'PRISONS: FIRM BUT FAIR'

THE HON MICHAEL YABSLEY, MP

MINISTER FOR CORRECTIVE SERVICES

DECEMBER, 1990
Introduction

Without overstating the issue, the previous few months have constituted a fairly turbulent period in the prison system. Whilst I have been at the centre of the debate surrounding these events, I have also attempted to be an objective sideline analyst. Unfortunately, much of what I have seen from the sideline has frustrated me.

Misrepresentation in both deliberate and unintentional ways has characterised so much of what has been written and said in the highly charged debate relating to the prison system. Naturally, my attention has been grabbed by those who contend that what I am doing is ultimately counterproductive, will create a less law abiding society, and seeks to manipulate a base prejudice in society against offenders.

These assertions have, of course, been embellished with an abundance of anecdotal material, used indiscriminately by many individuals and organisations whose own political agendas warrant close consideration. The political objectivity of many of the commentators is doubtful to say the least. They are masters of a misinformation campaign based on the idea that, "the exception equals the rule".

A More Violent Society

The backdrop for what I have to say today is to describe a society that is less law abiding than at any stage in the past. Never before has society been so violent. Never before has it been so disrespectful of public safety or public property.

Despite this, it seems that whatever your particular agenda is, you can paint a picture of crime and criminal justice in our society to justify your own description.
"Who is this person, the most Dickensian addition to the political landscape, to condemn this Dickensian system?"

Part of my job today is to give you an accurate picture of New South Wales gaols which is seldom achieved in a '30 second grab' before the cameras or in the Sydney Morning Herald.

A lot of time is wasted trying to portray a picture of the prison system that suits a particular political agenda. As part of that inevitable political banter, one side says the system is cruel and draconian where prisoners are accommodated three to a cell without any advantages in terms of leisure and education. The other side, whoever they might be, says that this is not right – prisoners are accommodated one to a cell, with ample access to employment and education, all in an environment suitable for rehabilitation.

Like many utterances in the political domain, the truth is somewhere in between.

There are parts of the New South Wales prison system that represent the best and the worst in contemporary corrections. Generally, our system is antiquated, in terms of both bricks and mortar, as well as in attitudes. The system has its own inhumanity, evidenced by overcrowding, social tension, inactivity, lack of productivity and lack of self-esteem.

I have never believed that in making the transition from Opposition to Government, suddenly, the system which was so deserving of criticism, should become so worthy of praise. That part of political life has never attracted me and I will continue to criticise rather than defend the system for which I am responsible, whenever necessary.

While it is incumbent upon me to face up to the responsibility for these problems I have mentioned, I refuse to wear the mantle of guilt that many commentators seem so keen for me to wear.
In so much of what I have read and heard in recent months there is an implication that the golden era of tranquility and reform ceased absolutely when I came to the position of Minister for Corrective Services and that the social oasis behind bars came to an abrupt end. Yet what these critics seem unwilling to acknowledge is the reality that this troubled system is not a creation of today, yesterday or last year – but a relic of many decades of confusion and poor management.

The Nagle Royal Commission and Tony Vinson

In 1976, the Willis Government appointed Mr Justice Nagle to head a Royal Commission into the custody, care and control of prisoners and matters relating to staff within the Department of Corrective Services of New South Wales. To fully appreciate the implications of this Report on corrections in the modern era, it is necessary to understand the prison environment at the time immediately prior to the Report.

No-one could rationalise the disgraceful state of prisons in New South Wales prior to 1976. Institutionalised violence and repression formed an acceptable part part of prison management techniques. The Nagle report revealed incidents that would shock, sadden and anger people with any degree of compassion. An extract from the Report covering an event in October 1970 at Bathurst Gaol is illustrative;

"The Superintendent then struck him in the face. Almost simultaneously the prisoner was hit from behind and pushed into an open cell. There followed a wholesale bashing of prisoners. Heads were cut open. Some were left lying unconscious on the prison floor. One was seen huddled and whimpering in the corner of his cell."
This was an era that demanded an informed and swift response to enable the Government to change what was rightly seen as a black mark on the history of public administration in New South Wales.

