

**Restorative Justice: Victims and Offenders: In the Context of Developing a
National Approach to a Best Practice Response to Social Breakdown and Crime in
Australia**

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I grew up in a community where as a family we went out for the day leaving doors unlocked, yet we were never burgled. We never locked our car, yet it was never stolen. We could go anywhere day or night in our local community and never fear assault. Police did not carry firearms. Crime was very much an unusual occurrence, not something that intruded on our way of life.

As an adult I live in a community where crime intrudes very much on my way of life. My home has been burgled on more than one occasion, my car has been stolen and my family and I are conscious of issues relating to personal safety as we go about our daily lives. As I go about my daily business I am aware that I am under regular surveillance of closed circuit television cameras, security uniforms are a common sight and we have armed police. Every day I see graffiti on community assets and on private buildings, the visible and lasting evidence of the tip of the iceberg of an anti-social destructive sub culture in our community.

In my lifetime our community has decayed. Our Australian way of life founded in the principles of a civil society has decayed. Our community is in a constant state of further incremental decay, such that I fear for my grandchildren in respect of the community they will inherit. Government and community leaders have an onerous and challenging responsibility to confront this issue of social decay. Policy settings are needed by government to maintain the principles of a civil society, so that our community becomes more law abiding and safer, with an enhanced quality of life for its citizens.

The total answer does not lie with government. This is a whole-of-community challenge. In this regard I am reminded of the anecdote I heard at a conference I attended in the United States of America in 1993 where a speaker gave a passionate address on the causes of crime and social breakdown in America. He said that the USA was ‘rotting from within’ and to illustrate his point he provided a horrifying array of statistics relating to family breakdown, illicit drug use, child abuse, family violence, juvenile crime, crime generally and imprisonment rates that were and remain the highest of any country in the world.

To illustrate that these issues were not just a government problem but a whole of community problem he told the story of the plane flying across America with 300 people on board. The Captain spoke on the passenger intercom to say,

‘I have some shocking and distressing news, our four engines have cut out, there is nothing I can do, we are about to crash’. Sure enough, the plane went in a steep dive plunging towards earth. The passengers all reacted in different ways, some panicked and screamed, some fainted, some prayed, some tried to use their mobile

phones to call loved ones, and through this chaos one passenger though distressed himself, noticed that the man beside him remained calmly reading his newspaper and sipping at his drink. He said to this fellow, for goodness sake, what is the matter with you, how can you be so calm, didn't you hear the Captain, the plane's about to crash!

The man looked up from his paper and shrugged and said, why should I care, it's not my plane!

The message in the story is that we are all in this together, and if our society crashes and burns, then we will all pay for the consequences.

The purpose of this paper is to propose recommendations for commencing a national approach to reducing social breakdown and crime in Australia by applying world best practice principles in a manner that meets community expectations for the maintenance of a civil society. In this regard the author is assuming community expectations to generally relate to:

- The rule of law being applied consistent with the underpinning moral values of Australian society;
- Punishments imposed by the Criminal Justice System reflect the seriousness of the crime and punishment outcomes are understood as generally appropriate in the circumstances;
- Society is protected from violent offenders;
- Offenders make best efforts to make recompense for the harm they have caused and to rehabilitate themselves;
- Social policy supports at risk communities, families and individuals, particularly children, in a manner that reduces the propensity for crime (**Note:** This paper illustrates that the link between today's social policies and future crime rates is not generally well understood);
- Crime does not dominate the daily news and people feel safe in their community; and
- The cost of crime is not an ever increasing burden on the taxpayer;

This paper illustrates how the principles of *Restorative Justice* have relevance in meeting the foregoing expectations.

One of the defining, indeed fundamental, characteristics of our system of democracy is the *rule of law*. The essential characteristics of the *rule of law* have been summarised in the work of Professor A. V. Dicey who identified nine principles. One of these principles is 'an underlying moral basis for all law'.

In writing on this topic, Dr Mark Cooray said,

morality includes such values as honesty, the pursuit of truth, responsibility, duty, fairness in interpersonal relations, concern for one's immediate neighbours, respect for property, loyalty and duty to one's spouse and children, the work ethic

and keeping one's word. The emphasis is upon the duty and responsibility of the individual. No society can function efficiently or humanely and no civilisation can endure, without these values.¹

Individual responsibility is a critical concept but for some people, including a significant proportion of offenders who come to prison, it needs to be considered in the context of some of the tragic and almost insurmountable life circumstances they have endured in their formative childhood years when personal values are being formed.

The *rule of law* in western democracies has a fundamental role in ensuring that the moral values of our society, as reflected in the law, are upheld. It is the role of a range of institutions within our society, not the least of which is the family, to develop, promote and achieve understanding within the community of acceptable moral values. The manner in which the justice system responds to people who breach society's moral values is critical in protecting the community and in reinforcing what is acceptable behaviour in the eyes of the community.

