

Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters

I would like to comment on Terms of Reference 1, 2 and 4 for this Inquiry:

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

Issues to do with Youth Detention Matters and Adult Imprisonment are intertwined.

In Tasmania, there is a dire lack of services for children and young people who have experienced abuse, neglect, or trauma. It is hit and miss in the education system as to whether schools can adequately support these children and young people. Children and young people who display disruptive behaviours are often treated punitively rather than therapeutically, which leads to young people dropping out of school. Young people in this situation are vulnerable and can be involved in drug taking and criminal activity at an early age, thus increasing the prison population.

Ashley Youth Detention Centre is not a therapeutic or rehabilitative environment. In its current form it is preparing young people for prison and thus increasing the prison population. A youth detention centre needs to be rehabilitating young people and showing them a way to survive without resorting to crime. Ashley is of course due to close, so it is hoped that the new detention centres will be based on a completely different model.

I recall a few years ago that young people at Ashley were being taught to be baristas, while this was a good idea, and obviously done with the aim of helping a young person gain employment on leaving Ashley, it is of little help as a stand-alone remedy. There is little point in teaching a young inmate how to do a job, if that inmate is not also being taught how to manage life! Many young people who end up in the justice system are severely lacking in life skills. They need to be taught basic skills, hygiene, how to do the washing, make a bed, how to budget, how to shop for food, how to apply for a job etc. 50 odd years ago children in Ashley were taught how to work on a farm, they were taught amongst other things, how to do a grocery shop and how to cook 7 different meals – one for every night of the week, children and young people today need the same type of teaching. I worked with children in Ashley 38 years ago and it was more therapeutic in those days than it is now, which is a terrible indictment on the Tasmanian Government.

Hopefully, the new youth detention centres being built will be more therapeutic than Ashley and young people will be treated respectfully and taught skills that help them survive, but to do so is expensive. Youth detention centres must have staff who have been trained in therapeutic care at a tertiary level. A police officer or a correctional officer who has done a couple of courses about trauma is not good enough. Detention centres must also offer education programs and skills training to the detainees. If detention centres do not change their approach to young people, the prison population will continue to grow.

A youth detention system must have a good health service that has the ability to assist young people who are mentally ill, or developmentally delayed due to trauma, family violence, attachment issues, drug and alcohol issues, foetal alcohol syndrome etc.

A youth detention system must have in place, good mechanisms for supporting young people when they leave detention.

Until these measures are in place, the recidivism rate will not reduce, and the prison population will continue to increase.

Reducing the prison population would require a huge investment in both the adult prison system and in services for children and young people who are at risk of offending.

Wrongful Convictions

Another issue that must be considered when examining why prisoner numbers are increasing is wrongful convictions. Wrongful convictions can and do occur in any judicial system, but they should be rare and when it is suspected that they have occurred, every effort should be made to rectify the wrongdoing.

In Tasmania, millions of dollars, which could have been used to improve the justice system, have instead been spent in defending the conviction of Susan Neill-Fraser, who in 2010 was convicted of murdering her partner of 18 years, Robert (Bob) Chappell.

Subsequent Tasmanian Governments have ignored calls for a Commission of Inquiry to investigate the conviction of Sue Neill-Fraser, but it is obvious that such an inquiry is needed because the police investigation was flawed, and serious errors were made in the original trial.

The litany of issues with this case have been widely reported for over 13 years. Dr Bob Moles, eminent legal academic from Flinders University, has cited a number of errors made at Sue's trial, which show that Sue Neill-Fraser did not get a fair trial. Andrew Urban has summarised these in his blog: www.wrongfulconvictionsreport.org He documents that:

This case fails to comply with the special rules applicable to:

- # circumstantial cases,
- # the law relating to expert opinion evidence,
- # the rules governing prosecutorial duties,
- # the substantive law about what constitutes a fair trial.

Major evidential problems:

- # The evidence of the forensic scientist about the screening tests for blood and that of the forensic pathologist was inadmissible.
- # The judge's summing up to the jury constituted serious misdirection.
- # The prosecutor's opening and closing address to the jury was seriously flawed. (There are many reasons in the prosecution address which amount to breaches of prosecutorial duties and provide clear reasons why the conviction should be overturned.)

