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23 July 2014

The Secretary
Inquiry on strategies to prevent and reduce criminal activity in Queensland
[REDACTED]

Thank you for considering my submission which offers some ideas about how to improve community safety and reduce criminal activity.

Central to my thinking on these issues is my perception that we do not emphasis deterrence, condemnation and victim safety in the way we respond to criminal behaviour, particularly violence.

We have increasing labelled anti-social behaviour and violence as being “irrational” and implicitly accept therefore no “rational” response is possible. I think this is flawed thinking and we should apply consequences to what we see as “irrational” behaviour which causes harm to others.

I also see that the legal profession is a major impediment to change.

The legal professions role as a self-interested business lobby and its role as a profession of great importance to our society now seems to be completely intertwined.

Some prominent members of the legal profession reject any suggestion that non legal practitioners have any knowledge of value to reform of the criminal justice system. The sense of moral outrage displayed by some legal practitioners is almost a claim that it is “their” criminal justice system and we community members should stand aside and allow them to manage “their” system.

The criminal justice system is funded by tax payers to provide a service to tax payers. It has very special privileges and rightly defends its independence against interference in decision making within the laws that exist.

However, the community has a perfect entitlement to raise concerns about the failures of the criminal justice system to remove from society those people who are, by any ordinary persons standards, an unacceptable risk to society.

We need change but change seems very hard to achieve.

How to achieve change

It seems to me that there are two common themes that are used to minimise change in the criminal justice system within Australia.

Theme 1.

It is loudly proclaimed that sending people to prison does not rehabilitate offenders. In the absence of specialised rehabilitation programs this is probably true. My response to that is; having no boundaries and no effective penalties does not rehabilitate either. At least if offenders are off the streets there will be some relief from their behaviour. In addition, lack of prison time encourages people [particularly young people] to treat the law with contempt.

Theme 2.

It is loudly proclaimed that we cannot afford to keep all these people in prison and it is more cost effective to manage them in the community. My response to that is; if managing offenders in the community leads to continued offending there are no cost savings and probably a cost increase.

To challenge Theme 1 we need to focus on attaching rehabilitation programs to custodial sentences and as a community we need to accept that good quality rehabilitation programs are cheaper than putting the same people back in prison every few years.

To challenge Theme 2 we actually need to manage our money more effectively so we can afford to keep in prison those who should be there and have enough money left to provide effective community based rehabilitation.

Where will the money come from ?

My belief is that we can be much smarter with the money we spend thereby getting a criminal justice system that meets community needs and expectations while being affordable.

We can save money by:

- Keeping in prison only those who need to be there.
- Introducing periodic detention, home detention, detention within specified boundaries, curfews, and association restrictions for some offenders, all supported by frequent substance testing and monitored by technology.
- Using innovative methods of random sampling for offenders under supervision in the community.
- Transfer a large part of the costs of custody and all other forms of detention, monitoring and supervision to repeat offenders.

- Transfer more Court costs and legal costs to repeat offenders.
- Transfer more costs of Policing to repeat offenders, including the cost of breaches of Domestic Violence Orders.
- Transfer more costs of Policing to businesses that are identified as contributing to offenders behaviour.
- Become innovative and, in conjunction with other jurisdictions, obsessive about collecting all outstanding money, if necessary, in small instalments and in cooperation with the ATO and The Department of Human Services. All money due should have a minimum payment at least fortnightly.
- Ensuring all non-residents charged or taken into custody should have their Visa status checked with Immigration, if they have overstayed their Visa they should be transferred to Immigration Detention for deportation.
- Ensuring all non-residents charged, or taken into custody, by Police should have their criminal history declarations upon entry to Australia compared with a criminal history search in the country of origin. If an overseas criminal history was not declared upon entry to Australia they should be transferred to Immigration Detention for deportation.
- Ensuring that when a Domestic Violence Order is issued against a non-resident the criminal history declaration of that person upon entry to Australia should be compared with a criminal history search in the country of origin. If an overseas criminal history was not declared upon entry to Australia they should be taken into custody and transferred to Immigration Detention for deportation.
- Ensuring that when a Domestic Violence Order is breached by a non-resident that person should be taken into custody and transferred to Immigration Detention for deportation under the “not of good character” provisions.
- Ensuring all non-residents in custody in Queensland should have their criminal history declarations upon entry to Australia compared with a criminal history search in the country of origin. If an overseas criminal history was not declared upon entry to Australia they should be transferred to Immigration Detention for deportation. If arrangements cannot be made for them to complete their sentence in their country of origin they should still be deported, however, be subject to immediate arrest to complete their sentence should they ever return to Australia. Each case should be considered on the merits of community safety and deterrence to ensure that no harm is done by this approach.
- Negotiation will be required with the Commonwealth Government to bring about amendments to current legislation to ensure that the only grounds for appeal against deportation on the basis of violence [including breach of Domestic Violence Orders] or criminal behaviour would be that there are

errors in the process. The process should move quickly and with certainty of outcome or it will not have a deterrent effect.

