

# **Towards a National Approach in Offender Management Within Australia**

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This year, 2001, marks the Centenary of Australian Federation. Prior to 1901, colonies protected their borders, levied duties upon trade and managed their own defenses. Such was the competition between colonies, that an array of health, education, transport and legal systems developed independently of each other. A classic memorial to inter-colonial rivalry is Albury Railway Station on the border of New South Wales and Victoria. The platform is the length of two trains, designed so that passengers disembarking from a train in one state would have to walk from one end of the platform to the other in order to join a second train heading into the other state on a different gauge track.

When Probation arrived in Australia, at various stages during last century, it became, within our federated system, the prerogative of individual states, as part of the system of justice administration.

There are advantages to managing offender services at a local jurisdictional level. Adaptation to local needs is facilitated and local identity is affirmed. The vast distances and population distributions across Australia might make a centralist model difficult to implement. Within most facets of Australian life, however there have been moves towards greater alignment of services, programs and standards across State and Territory borders. Nowadays, when you drive from one state or territory to another, you are no longer confronted by different road rules, although each jurisdiction manages its own. There is now a standard gauge railway line traversing the country and soon to link Adelaide with Darwin. The National Qualifications Framework is progressively introducing competency standards across industry, which are portable throughout the Commonwealth. In many areas of administration, for which State and Territory governments accept responsibility, the Commonwealth takes a coordinating role.

Probation and Parole or Community Corrections, within Australia suffered from the problems experienced worldwide by probation services as a result of the assertions by Martinson (1974) that nothing works in offender rehabilitation programs (Broadhurst and Maller, 1990).

Even while community corrections organizations have developed increasingly restrictive and punitive sanctions, prison populations rise at unprecedented rates and our efforts are sometimes derided as "soft options"

Law and order debates are frequent features of state and territory election debates and punitive legislation is rushed through parliaments, with bi-partisan support, in response to media coverage of a particularly brutal crime. The press pays little attention to the vast bulk of offenders who pass through the Courts, many of whom receive penalties which involve management by our

agencies. Selective reporting of the most serious offences (Lipmann, 1978) creates the impression that crime is out of control. Sentencing officers can find their sentences derided by politicians, the press and the public as too lenient. Judicial discretion is increasingly limited by superior court guideline judgements, which might be based on the worst examples of a particular crime. Yet there is a significant body of evidence, to support the contention that punitive sanctions, of themselves, deter neither the offending individual from further crime nor act to dissuade others from re-offending. Andrews et al. (1990) and Lipsey (1992), (McGuire and Priestley (1995).

So where are Probation / Community Corrections in the debate? That same research casts doubt upon the utility of psychotherapeutic models, including those used in individual counselling and medical models. These approaches formed the cornerstone of traditional probation practice. Other countries, including the United Kingdom, Canada and New Zealand, have moved on, by successfully developing ways of working with offenders, which employ evidence-based approaches to identifying and quantifying risk and targeting criminogenic needs.

Australian Probation and Community Corrections organizations, grappling to meet demands, which out-strip their resources, are endeavouring to re-invent themselves in line with international best practice for offender management. Risk assessment instruments proliferate across the country, some imported directly from overseas, others adapted and normed locally. Western Australia has developed its own actuarial instrument, based on the Wisconsin model. Efforts are made to develop intervention strategies based on criminogenic need but each jurisdiction largely 'goes it alone' in program development and implementation. There are two risks here for the organizations themselves: the first is that, in organizations with scant resources, offender programs can be used as a means of rushing offenders through the supervision process in order to get them off active supervision or reduce the level of service. The intention here might be to reserve whatever resources remain, to devote to higher risk offenders but this can be difficult to achieve because the expectations of courts and parole boards may not equate with our own. Because of pre-occupation with gate keeping, program integrity, essential to effectiveness of intervention (Gendreau and Goggin (1996) and Losel (1998) is compromised or the effective length of intervention cannot be achieved (Gendreau and Goggin, 1996; McLaren, 1996; Gendreau, Cullen and Bonta, 1994). The second risk for Australia is that there is scant attention to evaluation and research in this country, so that it cannot be demonstrated empirically, that it is possible to reduce offending behaviour, even when overseas research shows that intervention is more likely to be effective where it is community-based. (McGuire and Priestly 1995)

Community based offender services are thus fragmented across the Commonwealth. We would assert that this fragmentation, contributes to a climate where criminal justice policy has nowhere to go but in the direction of more punitive sanctions. This carries with it the risk of backlash from an ever more resentful offender population. With exposure to anti-social peers being a criminogenic factor (Andrews and Bonta (1995), the concentration of offenders

together in institutions, is an option which should be employed only when there is no realistic alternative.

