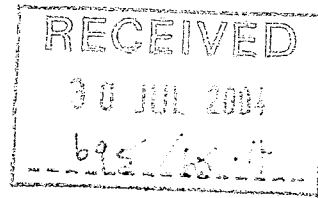


The Chairman
Standing Committee on Law and Justice
Parliament House
Macquarie Street
Sydney



28th July 2004

Dear Madam Chair,

I have enclosed a submission in respect of your inquiry into "back end home detention" as announced recently. Thank you for the opportunity.

As I have said to your predecessors in the past, it is a great shame that your committee's deliberations are not widely known in the gaol system, the very people it most affects. A copy of your advertisement on the notice boards of the accommodation wings in every gaol would not be much to ask, and could elicit some very useful feedback.

You are probably aware the only published forum inmates ever had, the newsletter known as Justice Action, was banned from all gaols two years ago after it published material critical of Commissioner Woodham. Since then, there is no advocacy mail allowed into the gaol system and your committee's deliberations will only therefore become known as a result of newspaper announcements. This excludes 98% of the prison population who collectively either do not get access to the daily papers or who cannot read them.

That assumes of course that the gaol management will facilitate the postage of submissions to you, which as you are no doubt aware, is not axiomatic.

Many of those contemplating works release or struggling with the current administrative aversion to granting works release at the earliest opportunity, may also be able to provide some interesting anecdotal evidence for your consideration.

I hope of my submission is useful for your deliberations.

Yours faithfully

SUBMISSION
Standing Committee on Law and Justice
Inquiry into Back End Home Detention

PERCEIVED BENEFITS AND DISADVANTAGES OF BACK-END-HOME DETENTION

The benefits:

- Reduction in costs to the Department.
- Presentation of a positive incentive for good behaviour to replace the lack of remissions.
- Provide a potential re-introduction of inmates back into the workforce: Given that unemployment and poor education are the predominate contributors to increasing recidivism, then having offenders experiencing work as part of the programme content is a desirable ingredient.
- Reduce the hardship for the family, particularly where the incarcerated person is the only income earner.

Disadvantages:

- The Department's incapacity to manage any external programmes with compassion and consistency.
- The abject failure of the inmate classification system to correctly identify inmates who could not only participate in, but would gain from a back end sentence alternatives.
- Added frustration for inmates who are advised of the existence of the programme without being advised of the prerequisites or find themselves denied access to the programme by maladministration and no suitable classification appeal process.

THE RELATIONSHIP BETWEEN BACK-END HOME DETENTION AND EXISTING EXTERNAL LEAVE PROGRAMS

The external leave programmes that are now available are so poorly administered, they fail to offer any positive rehabilitative value. There is no plan and no consistency.

There is a lack of commitment from the current administration, both departmentally and within the works release goals.

The current leave programmes are inconsistently applied, do not reward those who comply with their case plan and is over-represented by inmates most likely to fail. This is arguably a manifestation of the Department's perceived lack of commitment to the programme. Many of the inmates chosen, appear to be selected because they have a heightened chance of failure.

There are hundreds of inmates in the NSW system at present who could be on works release now if the Department adequately managed its own classification obligations in accord with its own manual.

When the original concept to extend back end programmes was first mooted, it was mooted to allow those on the stage two of works release, that is working and going home once a month, to have the ability to convert to home detention. This would greatly contribute to the value of the programme.

Another initiative would be to allow all those who do not still have drug issues, to go home after they have secured employment, under a supervised scheme.

Any back end programme will fail unless the present malaise of the works release and the classification system as it relates to the granting of C3 Classification is resolved.

It should form a positive incentive for those who qualify and should be provided in a timely fashion, that is when it is due, not months afterwards.

THE IMPACT OF BACK END HOME DETENTION ON THE PRINCIPLE OF TRUTH IN SENTENCING

Already the sentences in NSW are higher than in most other states.

A recent study carried out by the author into Commonwealth crimes of fraud proves that there is a substantial inconsistency in sentencing. In Victoria, the sentences are less for the same crime. In Queensland, whilst the head sentences are approximately the same, the non-parole period is substantially lower. For example, a Commonwealth Fraud of say \$600,000 in NSW will statistically earn the offender about 5 years with a 3-½ year non-parole period. In Queensland, the same offence will carry on average, a 5-year sentence with a 1 year non-parole period. This has a major benefit insofar that it provides a very powerful, long term, deterrent to re-offending and does much to rid the gaols of those who are not in need of programmes.

