



Redfern Legal Centre and the Prisoners Legal Service: A Short History

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*'We always thought of ourselves as gadflies — stinging other people into action'*¹ John Basten

For 40 years, Redfern Legal Centre ('RLC') has provided legal advice and assistance to tens of thousands of people in need and run notable cases, law reform campaigns and educational programs. RLC has also been a leader in developing innovative legal service programs. One project that started at RLC and has had a significant impact on the justice system is the Prisoners Legal Service ('PLS').

Prison work started early in RLC's history. Historically there had been little, if any, legal assistance for prisoners in NSW who often faced harsh conditions and judicial indifference.² Brutality in NSW prisons in the early 1970s led to major prison riots erupting at Bathurst gaol in 1974. Lobbying by prison activists, NSW parliamentarians, legal academics and lawyers was successful in getting mainstream press attention to the issue. This led to a Royal Commission into NSW Prisons beginning in 1976, conducted by then Justice of the NSW Supreme Court, John Nagle.³ One of the first RLC lawyers, Virginia Bell, remembers:

I had followed the Nagle Royal Commission and the revelations were quite shocking ... I saw quite a bit of the hearings ... There had been an institutional approach to the infliction of physical beatings on prisoners described as intractable. That had resulted in one case in a man becoming a paraplegic. The beatings were officially administered and were savage. When that material came to light, I think it was a shock to people ... At the time the *Report* was tabled my recollection is that there was a lot of press coverage about the shocking revelations and the Premier Neville Wran made statements that this would not happen again.⁴

At the time, there was little or no access to legal advice and assistance for prisoners. In 1978, a loose group of legal academics, lawyers and prison activists formed the PLS based at RLC.

George Zdenkowski, a legal academic at UNSW involved with RLC, notes:

We did a lot of legal visits to the gaols and there was some litigation that took place. It grew out of that. ... [RLC] received a lot of letters and individuals received letters from prisoners. The PLS was an opportunity to educate prisoners about their rights and we made regular visits to prisons ... I used to take out a group of law students weekly to Long Bay Gaol. That was mutually beneficial.⁵

Those working in the PLS consisted of RLC staff lawyers, barristers briefed by the RLC and also volunteer lawyers. The RLC solicitors were well known in the gaols and word-of-mouth brought the PLS many clients. John Basten (one of the founders of RLC) went to the Bar in 1981 and was briefed by RLC on many cases.⁶ RLC ran appeals for prisoners challenging disciplinary convictions. This led to the government legal aid service extending legal aid for those matters.⁷ RLC ran many cases about prisoners' remission entitlements,⁸ and was influential in the establishment of the Visiting Justice system (independent magistrates dealing with disciplinary charges in prisons).⁹

Work done at RLC for prisoners was undertaken in loose coalitions with other organisations. One of these, the Prisoners Action Group ('PAG'), had been formed in 1973 and 'was committed to abolition (not reform), to activism (not passivity), and ex-prisoners were to have the final say on policy and activities'.¹⁰ Prisoners would make complaints about their treatment in gaols,¹¹ and the PAG would arrange for solicitors from RLC to take instructions from them. Media organisations were involved. Radio Skid Row, in the basement of the Wentworth building at the University of Sydney, conducted interviews on prison issues with the

¹ Interview with John Basten (Sydney, 27 July 2016).

² For a history of prisoners' rights in Australia, see Mark Finnane and Tony Woodyatt, "Not the King's Enemies": Prisoners and Their Rights in Australian History' in David Brown and Meredith Wilkie (eds), *Prisoners as Citizens: Human Rights in Australian Prisons* (Federation Press, 2002) 81. See also Justice Action, *Chronology of the Prisoner Movement in Australia* <http://www.justiceaction.org.au/index.php?option=com_content&view=article&id=111&Itemid=991>.

³ David Brown, 'The Nagle Royal Commission 25 Years on: Gaining Perspective on Two and a Half Decades of NSW Prison Reform' (2004) 29 *Alternative Law Journal* 135, 136.

⁴ Interview with Virginia Bell (Sydney, 1 December 2016).

⁵ Interview with George Zdenkowski (Sydney, 28 October 2016).

⁶ Interview with John Basten (Sydney, 27 July 2016).

