



Prison Officers Association of Australasia Conference 2006
Public Service Club, 84 William Street, Brisbane
Monday, 16 October 2006, 9am
Opening address

The Hon Paul de Jersey AC
Chief Justice

I am very pleased to have the opportunity to address you this morning, and to open this significant conference – especially memorable for its marking the 30th anniversary of the Association, upon which I congratulate you.

I was nostalgically interested to learn that the first conference held in Brisbane was opened in 1976 by Sir Charles Wanstall, who the following year was appointed Chief Justice of Queensland, an office he held for the ensuing five years. The nostalgia arises from my having served as Sir Charles's Associate in the year 1970. I had great respect for him, and I am not surprised he would lend his support to such a worthy initiative as this conference.

Your President suggested I might, this morning, reflect on the relationship between your role as correctional officers, and the role of the courts of law – particularly of course, in the criminal jurisdiction. Your work and ours is based on the unfortunate reality that the offending of some within our community warrants their incarceration: Judges order the imprisonment, correctional officers supervise it.

We share something else: what we do is subject to close community scrutiny. Sentencing is the aspect of the work of the courts which attracts the greatest public comment; from your aspect, the people are – it seems to me – constantly vigilant lest prisons come to resemble holiday camps.

When Judges imprison offenders, they assume subsequent continuing attention, within the correctional system, to the statutorily prescribed objects of sentencing, especially, deterrence, community protection and rehabilitation. That becomes your substantial commitment, ladies and gentlemen, and all reasonable members of the community would



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be alive to the difficulties which you must regularly encounter, including serious risk to your personal security.

While Judges are used to criticism, and hope only that it be sufficiently informed and constructive, I am pleased to note that public criticism of correctional officers is not marked, which suggests to me that the work you do is valued and respected.

The extent of your aggregate responsibility as prison officers has substantially increased over recent years. That is the corollary of the increase in prison populations. As you may be aware, the last 13 years have witnessed a 155% growth in the prison population in Queensland, and a further 90% increase is forecast for the next decade.

What is the reason for this? Speaking broadly this morning, my perception is that levels of patience and tolerance within society have generally reduced over the last decade or so. The “rage” phenomenon illustrates this, as does the incidence of late night, alcohol fuelled personal violence within the inner city. Also, there is the scourge of methylamphetamines and the phenomenon of high strength tetrahydrocannabinols.

But I also acknowledge that judicial officers have in some cases felt obliged to imprison offenders because of the absence of facility for community-based supervision in certain parts of the State, or a lack of assurance that community-based orders would, if imposed, be subject to authoritative, intensive supervision. Judicial officers are acutely aware of the “slap on the wrist” factor.

In this context, I was reassured by the revamping, earlier this year, of the probation and parole service, to ensure stronger supervision for offenders given community-based orders, and upon release from prison on parole. That reflects no more than a reasonable public expectation. But it should also give judicial officers greater reassurance when considering the imposition of community-based orders in appropriate cases, rather than incarceration.



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The other cause for optimism arises from the establishment of new probation and parole facilities in remote areas, including the lower Gulf and Torres Strait. These will provide real alternatives to custody for indigenous offenders in those communities.

One further recent development I want to mention in this context is the establishment of a judicial liaison unit. Too often in my experience, a court, in exploring whether a particular rehabilitative program might be available within a particular community, has not been enlightened because the prosecutor or defence counsel was insufficiently informed. The purpose of the newly-established judicial liaison unit is to ensure the judiciary, the DPP and the Public Defender are kept comprehensively up-to-date about available rehabilitation programs.

These are potentially very beneficial developments.

But whatever the success of strategies to reduce the prison population, rest assured there will always be a workplace for you. Fortunately, the physical environments of this State's prisons are reasonably civilized without veering into the plush or luxurious.

Judges from both the Supreme and District Courts visited a selection of South East Queensland correctional centres some years ago. It was a most instructive and helpful experience. It is simply a matter of common sense that Judges should have some reasonably keen perception of the nature of the prisons to which they commit offenders. We were then impressed with the facilities we visited. Later this month, Judges from the Supreme and District Courts, including me, will be visiting the women's prison and other facilities.