Back end home detention would increase the number of accused persons who plead guilty when faced with a trial and the possibility of a custodial sentence. A more acceptable regime of a non-custodial sentence or a short custodial sentence combined with a back-ended sentence would encourage many to plead guilty.

There would also be a higher number of guilty pleas if there were sentence options available and these were plea bargained in advance.

The one caveat is however that many accused persons plead guilty as a result of improper pressure of either the Crown or the legal aid funded solicitors. Often the inmates exchange the discomfort of attending a trial for a simple sentencing routine, finding themselves unable to cope with the trial process. This is especially prevalent where the accused is mentally handicapped or illiterate. Your own statistics point to a high incidence of these two shortcomings in the NSW prison population.

Some consideration should also be given in your consideration as to applicability of appellants to back end programmes. At the moment they neither obtain progress within the classification system and do not get their C3 classification, irrespective of the merits of their appeal or the rulings of the Supreme Court to the contrary.

THE APPROPRIATE AUTHORITY TO DETERMINE WHETHER AN OFFENDER MAY PROCEED TO BACK-END HOME DETENTIONS

It is clear the Department of Corrective Services is incapable of managing the back end programmes is already has responsibility for. Afterall, the current failure of the works release programme (in NSW there are only 53 inmates on works release as at 1.7.04) is testimony to the lack of support the Department gives to pre-release programs. In the Silverwater complex there are approximately 50 inmates who are theoretically eligible for works release if the Classification system was correctly and appropriately managed and there was some sign of commitment to expedite the applications.

The Department cannot even ensure that reports to its own parole board are submitted on time to ensure that offenders have the opportunity of being released when their head sentence concludes. Some inmates wait months for another hearing as a result of departmental delays.

The Pre Release Programme Unit (PRPU) which presently operates the programme is not the appropriate body, as most of the ills of the present programme can be attributed to it. Six weeks to approve an employer is common. Taking people from their work position because there were allegedly not where they should be, (only to find out they were wrong), agreeing to employment positions on below award conditions, not being diligent etc are all common complaints.

After all, the senior officer in the Programme Unit was removed as Deputy Governor of the Works Release Centre because allegedly his attitudes were not conducive to dealing with minimum-security inmates.

The other issues with the PRPU is that most of the workers are ex officers, many of which have limited job and life experiences themselves. If this is the model that has to be chosen, it cannot be supervised by custodial staff and its success and failures have to be capable of monitoring. The monitoring should be on works positions and applications together with the response times taken from the time the inmate becomes eligible for works release to the date of his commencement.

The Department cannot consistently approve offenders into works release or other leave programmes in a timely and predictable regime. Delays through lost reports, lost files, lost forms and simply the lack of appropriate management is endemic in the current system. There is no effective monitoring of that failure rate either.

Many of the failures of inmates to progress to the works release programme at the Silverwater Works Release Centre include:

- Paper work prepared on or about the eligibility time, instead of in advance;
- Documents missing delaying eligibility;
- False information given to inmates about the whereabouts of their file;
- Delays in interviewing sponsors;
- Delays in having sponsors checked (a 2-minute computer check takes on average 2 to 3 weeks);
- Delays in having longer term inmates, public interest inmates or other inmates processed because at the end of their sentence, the paper work is not commenced in time;
- Public interest inmates are delayed at least two months into their eligibility period simply because the paper work has not commenced early enough in almost every case;
- The officer's perception that a day at home is not important to an inmate; and
- The lack of consistent notice given to families or employers re expected dates for day leave or works release.

This lack of credibility then seriously depletes the family and employer support because they cannot rely upon the predictions of availability.

When inmates are extended works release and other programmes, then they are often subjected to:

- Employers finding officers so abusive, they withdraw from the programme;
- Employers unwilling to participate because of the onerous conditions;
- Family members or sponsors withdrawing being unable to cope with the attitude of the officers who deal with their inquiries;
- Family members who cannot accept the poor attitude of officers attending their home to administer alcohol tests;

- Family members and sponsors who withdraw owing to the administrative uncertainties as to when leave will be granted; and
- Workers finding the officers implacable if they are late back from work through reasons such as late public transport, a matter which is beyond their control.