German criminologist Dr Christian Pfeiffer, Director of the Lower Saxony Criminological Research Institute, has said that the higher order role of the criminal justice system is 'to contribute to keeping peace in our society' as opposed to the commonly held notion that the criminal justice system exists to 'punish offenders and through punishment deter offending behaviour'.²

Pfeiffer's position relating to the role of the criminal justice system is critical in considering policy settings to reduce crime and social breakdown in our society. If we accept his view that the higher order role of the criminal justice system is to contribute to *keeping peace in society*, then it opens up a range of proactive, positive and cost effective options for policy makers to consider to reduce offending behaviour and strengthen social cohesion as opposed to our current model which is largely driven by the punishment imperative and consequently is reactive, negative and not cost effective.

CAN'T PUNISH CRIME AWAY

The thesis that it is possible to punish crime away is demonstrable nonsense. Let me explain.

If it was possible to punish crime away, the United States of America would have one of the lowest crime rates in the world. They have capital punishment. They have very long prison sentences as compared with those handed down for comparable crimes in Australia, relatively harsh prison conditions as compared to those in Australia and as shown in the table below, the highest imprisonment rate of any country in the world:

¹ LJM Cooray, *The Australian Achievement: From Bondage to Freedom*. (1987) Chapter 8.

<<http://www.ourcivilisation.com/cooray/btof/index8.htm>>

² Discussion between the author of this paper and Dr Pfeiffer, Hanover, Germany, 1991.

Table 1

Country	Prison Population Rate Per 100,000 of Population
The Top Ten	
USA	686
Cayman Islands	664
Russia	638
Belarus	554
Kazakhstan	522
Turkmenistan	489
Belize	459
Bahamas	447
Suriname	437
Dominica	420
Some Interesting Comparisons with the USA	
South Africa	404
New Zealand	157
England and Wales	139
Scotland	126
Australia	116
Canada	102
Germany	96
Sweden	68
Denmark	59
Finland	59
Norway	59

Note: *The figures are median rates for the particular countries. The source paper expresses some qualifications in relation to the preciseness of some data but despite its limitations provides a useful basis for comparison between countries.*³

There is a stark difference between the imprisonment rates in northern European countries and that of the USA. Canada and the USA is also an interesting comparison.

The high prison population rate in the USA is nothing new. When I attended a correctional administrator's conference in America during the 1990's I was provided with information relating to:

- The horrific murder rate by world standards and high crime rates generally;
- High youth suicide rates;
- High rates of family breakdown and dysfunctional families;

³ Roy Walmsley, *World Prison Population List*, (4th ed 2003).

- Over representation of African American people in prisons and in the criminal justice system generally; and
- Massive substance abuse problems.

I was advised that in some States the corrections budget equaled or exceeded the State's education budget, an appalling outcome that reflects seriously failed social and criminal justice policies.

For a range of issues relating to data collection and underlying social and political reasons it is difficult to objectively compare crime rates between countries. However, it is reasonable to say that the crime rate in America, despite the punitive nature of the criminal justice system, is higher than in Australia and in Northern Europe for example.

The prison population rates above were calculated as a rate per 100,000 of the country's total population and represent the median rate for the whole country. For our purposes it is useful to look at the imprisonment rates for each of the Australian states:

Table 2
Imprisonment Rate of Australian States per 100,000 of the Adult Population

QLD	NSW	VIC	NT	WA	TAS	SA	ACT	AUST
177	169	91	530	221	135	127	76	154

Notes:

- (i) *The rate shown in each case is calculated against the Australian **adult population**. This is the reason for the Australian median rate being higher than the figure for Australia in Table 1 where the rate was calculated against each country's **total population**⁴;*
- (ii) *Victoria's and the ACT's imprisonment rates are within the parameters of world best outcomes;*
- (iii) *The Northern Territory's imprisonment rate ranks among the worst in the world; and*
- (iv) *The rates raise the obvious question of why we have world best practice outcomes in two jurisdictions and abysmal outcomes in four of the other jurisdictions in the same nation?*

Table 3
No of Prisoners in Full Time Custody in Australian States and Total for Australia⁵

QLD	NSW	VIC	NT	WA	TAS	SA	ACT	AUST
5,396	8,875	3,558	760	3,369	498	1,516	190	24,162

⁴ Australian Bureau of Statistics *Report for the December Quarter 2005, Corrective Services Australia* – 4512.0, 23rd March 2006.

⁵ *ibid.*

It is noteworthy that Queensland has a State population of around **4 million people** for a prison population of **5,396** compared to Victoria with a State population of around **5 million people** for a prison population of **3,588**.

Of the three most populous States, New South Wales, Victoria and Queensland, Queensland has the highest imprisonment rate. In recent years the daily population of people in Queensland prisons has been growing at a faster rate than any other State.

Victoria's imprisonment rate is generally in line with outcomes achieved in Northern Europe. It is estimated that if Queensland could reduce its imprisonment rate to that of Victoria, Queensland would save in the order of \$120 million per annum in corrective services costs alone. That is \$1.2 billion over the next decade at today's dollars. There would be additional savings relating to the other elements of the criminal justice system.

