

Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters

I would like to comment on two terms of reference the Legislative Council Inquiry has named.

1. Factors influencing increases in Tasmania's prisoner population and associated costs

Imprisonment is an expensive and demeaning situation that in the case of young people becomes a school for criminality, with consequent high recidivism rates. The expense of that circular process is evident. Consequently, it should be used only in extreme cases. There are better, and cheaper, ways of controlling young offenders than gaoling them.

Another source of unnecessary expense, not to say an unacceptable denial of justice, is where a miscarriage of justice (MoJ) has occurred. No justice system is perfect, and MoJs are bound to occur anywhere, but all due diligence by the initial police investigation, the court proceedings themselves, including the sentencing, the appeal procedures should be impeccable. It is every citizen's right to expect all this in a civilised country.

That has not been the case at all levels in the case of Sue Neill-Fraser.

The initial police investigation was deeply flawed. This is a complex matter and much has been written and said on this already. The initial police inquiry did not pursue alternative possibilities for Bob Chappell's death, even though the chief investigator Peter Powell admitted that he knew robberies on yachts were occurring. The large pool of DNA on the yacht was dismissed as insubstantial, it having been transferred there from "a policeman's boot" when the pool was *larger* than a boot. Former Prosecutor Tony Jacobs has pointed to flaws in procedure, inter alia: flagrant incompetence by defence counsel, the late David Gunson; the failure of the solicitors lodging Neill-Fraser's 2011 appeal to raise these issues; the failure of the solicitor lodging her 2012 High Court appeal; the failure of the Tasmanian Appeal Court in 2012, of its own motion, to raise these issues.

For a circumstantial case to succeed it must be beyond reasonable doubt, that is, there must be no other reasonably plausible explanations. On March 1 2021, in the Court of Criminal Appeal, Meaghan Vass claimed on oath she had witnessed the murder and named the murderer. The next day, the Director of Public Prosecutions harried her until she, already in a frail mental state, retracted that evidence. Yet even if Ms Vass was incorrect in her initial statement, she had indeed supplied a very plausible alternative to Neill-Fraser's agency on the death of Chappell. So the circumstantial case against Neill-Fraser's collapses because a plausible alternative to her guilt had now become stated, and in court no less.

2. The use of evidence-based strategies to reduce contact with the justice system and recidivism.

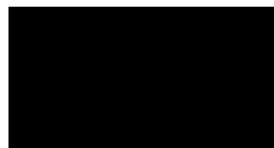
I have already addressed several instances where the case against Neill-Fraser was not evidence-based. Evidence was withheld as ex Prosecutor Tony Jacobs has explained, alternative avenues of investigation were not explored but actively dismissed, such as the

incriminatingly large pool of DNA on the yacht, the refusal to recall Ms Vass in the initial trial on the grounds that she had said she wasn't on the yacht, while her DNA strongly suggested otherwise.

Indeed, had the trial not been an adversarial one between the lawyers, but inquisitorial one, where the evidence itself is carefully examined, it is certain Neill-Fraser could not have been convicted.

As it is, the flaws in the initial trial led to appeal after appeal, all refused on technicalities not on substantive issues (a strange priority if one is trying to determine guilt, which is indeed a substantive matter). That regrettable chain of events led to enormous expense both in conducting the appeals and in keeping Ms Neill-Fraser imprisoned for so many years.

So, to return to the use of evidence-based strategies as in your terms of reference, there can surely be no doubt that had evidence-based strategies been used in the initial investigations and in the court procedures, Neil-Fraser would almost certainly not have been imprisoned at all. Due to bungling of the evidence, her case has cost the State an enormous and unnecessary amount of money. Further, a gross miscarriage of justice earns ignominy for the State as expressed by legal experts such as Dr Bob Moles, former Prosecutor Tony Jacobs, Criminal Law Specialist Ugur Nedim and several others, and it also creates unease and mistrust of the justice system in our citizens.



John Biggs, AM.



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