Legal rules governing criminal appeals:

The focus of an appeal court is not on issues of innocence or guilt but on whether the person has had a fair trial. If there has been an error at trial the appeal court has to assess whether there is a "significant possibility" that it could have affected the jury's verdict. If such a possibility exists, then the verdict must be set aside. Individually, each of the above

errors clearly warrants the conviction in this case being set aside. In combination they present an overwhelming case. Where a person has been wrongly convicted, they are entitled to have their conviction set aside. When that occurs, they are restored to the presumption of innocence. It is not the court's function or anybody else's task to establish innocence – in the absence of a conviction the presumption means no finding is required.

Conclusion (re trial):

There is no proof of death, no proof of killing and no proof that Ms Neill-Fraser was involved in any illegal activity. (www.wrongfulconvictionsreport.org 18/09/2022).

In addition to the errors at trial, there were major errors with the original police investigation, which was seriously flawed and on 31 August 2021, a lengthy report known as the Etter Selby papers, which outlines the issues, was tabled in parliament by Mike Gaffney MLC:

https://www.parliament.tas.gov.au/LC/tpapers/2021/LCpdf2021/LCTP14_31_08_2021.pdf

The report had previously been sent to Attorney-General, Elise Archer and detailed flawed police investigation practices and failure to disclose evidence, bringing to light information that has not been presented to court at either the trial of Sue Neill-Fraser or at subsequent appeal hearings. The report revealed (among other things) how investigators in Operation Ransack (the operational name for the Sue Neill-Fraser murder investigation) failed to follow up basic and obvious lines of inquiry about Meaghan Vass and her known associate Sam Devine, both prior to the Sue Neill-Fraser trial in 2010 and thereafter.

Given the extent of the problems with the conviction of Sue Neill-Fraser it seems unlikely that this is an isolated example of issues with police investigations and judicial processes.

With such fundamental errors being made with the police investigation, the question needs to be asked – are the same errors being made with other investigations? Has the prison population in Tasmania increased because there are people who have been convicted based on faulty investigations?

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

Contact with the Justice System

In over a decade of working with the Neill-Fraser Support Group, I have been approached on multiple occasions by people who are caught up in the justice system, who want to share their concerns about the way police investigations are carried out in Tasmania. There is an ongoing theme that evidence-based strategies are not used in many aspects of police investigations in Tasmania.

In Sue Neill-Fraser's case, and in many others (Including Jeffrey Thompson, a lawyer working on Sue's case who was arrested for perverting the course of justice) there appears to be a tendency for police to arrest people based on suspicion, speculation, and assumption. Then,

once the arrest is made, Tasmania Police go out to find the evidence to back up the conviction. If the police cannot find sufficient evidence to shore up the conviction, the case likely drags on for an extended period. There is **no** evidence-based strategy to back this method of investigation.

In Sue Neill-Fraser's case, 3 people were charged with pervert the course of justice. Karen Keefe was dragged through the courts for 4 years before the office of the Director of Public Prosecutions (ODPP) discontinued the charges. Jeff Thompson's case dragged on for 5 years before the ODPP was forced to drop charges, after it was found that police had acted illegally regarding covert surveillance of Jeff and his client Stephen Gleeson.

Stephen Gleeson was the third person charged, and he chose to plead guilty, he was already in prison, and it is not known why he chose to plead. There is concern that Mr Gleeson was pressured to plead.

Anecdotally, many of the people who have contacted the support group have spoken about their case dragging on for years. Through my work, I have spent many days in the Magistrates Court and there does seem to be an ongoing pattern of cases being continually adjourned and often it is because the prosecution is not ready to proceed.

There seems to be no sense of urgency in the legal system in Tasmania, there seems to be no recognition of the huge financial and emotional toll experienced by people who are waiting for their cases to be heard. People denied bail, while their cases are slowly progressing, can spend years in prison before their case gets to court. Justice delayed is justice denied!

In Jeff Thompson's case, the ODPP tried to oppose bail, stating that Jeff had significant ties to South Australia and was a potential flight risk as a result. Jeff had no criminal record and no ties to South Australia and was granted bail.

Is the prison population increasing because of people being denied bail, who should be granted bail?

