

Justice Action Response: Risks posed by Serious Violent Offenders/Consultation Paper

We draw your attention to the following matters. We are most concerned at the current trend for extending the sentence both in its length and its intrusiveness into the community. That approach offends principles of fairness, utility and community responsibility. Community problems can only be handled in the community with support rather than excluded and further distorted.

Limitations of the Audit by the Corrective Services NSW (CSNSW) in April 2010

- The criteria used to identify inmates who posed a “significant high risk” to the community of serious violent offending upon expiration of their sentence were flawed.
- The criteria used prison management policies and case management discretionary powers of prison authorities as some of the determining factors and not the personal characteristics of the offender as one of the relevant criteria.
- Furthermore, the audit was completed without a comprehensive clinical or medical assessment in every case.

Characteristics of serious violent offenders and determining risk of re-offending

- A fundamental issue to be settled before suggesting possible reform. The basis for identifying the cohort of serious violent offenders and the risk of re-offending is considered inadequately addressed, and the inherent limitations of determining any common characteristics amongst such offenders and the questionable methods used to assess the risk so posed by them.
- This was identified in the Statutory Review (the review) under s 32 of the Crimes (Serious Sex Offenders) Act 2006, undertaken by the Department of Attorney General and Justice.

Methods of Assessment of Risk

- The review also found that the nature of the offences that would be considered as serious and violent, would not necessarily predict an offender's continued risk to the community either in committing the same or any other crime.
- A fundamental error has been the use of sex offences as a template to judge the validity of introducing similar measures for serious violent offences. The latter is not only different in character but further engulfs a multitude of sub-offences that have very little in common with sex offences.
- The Violent Offenders Therapeutic Programme (VOTP) currently used in NSW has some obvious limitations, based on an actuarial (impersonal) assessment of the risk posed by a group of offenders rather than the individual within that group, also unable to factor in special needs.
- VOTP also fails to distinguish and applies irrespective of the type of violent offence and the reasons or motive behind the offence. This is aggravated by the fact that this programme is undertaken in the restrictive and oppressive conditions of a prison.

Current sentencing and management options in NSW

- Sentencing options available in relation to offenders perceived as presenting an ongoing risk to the community have the possibility of discriminatory practices and the rejection of the rehabilitation of the offender, leading to increase in recidivism.
- Use of any form of indefinite or disproportionate sentencing options may lead to a subrogation of the sentencing principles of proportionality and double punishment, contrary to the ratio of *Veen v The Queen*.
- Current legislation, including those addressing indeterminate sentences generally focus on the culpability of the offence and do not address the risk of re-offending or community protection.
- Reluctance of the Courts in NSW to invoke the *Habitual Criminals Act 1957 (NSW)* is a clear indication of the uncertain and inconclusive nature and basis of predicting re-offending risk and a policy that seeks to punish in advance for crimes that may never be committed, a view similarly held by the Australian Law Reform Commission.

Rehabilitation and the Social Response

- In accordance with the legislative requirements (sentencing purposes), promotion of the rehabilitation of the offender is an important if not the only criterion for the equitable application of sentencing policies and the consequential reduction of re-offending and promotion of community protection.
- Rehabilitation involves addressing psychiatric, psychological, social and other factors that cause criminal conduct. The Queensland Government whilst maintaining support for continued detention and supervision of high risk offenders, recognised rehabilitation inherently social-environment based, with re-integration into society as the best long term solution to managing the risk posed by high risk offenders.
- A focus on providing a social setting for rehabilitation and reintegration through restorative justice and options like “peer mentoring” as preferable approaches. These negate the diminishing of community safety, caused by placing offenders in a criminal-rich environment of a prison or similar oppressive situations, which further foster hatred for, and destruction of community values.
- Use of sentencing policies promoting detention or increased post-release supervision of offenders is investment heavy, based on ‘opinions’ and uncertain grounds that could be inappropriately or incorrectly applied leading to increased recidivism and consequential community harm, in contravention of basic human rights and international commitments.
- Interestingly, the average age of offenders identified in the CSNSW review was 44 years, further suggesting that a measured and appropriate use of sentencing options based on re-offending risks and the proportionality principle as a limiting factor, supported by access to rehabilitative programs including peer mentoring could prevent younger offenders from re-offending by not staying incarcerated for hypothetical criminal intent and being labelled as serious violent offenders, based on administrative and legislative criteria .

Justice Action would be pleased to be further involved in this matter.

JUSTICE ACTION

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