The Australian Institute of Criminology has estimated the total cost of crime to the Australian community as being in the order of \$32 billion per year. In addition there is the associated degradation of the quality of community life and community assets and the personal loss, injury and grief caused to individuals. With \$32 billion per year on the table surely this justifies the attention of government in terms of encouraging development of a business plan to claw some of this money back, even leaving aside the social and personal benefits for citizens.

Changes in imprisonment rates do not necessarily reflect changes in crime rates. However, appropriate initiatives can reduce both crime and imprisonment rates resulting in massive bottom line budget savings over time as well as a safer community with an enhanced quality of life.

As a starting point we should seek to achieve broad political agreement as to where the balance should be in our various responses and initiatives in crime prevention. At State elections the issue of *Law and Order* is part of each major party's policy platform. No major political party wants to position itself so that its opponents can label it as soft on crime. Accordingly, at election time and in between elections, in the face of increasing social breakdown, more crime and sensational reporting of horrific crime our political leaders make stern-faced announcements promising more police, more resources for police, more judges to reduce court backlogs, longer prison sentences including restricting the autonomy of judges in sentencing, more restrictions on phased release of prisoners and more money for more prisons.

We hear politicians and other commentators talking of the need to punish criminals not only for their own misdeeds but also as a deterrent to like-minded people, of the need to protect society from criminals, of the need to mount a *war on drugs* and the rhetoric goes on. The logic of their position is that if we have enough well-trained and well-equipped police to catch most of the criminals and if the courts were tougher and we can take criminals off the street for long enough and if corrective services ran prisons and not *motels*, then we will have a safer community.

Further, if the punishment inflicted on criminals is harsh enough it will deter others from becoming criminals. Thus, through an efficient and tough criminal justice system we will be able to largely *punish crime away*.

An effective and efficient criminal justice system is an essential plank in the implementation of the rule of law and needs to be properly resourced. However, I argue that the current emphasis in Australian political debate on the law and order issue has placed too much weight and expectation on the capacity of the criminal justice system to reduce crime. Consequently political and public attention and considerable public resources are being directed into reactive back end options after the crime has occurred such as police, courts and prisons, with less than appropriate attention being given to front end options that could prevent crime from occurring in the first place.

As far as Corrective Services is concerned, while overall expenditure is increasing, critical rehabilitative initiatives within prisons and community supervision options are generally under funded due to these programs being seen politically as soft options. This is unfortunate as effective rehabilitation programs reduce crime and therefore make the community safer.

MAINTAINING A CIVIL SOCIETY

The foregoing indicates that generally in Australia our philosophical approach to developing a safer community is founded in the principle of *punishing crime away* rather than in an approach directed at maintaining *a civil society* where the moral values outlined by Dr Cooray underpin the rule of law and the criminal justice system *contributes to keeping peace in our society* as envisaged by Professor Pfeiffer.

Based on my more than 30 years experience in the criminal justice system, as well as considerable experience with state welfare services and various community support agencies, I make the assertion that when a social system is in decay and the political and community focus is not on the underlying causes of this decay, then the criminal justice system will not be able to maintain peace in our society.

Indeed the criminal justice system will lose the respect of the community as it fails to meet the expectations set by our politicians for it to curb crime. We have seen many examples of this, increasingly in recent years, where citizens, shock jocks, media generally and politicians have attacked the judiciary over sentencing practices and prison administrators for alleged *soft conditions* for prisoners thus weakening the community's respect for the efficiency and effectiveness of the criminal justice system.

The widely held notion that we can punish crime away has its genesis, I suspect, in the fact that the significant majority of Australians in the 50 year plus age group can reflect on a childhood and young adulthood where there was less crime. I often hear comments such as, 'if I stepped out of line the local copper gave me a good kick up the backside and sent me home to dad where I got a clip around the ear and I didn't do that again', or 'I went into National Service, a bit of good old army discipline, that really made a man of

me'. They extrapolate from these experiences to the view that a bit of good discipline or stern punishment is what thugs/ criminals need to put them on the straight and narrow and therefore stricter discipline/ punishment will go a long way towards curing dysfunctional and criminal behaviour in society.

CRIME REDUCTION AS PART OF A BROADER SOCIAL POLICY

The problem for this position in considering broader social and justice policy is that the great majority of people, who have been and remain the law abiding people within our community, come from loving and supportive family environments where discipline is imposed on children in an appropriate manner within that loving and supportive environment. The great majority of us in our formative years would have received more pats on the back than kicks up the backside and when we got our kicks or discipline it was appropriately applied and we understood it in the context of our total environment.

In considering policies and action to reduce crime and to make our community safer, we need to start with an understanding of the social demographics of the people who form the criminal sub culture in our society. These people mostly do not come from loving and supportive families. They mostly come from dysfunctional abusive families where some or all of the following apply:

- Disagreements are dealt with by screaming and by violence;
- Child discipline is grossly inappropriately applied;
- Child health and nutrition is neglected;
- Substance abuse is a fact of life for family members;
- Children can be sexually abused;
- Children are not nurtured and appropriately socialized in their early formative years;
- Lack of parental commitment and or finances result in children being disadvantaged in relation to resources and activities that more fortunate children take for granted; and
- No support with the trials and tribulations of school life.

