

REPORT OF PROCEEDINGS BEFORE

**SELECT COMMITTEE ON THE
INCREASE IN PRISONER POPULATION**

At Sydney on 19 April 2000

The Committee met at 2.00 p.m.

PRESENT

The Hon. J. F. Ryan (Chair)

The Hon. Jan Burnswoods
The Hon. Dr A. Chesterfield-Evans
The Hon. P. T. Primrose
Ms Lee Rhiannon
The Hon. Janelle Saffin

KEPPEL EARL ENDERBY, Chairman, Serious Offenders Review Council; President, Universal Esperanto Association, Rotterdam, Holland; and farmer, affirmed and examined:

CHAIR: In what capacity do you appear before the Committee?

The Hon. K. ENDERBY: I have been invited to appear. I do not know of any other reason..

CHAIR: Strongly invited?

The Hon. K. ENDERBY: There is a bit of misunderstanding about that.

CHAIR: I hope to give you a chance to clear that up. Could you briefly outline your qualifications and experience which might be relevant to this inquiry?

The Hon. K. ENDERBY: They are all in that written submission I sent to you.

CHAIR: Judge, Attorney-General.

The Hon. K. ENDERBY: Of course, yes. I have been a barrister for more years than I care to think about, practising often in the criminal courts, sometimes trying to put people in gaol and many times trying to keep them out of gaol. I taught law at the Australian National University for a few years. Apart from studying criminology at Sydney University back in the late 1940s, I went to London and did a master's degree in criminology with Mannheim, and did a thesis on it in criminology. When I went on the bench, in the Supreme Court of New South Wales, I did my share of criminal work and sat on the Court of Criminal Appeal. I was a member of the Sydney Institute of Criminology and reasonably active there.

I try to keep up to date with the literature on criminology and penology. In 1975 I led the Australian delegation to the fifth United Nations Congress in Geneva on Prevention of Crime and Treatment of Offenders. For some years I was a councillor of the Australian Academy of Forensic Sciences. For the last three years I have been chair of the Serious Offenders Review Council—SORC.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act?

The Hon. K. ENDERBY: Yes, one was just given to me.

CHAIR: Are you conversant with the terms of reference for this inquiry?

The Hon. K. ENDERBY: In general terms and in a general way.

CHAIR: If you should consider at any stage during your evidence that it is in the public interest that certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee would usually accede to your request and resolve into private session. I should warn you, however, that the Parliament has the power to override that decision at any time and make your evidence public. You gave a written submission to the Committee. Do you prefer that to form part of your evidence?

The Hon. K. ENDERBY: Yes.

CHAIR: Do you wish to address the terms of reference or the written submissions that you gave to the Committee?

The Hon. K. ENDERBY: Yes. I have prepared a very short opening statement because it was suggested to me that I might be able to do that. First, may I thank you again for the opportunity to try to assist the Committee by giving evidence today. I have sent to the Committee a somewhat long written submission, together with two annexures, which set out most of my views. Knowing how much politicians are pressed for time, I apologise for the amount of reading I have invited the Committee to undertake. I have a few copies of that submission and the annexures for the media and whoever might wish to have them.

I suppose the principal point that I wish to make to the Committee, from a utilitarian as well as a humanitarian point of view, is that we would all be better off if a significant percentage of our present prison population were not in prison. There must be better ways of handling the social problem presented by the criminal behaviour of some of our citizens than putting them in the counter-productive and generally corrupting environment of a prison. As the cartoon in this morning's *Sydney Morning Herald* so graphically demonstrates, we are increasingly using prisons as childcare facilities for our disadvantaged communities. I am sure the Committee has seen the cartoon. I do not think anything can say it better than that cartoon.

The problem, and I suggest it is essentially a problem for politicians such as yourselves, is that that is what the majority of the voters seem to want. They want more people in prisons. There seem to be fewer votes in what might be the alternatives to prison. The present Minister responsible for prisons—Mr Debus—as I see him, is as humane and progressive a Minister as one could hope for in a practising politician, but he has to deal with the realities of political life. Mr Chairman, you will have noticed perhaps in the written submissions and in the annexures that I do not talk about corrective centres, I talk about prisons because I think that is what reality demands. “Corrective centres”, although fashionable and a euphemism, merely clouds the true issues that are involved.