I personally have on these visits been impressed also by the apparent professionalism of prison officers carrying out an inherently difficult role. Part of the difficulty of your role arises, of course, from the circumstance that you are usually not dealing with persons of



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ordinary sensibility and understanding. The courts learn of some consequent problems through the process of judicial review of administrative decisions made within the correctional system. This is quite a lively jurisdiction of the Supreme Court, increasingly characterized in this State by self-representation.

The mechanisms of administrative law are, regrettably, not always employed productively. A December 2005 discussion paper of the Legal, Constitutional and Administrative Review Committee of the Queensland Parliament, entitled "The Accessibility of Administrative Justice", includes these observations borne out by judicial experience:

"Some people make frequent and persistent use of administrative justice mechanisms in Queensland. This may be because they have a genuine grievance which is not being addressed; have an ulterior motive causing waste and inconvenience; and/or suffer from a mental illness or a personality order."

Our Supreme Court, exercising that jurisdiction, has given some decisions of great importance on issues relating to prisoners, like parole, release on licence and remissions (eg *McCasker v Queensland Corrective Services Commission* (1998) 2 Qd R 261); although it may be added the court has had to refuse a lot of applications seeking the review of essentially managerial decisions, such as denying a prisoner full-time study and requiring him to work in the fruit shed (*Bartz v Chief Executive, Department of Corrective Services* (2002) 2 Qd R 114).

Mr Bartz has made extensive use of the judicial review process. He is a prisoner serving 18 years for armed robbery. My search unearthed six applications since the year 2000. They mounted diverse challenges: his security classification and transfer from one jail to another, in particular, but extending to payment of postage costs for "privileged mail" – that is, I understand, letters to persons like the Ombudsman, the Minister, and the Anti-Discrimination Commissioner. The high water mark was his challenge to the decision of the Chief Executive not to authorize surgery for the removal of his facial tattoos until two years prior to his release, and to require a financial contribution from the prisoner. That application for review was, incidentally, dismissed.



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You may not have been unhappy to notice that the recent amendments to the *Queensland Corrective Services Act 2000*, which commenced on 1 July this year, removed a prisoner's right to challenge, by way of judicial review, decisions about security classification and placement. It was apparently considered other avenues for review were sufficient.

There is for example a general statutory complaint mechanism available to Queensland prisoners, to the Ombudsman. During the year 2002-03, being the only statistic available to me, the Ombudsman received as many as 1,501 prisoner complaints, mostly about sentence management decisions. Of those 1,501 complaints, only 23 were upheld following an investigation on the merits. That figure of 1,501 may be put into a broader context: the next highest number of complaints relating to a single agency was only 324 (Department of Corrective Services "Prisoner Review and Complaint Mechanisms Consultation Paper", November 2004). There remains facility for merits review of decisions about security classification, but not judicially.

In the last reporting period, which was 2004-05, prisoners made 35 applications for judicial review to the Supreme Court. In that year, the Supreme Court heard 18 applications, of which only three succeeded.

I mention these figures as part of my acknowledgement, ladies and gentlemen, of the inherent difficulty of the tasks you daily accomplish. Your work environment is no doubt often characterized by at least disputation and complaint, but often more likely, an obdurate refusal to accept what is reasonable, leading to anger and violence. In that context, your professionalism must be at a high level.

And at the end of the day, it is I suppose largely assumed, that having endured these problems, having done your utmost to rise to those challenges, you are all then more than up to restoring your own emotional strength. Just as we hope the indefinitely incarcerated prisoner will rise above his desperation, so we trust you continue to be able to rise above your frustrations, enlivened, even if only occasionally, by a spark of rebirth you are able to



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fire in an otherwise lost soul. Please be assured your important work is greatly appreciated.

In wishing you well for a productive conference, I am very pleased now formally to open the 2006 Conference of the Prison Officers Association of Australasia.