The Nagle Report achieved that purpose. It should be seen for what it was – a direct and frank response to institutionalised violence in the New South Wales prison system of the early and mid-1970's. In fulfilling this aim the Report was very successful.

The Report was an attempt at redressing the bias against prisoners' rights that existed in the pre–Nagle days. The fault with the Report, however, was that it lacked clear and purposeful direction for the management of offenders. What it neglected to do was to realistically and comprehensively address the balance between prisoners' rights, privileges and responsibilities.

Drawing on the Nagle Report, prison managers were in the main guided by the statement;

"While in prison the inmate should lose only his liberty and such rights as expressly or by necessary implication result from loss of liberty."

From this proposition, one is able to adduce the main thrust of the Nagle Report – that is, prisoners only lose their rights of liberty and retain all other rights of free persons.

It is no wonder then that prison managers interpreted this as meaning prisoners could not be disciplined or controlled whilst in prison for fear of allegations of enforcing a 'second' punishment. Prisoners were given, as a matter of course, the things that were intended to be 'carrots' for good behaviour. Remissions were automatic, substantial and therefore a farce. There could be no incentives for good behaviour, since all prisoners had to do was label anything they wanted as their right.
In allowing this to happen, the Vinson administration of Corrective Services effectively sabotaged the whole notion of creating a more humane system. Vinson ultimately resigned in 1981 and retreated to his academic enclave. The prison system, however, had commenced a rollercoaster ride that the Wran Government found more politically comfortable not to derail, especially with Vinson gone and with him, his craving for personal profile.

Significantly, those in Corrective Services today who most resent the Vinson era are those who were most keen to see the prison system break out of its own malaise.

The only incentives available to prisoners at the time were various systems of early release – systems which destroyed public confidence in the administration of justice by tampering with the determination of the sentencing court.

This sequence of events sparked the reign of prison heavies; of loss of control of the gaols; where officers and prisoners were merely differentiated by a uniform and a set of keys rather than legitimate authority. The balance was not reached, the bias in the system was merely transferred.

The New South Wales Government firmly believes in the ideal of a secure system and a humane system where one does not jeopardise the other; a system that is firm but fair. If these goals are seen as mutually exclusive, then we will produce a system that will be as unjust as it is unsatisfactory. The Government is, however, proceeding to achieve both these goals.

For those who are familiar with gaols it is illustrative to dwell upon the formalisation of the power of prisoners through the reign of the gaol 'sweeper' – a prisoner who is ostensibly allocated the responsibility of maintaining particular areas of the gaol.
Under this invidious regime, prison officers would often issue orders to prisoners through the agency of the sweeper. Sweepers had power in many cases to determine who slept in what cell and with whom they would share their cell. The sweepers were known to control gaol black markets and the brutality which accompanied this illicit trade. Indeed, it is germane at this point to recall the connection between the sweeper system and the tragic bashing of Jamie Partlic.

This Government does not recognise and will not accept the power of the sweeper in the prison system. It would be worse than reckless for us to idly stand by and watch prison 'heavies' strip officers of their authority and establish a tyranny over dispossessed prison officers and unprotected prisoners.

Prison industry following Nagle was regarded as a pastime in which prisoners could partake at their leisure. As a consequence, prison industry failed to fulfil the important role it should play in effective prison management. At one stage in the early 1980's, only a couple of hundred prisoners were engaged in productive industry of any description.

Today we have some 1,500 prisoners employed in real jobs, compared with 790 in 1987. This does not include domestic employment. But the result is not good enough. Whenever I visit a gaol and see the debilitating sight of 300 or 400 able-bodied men doing nothing, I know there is a fundamental flaw in the system. Often the fault lies with local management who suffer from the lethargy that follows a long period without proper control. This occurred after Nagle because the system was based on options rather than obligations. There was an acceptance of the reality by prison managers that directives were largely unenforceable.

The Government is presently dedicating substantial resources into overcoming the serious lack of prison industry infrastructure. Although less so today, antiquated work practices have also operated to inhibit productivity.
There is no humanity in doing nothing. There is no humanity in allowing the day to be so 'unstructured' that one's only ambition is a deep suntan and a game of cards. Nor is there a lack of humanity in making rewards, including a reduction in security, dependent upon co-operation with the system, such as working in prison industries.