- Vigorously pursuing all offenders who assault or injure Police in the performance of their duty. Queensland Police are just people like the rest of us. They have families, mortgages, good days and bad days. They want to see their kids grow up, they want to have good health and an opportunity to enjoy life. They should not have to tolerate abuse and violence towards them in their daily work.
- If we want police to protect us and our families, we must show police and their families that we will take action to protect individual police officers from harm. One way to protect police officers is to ensure that every offence against them is pursued very vigorously and appropriate penalties are imposed on every occasion that a police officer is harmed.

Attached are more detailed comments on each of the points I have made above.

I hope that you will have an opportunity to consider in detail the suggestions I have made.

Yours sincerely,

A handwritten signature in black ink that reads "Max Vardanega". The signature is written in a cursive, slightly slanted style.

Max Vardanega

Attachments: Detailed Comments on the points made.

Detailed Comments on the points made

Keeping in prison only those who need to be there.

The Australian Bureau of Statistics publication "Prisoners in Australia", reissued on 2 April 2013 and again 5 December 2013 shows the following figures

Total prisoner population in Queensland as a percentage of total prisoner population in Australia

"..As at 30 June 2012.....Queensland (19% or 5,593)....

"..As at 30 June 2013.....Queensland (19.7% or 6,076)....

Imprisonment rate

"..The imprisonment rate in Queensland decreased between 2002 and 2012 (down 6%, from 168 to 159 prisoners per 100,000 adults)."

"..The imprisonment rate in Queensland increased in the year ending 30 June 2013 by 6.4% from 159 to 169 prisoners per 100,000 adults)."

This imprisonment rate of 169 prisoners per 100,000 adults in Queensland is less than the national imprisonment rate of 170 prisoners per 100,00 adults.

I conclude from these figures that our starting point on prisoner numbers is reasonable, however, if the 6% rate of annual increase in the Queensland prison population continues the system is unsustainable. Even if that annual growth rate fell to 3% I doubt it could be sustained in competition with other spending needs.

I believe a target of no increase in the per 100,000 of adult population beyond the 30/06/15 census would be possible and sustainable.

By focusing on who we actually want in prison and dealing in other ways with the other offenders we can make good headway in restraining costs.

Who should be in prison ?

1. Offenders who have done serious violence, whether by intent or recklessness, should always be imprisoned. The period of imprisonment should be calculated to be a deterrence to others, protect the community and provide for an opportunity for rehabilitation.

[not limited to but including, Homicide and related offences, Acts intended to cause injury, sexual assault of a serious nature and related offences, offences against children of a serious nature]

Parole possibilities for these offenders should be limited and where the violence caused death the parole possibilities should be only available in the last 15% of the

sentence for the purpose of release under supervision to allow reintegration into society under supervision.

2. Offenders who have done less serious violence or significant harm to the community should be imprisoned. The period of imprisonment should be calculated to be a deterrence to others, protect the community and provide for an opportunity for rehabilitation.

[not limited to but including, Acts intended to cause less serious injury, Sexual assault of a less serious nature and related offences, offences against children of a less serious nature, dangerous or negligent acts, Weapons offences and Abduction, extortion and other offences against the person]

Repeat offenders in this category should have a sliding scale of parole possibilities; Perhaps parole opportunities after 50% of sentence served on first offence moving to no possibility of parole on 3rd offence.

3. Repeat offenders in less serious crimes should also be imprisoned for a period growing with each offence committed.

There is a very large range of offences for which an alternative to prison is possible, imagination and commitment is needed to make those alternatives work.

Who should *not* be in prison ?

1. Offenders who are not a risk to the community and who do not present as a risk of re offending.

2. Offenders who can be effectively subject to periodic detention, home detention, detention within specified boundaries, curfews, association restrictions, frequent substance testing and monitored by technology.