⁷ John Basten, 'Neighbourhood Legal Centres in Australia: A Legacy of the Vietnam War?' (Paper presented at the Annual Meeting of the Law and Society Association and the ISA Research Committee on Sociology of Law, Madison Wisconsin, 5-8 June 1980).

⁸ Remission entitlements are entitlements to a reduction of the term of a prison sentence, usually due to good behaviour or conduct.

⁹ Interview with John Basten (Sydney, 27 July 2016).

¹⁰ George Zdenkowski and David Brown, *The Prison Struggle: Changing Australia's Penal System* (Penguin Books, 1982) 83.

¹¹ *Ibid* 99.

lawyers from RLC.¹² Nick Franklin at ABC Radio 2JJ began broadcasting *The Prisoners Program* in about 1978,¹³ and there were other prisoners' programs on community radio stations in Sydney.

While the PLS mainly focused on prisoners in male gaols, Women Behind Bars ('WBB') concentrated on women prisoners. Staff of RLC were involved with activists in WBB.¹⁴ In 1979, Robyn Lansdowne was working with the Feminist Legal Action Group ('FLAG') and WBB to assist clients Violet and Bruce Roberts.¹⁵ Violet Roberts and her son were convicted of murdering her violent husband in 1976.¹⁶ Lansdowne recalls:

I interviewed Violet Roberts who had been convicted of murder and had been given a life sentence. Her case was very tragic and through WBB there was a movement to have her and her son released. In 1980, there was a street campaign – sit-ins, marches etc and public meetings at Redfern Town Hall. There was a formal process when I was the solicitor for Violet at RLC making an application for Violet's release on licence and a campaign through the media including *60 Minutes* episodes etc.¹⁷

Lansdowne was employed by the law firm Freehills and was the first pro bono lawyer to be employed to work for a community legal centre by a firm in Australia. 'The terms of my employment were, I worked 1 day a week for the Centre and 4 for Freehills and Freehills paid me 5 days a week.'¹⁸ At RLC, Lansdowne worked on Violet's case. Ultimately Violet and her son were released on 15 July 1980.¹⁹

There was strong support for RLC in the prisons, to the extent that one of the demands by prisoners in a sit-in at Parramatta Gaol on 13 January 1979 was that '[gaol] authorities organise among prisoners a collection of money to aid the Redfern Legal Centre'.²⁰ RLC undertook casework for prisoners but also took an activist approach to prison issues. In 1979, RLC organised lawyers to go to Goulburn to take statutory declarations from prisoners. This work formed the basis for the terms of reference in the Goulburn Gaol inquiry into warder bashings and other offences.²¹ The inquiry led to Public Service Board charges against five prison officers.²²

Well-known prison activist Brett Collins finished a prison sentence in 1980 and was keen to make a difference in NSW prisons.²³ 'Redfern was the only centre [in NSW] following through on prisoners' issues. It was a centre linking the Prisoners Action

Group with other activists and lawyers – a safe place and a place of networking.'²⁴ Collins and other prison activists used RLC as a resource and RLC lawyers and volunteer lawyers were involved in all aspects of prison work, including the management of a halfway house for prisoners in Glebe.

The work was not without its difficulties. Anne Healey, a RLC staff member, recalls:

The prisoners were getting a voice they hadn't had before and my impression was that the armed hold up squad didn't like it at all ... There was a palpable hostility from the Redfern police ... I remember thinking particularly Virginia [Bell] and Nanette [Rogers] [RLC Solicitors] were really brave ... They never thought of changing their behaviour as a result of the police hostility.²⁵

¹² Interview with Andy Nehl (Sydney, 9 February 2017).

¹³ Bernie Matthews, *Intractable: Hell Has a Name: Katingal: Life Inside Australia's First Super-Max Prison* (Pan Macmillan, 2006) 203.

¹⁴ Women Behind Bars was a 'small ... effective group of activists in NSW in the 1970s and early 80s, who changed public awareness about women, crime, punishment and imprisonment': see ABC Radio National, *Women Behind Bars* (15 April 2012) <<http://www.abc.net.au/radionational/programs/archived/hindsight/hindsight-15-04-12/3941858>>.

¹⁵ *Women Behind Bars* (Presented by Lorena Allam, ABC National Radio, 2012) 37:15:00.