A prerequisite for the kind of prison system we want is to ensure that every inmate is kept productively occupied. If this is presented as an option rather than an obligation it will never happen.

I have on various occasions in the past affirmed my belief in the method of unit management as a desirable model of prisoner management. The attempted implementation of this strategy was made untenable due to prisoners possessing freedom to roam the gaols as they wished, to spend their time intoxicated, listening to cassettes, watching television or just 'doing their own thing'. All of this could be summed up in the phrase, 'another day gone, another day wasted'.

Gaol life was, and to a large extent still is, devoid of the discipline and routine which is required by all individuals in fulfilling their responsibilities. Gaol education stressed optional hobby classes rather than tuition in the vastly more important areas of literacy and numeracy, and as I have said previously, an unproductive day in the prison system was considered to be a normal day in the system.

The officers who did not like the direction of the system were of course, compliant. The maxim, "a quiet gaol is a good gaol" allowed them to rationalise the unintended consequences of the Nagle Royal Commission brought about by the naive, zealous, day dreaming social engineers of the Vinson era and beyond.

Their is a world where the winners circle is widened to encompass all, where, if you choose to believe it, incentives, punishments, rewards, failures and achievements would become meaningless, and concepts of success or failure would not exist. This stale and
unrealistic outlook is one that appears to be shared by the Australian Democrats, various Independents and some sections of the media.

Sadly, both for prisoners and those who tried to manage them, the use and abuse of alcohol became commonplace in prison life. I was warned at a very senior level shortly after my appointment, "Leave it alone. It's the grease that keeps the wheels turning". Needless to say, that person is no longer in Corrective Services. Fermenting gaol brew was a common, everyday event in most gaols. It was not surprising to see an accumulation of oranges, sometimes up to 200, in a cell. Their sole purpose was for use in manufacturing gaol brews.

Gaol brews were reported as a major causal factor leading to numerous assaults and riots. To refer once again to the barbaric attack made upon Jamie Partlic, the prisoner who inflicted the assault was apparently inebriated at the time. As a further illustration, following the Parklea riots of December 1987, in which 20 officers were injured, 48 of the rampaging inmates were found to be drunk.

In late 1988, fermentable items were removed from the gaol system. A high profile criminologist, Paul Wilson, warned that the gaols would burn. In fact, the result was, and continues to be, a sober system that has replaced a frequently drunk system and, as a result, a safer system for all concerned. The Government will certainly not resile from cleansing the system of these dangerous and unacceptable influences.

As all observers of the prison system would know, drug trading and use became prevalent throughout the 1970's and 1980's. Gaol drug barons took advantage of the relaxed conditions in prison to run drug syndicates. It is widely known that some prisoners who have been released from prison since the early 80's have departed far wealthier than when they entered the system, while others have been released scarred for life with an addiction developed while in
gaol. Of course, most prisoners involved with drugs are not part of the syndicates. They are just users, whose wives and friends as well as corrupt staff have been prepared to play the role of courier, often out of a sense of misguided sympathy.

These are but some illustrations of the prison administration we are determined to turn around to the advantage of staff, the prisoners and the community alike.

The post–Nagle period was characterised by prisoner control of the system. It was a system that despite the impressive rhetoric of the so–called 'reformers' had no room for incentives or good behaviour. It was a system where prisoners who displayed good behaviour were treated no differently to those who indulged in riotous or violent behaviour. The central recommendation of the Nagle Royal Commission had been perverted.

A weekend in the New South Wales prison system under the stewardship of Tony Vinson indicates what sort of system the Nagle Report eventually produced. Under the headlines, "Turmoil Grips Gaols Again" the following events were reported:

. During one weekend, Long Bay prisoners lit fires throughout the gaol burning blankets and bedding.

. A prisoner activist group threatened to shoot prison officers.

. Two prisoners, including a murderer, escaped while keeping score for a social football game.

. A prisoner was found dead in his cell at Parramatta. He was stabbed in the chest.

. Prison officers expressed concern at dangerous prisoners being housed in inappropriate gaols.
In saying this I do not seek to make unreasonable use of the anecdotal material. I simply make the point that Vinson's 'golden era' of reform was punctuated with violence and difficulties, although the Nagle Report successfully put an end to unchecked institutionalised violence.