As I have said in my written submission and in the annexures, there are many causes of crime and they are all social in one way or another. Lack of deterrence—the principal reason justifying the use of prisons as a punishment for criminal behaviour—is not one of them; neither, in the case of most prisoners who must sooner or later be released from prison in the long run, is the protection of society. I am happy to answer any questions that the Committee might wish to put to me.

CHAIR: The Committee has received a number of explanations for the increase in prison population: more imprisonable and violent offences being committed, particularly by women; the heroine epidemic, more efficient policing, the impact of various legislative changes including the Sentencing Act, the Trafficking Act, the Criminal Procedure Act; jurisdictional shifts in the powers of the local Court, guideline judgments and a reaction to the law and order debate. Do you wish to highlight any of those factors, or others, as contributing to the increase in prison population in New South Wales?

The Hon. K. ENDERBY: The list you have read out covers many of them. I did not make a note of what was read out but there are many reasons. The misunderstanding that lies at the base of the idea that votes are to be had in the law and order campaigns that we are so often

subjected to, is that the public perception of the rate of crime is much worse than it really is. In all the research that I have looked at over the years, the popular perception of the man and woman in the street is that crime is rampant, out of control, and increasing rapidly—and that is just not the case.

There are various reasons for it. As I tried to say in the written submissions, in the *Ockham's Razor* talk that I gave and in the annual report of SORC, we are all interested in crime. You have only to read the daily newspapers when someone from the countryside commits a murder or a rape, particularly a crime with violence—we are not interested to the same extent in white-collar crime, that seems to be different—and there are radio talkback hosts such as Mr Jones and Mr Laws and others, and some newspapers. Because of that, public opinion that crime is out of control is fanned and ratcheted up. With great respect to the politicians present, because I once had this problem, in a democratic society—which we all like and want to preserve, keep and advance—you have the terribly difficult problem of trying to placate popular opinion and yet at the same time do right. Doing right has not necessarily always been popular, unfortunately. There was a very famous English historian called Hobsbawm—I think he is still alive—who once said that there is a basic conflict between liberalism and justice and democracy. That sounds like a basic contradiction in terms, but if you think about it, there is.

To be more specific, your list mentions changes to the Bail Act. One must appreciate that with the social environment of the public often being said to be demanding more measures to control crime, the police become involved and they become more and more active. That is the first discretionary step in the criminal justice procedure, the decision of a policeman whether or not to arrest. It is a discretion which he or she must make. If they are persuaded to make more arrests and do not exercise the discretion not to arrest when there is a suspicion of crime, a greater number of people will go into prison, not because the crime rate has gone up but because the decision to arrest has been made more often than it used to be.

Once the person is arrested he or she goes into custody and he or she then has the right to make an application for bail. In my time at the bar and on the bench most of the time—not all of the time because in the end it changed—but it was generally accepted, and rightly so, that there was a presumption in favour of bail because the person had not been convicted of anything and was presumed to be innocent. That is a basic, liberal, fundamental right, the basis of civilised society. However, yielding to this outcry we are told exists, the Bail Act was changed, not all at once but over a period of time, so that more and more that presumption of bail has been watered down. I do not say it has disappeared but not only are more and more people going into prison but fewer and fewer are coming out on bail. It is much more difficult to get bail now. That is a big contributing factor.

One factor was the abolition of remissions back in 1988, I think it was. As I said in my written submission, I understand from reading *Hansard* and the literature at the time that the reason for abolishing remissions was not that the people in gaol were not unfit to be in gaol but it was the honesty question. Remissions gave the impression that when the judge said X years, X years did not mean X years, so that the public had the feeling that there was a dishonesty or deceit being practised upon them. Judges were aware of the remissions and in a hypothetical case if I thought that 20-odd years as a minimum term of non-parole period in those days—I think it is coming back—was appropriate, I knew full well that with good behaviour when I opted for 21 years, the good chances were that after two-thirds of that time, with one-third off, the man would be eligible for parole and would probably be released. There was a presumption of parole.

Judges often said to the person they were sentencing: "You behave yourself and in a certain time you will probably be out." I do not think anyone said that was not a good procedure to follow but it did have the element of being dishonest or of a deceit being practised. Mr Yabsley was the Minister and made a strong case when he said that it was not his intention to increase sentences or cause people to stay in gaol longer. He just wanted to introduce truth in sentencing. It was an honesty question. No-one could complain about that, and no-one does complain about it. However, the result was that within a couple of years people were spending one-third longer in gaol than they had served before.