¹⁶ 2XX, 'Report on the Violet and Bruce Roberts Story in the 2XX collection', *2XX Collection*, 1979. For more on Violet Roberts, see Ann L Genovese, *The Battered Body: A Feminist Legal History* (PhD Thesis, University of Technology Sydney, 1998) <<https://opus.lib.uts.edu.au/handle/10453/20131>>.

¹⁷ Interview with Robyn Lansdowne (Melbourne, 6 July 2016).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ 'Sit-In by Prisoners', *Sydney Morning Herald* (Sydney), 14 January 1979, 3.

²¹ Garth Symonds, 'RLC Policy Meeting' (Non-casework paper, Redfern Legal Centre, 3 February 1980) 2. See R W Henry, 'Report of Inquiry into Allegations of Misconduct by Prison Officers at Goulburn Gaol' (Report, NSW Government Printer, 1979).

²² Garth Symonds, 'RLC Policy Meeting' (Non-casework Paper, Redfern Legal Centre, 3 February 1980) 2.

²³ Interview with Brett Collins (Sydney, 18 July 2016).

²⁴ *Ibid.*

²⁵ Interview with Anne Healey (Sydney, 24 July 2016).

The PLS and other prison work done by RLC demonstrated the real need for legal services to prisoners. The ethos of RLC at the time was that it was the RLC's role to demonstrate legal need in sectors of the community. Once the government accepted that this need existed, the plan was that RLC could hand over responsibility for providing the service to the government and move on to work on other areas of need.²⁶ As Basten states, '[w]e always thought of ourselves as gadflies stinging other people into action'.²⁷ In 1979 and 1980, discussions were had with the State government's legal aid body, the Legal Services Commission, with a view to setting up a funded, independent Prisoners Legal Service. On 27 May 1981, the Legal Services Commission resolved to recommend, to the Attorney-General, the establishment of a separate division of the Commission to operate a comprehensive Prisoners Legal Service.²⁸

At first, the government contracted the PLS services to RLC and other community legal centres. Redfern, Marrickville and Macquarie Legal Centres participated in the Legal Services Commission's Prisoners Legal Service by providing solicitors to attend at Long Bay, Parramatta, Silverwater and Mulawa Jails on a regular basis to give general legal advice to prisoners.²⁹

The legal regime in prisons was incredibly arcane and little was known about it. RLC's work led to the first Australian consolidation of prison law in *Halsbury's Laws of Australia*.³⁰ There were a lot of technical cases run. Previously, prisoners had been almost always unrepresented. Cases were run by RLC such as *Riley v Parole Board of New South Wales*,³¹ where Mr Riley had been refused release by the Parole Board for years with no reasons given. The case was taken on as an issue of natural justice and its successful conclusion assisted not only Mr Riley but also many other prisoners.

RLC staff lawyers represented prisoners at Visiting Justice hearings for which RLC had received specific funding. Andrew Haesler, a solicitor at RLC, notes:

We engaged in strategic thinking about the work being done. In the PLS work for instance, we asked, 'if we run this case will we change the remission system?' We forced changes which got lots of people released. We would send someone down to the gaol with a particular facts situation in mind and try and find someone who fitted that case. We didn't want to be just a duty solicitor.³²

RLC Prisons solicitor Bill Dickens recalls work in the 1980s:

We used to do a lot of sentence calculation work ... At the Department of Corrective Services, there was an employee whose sad responsibility it was to calculate the sentences. These were done on handwritten cards which had all the arithmetic on them. And it was complex because of the nature of the remissions system ... We used to get the cards and would check the release dates and inevitably the Department would get it wrong and we would then commence extensive litigation to calculate the proper sentences. This was a good source of income from costs for RLC for a while.

That was a lot of fun. I remember one time when the prison released a person and he said to them, 'I am not meant to be released now' and they said, 'yes you are, on your way' and about a week later they contacted him and said, 'please come back now we made a mistake'. So, we briefed John Basten and went to the Full Court of the Federal Court and they found the release extinguished the warrant and there was no power to arrest him so he was out. There was an amendment to the *Crimes Act* to deal with that situation after that. John Basten was absolutely ruthless in his efficiency. You briefed him and within 24 hours you would not only have an advice but you would have pleadings and documents and you were ready to go. It was pretty exciting, all that crime work.³³

Ben Slade, a RLC solicitor in the mid 1980s, had come straight from law school to work at RLC and was participating in the PLS with Bill Dickens.