As I have said, the Nagle Report was a response to bashings by prison officers. It did not provide the answers to effective prison management. It did not provide direction for correctional objectives. The Report was merely an immediate reaction to a crisis. Unfortunately, the previous Government did not recognise this. They were torn between fierce factional debates about prison management, eclipsed only by the characteristic pragmatism of Neville Wran in his desire to keep the gaols out of the news.

The Way Ahead: Attitudes and Infrastructure

There is a vision for the future. Significantly and ironically, the outcome that so many of my detractors claim they want parallels my own aspirations for the New South Wales prison system. As is so often the case, the debate revolves around how we get there.

Fundamentally, my contention is that the worthwhile reforms – unit management, education, training, programmes, life skills and so on, are utterly unachievable in a system characterised by the mind set and practices I have just described.

The pre-Nagle period was a crisis and the post-Nagle period was also a crisis. Where there is no discipline there is no control, and when this occurs in a prison it leads to an escalation in violence, drug and alcohol abuse, and the terrorising of the system by prison heavies. It is in this context that prison industry and rehabilitation programs inevitably fail, and the occupational risks to officers increases substantially.
I willingly acknowledge that the objectives of being firm but fair have caused confusion in the minds of some because they are seemingly irreconcilable. This confusion is compounded by those like Jim McClelland who are determined to blur the line between firmness and brutality. They are the same people who equate compassion with leniency, and routine and order with harshness. Departmental staff, uniformed or ununiformed, senior or junior, who are unable to make these crucial distinctions are not welcome in the new world (not a brave new world, just a sensible new world) we are endeavouring to enter.

How can we extol the merits of unit management, and in the same breath proceed to remove personal property and implement other measures predicated on control?

To me the answer is not obscure. Control is a prerequisite for the reforms I am talking about. I am not prepared to see the concessions hijacked and abused as they were in the period following the Nagle Royal Commission.

To define the humanity of the system in terms of bracelets, religious statues, or a pet budgerigar is to totally miss the point. I doubt that those who have so vocally highlighted the alleged 'inhumanity' of the system in recent weeks would seriously argue that the system would suddenly be enhanced by giving those items back.

Significantly, the information I have suggests the 'new generation' gaols such as Borallon, some of the United States gaols and several European systems have gone through precisely the process that I am talking about to protect the worth of what they are doing. These institutions and systems are firm but fair.

If the people of New South Wales demand a correctional system that does more than simply cage the State's criminals within a university of crime before their eventual release back into the community, then the establishment of a rehabilitative and
enlightened system must, I repeat must, be preceded by the process of creating sound foundations in a humane environment to ensure that we do not again make a mockery of the concessions that are so essential to the process of rehabilitation.

Capital Works and Rejuvenation

In this whole process attitudes matter most of all, but attitudes can be negated if we continue to persevere with bricks and mortar that are 100 years out of date.

While Tony Vinson and some others see the very process of prison construction as an all-American aberration, the reality is that prisons are essential to meet the demands of the courts, and ultimately, society.

We are now into the largest prisons Capital Works programme in the history of New South Wales. That fact does not give me a warm inner glow. It is occurring because there is no option, regardless of what is achieved with sentencing reforms.

The one point which should never be forgotten is that in the last 100 years only one new major maximum security gaol has been built in New South Wales, and that occurred with the construction of Parklea Gaol in 1982. Over the next five years we will see total prisoner accommodation increase to 7,500 from the current level of 4,500 beds, and the construction of a number of modern maximum security institutions.

This is in combination with a vigorous approach to the expansion of programmes and facilities in the community corrections area. There are currently 17,000 offenders under the supervision of the Community Corrections Service of my Department. Alternatives to full-time imprisonment enable offenders to maintain their links with their families and the community, as well as retaining employment.
The number of offenders sentenced to periodic detention, for instance, has increased from 572 in June 1989 to over 900 presently. Three new periodic detention centres have recently been built, and opportunities are currently being investigated to establish several new centres.