These are the children that classroom teachers, commencing with pre-school teachers, across Australia can identify as our future criminals. These are the children, who come to school without breakfast, who show evidence of physical and emotional abuse, who don't have clean or appropriate clothes and who have it reinforced to them on a daily basis that they are different, that they are inferior. The Australian school classrooms and playgrounds become the bleeding edge of society for these children. They become disruptive in the school environment, they fail to cope, they truant, they drop out and many become the clients of the criminal justice system.

When these kids are truanting, vandalizing, committing petty crimes, a good kick up the backside by the *local copper* would have no positive effect, they have had far worse at home, and it would only reinforce the rest of the negativity in their lives. The threat of jail is of no concern; quite often they have visited dad or other family members or associates in jail. Jail for many is part of their normal life experience.

For many years I was a member of the Queensland Parole Board and reviewed the cases of many hundreds of serious offenders, those serving sentences of 5 years or more, the armed robbers, rapists and murderers. I can say that in the order of 80 per cent of those offenders came from the dysfunctional abusive family background that I have just outlined. I do not say this to excuse their crimes but, in the context of this paper, to provide some explanation of factors underpinning their behaviour.

I believe each of us needs to reflect on where we might have ended up today if we had been subjected to gross neglect and abuse as a young child. Some survive the physical and emotional trauma but many do not. They end up on the conveyor belt of the criminal justice system and, after causing considerable grief and cost to society, are deposited in big expensive bins called prisons to be “rehabilitated”.

In this regard to achieve better understanding of the challenge we are facing it is useful to consider the following demographics of the Australian prisoner population:

- The majority are aged under 30 years;
- In the order of 11 per cent are intellectually impaired;
- In Queensland some 24 per cent are indigenous people, compared to their representation of less than two per cent of the State’s population;
- The national rate of imprisonment for Indigenous persons in the December quarter 2005 was 2,024 per 100,000 of the adult Indigenous population, an increase of three per cent since the December quarter 2004 (**Note:** Comparison of this figure to the imprisonment rates of Nations and States in Tables 1 and 2 above reveals stark evidence of the tip of a horrific social and criminal justice nightmare that is shameful for our great country);
- Some 40 per cent of prisoners are functionally illiterate;
- A high proportion suffer from mental illness. A 2003 study in NSW found the rate of psychosis was 12 per cent, 30 times the rate in the general population and for female prisoners, if drug-related disorders were excluded, 66 per cent of the women met the criteria for a mental disorder;
- Some 80 per cent of serious offenders come from severely dysfunctional family backgrounds and suffered neglect and abuse in formative years;
- Over 70 per cent of women in prison have been the victim of sexual abuse at some stage in their life, often as children; and
- 93 per cent of prisoners are male. (Males are 14 times more likely to be in jail than females).

In a chilling pointer to the future in so far as crime and imprisonment rates are concerned, Brisbane’s daily paper the Courier Mail in articles on August 2nd and 8th 2006 reported on “*Child Abuse Files of Shame*”. The Courier Mail reported that as at 30th June 2006 there were 12,000 outstanding investigations and assessments of child abuse reports not finalised in Queensland. The report said that there were 6,352 cases of neglected and abused children living in ‘out of home care’. Many of the children living in ‘out of home care’ had endured multiple placements and it was reported that the predicted outcome of this would be ‘reduced health status, lower education levels, a lack of stability in future

relationships and a higher incidence of imprisonment, drug abuse and mental health problems’.

These are horrific figures of horrific treatment of vulnerable children. Sadly, experience in these matters tells us that these figures would considerably understate the total number of neglected and abused children in Queensland. If we extrapolate these Queensland figures for the whole of Australia we can begin to appreciate that this is a massive ticking time bomb that will explode into an adult crime wave as this cohort group moves into its teens and early adult years.

As they commit crimes as juveniles, and as they commit further crimes as adults, do you think that punishing them will deter them and or their associates from committing more crimes? On the basis of past experience and common sense given their backgrounds, the answer to that question is largely no. These people do need to be held to account for their crimes and many must be locked away for the protection of society. However, the point I am making is that while such action may incapacitate them from committing further crime for a period and may assist in some cases with rehabilitation, it will not deter their associates from crime nor will it deter from crime the next wave of neglected, abused and at risk young people coming through our social system.

