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The Devil in
Rural Regional Remote Territory

Walking and Chewing Gum

Matthew Storey,
President,
Law Society Northern Territory



The following is the text of a 2009 ABC News online story:

NT has 'one of the world's highest' jail rates

Posted Tue Jun 23, 2009
11:05am AEST

The Northern Territory has one of the highest incarceration rates in the world but its main jail "falls well short of the test of decency", according to a 2007 report released this week.

The report, commissioned by the Department of Justice and co-authored by Richard Harding, a former chief of custodial services in Western Australia, found the Territory's incarceration rate in 2005-06 was the fifth highest in the world, with 551 people per 100,000 Territorians in prison.

Figures released last week by the Australian Bureau of Statistics for the March quarter show there are now 696 people in custody per 100,000 Territorians.

The average incarceration rate for all of Australia is 166 people per 100,000 people.

The ABS data shows the Indigenous prison population in the Northern Territory has increased by 23 per cent in the last year -

the largest jump of any state or territory.

However, the percentage of the Territory's Indigenous people in jail is less than the percentage of Indigenous people in Western Australian, South Australian and New South Wales prisons.

The report says Darwin's main prison at Berrimah is a "forbidding building" that reflects the "repressive values" of the 1970s.

"In terms of cell amenities, climate control, exercise areas, visits space and other shared areas, Berrimah falls well short of the test of 'decency' adopted by the United Kingdom and other autonomous prison inspectorates."

The ABC story, over eighteen months old now, could have been written yesterday, except that the incarceration rates it refers to may need to be updated but the picture remains the same.

The following data is from the *Northern Territory Government Social Indicators* publication of July 2010:

In the March quarter 2010, the average daily number of persons in full time custody in the Territory was 1110. This represents a 3.4 per cent increase from the previous quarter and a 0.5 per cent increase from the

March quarter 2009.

In the March quarter 2010:

- The imprisonment rate in the Territory was 676 per 100 000 adult population, the highest of all jurisdictions and above the national rate of 171 per 100 000 adult population;
- The average daily number of Indigenous prisoners in the Territory was 901. This represents about 81.2 per cent of the Territory's prison population. The Indigenous imprisonment rate for the March quarter 2010 in the Territory was 2178 per 100 000 adult Indigenous population compared to 2311 per 100 000 adult Indigenous population nationally;
- The male Indigenous imprisonment rate in the Territory was 4299 per 100 000 relevant population, the fourth highest of all jurisdictions and below the national rate of 4316 per 100 000 adult Indigenous male population.

Given the ever increasing prison population it is barely surprising that the Berrimah prison, built in the 1970s, is overcrowded. As the ABC reported in 2009: "in terms of cell amenities, climate control, exercise areas, visits space and other shared areas, Berrimah falls well short of the test of 'decency'... In fact at the time of writing (February 2011)



Berrimah prison had 687 prisoners. It has a design capacity of 590.

The simple equation of number of prisoners is greater than number of places has been well known for many years. Earlier efforts to reduce the rate of increase appear to have made little difference. One such notable attempt is the *Fines and Penalties (Recovery) Act* of 2001. That legislation of course establishes a hierarchy of measures to be attempted before a person is imprisoned for not paying a fine (imposed by a Court or under an infringement notice).

Such measures aside, it was only in September last year that the Territory Government announced the location of its new prison, at Holtze in outer Darwin. The new prison will be an 800 bed institution and include a 36 bed secure mental health facility. It is expected to be operational in 2014.

In announcing the new prison the Territory Government noted that 47% of prisoners re-offend within

two years and that the existing prison did not have the capacity to deliver rehabilitation programs and education needed to “break the cycle of re-offending.” By contrast the new prison was to have state of the art facilities for these programs.

The Government announcement emphasised that the new prison was part of a overall policy initiative in Corrections that emphasised: the creation of sentencing options to provide for court ordered education and rehabilitation programs; increased alcohol and drug treatment facilities; the introduction of community based electronic surveillance; and, new “prison farms” in Tennant Creek and Katherine. Finally, the Government’s announcement notes that these changes should also be seen in the context of their Alcohol initiatives (discussed in this column in the last edition of *Balance*). The goal, so the Government states, is to reduce overall prisoner numbers by 20% (220 people).

The Government’s plans are not without critics. John Lawrence SC, President of the Criminal Lawyers Association of the Northern Territory, is one of the most vocal. The NT News of 27 January 2011 carried the following comments attributed to John:

John Lawrence is opposed to building the prison. He said so many offenders were being sentenced to jail that it would be full by the time it was built. [He] said the Northern Territory Government needed other ways to deal with non-violent offenders.

The NT News of 28 November 2010 ran a story on the recidivism rate in the Territory (47.3% as noted above). Commenting on this, Mr Lawrence is reported to have said:

The figure shows the NT Government’s unwillingness to spend money on the areas that cause crime. “They prefer to spend money on



continuously incarcerating people,” he said.