The other thing that I think has played a part is that judges themselves do not always live in ivory towers, in fact very seldom. Anyone who has practised at the bar, as most judges have, certainly do not live in ivory towers. I would argue very forcefully that most barristers, particularly those who do criminal work, are much more in touch with the sordid and real side of society than the average man or woman in the street. They do not live in an ivory tower by any means. Judges, reacting to public opinion, also began to increase their minimum terms and head sentences. They are contributing factors. I may have overlooked some but they are all set out in the written submission.

CHAIR: You were quoted in the media as saying that 80 per cent of prisoners should not be in prison. Were you correctly quoted and if that is the case, where should they be?

The Hon. K. ENDERBY: No, as I said in the written submission, I never said that. I said we would all probably be better off if up to 80 per cent of people were not in prison. That is a totally different thing. As I said in my submission, no-one knows what the percentage is. I certainly do not know what the percentage is, but it is a very substantial percentage.

CHAIR: What do you see are the alternatives to putting people in gaol. If a person has committed a crime, should our laws be more lenient in dealing with them or should we have other options that are not gaol?

The Hon. K. ENDERBY: We should have other options but more and more of our resources should go into the root causes of crime. As I said, the article in the *Sydney Morning Herald* summed it up so beautifully. Our resources are not going into finding the root causes of crime, which are essentially social. They are going into building more and more prisons, which is putting the results of crime out on-sight, out of view, out of mind, I suppose.

CHAIR: I refer to something in your written submission which, I suspect, will create some public discussion. On page 10 of your written submission you said:

Another change has been the increasing encouragement given in recent years to victims lobbies which, in a small but noticeable way is contributing to the increase in prison numbers. The statutory definition of victim is very wide and can take in a person other than the immediate victim. Whilst everyone sympathises greatly with the distress suffered by victims and relatives of victims of violent crimes, they cannot be expected to be impartial or objective. Over the years victims rights have resulted in victims being given an increasing role in the administration of justice that does not always facilitate the doing of justice in a particular case.

Would you like to expand on those remarks?

The Hon. K. ENDERBY: I do not think I can say it any better than what you have just read out. I had occasion to go out to Silverwater on Monday where there was a meeting of the pre-release leave committee. One prisoner or inmate, as the euphemistic term goes these days, who was not a murderer or rapist or anything of that sort because it was a different type of crime altogether, had reached the stage where because of his behaviour and in the best interests of

preparing him for eventual release either at the end of his non-parole period or after the completion of the full sentence, he was only about one year away from the expiry of the non-parole period, he was up for the day leave and weekend leave. To test the person they may be out on day leave, weekend leave and eventually on work release to see whether they can cope with outside society. They are on conditions, of course, to be of good behaviour and that sort of thing.

This man had been refused a number of times because of the particular group of victims in that case. One person had been killed and all the relatives were there. One can have enormous sympathy for them because they are real victims, there is no doubt about that. I am not arguing that they are not to be treated as victims but in this particular case the argument that this group of victims was continually putting up meant that there was a kind of threat, if you like, to bodies such as the Serious Offenders Review Council [SORC], the Minister and the commissioner—SORC does not make many decisions; it just gives advice; it is the commissioner ultimately—that if the day leave was given, and it was just the day leave, a testing thing—despite all the psychiatric and psychological evidence and evidence from governors and that sort of thing, this victims lobby would take the political course to go to local politicians and all hell would break loose. That is their democratic right and no-one could argue against that. That is just an example of it.

I do not say it is a major contributing cause. I suppose for completeness one should say this: One can understand why Parliament decided to recognise in a formal way the interests of victims. That was perfectly justifiable and proper, not that it was not always the case that judges took account of victims' interests. They always did. For instance, if a judge was sentencing a man for the murder or something or other and there was a family of distraught people in the back of the court, you could not and did not ignore them. I suppose it is part of that democratic process that to get one benefit, one also has to pay a price, and we are paying a price in the sense that we all being human, no-one wants to wake up in morning like I did after I gave that talk to 11 people in the pub, to be told by whatever the television station was at four o'clock in morning had I read the *Daily Telegraph* about the 80 per cent thing.