To stress how futile it is to address this challenge of long term crime prevention with a philosophy founded in a major emphasis upon punishment, let me give you an example from South Carolina in the USA. When I visited South Carolina in 1993, its population was similar to that of Queensland. Yet at that time on any one day South Carolina had twenty thousand (20,000) people in prison⁶ compared to Queensland’s then two thousand two hundred and thirty (2,230)⁷

Table 4
Comparison of Prison Populations between the State of South Carolina and Queensland

South Carolina 1993	Queensland 1993	Queensland ⁸ December 2005
Daily prison population: 20,000	Daily prison population: 2,230	Daily prison population: 5,396 (142 per cent increase)

Note: *For Queensland, the daily prison population increase of 142 per cent since 1993 is very disturbing given that in this period, 1993 to 2005, Queensland’s State population has grown by 28 per cent. The prison population outcome appears to reflect the USA model of getting tougher on crime without addressing underlying causes in an effective manner. The Queensland Government predicts that the State’s prison population will increase by a further 90 per cent over the next ten years;*

⁶ Oral advice to the author during visit to South Carolina in 1993.
⁷ Queensland Corrective Services Commission Annual Report 1992/1993
⁸ Australian Bureau of Statistics , above n 4.

I met with a District Attorney in South Carolina and with local politicians to discuss crime rates sentencing and imprisonment. I asked the question, 'What are you going to do about this terrible problem'? The unanimous and shocking answer was, 'we are just going to have to get tougher'. They were true to their word, since then the American median imprisonment rate has risen by over 50 per cent and crime remains at a level we would never want to see in Australia.

In considering initiatives to reduce social breakdown and crime, in my mind, there are some significant points that can be drawn from the foregoing information.

When we apply a potential remedy to a particular problem for a significant period of time and the potential remedy does not work, it is reasonable to predict that if we keep applying that same remedy to the same problem it still will not work and we will still have the problem.

If we feel that perhaps we did not have the dosage correct and therefore we should apply more of the same treatment, then we have the USA experience to draw upon, where the same problem exists and they have significantly increased the dosage of the traditional remedy and this has not worked.

On the other hand we have examples in Northern Europe of countries of similar cultural values who have applied a mix of the traditional remedy, complemented by other treatments that have achieved outstanding results over a long period of time. We also have in Australia the State of Victoria where for many years the imprisonment rate has been comparable to that of Northern Europe and according to the Australian Bureau of Statistics⁹, 'Despite exceptions for some categories of offence, Victoria and Tasmania were generally more likely to have crime rates below the national average across the offence categories shown'; and

In considering imprisonment rates in Australia, the majority of prisoners are young males in the age group 18 years to 30 years.

Prisoner case files show that the significant proportion of these young men who come to prison after their 18th birthday did not suddenly decide to become an adult offender at this stage of their life. The evidence is that they come from the previously described social demographic of the dysfunctional family involving child neglect and abuse, under-achieving at school, poor peer group association and anti-social and or criminal behaviour as a juvenile. Disturbingly, a significant proportion has a background of mental illness. A grossly disproportionate number are indigenous people.

Therefore, if we consider a cohort group of neglected and abused children in the age range of one to seven years, the critical developmental years according to child psychologists, then we can expect this group to begin impacting on crime and imprisonment rates in the out years 11 through 17. This means that when we look at

⁹ Australian Bureau of Statistics, Measuring Australia's Progress -1370.0, 2002.

today's imprisonment and crime rates in Australia we are looking at the consequences of social policy settings that were in place around two decades ago.

There is a frightening scenario for Australia, working with the figures quoted previously relating to neglected and abused children. That is, we have already most probably placed somewhere in the order of 100,000 or more young Australians in life circumstances where a significant proportion of this number are at considerable risk of becoming involved in the criminal justice system, with all of the resulting grief for victims and cost to society. That is, today's approach to social problems has hard wired in an increasing crime and imprisonment rate for the next two decades, unless we can implement a circuit breaker.

I earlier quoted the German criminologist Dr Pfeiffer who said that the higher order role of the criminal justice system is 'to contribute to keeping peace in our society', as opposed to the commonly held notion that the criminal justice system exists to 'punish offenders and through punishment deter offending behaviour'. When I last met Dr Pfeiffer some years ago he advised that in the decade following the Second World War a number of Northern European countries came to the conclusion that:

- To reduce social breakdown and crime, societies need to place emphasis on good social policy that protects and nurtures children and facilitates optimal development of their potential;
- The functioning of the criminal justice system should reflect the higher order goal of *keeping peace in society* and therefore should fulfill its *punitive* function within a *restorative* framework that seeks, if possible, to restore something to the victim, restore something to society if appropriate and if possible restore the offender to a law abiding lifestyle, that is, a *restorative justice* model;
- There is a time lag between implementation of social policy impacting on young children and the assessment of outcomes on their adult lives;
- There is a need for a 15 year business plan driven by government that takes a whole of community approach. The plan must be based on objective data on the current cost of crime, the extrapolated cost of crime over the life of the plan under current policies and the expected savings and benefits to be achieved over the life of the plan due to proposed policies and initiatives. Key achievement milestones can be assessed in line with the ongoing election cycle;
- The development of such a plan requires high level conceptual input from across a range of disciplines including economists, criminologists, social demographers, sociologists, educationalists, child and family psychologists, correctional, police and family welfare practitioners, judges, the legal profession and politicians; and
- There is a need to achieve community understanding and support for the appropriate balance between good social policy and the role and outcomes of the criminal justice system as reflected in the business plan. This is achieved through factual information being disseminated by governments, elements of the criminal justice system, social/ community support agencies and academia concerning:
 - the underlying causes of crime and social breakdown;

- statistics showing what is occurring where and trends; and
- information concerning world's best practice in addressing these issues, including what works and what does not work.