In Australia, probation and community corrections organizations function as subsidiaries of larger correctional departments, whose culture and primary orientation have been the construction and maintenance of prisons. Probation and custodial corrections have operated simultaneously, yet independently of each other, with little overlapping of ideas and poor communication sharing. Community Corrections budgets, in comparison to prison budgets, have generally been poor. Most jurisdictions, however, are now developing models of integrated offender management or and “throughcare”, based on ‘What Works’ principles, thus paving the way for greater communication between custodial and community corrections and alignment of services. Integrated offender management challenges all within corrections to think outside their paradigms and to develop partnerships and a sense of common purpose between those working in institutions and those in the community. It should entail the directing of resources towards reducing offending propensity wherever a person is within the system, thus placing due emphasis on medium to high risk offenders within the community.

A good deal of work has been undertaken between various jurisdictions, with the cooperation of the Australian Bureau of Statistics, during the past two years, to try to identify similarities and differences in core programs. This is so that statistics, obtained and published by the Bureau in relation to numbers of offenders who are subject to various order types, might have some validity and meaning. The fact that this process has taken two years, and is not yet ready, is evidence of the tangle of legislation which exists across the country.

State and Territory legislatures develop their own criminal sanction structures in relative isolation from each other, much the same as colonial administrations developed rail gauges. If you offend in one State, you may be liable to different penalties than if you offended in another. If you offend in one State, whilst being a resident of another, you will be ineligible for many of the community based sanctions available to the sentencing court, because of a lack of reciprocal arrangements for supervision between jurisdictions. This problem is significant in border towns and cities, particularly with regard to community service work, but also with regard to other emerging sanctions such as home detention and intensive supervision orders. If you are placed under supervision, on what might variously be called a community-based order, bond, recognizance or probation order, the nature and length of supervision will vary according to where you happen to be and, if you move inter-state, you are likely to be managed differently there. Interstate transfer of parole is now possible and enforceable, via reciprocal legislation within jurisdictions. Periodic efforts are made to develop reciprocal arrangements, between jurisdictions, for supervision of offenders who are required to perform community service or community work. This form of sanction having been in existence for over twenty years, however, the potential for reciprocity remains just that. Efforts have been made to develop model legislation for all forms of community based supervision but are currently stalled.

If you are a Commonwealth offender, you will be eligible for different penalties for the same offence, depending where you commit it, because of the provisions of Section 20AB of the Crime Act (Commonwealth) 1914. You may be eligible to be sentenced to periodic detention for a Commonwealth offence, if you reside in New South Wales or the Australian Capital Territory. If however, you commit the same Commonwealth offence in another Australian jurisdiction, which does not have periodic detention, the Court may have to settle for home detention (if that exists) or an intensive supervision or intensive correction order as the most severe penalty aside from full time custody. It is arguable that a Commonwealth offender can be more or less severely dealt with, depending upon where she or he offends, when the sentencing Court is considering penalties other than full-time custody.

No Australian jurisdiction can afford to, or really should be undertaking research and evaluation alone. Yet it would be a daunting task to do anything at a national level because of the uncoordinated way in which State and Territory jurisdictions operate. Where research is undertaken, structured means of sharing information do not exist. There is no such thing as an agreed national approach to management of offenders, although each jurisdiction is roughly trying to achieve similar outcomes. Each jurisdiction employs different risk assessment instruments and, although considerable work has been done by individual jurisdictions, there is no one instrument which has universal acceptance.

The Probation and Community Corrections Officers' Association arose because of a felt need of practitioners, middle managers and some senior managers to share information and develop common ways of working. Until PACCOA's formation, three and a half years ago, there was no national forum in existence within our profession, administrators met rarely and some did not always know the names of their interstate counterparts. A greater tendency to share information has become evident in recent years, partly because PACCOA has helped to break down barriers and to facilitate the exchange of ideas. It is heartening to note that annual meetings of Probation and Community Corrections administrators are now held and include New Zealand. Notwithstanding these first steps, communication is limited and unstructured and information sharing is haphazard and depends upon who knows whom. Each jurisdiction has, for example, developed its own information database, in isolation from other jurisdictions. With organizations having so few resources, it makes little sense for them to be spending money on developing programs and services, without consultation with others who have already developed them.

The community might expect that our state and territory agencies share information about offenders more effectively than we do. Gaining access to information from other community corrections jurisdictions about domestic violence offenders and child sex offenders, for example, is dependent upon the acumen and tenacity of the individual worker. There is no national database of offenders under supervision. It's even hard to obtain telephone listings for other jurisdictions.