CHAIR: Even someone as far-sighted and progressive as Archbishop Desmond Tutu has spoken about the value of restorative justice. Do you not see that the greater recognition being given to victims is part of that valuable input into the justice system where, to some extent, the real pain of victims has been somewhat ignored by the court process. Do you not think it has been valuable to at least recognise that?

The Hon. K. ENDERBY: I am not saying there is no value in it, I am simply saying you are paying a price for it as well. As Mr Fraser once said, "There's no such thing as a free lunch."

CHAIR: I put it to you that there might be some who would argue that the most appropriate people to pay the price are the prisoners themselves.

The Hon. K. ENDERBY: Yes, that is an argument you often hear. In the case I mentioned the other day, people who made the decision in the prison put to both the victims and the prisoner that perhaps some benefit might come from sitting down at a table together, eyeball to eyeball, fronting each other. The prisoner was quite prepared to do it, because he was terribly sorry for what he had done. The man he killed was his best friend. But it was the victims who refused to do it. And that is understandable, why would they want to? It is not black and white. Every case is different.

CHAIR: If people who have committed nasty crimes are spending more time in gaol, what is lost?

The Hon. K. ENDERBY: I suppose the first thing is that, with rare exceptions, they come out worse than they went in; and 99 per cent of them have to come out sometime.

CHAIR: As head of the Serious Offenders Review Council you would have the opportunity to review many prisoners who have received an escape classification. From time to time it has been put to the Committee that the escape classification is a hindrance to properly preparing prisoners for eventual release, because they are not able to participate in work release and other programs that have a useful rehabilitative role. Are you able to any insight as to whether the current arrangements for reviewing the escape classification are adequate? Are they too bureaucratic, or sufficiently bureaucratic, to do the task? Do you think there are any prisoners who should have had the escape classification taken from them, but have not?

The Hon. K. ENDERBY: I think I understand, but I am not certain, what you mean when you say “escape classification”.

CHAIR: The “E” classification that prevents prisoners from going through the—

The Hon. K. ENDERBY: The High Security Risk Committee.

CHAIR: Yes.

The Hon. K. ENDERBY: I believe there is a very small percentage of people who are an escape risk, but they do exist, there is no doubt about that. And if they do exist then, certainly, you have to have a process to determine whether they are in that category, and that does exist. I sometimes think that there is an unnecessary emphasis to their being manacled not only with the hands but also with the feet—which is offensive to any supply society—when they are brought before the committee. It is occasionally done. You are quite right: if they are classified as an escape risk that does hinder them from being considered for day leave, weekend leave and work release.

CHAIR: Serious offenders who serve their full sentence may sometimes move directly from maximum security to live in the committee. Can you inform the Committee of any more effective means of achieving the goals of offender rehabilitation and community safety?

The Hon. K. ENDERBY: Yes. I would like to see, except in the most extreme cases, as people near the time for their ultimate release, whether it is on parole or because the head sentence expires, that they get day leave, weekend leave and work release to best prepare them for it. Perhaps three or four weeks back now, and I touched on this in the submissions, there was a visiting Canadian specialist in Sydney. I believe he was brought out by the department to give some talks on the assessment of risk. He is a psychologist by profession. In the course of questions he compared the situation in Canada with the situation in the United States and in New South Wales, Australia generally because he had travelled around Australia a bit, and he was very critical of the way we were going; that we were going along the road of the United States in that we had a tendency to put people in gaol and throw the key away.

He contrasted that with Canada. I am not an expert on Canada, but I asked him some questions about it. If I understand him correctly, Canada has succeeded in reversing the trend by

expending more money on post-release supervision of prisoners during their daily leave, weekend leave and work release so that they are encouraged in that regard. There are fewer recidivists, there are fewer people going back into gaol, and the prison population in Canada is falling. Indeed, according to him, the crime rate is falling, only just; it has only just started to do it. Whereas in the United States it is going the other way. I have his email address. I intend to follow it through to see if I can get some more-up-to-date information. A recent book by Duncan Chapel and Paul Wilson has some material on the Canadian experience, which is worth reading.

The Hon. Dr A. CHESTERFIELD-EVANS: Do you know why Victoria has a much lower imprisonment rate than New South Wales? It seems an elementary question, but remarkably little attention has been given to the answer.