RESTORATIVE JUSTICE: A COMMUNITY ROLE FOR SENTENCING

Community support for the above approach was enhanced through a restorative justice approach to sentencing where victims and or their representatives are involved in the sentencing process thus achieving more appropriate and better understood sentencing outcomes. The sentencing process, which is conducted by the trial judge, as well as having input from victims, can include input from professionals from the fields of corrections, health, child and family welfare, police, and any other discipline relevant to the case to assist the trial judge in arriving at a sentence outcome that:

- Appropriately reflects the seriousness of the crime as viewed by the victim and the community;
- If possible provides for a measure of restoration to the victim and to the community if appropriate;
- Provides guidance to correctional authorities on the appropriate rehabilitation programs, including where imprisonment occurs, the acceptable stages at which the offender can be considered for community supervision options; and
- Confronts the offender with the seriousness of the impact on the victim/s of the crime and clarifies for the offender in the context of the sentence the steps/ programs the offender has to undertake to change behaviour such that benefits of supervised release and ultimately freedom can be achieved;

Sentencing statistics are regularly published that enable analysis, comparison and debate of the sentencing practices of the judiciary in terms of effectiveness having regard to a range of other data relating to imprisonment rates, ethnicity of prisoners, prisoners health including mental health, recidivism, crime rates generally, the cost of crime etc.

Sentencing practice is a major divisive element in the Australian context which drives the *punish crime away* protagonists. There is a common perception, fuelled by media coverage of cases of horrific crime that certain offenders are not being appropriately punished and or controlled. In support of this view, there is strong experiential and clinical evidence that certain types of serious offenders are highly likely to re-offend in a horrific manner. Therefore, there is a strong case, using the incapacitation argument, that for such offenders the possibility of parole or any form of future release should not be an option while they are physically able to cause harm.

Over the years this minority group of very serious offenders has contributed to a negative perception within the community of the credibility and integrity of the parole system. This occurs on two counts. Firstly, the decision to release high profile serious offenders on parole always receives publicity and mostly draws condemnation of the decision from victims, victim's organisations, police, concerned citizens etc who regard such release as inappropriate due to the nature of the crime and concern that the offender may re-offend.

In the process of expressing their criticism many denigrate the parole system as a *soft option* not only for such offenders but for offenders generally.

Secondly, when, as occurs from time to time, one of these very serious offenders re-offends while on parole, community outrage is directed at the parole system resulting in serious diminution of community respect for the credibility and integrity of the overall parole system.

Controversies of the above nature that result in loss of community respect for the parole system are a tragedy as parole is a critical element in the rehabilitation process for most prisoners as part of phased release or through care. That is, prisoners who demonstrate progress in rehabilitation programs can achieve reduced security classification, transfer to low security facilities, access to leave of absence, release to work, home detention and ultimately parole. Throughout this process they are supervised and supported resulting in a higher probability of effective reintegration into the community with a law abiding life style and reduced recidivism which means less crime.

The controversy surrounding the release of very serious offenders on parole coupled with the lack of effort by most Australian correctional authorities in promoting the essential nature and the considerable benefits to the community of phased release and community supervision of prisoners, has led to negative outcomes including increased crime.

That is, we have seen politicians around Australia taking populist and knee jerk decisions to restrict access to parole by prisoners and in the process denigrate and considerably weaken a critical element of the rehabilitation and crime reduction process. (That is, the community supervision of the majority of offenders to facilitate maintenance of a law abiding lifestyle as they re-integrate into society applying improved thought processes and behaviours learned through prison rehabilitation programs.)

The very serious offenders are a minority of offenders but the issue of sentencing in these cases needs to be addressed urgently to take this issue off the table so that sensible debate can occur in relation to sentencing for offenders not in this category. I say this because for a significant proportion of offenders in the less serious categories, my experience is that sentencing outcomes are inappropriate either in terms of harshness and or in not facilitating rehabilitation.

A restorative justice approach to sentencing for the majority of offenders would facilitate the development of just and humane outcomes and reduce re-offending.

In Northern Europe a number of policy initiatives were taken within the framework of the foregoing which has contributed to the outcome of the lowest imprisonment rates in the world and generally lower crime rates. It was not a quick fix and there have apparently been hiccups along the way including issues relating to substance abuse, the opening up of Eastern Europe with, for a short period, the resultant migration of a criminal element to Western Europe, from time to time various ethnic tensions and the usual swings in public and political opinion when particular incidents of horrific crime occur.

Nevertheless, the various pendulum swings have mostly returned to the central theme, on which there is general political and community agreement, of good social policy aimed at addressing the underlying causes of social breakdown and crime with the criminal justice system contributing to maintenance of a peaceful society through a *restorative* emphasis.

Dr Pfeiffer provided a number of practical examples of *restorative justice* at work. I will share one small example with you which had a very powerful outcome and provides food for thought for us in Australia in considering how we may choose to philosophically redefine our approach to crime prevention.