3. Non-residents of Australia where there is any possibility of making arrangements for them to serve their sentence elsewhere and then be prohibited from returning to Australia.

4. Non-residents of Australia who are eligible to be deported for any reason.

Using innovative methods of random sampling for offenders under supervision in the community.

To strengthen the impact of supervision in the community a model should be developed which includes monitoring lifestyle, who a person associates with, where a person goes, telephone and data usage, random substance use testing and any other factors that may be examined in a random manner to ensure that a person under community supervision, is actually under supervision.

This model does not need to be huge piece of work, it could be implemented quickly and simply to ensure that community supervision is indeed an adequate reminder to offenders that they serving part of a Court sentence.

Transfer a large part of the costs of custody and all other forms of detention, monitoring and supervision to repeat offenders.

Transfer more Court costs and legal costs to repeat offenders.

Transfer more costs of Policing to repeat offenders, including the cost of breaches of Domestic Violence Orders.

It is not at all unreasonable to transfer costs to those offenders who can afford to pay.

This should be an administrative process and the Courts should be prohibited from taking into account for sentencing the contribution to costs that offenders [and in particular repeat offenders] will be required to pay.

In some communities it will not be possible to recover costs because of the very low financial capacity of offenders and the negative social consequences of adding this burden to the already disadvantaged. It should not be difficult to make the exemptions that will be required.

However, there are a large number of offenders who have the financial capacity to bear the cost of their own behaviour and they should bear that cost.

Transfer more costs of Policing to businesses that are identified as contributing to offenders behaviour.

In some entertainment districts it is abundantly clear which businesses are disregarding the conditions of their licenses. These businesses should be required to meet the costs of frequent inspections and meet at least 50% of the costs of Police attending their premises or within a reasonable range of their premises.

Become innovative and, in conjunction with other jurisdictions, obsessive about collecting all outstanding money; if necessary, in small instalments and in cooperation with the ATO and The Department of Human Services. All money due should have a minimum payment at least fortnightly.

The huge amount of money outstanding for collection with SPER needs careful consideration.

Perhaps the place to start is the ATO and the Department of Human Services [for Centrelink]. If the Commonwealth Government could be convinced to direct all tax returns or a percentage of Centrelink bonus payments to SPER that might be helpful.

Even getting a commitment of \$15 per fortnight from Centrelink would help.

Ensuring all non-residents charged or taken into custody should have their Visa status checked with Immigration, if they have overstayed their Visa they should be transferred to Immigration Detention for deportation.

Ensuring all non-residents charged, or taken into custody, by Police should have their criminal history declarations upon entry to Australia compared with a criminal history search in the country of origin. If an overseas criminal history was not declared upon entry to Australia they should be transferred to Immigration Detention for deportation.

Ensuring that when a Domestic Violence Order is issued against a non-resident the criminal history declaration of that person upon entry to Australia should be compared with a criminal history search in the country of origin. If an overseas criminal history was not declared upon entry to Australia they should be taken into custody and transferred to Immigration Detention for deportation.

Ensuring all non-residents in custody in Queensland should have their criminal history declarations upon entry to Australia compared with a criminal history search in the country of origin. If an overseas criminal history was not declared upon entry to Australia they should be transferred to Immigration Detention for deportation. If arrangements cannot be made for them to complete their sentence in their country of origin they should still be deported, however, be subject to immediate arrest to complete their sentence should they ever return to Australia. Each case should be considered on the merits of community safety and deterrence to ensure that no harm is done by this approach.

[Negotiation would be required with the Commonwealth Government to bring about amendments to current legislation to ensure that the only grounds for appeal against deportation would be that there are errors in the process. The process should move quickly and with certainty of outcome or it will not have a deterrent effect.]

Queensland, particularly South East Queensland, has received a large number of new arrivals to Australia in the last few years. This has been a significant financial burden to Queensland, although I know that immigration also has great benefits.

A number of these new arrivals are legally here long term and an unknown number of individuals are still in Queensland because they have overstayed their Australian tourist visas.

While many of these new arrivals are wonderful potential citizens a small [but significant] number are not.

The extent to which some of these individuals are engaged in criminal and violent behaviour is a very significant cost to Queensland taxpayers and a great drag on the economic potential of Queensland.