The Community Service Orders Scheme has also been expanded; in October 1990, 3,631 offenders were performing community service work as compared with only 2,565 in June 1989. Attendance Centre Orders, often connected with Community Service Orders, have been facilitated by the construction of new centres, and plans for several more.

It is envisaged that the number of offenders sentenced to these various forms of alternatives to full-time incarceration will dramatically increase over the next five years.

The greater emphasis on lower security institutions through the mechanism of the revised classification system is part of the new generation prison system we are determined to pioneer. This objective entails a rejection of the absurd and unusual arrangement that exists in New South Wales, where 50% of the prison population is accommodated in maximum security. It means giving effect to the notion of accommodating prisoners at the lowest possible level of security. This, of course, produces an element of risk in an effort to have affordable, humane accommodation.

Clearly, the approach that I have just set out demands a major re-think of the offence of escape to ensure that the security expectations of the community are met. The Government is going through that process now. Significantly, since 1988, we have had the lowest escape rate in the history of records being kept. We can still do better.

It is important to realise that in our attempt to better accommodate the State's 5,500 offenders I compete for funds that our society demands be spent on schools, hospitals and roads. I am not
suggesting that Corrective Services does not get its share. At this stage it is getting a record share, but it must be understood that this share is not big enough to close down the Dickensian relics that account for much of our prison accommodation.

Of course, our task is made somewhat more difficult in that this desperate shortage of contemporary accommodation has coincided with a time when there is a record increase in the prison population.

**Increasing Numbers of Prisoners**

Contrary to the popular mythology emanating mainly from academics and journalists, the prison population is not a creation of the prison system. While there may be some strength in the arguments that for some offenders prison encourages recidivism, and that the Sentencing Act 1989 has caused a marginal increase in the length of sentences, these factors alone have not caused the prison population to increase from 3,600 in 1988 to 5,500 in 1990, or periodic detainees (to whom the Sentencing Act does not apply) to increase from a little over 500 to 900 in the past two years.

There is a simple process at work that produces a simple result, with far reaching implications for the criminal justice system, and the prison system in particular. In a society where more crime is being committed, there are more police, with better technology, using more laws, to make arrests. It follows that there are more people going to court, and more people going to gaol. Added to this are the positive steps being taken by the Government to introduce greater efficiencies into the court process.

The debate about the merits or demerits of that process, and the prison population it generates is a separate matter, and one that I do not intend to explore today, other than to say the question of sentencing options and the way they are used is on the agenda, and needs to be more prominent on the agenda. Just how many people are in gaol today who shouldn't be in gaol? Why not make the
white collar criminal pay through the pocket for the rest of his life rather than with six meaningless months at Long Bay at great cost to the taxpayer? These are good questions that deserve answers, which I am not about to give because to do so would be to unduly interfere with the portfolio of the Attorney-General.

Suffice it to say we do not resile from our responsibilities and mandate to deal with those who operate outside the rules of society, and to assist those who suffer the consequences. Victims' compensation is a very worthy concept that deserves a more central place in our criminal justice system. In time, I am sure that will happen.

'Contracting Out'

Recently, I have announced that the Junee Correctional Centre will be designed, constructed, financed and managed by the private sector.

Without going through all the philosophical and practical issues for and against contracting out to the private sector, I see it as providing the single best prospect we have of getting out of an age old rut, within an acceptable period of time, so that we may create the new generation gaols we want in terms of both attitudes and infrastructure.

The obvious success of Borallon Gaol in Queensland, under private sector management by the Corrections Corporation of Australia, which enjoys the measured support of both sides of politics, is an important and timely precedent as we commence this course in New South Wales. In New South Wales we have always said that contracting out could only be justified if, at the end of the day, a better quality product could be delivered, in a cost effective way.

I am sure the Junee Correctional Centre will be a better quality product, and will provide a bench mark for the development of new
institutions and the reform of existing institutions, as far as that is possible.

Corrective Services Academy

The Corrective Services Academy is the flagship for the development of new attitudes in the Department of Corrective Services.

The process of de-programming officers from the role of guard and turn-key will not occur quickly, nor will it happen unassisted. The Corrective Services Academy is a proud, central and deliberate addition to the Department which will ensure that through training and staff development, attitudes are moulded that are appropriate for a modern, progressive prison system.