The Hon. K. ENDERBY: That is a good question. Why do we have twice as many barristers in Sydney than Melbourne? I do not know.

The Hon. Dr A. CHESTERFIELD-EVANS: Surely those two facts are not related?

The Hon. K. ENDERBY: No, they are not. You are quite right, they are not related. But it does highlight something between the culture of the two different cities. Sydney is the big cosmopolitan city close to the United States. So is Melbourne, I suppose. People often make the comment that the culture in Sydney is totally different to the culture in Melbourne. Melbourne is supposed to be more intellectual than Sydney. We are supposed to be brash and barbarian-like. I do not know whether we are. But you are quite right. I just threw that it in about barristers to illustrate that there are other differences between Sydney and Melbourne, not just the arrest rates or the crime rates.

The Hon. Dr A. CHESTERFIELD-EVANS: There must be criminological reasons though?

The Hon. K. ENDERBY: I do not know of any reasons that could be accounted for by a different penal system that exists in Melbourne from what exists in New South Wales.

The Hon. JAN BURNSWOODS: Convict colonies, perhaps?

The Hon. K. ENDERBY: Yes. There are convicts in Melbourne, but we started it all, did we not?

CHAIR: You would be aware that the Minister for Corrective Services has announced the construction of the new women's prison at south Windsor as a response to the burgeoning female inmates numbers. Do you have any views on the development of the new women's prison?

The Hon. K. ENDERBY: Just that I regret it, in the sense that it is deemed to be necessary.

CHAIR: Do you agree that it is necessary?

The Hon. K. ENDERBY: I am a realist in the sense that I know that the plea I make is unacceptable politically.

The Hon. Dr A. CHESTERFIELD-EVANS: We are trying to change that.

The Hon. K. ENDERBY: I hope so. I suppose the real answer, and it is a long-term one, is better understanding, more education, more social services. I do not mean exaggerating the welfare state so that we all become welfare dependent; I do not mean that at all, but more of our resources going into the causes of crime rather than trying, once crime has occurred and the offender has been caught and arrested and put in prison, keeping him or her there for longer. The prisons are much better places now than they were when Bathurst was burned, at the time of the Nader report and all that. But they are still nasty places.

The Hon. JAN BURNSWOODS: In the early part of our questions we spoke mostly about serious offenders, and your position on the Serious Offenders Review Council. Can you remind us of roughly what percentage of the prison population serious offenders make up?

The Hon. K. ENDERBY: It is a small percentage. I do not have the up-to-date figures in my mind, I am sorry, but I think the total prison population in New South Wales now is 7,200 or 7,300, or something like that. Serious offenders, and the definition has been widened in recent times, would be less than 600. I think I am right in saying that.

The Hon. JAN BURNSWOODS: And that is fairly stable?

The Hon. K. ENDERBY: In my time. It is probably going up a little bit because the classifications have been widened. The chap I mentioned the other day, a few years ago he would not have been regarded as a series offender, but he is now defined as a public interest inmate.

The Hon. JAN BURNSWOODS: I noticed that you have used the word "chaps". Roughly how many serious offenders are women?

The Hon. K. ENDERBY: A relatively small number. I do not know what the percentage is off the top of my head, I am sorry.

The Hon. JAN BURNSWOODS: A tiny percentage?

The Hon. K. ENDERBY: Yes, a small percentage of the whole. But some of them, because of the nature of the crime, attract just as much public attention or the involvement of the media, which is not the basis of the problem because it is the social attitude itself, it is the public perception that crime is much more prevalent than it is that lies at the basis of the theme, and that is why I say that education is anything you can bring to bear on that problem. You cannot criticise the media for wanting to sell newspapers. You cannot blame politicians too much for wanting to be re-elected. People talk about leadership and that sort of thing. It is very easy to say it when you are not in power or not in Parliament.

The Hon. Dr A. CHESTERFIELD-EVANS: Why are the options to prison not used more by people on the bench, or why do people on the bench not ask for more options if they think the punishment should fit the crime?

The Hon. K. ENDERBY: The old common law rule, as it related to crime, was that prison was supposed to be the last resort. Judges would exercise all the other means available to them as a means of punishment: periodic detention, fines, suspended sentences, so on and so forth. But I think what happened is again the same process. If I am repeating myself, forgive me.