Our profession is responsible for the management of approximately 100,000 offenders within the community annually. Given that a small proportion of people commit the vast majority of offences and we hold responsibility for endeavouring to ameliorate their offending behaviours, it is surprising that crime prevention and crime reduction agencies have not identified crime prevention, through intervening with existing offenders, as a major national priority.

Restorative justice programs are taking root as options with adult offenders, following significant application in Canada and New Zealand. The concept of restoring offenders to their community, where possible, has significant implications for the criminal justice system and the community in general. Because of our role, which may sometimes be seen as a brokering role between the community and an offender, we are in an important position to advance notions of restoration between the two.

It is our contention that, in order for probation/community corrections to have a significant impact within the criminal justice sphere, state and territory organizations need to work more closely together than they have been.

The areas where greater communication can be achieved include:

- Resumption of development of model legislation governing community-state and territory legislatures; and, concomitant with this

- Reciprocity between jurisdictions with regard to transfer of all forms of supervision order;

- Continuing to work on the adoption of common counting measures so that interventions in one jurisdiction, can be compared with the supervision of similar offenders across the nation;

- Access to a national offender database to obtain information on relevant background, risk, criminogenic issues and responsivity factors;

- Development of key performance indicators for all offender programs;

- The establishment of a national strategy for researching offender programs and publishing findings;

- Incorporation of offender programs within the National Crime Reduction strategy to ensure that management of existing offenders recognised as a national priority.

To date, the Commonwealth has had a minimal role in offender management. There are a number of reasons why the Commonwealth should take a higher profile in coordinating and supporting states and territories to work more closely together.

Crime knows no boundaries. According to the Australian Institute of Criminology (2000), the cost of criminal behaviour to the Australian economy is estimated to be between \$11million and \$27million per annum. Many offenders, particularly some serious offenders are highly mobile.

The Commonwealth coordinates crime reduction strategies via National Crime Prevention (NCP). A crime prevention or crime reduction strategy, which fails adequately to incorporate the minority, who commit the majority of offences, is an inadequate strategy;

The Commonwealth coordinates a national meeting of Ministers of Corrections and this is the proper body to consider the implications of our proposals;

The Commonwealth has an interest in the management of offenders because offenders under Commonwealth law are housed in state and territory correctional facilities and/or subject to the community supervision of the States and Territories within which they live;

The Commonwealth's external affairs powers would allow it to negotiate with foreign governments regarding the supervision of serious offenders who are living overseas, such as those who have been deported to the country of their citizenship. In some instances, this might involve the formal transfer of orders to another country. It is, after all, the Commonwealth, which makes the decision to deport serious offenders, thereby removing them from the authority of the relevant releasing jurisdiction. Similarly, the Australian community might wish to be assured that everything possible is being done to reduce the risk of re-offending by serious offenders who have been deported home here, whilst subject to an order for conditional liberty made in another country. This could be achieved by registering a parole order or other recognised form of conditional liberty here in Australia, with attendant powers to prosecute for breach. Given the level of movement of populations between New Zealand and Australia and our similar legal and criminal justice systems, an agreement with the Government of New Zealand on this issue, might be a good first step.

In our region, democracies are emerging, with needs to establish the rule of law and to set up contemporary criminal justice systems. It is properly the function of the Commonwealth Government to extend assistance where it is sought yet the Commonwealth would presently be in a poor position to do so.

The Commonwealth funds the Australian Institute of Criminology (AIC) which, we believe, could expand its existing roles to undertake research into offender management and provide funding grants to individuals and centres of learning to undertake research;

The AIC currently sponsors outlook symposia on crime prevention and we believe that the scope of these symposia would be significantly

enhanced through the formal recognition, by it and the Commonwealth, of offender management as requiring partnerships at all levels of government and the broader community.

We advocate the establishment of a National Council on Reducing Offending, to advise governments, State and Federal, on policy initiatives aimed at management of offenders and reduction of offending. This Council would probably be best placed within the ambit of NCP and be comprised of senior administrators, academics and, eminent persons and have both institutional and community focus. Its roles might include; providing sound, research-based advice to governments on strategies to manage offenders and reduce the risk of re-offending; supporting and funding research; developing strategies, policies and model forms of legislation to assist state and territory governments in carrying out their responsibilities to their communities; providing education to the community in relation to issues relating to community based offender management.

PACCOA came into existence because of yearnings for dialogue and to develop and share practice wisdom. We are certain that if we can build stronger, more structured partnerships, through a common-wealth of participation, rather than a struggle in isolation, we will, at last break the shackles of Martinson and make a contribution towards enhancing significantly, the quality of justice in this land.

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