Many of the people who have contacted the support group have expressed frustration and at times despair, recounting the difficulties they have experienced in gaining access to information about their case and when they do receive documents, they are heavily redacted, so the accused person is unable to have a full understanding of what has led to their charges. Unfortunately, failure to disclose by the police seems to be an ongoing issue. Tasmania is also the only State in Australia where defendants have to pay to access the police files about their case.

When Jeff Thompson sought full disclosure from Tasmania Police, he was told that he would have to pay \$107,000 for 1167 hours to process 10,000 plus pages. Jeff complained about this to the Ombudsman's office, who conducted their own investigation. The Ombudsman then informed Jeff that the Police had miscalculated and there were actually 150,000 pages, which would take 17,500 hours to process, and Jeff would be required to pay \$1.5million to access the information about **his own case**.

How can any defendant get a “fair go” if they are expected to pay \$1.5million just to get the documented evidence the police supposedly have compiled on their case?

If the police had 150,000 pages of information about Jeff, why did it take five years for the case to progress through the court process, only to be thrown out?

Is the prison population increasing because of people being unable to mount a proper defence, because they have been unable to access essential records about their case? Full disclosure should be a given – there is no evidence-based strategy that would allow for non-disclosure.

TAS Police should welcome scrutiny and offer defendants full-access to the records they are entitled to see.

The ODPP should, at all times, be acting as a Model Litigant. This should mean that their aim is to ensure that justice is done, rather than to go to any length to win cases.

Prison Systems and Recidivism

Unfortunately, the current prison system in Tasmania does not rehabilitate prisoners, many of whom leave custody ill-equipped to cope with life on the outside, which results in a high recidivism rate.

It would appear that the current prison system is one based on control and containment, when there needs to be greater focus on rehabilitation, education and training.

Prisoners need to be properly assessed with a systemic approach to rehabilitation, education and training. Attention needs to be given to a prisoner’s family situation, mental and physical health, drug and alcohol use, level of education and life skills – only when these are known can tailored programs be developed to assist prisoners.

Currently correctional staff are at a huge disadvantage because they are not adequately trained. Correctional staff in Tasmania only complete a ten-week program before being expected to cope with the huge complexities of the prisoner population.

Prisons in Scandinavian countries have some of the lowest recidivism rates in the world, but ensuring low recidivism is not cheap! In 2019, the BBC in the UK reported that Halden Prison in Norway cost £98,000, (\$180,202) per prison place per year. It is a prison where guards and prisoners are together in activities all the time, they eat together, play volleyball together, do leisure activities together, and that allows the guards to really interact with prisoners, to talk to them and motivate them.

In Norway, it is recognised that the punishment is the fact that someone’s liberty has been taken away. Other rights stay. Prisoners can vote, can access school, health care, they have the same rights as other Norwegian citizens. The attitude is that prisoners have done wrong, they must be punished, but they are still human beings. This is in stark contrast to the Australian population where people commonly seem to believe that people go to prison to be punished, rather than a recognition that going to prison, the loss of liberty, ***is the punishment.***

In Halden Prison, Norway, the aim is to give prisoners a sense of normality and to help them focus on preparing for a new life when they get out. Many inmates will be released as fully qualified mechanics, carpenters and chefs. Planning for release begins on the first day the prisoner arrives. Having opportunities and something to aim for gives prisoners purpose.

Recidivism rates in Norway are approximately 20%.

The Tasmanian prison and youth detention systems could learn a lot from the Norwegian approach to incarceration.

4. Training and support initiatives for corrective service staff related to increasing individual well-being, professionalism, resilience and reduced absenteeism.

In Tasmania, it takes ten weeks to train a prison officer, in Norway it takes two to three years. In Norway prison officers study law, ethics, criminology, English, reintegration and social work, because it is believed that this level of education is needed to equip prison officers with the skills to rehabilitate prisoners. As well as prison officers, workshop tutors and teachers are also employed.

In Norway, emphasis is placed on social connection with the inmates, the aim is to defuse situations before they happen. There is virtually no violence in the Norwegian prison system.

It is clear that correctional staff in Tasmania receive inadequate training, they cannot possibly be expected to deal with highly pressured, complex situations without an in depth understanding of why these situations occur. Correctional officers deserve to be given the skills and education required to do their job,

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