The judges began to cop all this criticism too: they were too soft and they were living in their ivory towers. There was one particular television man from Melbourne—his name will not come to be, but he is not doing it now—who was just offensive in the extreme. It is all very well to say that judges are independent, and in the statutory tenure sense they are, but they do not like to be continually attacked in that way.

This is a difficult problem of the same sort I have been trying to talk about. As I said, I think it was in the *Ockham's Razor* talk, there is a great deal of difference between the austere demands of justice, if you like, particularly in the criminal court and the popular demands of a radio or television commentator. Judges are also jealous of their discretionary rights. They genuinely believe that justice requires discretion within the parameters, of course, of what the Parliament sets. But they increasingly know, as we have seen in the Northern Territory and Western Australia, if the public opinion is inflamed, and I am being extremely frank, to such extent by the media, not that the media is trying to intentionally inflame anybody but in its excessive reporting of these things, the politicians will come in and act and you will get mandatory sentencing, like there is in the Northern Territory, which takes the discretionary function completely away from judges in certain circumstances. To weaken those trends judges, of their own volition, increases sentences.

The present Chief Justice, Justice Spigelman, as I understand it introduced a system of guidelines to sentencing judges to try to placate, if you like, as I imagine it, the demand that otherwise Parliament might intervene and do something not as drastic as the Northern Territory but something that should be avoided.

The Hon. Dr A. CHESTERFIELD-EVANS: But you have said that very few of the people are serious offenders in the sense that they committed violent crimes. So there must be a huge spectrum between the person who rapes a 93-year-old and gets on the national hate list, and the person who commits small crimes such as burglary or whatever. Admittedly, there is always the person who says that anyone who burgles his house should do life. There are variants of that in the public media. There seems to have been a contraction of alternatives as a percentage of total sentences. That does not seem to have been resisted even though everybody knows that most offenders are serving relatively short terms or are imprisoned for relatively trivial offences in the sense of the amount of physical harm that has been done.

The Hon. K. ENDERBY: I do not dispute that. It is implicit in what I said earlier to the Chairman about more arrests being made these days because that is what is expected of the police. That brings more and more people into custody. Smaller percentages are getting bail because the magistrates are subject to the same sort of social pressure, if you like—as are District Court and Supreme Court judges. They try to resist it as well as they can. So the gaols fill up with prisoners on remand, which is increasingly accounting for a large percentage of—

The Hon. Dr A. CHESTERFIELD-EVANS: It has affected court delays, has it not?

The Hon. K. ENDERBY: I do not know about that.

The Hon. Dr A. CHESTERFIELD-EVANS: They would not be on remand if they were not going to court, would they? If they did not have to wait for court they would not be on remand?

The Hon. K. ENDERBY: I am not up to date on court delays these days.

The Hon. JAN BURNSWOODS: They have been reduced in the District Court.

CHAIR: I might read a sentence of your submission on that point. At page 7, about midway down, you say, "If one goes no further than observe the recent doubling of the prison population, and note that it bears little or no relationship to many changes in the actual crime rate, one can argue by old norms of proper sentencing perhaps 50 per cent of the present prison population should not be imprisoned." Were you saying that prison sentences nowadays are longer than they need to be and that judges should be opposing shorter sentences?

The Hon. K. ENDERBY: Let me approach the question this way, Mr Chairman. When truth in sentencing came in in 1988 I do not think anyone then argued in favour of a change in the law that the people in gaol were not there long enough, that the prison sentences were not long enough. Mr Yabsley did not say that; he just tried to introduce truth in sentencing. If you want to take 1988 as a base year—that is really being artificial—there were probably a significant number of people in gaol then who should not have been in gaol, or we would all be better off. That is the test I like to use. Since that time the prison population has about doubled. The crime rate has not doubled—nowhere near it; it has gone up only marginally, I think. That is where the 50 per cent comes from. But that is only the start of it. As I touched on in the written submission, and in evidence given to the Committee by Professor Haynes, Professor Vinson and Dr Eileen Baldry, a very significant number of prisoners are in prison because, although they have committed crimes—they would not be in prison without having committed crimes—they are really mentally disabled or mentally handicapped. I suppose that both those words are a little too strong. With a better social environment outside, few of them would end up in prison.