Mr Lawrence said there were many factors that contributed to people re-offending, including socio-economic status, employment, boredom and substance abuse.

“All areas that the Government refuses to address,” he said.

“They prefer to continue the cycle by accommodating the situation rather than attacking it.”

He said it takes time and a lot of money to attack a problem of this magnitude and a solution would be to increase funds for education, employment and infrastructure.

With the greatest of respect, I cannot wholly agree with Mr Lawrence. Certainly, I can agree that: “it takes time and a lot of money to attack

a problem of this magnitude and a solution would be to increase funds for education, employment and infrastructure.” However, I do not agree that the Northern Territory (or Commonwealth) Government is unwilling to spend money in these areas. Rather, I think that the money that *is* spent has a reduced effectiveness as a result of the severe dysfunctionality in many communities directly attributable to alcohol abuse. Similarly, the abuse of alcohol itself contributes enormously to both the overall prison population and the underlying recidivism rate. However, I also believe it is incorrect to suggest that the Northern Territory Government has not taken steps to attempt to deal with the crippling effects of alcohol (as noted earlier, in this column in the last edition of *Balance*).

I certainly agree with Mr Lawrence that it takes time to deal with the underlying issues that lead to the unacceptably high incarceration rates in the Territory. However,

if one accepts that remedying the situation will take time then it must also be accepted that the current overcrowding of Berrimah prison will continue until there is an improvement in those underlying problems. In fact, given the current population at Berrimah of nearly 700 prisoners almost inevitably the 800 bed new prison will be full when it is completed in 2014.

However, I see this as a reason why the new prison should be supported. To return to where this column started; the current Berrimah prison falls well short of any test of decency. The existing prison is physically incapable of delivering rehabilitation and education programs. Clearly, there will be ongoing pressure on prison facilities until there is some improvement in the underlying social causes leading to the unacceptably high prison population. To me the conclusion that a new prison facility is needed, in fact is desperately overdue, is inescapable.

However, expressing support for a new prison does not imply that

funds to address the underlying causes should not be deployed, of course they should. Nor does it mean that sentencing alternatives to incarceration should not be developed and funded, of course they should. Similarly, supporting the establishment of a new prison does not mean that support should not be given to addressing the main prison population 'driver' – alcohol. It should.

To me the only basis there could be for not supporting the new prison is if one were to believe there could be an almost immediate decrease in the current prison population. That is if, literally, a few hundred prisoners could be let out – this week. I do not understand the opponents of the prison to be suggesting this. Mr Lawrence, for example, has suggested increased sentencing alternatives to incarceration. Through measures such as the *Fines and Penalties (Recovery) Act*, the increased funding for community corrections (including rehabilitative) models and the availability of remote electronic surveillance technology, the Government would maintain they have done this.

Certainly it could be maintained, and the Law Society frequently does in our discussions with Government, that these measures need to be expanded and further measures introduced. These measures will hopefully halt the increase in the prison population and even over time lead to a decrease in the

rate of imprisonment (noting an increasing population), perhaps even a decrease in the overall number of prisoners over time in accordance with the Government's objectives. However they will not lead to an immediate decrease in the current prison population. As Mr Lawrence has noted, the same is true of improvements in employment, education, housing and substance abuse. Surely it is not seriously being suggested that the existing prison population must continue to suffer indecent conditions while we await the commencement of the new utopia?

Spending money on Police wins votes and increasing penalties wins votes because governments like to be seen to be "tough on crime". Spending money on Corrections does not win votes. So when a government does improve indecent conditions for prisoners they deserve credit – not opportunistic criticism. In the same vein though, when governments engage in opportunistic 'tough on crime chest thumping' they do deserve criticism. In this context I will close by noting the following extract from a Government Media Release dated 27 January 2011:

- "The Government will also make it an offence to breach bail conditions which will include failing to attend court hearings when required.
- "Offenders who are released

on bail but breach bail conditions will face a fine or a maximum penalty of two years imprisonment.

- "Everyone must understand that bail is privilege and conditions of release must be followed or you will end up in custody."

To my mind the proposed legislation must be one of the more misguided policy decisions of recent times. Creating a further offence of breaching bail conditions is not going to reduce offending in society; the offence is 'definitionally' already alleged to have occurred. It will create circumstances where the otherwise innocent are convicted – not for the original charge but for lack of adherence to bail conditions and where otherwise minor offences are aggravated. Inevitably it will lead to more people being incarcerated for longer.

As I have tried to show in this column; government has taken steps in the area of Corrections that deserve praise, but with a looming Territory election they must resist the temptation to wipe away that good work by descending into a pre-election 'law and order auction'. The role of the Society is to condemn such rank electioneering as much as it is to praise sound policy development. ●

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