This process is just as applicable to the senior custodial officers who too often suffer from a sense of lethargy, as it is to the new recruits who are planning to embark upon a career in corrections.

In preparing for this address, I have strayed into many areas related to prisons and the criminal justice system. Today many of those vital themes will remain unexplored, not because I regard them as unimportant, but because they are of such importance that it would be wrong to give them superficial treatment today.

Truth in Sentencing and why early release is not an acceptable option; broadening sentencing options; AIDS – compulsory testing, integration or segregation; drug and alcohol programmes; classification to ensure the lowest possible level of security; are all issues central to the Government’s agenda.

In this extraordinarily complex area of administration, sometimes the choice is not between right and wrong. I know that in relation to the management of AIDS in prisons for instance, it is often a question of which strategy is least wrong.
Responsibility and the Family

I will conclude by referring to a theme that I think makes everything else fade into insignificance.

Something that bothers me greatly in the great crime/prisons debate, is the lack of emphasis on the real reason there is such disrespect for the law.

A recent and refreshing exception to this, albeit in tragic circumstances, were the comments made by Justice James Wood when he sentenced the young man convicted of the murder of the schoolgirl Leigh Leigh. He said,

"The greatest concern should be entertained in the community that this party [from where the victim was taken and ultimately murdered] was permitted to go ahead without proper parental supervision.

"A duty is owed to all young people to ensure that they are protected from the inevitable peer group pressure at functions such as these to experiment with and abuse alcohol and drugs and to engage in sexual promiscuity.

"The murder," he said, "was totally preventable."

This is, of course, just one example. The real point is that the failure is occurring in the homes – a point unfortunately missed in repeated reports on crime written by the experts. The experts often miss the obvious.

In the time that I have been Minister for Corrective Services, I have observed the worrying trend of misapportioning blame – something that our society has turned into an artform.

The notion of holding individuals responsible for their behaviour is, of course, a basic tenet of our political system and eminently
appropriate. The problem is, however, that blame is invariably apportioned to the people and organisations where it is least deserved.

In searching for an explanation for criminal behaviour I so often hear the predictable, but fundamentally erroneous reasons. We are told the school system, the prison system, the courts, Family and Community Services, the Probation and Parole Service, have all been unsuccessful in dissuading an individual from their life of crime. It is said that society has let them down. That may well be true in part, but the job that all those organisations and individuals had was one of picking up the pieces, often many years after a life of crime had commenced. I am not saying that there is not a corporate responsibility. I am saying there is a greater individual responsibility.

The reality is that so often the problems start at home, generally with an appalling lack of parental supervision and responsibility, and more generally, a lack of values that allows individuals to distinguish right from wrong. I am not talking about those who try and ultimately fail – which does sometimes happen. But there are too many who, by their actions and attitudes, maximise the chances of failure rather than success.

These actions and attitudes come into play long before criminal elements come into play. There are occasions when parents come to see me at my Electorate Office in Rose Bay to complain that their teenage children are drinking at nearby hotels. They are so irate that the law is not adequate to deter them. They present me with another variation on the theme "society is failing my child". The harsh reality is they are failing their child, by being unable or unwilling to impose the necessary discipline in the first place to stop the child drinking.

This problem is without class or geographic boundaries. It is as relevant in Bellevue Hill as it is Bass Hill, and as relevant in Bass Hill as it is in Broken Hill.
At a time when society and individuals are most in need of a strong sense of direction, moral neutrality remains a favourite catchcry of the social engineers. The point that they miss is that the ascribing of values is a necessary process in the life of every individual. We are told not to be judgemental, for fear of telling someone something they do not want to hear or lest we should be establishing ourselves as the ultimate authority on morality. Our society appears to have become so sophisticated that concepts of good and bad, right and wrong, have been expunged amongst people who should be setting an example.

Some people who take an interest in what I do warn me that this notion is "a bit old-fashioned". Perhaps it is. That doesn't make it any less desirable or correct.

There is an overwhelming desire to refrain from causing harm and to ensure that harm is not perpetrated against us. Ultimately, the vision for Corrective Services in New South Wales is directed to that end.