The costs of this criminal and violent behaviour can be seen in:

- police time and resources
- criminal court time and resources
- insurance claims, civil court proceedings
- corrective services time and resources
- costs of custodial sentences

- hospital time and resources
- significant damage to our reputation as a tourist location
- an appalling example to our young people of what is acceptable

I cannot put a dollar value to all this however it must be enormous.

Persons who are not permanent residents of this country should understand that criminal and violent behaviour will result in their deportation.

There is difficulty with the concept of returning individuals from violent and difficult circumstances to the place they came from, I understand that. Unfortunately, we cannot allow standards of public safety to be lowered by exceptions for new arrivals. We have enough problems with our home grown violent and criminal behaviours. The precedent must be established, any person who comes here lawfully and obeys our laws is welcome, all others are deported.

For a number of years the States have borne a large part of the financial burden of the Commonwealth Government policy called the Closer Economic Relationship with New Zealand.

In Queensland this cost has been particularly evident in the social pressures on low cost housing, community organisations, public hospitals, education and the criminal justice system.

Unfortunately New Zealand has a very significant problem with alcohol, violence [particularly family violence] and gang related activities. Perhaps it is not much worse than Australia however with such large numbers of people moving to Queensland from a society that shares those problems it is no surprise that New Zealand passport holders create a significant workload for Police and the Courts.

Every effort should be made to have the Commonwealth Government contribute to the local costs of its immigration policies.

If the Commonwealth Government will not contribute to the costs it should at least review the deportation process to ensure that the only grounds for appeal against deportation would be that there are errors in the process. The process should move quickly and with certainty of outcome or it will not have a deterrent effect.

At the present time deportation for violent crime or repetitive crime is a slight possibility, it should be a near certainty.

Vigorously pursuing all offenders who assault or injure Police in the performance of their duty.

A consensus seems to have grown that Queensland must act to reduce the violence and anti-social behaviour which is clearly affecting many parts of our Queensland community.

There are disturbing stories to be found in many places, including, in the conduct of children in schools, in assaults upon buses and bus drivers, spectators at sporting matches and the night entertainment scene.

Regardless of what changes to legislation and resources governments make each individual police officer within the Queensland Police Service will continue to face the violence, disrespect and contempt that is thrown at them daily by the people whose behaviour is at the heart of this very significant social problem.

If we want to see change then we must ensure that the Queenslanders who face the dangers of enforcing change are given a fair go.

In the 2011 – 2012 reporting year the total assaults against police in Queensland was 2643. Of those 712 were considered serious assaults.

Regional Breakdown 2011-12

North Coast (Bundaberg to Sunshine Coast) 120 serious assaults, 448 total
Central Queensland (Rockhampton, Mackay, Longreach) 80 serious, 336 total
Southern (Ipswich to Charleville) 91 serious, 302 total
South Eastern (Gold Coast/Logan) 88 serious, 351 total
Metro North 71 serious, 313 total
Metro South 83 serious, 289 total
Northern (Townsville/Mt Isa) 82 serious, 308 total
Far Northern (Mareeba/Cairns) 97 serious, 296 total

Queensland Police are just people like the rest of us. They have families, mortgages, good days and bad days. They want to see their kids grow up, they want to have good health and an opportunity to enjoy life. They should not have to tolerate abuse and violence towards them in their daily work.

If we want police to protect us and our families, we must show police and their families that we will take action to protect individual police officers from harm.

One way to protect police officers is to ensure that every offence against them is pursued very vigorously and appropriate penalties are imposed on every occasion that a police officer is harmed.

Police who are assaulted on duty can be forgiven for feeling that the person convicted of assaulting them is frequently dealt with very leniently during sentencing.

It is most unusual for the maximum available penalty to be applied and frequently a suspended sentence or community service is imposed, not time in custody. Sometimes no penalty is imposed.

There is no simple answer to why this happens.

Perhaps there is an attitude in some Courts that police should accept some level of violence directed towards them because they are paid to do that job. Such a proposition is unacceptable.

Perhaps there is a reluctance to impose custodial sentences.

It is well understood that custodial sentences without rehabilitation programs generally do not rehabilitate offenders.

However letting offenders against police escape any punishment at all does not rehabilitate either.

No consequences for assaulting police sends the message to offenders that police can be ignored or assaulted with impunity.

No consequences for assaulting police sends the message to police that good hardworking police officers are not valued by the community.

Both these messages are very damaging to our community and cannot be allowed to stand unchallenged.