There is the other problem too. We hear over and over again about the growing gap between rich and poor. I suppose we are all tired of hearing it but the more that gap grows, the more you get a significant underclass, which is where you find criminal behaviour—badly educated, watching the difference in wealth that other people flaunt in their faces and so on, disabled in some way or another, resorting to drugs. I do not have any simple cure for the problem. All I say is that gaol itself is not the answer. That does not say that there is not a small percentage of people that you have no alternative for but to put them in prison.

The Hon. Dr A. CHESTERFIELD-EVANS: I understand that people are staying in gaol longer. Much better policing, if you like, has meant that, if the same number of crimes are committed, twice as many people are being arrested for them. The police are more efficient and are seeing or finding more of the crime that was committed before and that presumably went uncaught or unacted on. But as that rose you would expect alternatives to prison to have risen as well. People would say that if there is this problem let us find some alternatives to putting people in gaol. You would have expected there to be some pressure in that area. But there does not seem to have been any, neither from the judges nor from society in general. Can you suggest why that is?

The Hon. K. ENDERBY: Only what I have said so many times. The alternatives that judges have are not all that many—suspended sentence, periodic release and fines. Fines are often not appropriate because the offender does not have the money to pay the fine. Suspended sentences are often unacceptable because of public opinion—the same for periodic detention. Police being more efficient is a very attractive argument. If you have more policeman you are going to catch more people and have more arrests. The old-fashioned cop on the beat often, particularly with young people, deliberately turned a blind eye to juvenile crimes—and very wisely

did it. Because of the same social pressures I am talking about, today he is not encouraged as he may once upon a time have been encouraged, to turn a blind eye. Now he brings about an arrest. The person goes into custody and stays there for a while, does not get bail and so forth. The New York experience is very interesting—zero tolerance and all that sort of thing. For a short time they seem to have managed the crime rate. But now there is a real backlash because of excessive police behaviour. You do not want to have a police state either.

Ms LEE RHIANNON: Earlier you said that resources are not being allocated to look at the root causes of crime; they are going to lock people up. You also spoke about Mr Debus as the Minister, words to the effect that he has a progressive and humane outlook. Do you think that he is allocating resources in a wise way considering that you believe that he has the outlook? Do you think that things could be different under—

The Hon. K. ENDERBY: It is an unfair question, if you do not mind. I am not a politician anymore. I do not hold—

Ms LEE RHIANNON: But you did come here with that background. That is why I am asking the question.

The Hon. K. ENDERBY: I do not hold a marginal seat.

Ms LEE RHIANNON: You mentioned that you had been Attorney-General and we are aware of your time as a politician. I saw that as a basis on which you are also speaking to us. I was asking the question quite seriously.

The Hon. K. ENDERBY: I am sure you were. I did not mean to be frivolous about it. But I think I have to say the same thing again. An old colleague of mine, Kim Beazley senior, not the present Leader of the Opposition, once said that politics was the art of the possible. There is truth in that. I do not know what other claims there are on Mr Debus's resources. I just do not know.

The Hon. Dr A. CHESTERFIELD-EVANS: My understanding is that remissions were abolished in the sense that they were seen as a dishonest one-third discount, as you said. But there was also some corruption in their administration, as I understand, and that was a problem. If one were trying to revisit remissions as a possibility, how do you think that should be administered?

The Hon. K. ENDERBY: If I were sitting on high and had the power and the resources to do it I would have a system that had some kind of remissions built into it. One of the problems in the prison system at the moment is a lack of incentive for prisoners to undertake courses, rehabilitate, behave well, confront their offending behaviour and all that sort of thing so that they would qualify for remissions. As you correctly point out, there was that element of corruption that had crept into it. It had also become a little absurd in some ways. They were entitled to remissions because of the Queen's visit and things like that. That could not encourage good behaviour.

CHAIR: The counter-argument to that might be that the current system does have an element of remissions built into it in that a prisoner has to serve 75 per cent or 80 per cent of his sentence and the other 20 per cent is available as parole if he behaves. Some have argued that that is a form of remission.