Of late, the Governor has directed that any minor infraction in the works release area, eg smoking in a non-smoking area, is punishable by cancellation of day leave entitlements. Others who have been vocal about the delays in their works release find other programme impositions have been placed in their way, further delaying their works release. This often leads to job opportunities becoming stale because of the constant delays.

This style of management is not conducive to the conduct of a rehabilitation programme.

The Serious Offenders Review Council is also not without criticism. They have on occasions shown remarkable compassion, but they too have not recognised the need for inmates to know of their release date with sufficient notice. They are also prone to rather puritanical and reactive decisions, for example in July 2004, they instructed that all inmates at the Silverwater Works Release Centre be urine tested each day. Apart from the administrative burden, the sheer lack of consideration to inmates is breathtaking. Not to mention that many of the inmates on works release are not on drug charges and have no history of drug consumption.

To introduce a commitment to back end programmes, a special unit should be developed and their effectiveness measured by the participation in the programme. It should be managed along rehabilitation lines and not be an extension of the custodial service.

THE CRITERIA FOR ELIGIBILITY FOR BACK END HOME DETENTIONS

Criteria should include:

Must be capable of holding down full time employment or full time education.

Drug free whilst incarcerated: Many of the issues in the current works release area relate to drugs, where the inmates have not overcome drug habits. Most of those taken off the programme in the last 12 months were for drug issues. Interestingly, they were all known to have a drug problem before they were granted the works release.

Constantly worked in the gaol system with good work reports: Many of those in the works release programme showed absolutely no work ethic whilst in gaol and should not have progressed. They do and their poor work ethic follows to the works release unit where they don't work, they change jobs, they take extended sick leave and otherwise overextend the administration because they really are only seeking the other leave programmes and don't display the necessary work ethic.

Is not ill: Some of those who aspire to works release do so for the lure of day leave. Many of them suffer mental or health issues which preclude work. One inmate was recently granted works release despite an advancing case of dementia.

Is not a deportee: At Silverwater, the prevailing wind direction appears to dictate whether deportees are eligible for works release. Some have works release and others are informed it is against the regulations.

THE EXPERIENCE OF OTHER JURISDICTIONS

The New Zealand experience correctly and apparently expertly permits those who are on home detention but cannot comply with the rigors, to surrender their entitlement to home detention in favour of full time custodial. This is a very clear indicator that both the administration and the

detainee have a clear understanding of their obligations and the proposition of returning to full time custodial is preferable than fail to adhere to the rules of the programme.

ANY OTHER RELATED MATTERS

The Department and the convening authority for pre release programmes must become involved in the predictions of dates and programmes at an early stage in the sentencing procedure. This is at odds with the current classification malaise where works release is delayed poor scheduling and the overall perception that any programme is discretionary and that any dissatisfaction with the administrative malaise is simply lack of appreciation.

To put this into context, many inmates currently:

- Do not know their sentencing details because they were too shocked at sentencing and it was never explained.
- They cannot obtain a copy of their sentencing remarks from their file whilst in prison.
- The computer system within the gaols (OMS) is not reliable enough to record release dates.
- Even if the date is known, then there is the unknown about parole. More often than not, parole is refused because an inmate has not addressed his offending behaviour or not partaken of a course, which the Parole Board deem desirable. Why this is not done earlier on in the sentence is only a matter for speculation. Presently it is only when an inmate meets the parole officer at the end of the sentence, does he learn of the pre-requisites for parole, thus unnecessarily extending the sentence.
- Then an inmate sees the parole officers who have little to no concept of what the terms of parole are going to be, or, in many cases, do not even realise that parole is automatic in some cases eg shorter terms or Commonwealth prisoners.
- Without knowing the release date, the earliest parole date, the likelihood of parole etc, then the postulating about rear end programmes may just remain as that and the written undertakings from the Department about eligibility for parole, eligibility for works release etc are just simply not worth the paper they are written on.

It is possible that the Department is intentionally placing unsuitable inmates into the programme to bring it into disrepute. This appears to be so at Silverwater where those known to have a drug habit are placed in the works release wing, but others, who have no drug issues and would welcome works release have their applications refused.

Imprimatur

It is critical that the rules and regulations that are promulgated in this proposed programme are published and made available to inmates and their advocates. At present there are very few copies of the regulations or the Sentencing Administration Act or the Classifications Manual in the gaols and it is therefore impossible verify what inmates are told by the officers.

Inmates would almost daily be required to sign forms, which has its quoted origins in acts and regulations that the inmates cannot access. This is a serious breach of natural justice.