Hanover has a city mall which is the focus of this example. The mall became a gathering point for young people, particularly on Friday and Saturday evenings. A minority of these young people caused considerable problems in terms of assaults, vandalism, substance abuse and general disorderly behaviour. The initial thought by authorities was to send in the police. However, due to the positive interrelationships that exist between police and juvenile welfare authorities under a *restorative justice* model, an alternative first response was constructed. The elements of the response were as follows:

- Identification of the social demographic of the trouble makers by youth workers. They were found to be essentially young males who came from disadvantaged families, who had limited resources, were not part of a constructive peer group and were basically bored with plenty of misdirected energy;
- An objective was set to encourage these young males to not attend the mall on Friday and Saturday nights through engaging their attention and energy in some constructive alternative activity;
- A warehouse was leased on the outskirts of the city. This warehouse had a considerable tract of adjacent land. The warehouse was stocked with an appropriate number of wrecked motor bikes that were donated by wrecking yards;
- A number of retired mechanics/ tradesmen were engaged to attend at the warehouse on Friday and Saturday evenings;
- Each Friday and Saturday evening a van with youth workers would attend the mall. Youth workers would approach the identified trouble makers and their associates with an offer that was too good to refuse, 'I know where there are some wrecked motor bikes with some blokes who will help you to put them together and when they are fixed you can keep them';
- Each Friday and Saturday van loads of potentially offending youth were taken to the warehouse, worked on the motor bikes, ultimately built a dirt track on the adjacent land, created a motor cycle club and mostly refrained from anti social behaviour. Many found work as a result of this activity;
- Police in the mall worked in concert with the youth workers to refer youth at risk to youth workers rather than charge with offences and a variety of other similar programs were developed; and
- The mall became largely peaceful, young people were diverted away from the criminal justice system and into constructive activity.

This is one small but powerful example of how a positive vision for a *peaceful society* can result in good social policy where people from welfare agencies and the criminal

justice system work together to prevent crime while enhancing the life chances of young people. It demonstrates what can be achieved when the temptation to make the first response to social disorder punitive is resisted.

The cost of the above initiative was far outweighed by the costs that would have been incurred by processing these young offenders through the criminal justice system, coupled with the benefits of crime reduction. This initiative needs to be viewed in the context of a whole myriad of creative initiatives, many of which are quite complex, implemented across a nation that are targeted to particular areas of need, that are based on sound demographic analysis of the underlying cause of the problem, which are appropriately resourced with the costs and benefits of outcomes measured against quantifiable data relating to the cost of crime. That is, a properly constructed business plan to reduce crime, reduce the cost of crime and to achieve a safer community.

In summary, in my view, in Australia we have within our midst a social tragedy of immense proportions that is destroying the life chances of a significant group of young Australians.

If we continue to do so these increasing numbers of neglected and abused young Australians will continue to wreak havoc of increasing severity that will continue to erode our quality of life. A concerted national plan of action is long overdue and desperately needed. For this to occur there needs to be a sense of urgency at the national and state political leadership levels concerning the challenge we are facing, an understanding of the problem, a vision for where we might go from here and enthusiasm at that leadership level to search for solutions.

RECOMMENDATIONS

Accordingly I recommend as follows:

Recommendation One

That the issue of a national approach to developing a best practice response to social breakdown and crime in Australia is placed on the Standing Agenda for the Council of Australian Governments (COAG). This is because the national importance and cross-jurisdictional nature of the issue make this an appropriate matter for COAG. That in placing the issue on the COAG agenda, COAG be asked to consider the following:

- That in specific regions and communities across Australia there is debilitating social, family and economic circumstances denying a significant number of children and young people a reasonable opportunity for a happy, healthy and productive life. These circumstances contribute to the underlying causes of crime and social breakdown which impact adversely on the wider community.
- That there is recent evidence in communities such as Redfern, Sydney and Palm Island, North Queensland where dysfunctional social circumstances have erupted into extreme community violence and contempt for the rule of law with

disturbing images beamed around the world, thus diminishing Australia's reputation as a safe and cohesive society. There have been disturbing recent media reports of radical extremist elements planning to infiltrate certain disadvantaged low socio-economic communities to recruit and develop 'home grown terrorists'. Examples of this have been cited in the United Kingdom and other countries.

- That there are a range of proactive initiatives under way across Australia to address systemic disadvantage, to protect children and young people and to reduce crime. Many of these have been driven by the Commonwealth Government. Nevertheless, significant areas of responsibility lie with the States and while there are success stories on a variety of initiatives, there is evidence from imprisonment and crime rates that Australia is behind world best practice in its approach to crime reduction through addressing the underlying causes.

This results in economic disadvantage to Australia through unnecessarily high expenditure on reactive criminal justice system needs that divert public and private sector funds away from nation building projects. What is needed now is to pull the success stories together and for them to be adopted more widely. That needs serious State involvement as well as Commonwealth involvement and leadership.