The Hon. K. ENDERBY: It is not a remission but it is a form of encouragement. With the changes that have occurred in the Sentencing Act over the years parole is not automatic by any means any more. All sorts of safeguards and provisions and tightening up steps have been introduced over the years to make it more and more difficult for the Parole Board to give parole, particularly if a prisoner along the way—for example, this chap I talked about earlier in the week—is not going to get day leave or weekend leave. The Parole Board properly says to itself when he comes up to be considered for parole: He has not been tested outside. We do not know how he will behave so we will keep him there a little longer. The Parole Board cannot say to the commissioner, “Give him day leave” and it does not try. SORC can try to do that. But the commissioner has his own considerations always, of course, and he makes the final decision. Coming back to my Canadian colleague, as he was, I understand that although remissions have formally been abolished in Canada too, as they have in many other Australian States—not all of them—prisoners are much more likely to get out at the minimum term. Then there is a second minimum term. It is a sort of progressive thing along the lines of what you said, Mr Chairman, only much more so. It encourages good behaviour. When I go into prisons it is often said to me, by people who criticise the present system, it is true, that there should be more incentives. And remissions were a good incentive. They certainly needed reforming.

The Hon. Dr A. CHESTERFIELD-EVANS: What reforms would you suggest if they were introduced and who would manage the process of deciding how much would be taken off a sentence?

The Hon. K. ENDERBY: Ultimately it would be a matter for the commissioner of the day to work out a system. Parliament could set guidelines, of course.

The Hon. Dr A. CHESTERFIELD-EVANS: That is where the problem lay before, did it not?

The Hon. K. ENDERBY: I am not suggesting giving the power to the Minister, as in the case of Mr Jackson.

The Hon. Dr A. CHESTERFIELD-EVANS: I do not have great knowledge but one hears that before the prison administration had remissions to hold over the prisoners: If you want your remission you better do this, this, this all this.

The Hon. K. ENDERBY: I do not think I have heard that. The great nineteenth century reformer out here, McConachie, got into trouble with the politicians of the day. He introduced a system of remissions and lost his job for it.

Ms LEE RHIANNON: Concerns have been expressed about the role of sections of the media in the handing down of harsh sentences. It is an issue of considerable concern because it seems to imply that justice is not being done. Are any measures being considered or that you could suggest to remedy this situation? It is a difficult issue, but it does go to the heart of justice in our State.

The Hon. K. ENDERBY: More courage on the part of politicians.

Ms LEE RHIANNON: On the part of politicians?

The Hon. K. ENDERBY: And the commissioners, and SORC, and the Parole Board, and everybody else who is involved in making those decisions.

Ms LEE RHIANNON: What sort of decisions?

The Hon. K. ENDERBY: If it is right but likely to be unpopular, you still do what is right. And that is not easy.

CHAIR: It has been said that if offenders are not going to be imprisoned they might need to be placed somewhere else. I will rephrase the question a slightly different way. What would you like to see done to rehabilitate prisoners that is not being done now? What specific steps or programs should be undertaken that are not presently being undertaken?

The Hon. K. ENDERBY: The first thing I have to say about it, Mr Chairman, is that all sorts of rehabilitation programs in prison are difficult because of the prison environment. There are plenty of courses to assist people to control violence and other behaviour, and reports are done by psychologists, psychiatrists and others. However, the basic prison environment makes it all very difficult. There is no simple answer. For example, it is well-known that Aboriginals are a small percentage of the population, yet they occupy a much disproportionate percentage of the prison population, not only in New South Wales but more so in other States, such as Western Australia and the Northern Territory. No-one can say that there is something inherent in the Aboriginal genes that makes them prone to commit crimes. That is ridiculous and nonsense. They are overly proportionately represented because they are probably the lowest socioeconomic class in the community.

CHAIR: This question will probably be asked outside of this Committee. It will not be the most complimentary question I could ask you, but I would like you to answer it here for our benefit. I suspect a question might be put to you in this form. Is it not a fact that you are an old-style left-wing softie who wants to go mild on crime and that you are reacting more to sentimentality than to facts?

The Hon. K. ENDERBY: I hope not, Mr Chairman. I have put people in gaol for life, and I have put quite a number in gaol for 25 years. No, I do not think that is so.

CHAIR: Thank you, Mr Enderby. We appreciate your time. I am sure that members of the media will accost you after the conclusion of this Committee. Are you happy for your written submission to be made public?

The Hon. K. ENDERBY: Yes. In fact, not knowing whether you would ask, I brought my own copies along.

CHAIR: I ask that a member move a motion that Mr Enderby's evidence and the transcript be made public.

Motion by Ms Lee Rhiannon agreed to.

(The Committee adjourned at 3.03 p.m.)