²⁶ Interview with Roger West, (Sydney, 9 December 2015).

²⁷ Interview with John Basten (Sydney, 27 July 2016).

²⁸ 'Prisoners Legal Service Advisory Committee Report' (Committee Report, Legal Services Commission, 1981).

²⁹ John Hunt, 'Free Legal Advice All Year', *Sydney Morning Herald* (Sydney), 13 May 1984, 116.

³⁰ LexisNexis, *Halsbury's Laws of Australia*, (at 3 October 2014) 335 Prisons.

³¹ (1985) 3 NSWLR 606.

³² Interview with Andrew Haesler (Sydney, 7 July 2015).

³³ Interview with Bill Dickens (Dubbo, 8 February 2017).

They would visit two gaols in a day. You would 'see a queue of 30 people in one gaol and another 30 in the afternoon'.³⁴ There was no other free legal advice at the gaols. RLC's activities clearly antagonised the Department of Corrective Services. The Hon John Fahey publicly criticised the PLS, claiming it was being abused by prisoners who appealed to the District Court when Visiting Justices punished them for misbehaviour. Fahey claimed these appeals 'clogged up the District Court and cost the State tens of thousands of dollars in transport and legal expenses'.³⁵

Eventually it was agreed that the government legal aid office would set up a separate section to deal with prisoners' matters to start around July 1985.³⁶ RLC handed over the PLS organisation to government though they retained casework in Visiting Justice matters, occasional test cases,³⁷ and representation on the PLS Advisory Committee. RLC's mission in this area was accomplished. The project to provide legal services and a voice for prisoners in NSW had been established by RLC and was now to develop into a state-wide government funded service to prisoners in NSW gaols.³⁸

The new PLS though did not operate as an activist organisation. Brett Collins, now coordinator of prison activist group Justice Action, notes:

Over the years legal aid became more and more reluctant to be activist and less prepared to expose what was actually happening in the prisons ... after a while they didn't want to put all that time into the meetings ... they tried to step away. Then they said they don't want a committee any more [Advisory Committee] ... it was reinstated after protests but then disbanded ... The Prisoner movement lost the network and being part of the processes with lawyers.³⁹

Zdenkowski agrees:

When the PLS went to legal aid there was a gap in advocating for prison rights. There are now very few people involved. Brett Collins and Justice Action have continued to hold the torch. However there is no sustained public discourse about prison conditions.⁴⁰

Despite these concerns, the innovation of the PLS has proved to be a sustainable service that today assists prisoners everywhere in NSW.⁴¹ The staff and volunteers at RLC saw a need, then designed and implemented

a novel service to meet the need. They demonstrated the value of providing assistance to some of the most vulnerable people in the state and persuaded the NSW government to take on and run a service for prisoners in all gaols. In doing so, they made a significant contribution to delivering access to justice.

³⁴ Interview with Ben Slade (Sydney, 8 December 2015).

³⁵ Luis Garcia, 'Prison Drug Smugglers Face Jail', *Sydney Morning Herald* (Sydney), 1 June 1988, 3.

³⁶ Letter from Andy Haesler to Tony Woddyatt, 11 March 1985.

³⁷ For example, 'in December 1988 ... Redfern Legal Centre, acting on behalf of all prisoners sentenced to life imprisonment, commenced a representative action in the Supreme Court of New South Wales to have the policy declared null and void': New South Wales, *Parliamentary Debates*, Legislative Council, 1 March 1989, 5396 (Elisabeth Kirkby). This policy declared a mandatory higher security classification for any prisoner who had escaped: at 5391.

³⁸ The contribution made by Legal Aid's PLS solicitor Jack Grahame, who had a longstanding commitment to civil liberties and prisoners' rights, should be noted.

³⁹ Interview with Brett Collins (Sydney, 18 July 2016).

⁴⁰ Interview with George Zdenkowski (Sydney, 28 October 2017).

⁴¹ See Anne Grunseit, Suzie Forell and Emily McCarron, 'Taking Justice into Custody: The Legal Needs of Prisoners' (Paper, Law and Justice Foundation of New South Wales, 2 June 2008) for research on issues relating to prisoners' access to legal assistance in NSW.