- Key themes from the Pathways to Prevention Report of 1999, the World Health Organisation's Safe Communities Model and other relevant research papers and best practice models should be reflected in the COAG paper.
- An example of potential savings that could be achieved by *a more peaceful society* through better balance and interrelationship between social policy initiatives and the criminal justice system is if Queensland could reduce its imprisonment rate to that of Victoria. Then Queensland would save in the order of \$120 million per annum in corrective services costs alone. That is \$1.2 billion over the next decade at today's dollars in just one State *in corrective services alone*. In addition, there is the Australian Institute of Criminology's estimate of the total cost of crime to the Australian community as being in the order of \$32 billion per year and the fact that a modest 10per cent saving would reduce cost to the Australian community by the considerable sum of around \$3.0 billion per year.
- Australia's reputation as a safe and prosperous society, with a high quality of life for its citizens must be maintained and enhanced into the future if we are to continue to achieve strong economic development. Our tourism industry largely depends upon our reputation as a safe destination.
- All the evidence is that the response to the challenge facing Australia to address systemic disadvantage in certain communities, to protect children and young people and to reduce crime needs a national approach, led and directed at the

highest level of political leadership (COAG) under the auspices of a Business Plan. This plan would look at:

- World's best practice and bench marks in areas of social policy and criminal justice initiatives;
- The reasons for the achievements in the State of Victoria;
- The cost of crime in Australia, nationally and on a State and regional basis;
- Evidence as to the underlying causes of crime on a State and regional basis;
- Targeted initiatives for crime reduction on a State and regional basis;
- A review of sentencing practices in the light of a restorative justice approach, including a community acceptable outcome to the issue of serious offenders;
- A planning time line of in the order of fifteen years with milestones for achievement;
- Agreed cost benefit targets for each milestone. That is, funds directed to initiatives in regions and States need to be justified as making a contribution against measurable cost savings due to less crime, e.g. less money spent on repairing vandalism including graffiti, less money spent on court services due to fewer people appearing in courts, savings in corrections budgets due to reduction in prisoner numbers, savings in government expenditure in dealing with child neglect and abuse cases, etc, etc;
- Acceptance that there will be a need to increase government outlays in the early years of the plan to resource front end community building initiatives in regions and communities. However, the rigorous targeting and implementation of these initiatives will result in these outlays being repaid many times over as the plan unfolds through its 15 year cycle; and
- Agreement that critical to the success of the 15 year plan is:
 - high level conceptual input from across a range of disciplines including economists, criminologists, social demographers, sociologists, educationalists, child and family psychologists, correctional, police and family welfare practitioners, judges, the legal profession and politicians;
 - community understanding and support for the appropriate balance between good social policy and the role and outcomes of the criminal justice system as reflected in the business plan. This will require a sound information dissemination and communication strategy;
 - a refocusing of some practices within the criminal justice system having regard to the principles of restorative justice. This will attend to some structural and coordination issues in the way that governments and relevant agencies respond to social breakdown and crime to facilitate proactive addressing of the underlying causes; and

- never losing sight of the fact that there is no quick fix and that the social and justice policies we have in place today will determine our crime and imprisonment rates in fifteen years time.

Recommendation Two

Subject to COAG agreeing in principle that the issue is worthy of further consideration, I recommend that COAG appoint a suitably resourced, relatively small Task Force of government and non-government personnel to develop the concepts to the level of a broad strategy document for its further consideration.

The Task Force should develop this broad strategy document in consultation with appropriate State and Commonwealth Government representatives and seek conceptual and practical operational input as required from people outside of government.

CONCLUSION

The Australian Criminal Justice System is dealing with a significant number of individuals whose attitudes and behaviours have been shaped by life circumstances where they have suffered abuse and neglect as children and or endured deprived socio-economic circumstances in the communities in which they reside. A significant proportion of these people come from indigenous communities and lower socio-economic communities within urban environments.

Many thousands of Australian children live in neglectful, dangerous and destructive circumstances that will destroy their life chances and will result in many of them entering the criminal justice system. This is a social and economic tragedy of immense proportions.

We need:

- Understanding and acceptance in the community generally and at the highest levels of government that this a national disaster that requires a *nation building approach*; and
- Action based on world's best practice to achieve a *civil and peaceful society* within *the rule of law* where children and young people are protected and nurtured.

We are proud to be Australian. We stand tall on the world stage in many fields of endeavour. We believe in a *fair go* for everyone, we are resourceful and creative, economically we are a wealthy nation, socially we have much to be proud of, we have a strong democracy and the quality of life for most of us is exceptional. However, progress depends on a healthy feeling of dissatisfaction that we can and need to do better.

I have a healthy feeling of dissatisfaction that in the midst of all our success, our social and legal systems' uncreative, blinkered and uncoordinated approach to the underlying causes of social breakdown and crime is reducing our quality of life and condemning abused and neglected children to becoming cannon fodder for the criminal justice system.

I believe that we must and can do better. I know we have the ability, we have the human and financial resources, all we need now is an understanding of the challenge we are facing and a commitment to address it.