

Diocesan Office of Justice, Ecology & Peace

2001 – The International Year of the Volunteer

The Office of Justice, Ecology & Peace was established by the Bishop of Broome in 1998 as the result of a gathering of Diocesan people in Broome in September 1996. There was a strong desire for the Diocese to 'transcend the past and present and take decisive action on issues such as social justice'. It is the task of this Office to be the catalyst for such decisive action. While the Coordinator is appointed by the Bishop, the work of the Office, including its public comment, is independent of the Bishop of Broome.

Submission to the
Human rights and Equal Opportunity Commission

WCAR Secretariat
Race Discrimination Unit
GPO Box 5218
Sydney NSW 1042

CONTENTS:

Part 1	The Justice System	2
	➤ Prison Population (W.A.)	2
	➤ Mandatory Sentencing	2
	➤ Alternatives to Prison	5
	➤ Privatisation of Prisons	6
	➤ Social Justice for Aboriginal People	8
Part 2	The treatment of Refugees and Asylum Seekers	9
	➤ Political use of Language	10
	➤ Detention Centre operations	10
	➤ Need for Judicial Inquiry	11
	Conclusion	12

Part 1 – The Justice System

The introduction to the Discussion Paper (page 7) makes mention that racial discrimination “may be direct or indirect, whereby a particular practice, policy or law that is neutral on its face has a differential impact on a particular racial group.” This seems to us to be the case in Western Australia as a whole and in the Kimberley specifically in the case of the approaches to the prison system and the sentencing of prisoners.

Prison Population (W.A.)

The figures for Western Australia are frightening.

- On average, almost 120 prisoners in spaces built for 100
- Unnatural death rate 0.34 for every 100 prisoners (nationally 0.2)
- General imprisonment rate of 200 per 100,000 (nationally 143)
- Aboriginal imprisonment rate 2954 per 100,000 and rising (21 times national)
- Indigenous prisoners are 20% of the prison population¹

Mandatory Sentencing

With such a high proportion of Indigenous persons coming before the courts and being represented in the figures for incarceration, any policy related to sentencing will impact more heavily upon this section of the population than any other.

Even in the Children’s Court, Aboriginal males and females are more likely to be placed in custody than others (33.5% to 13.7% and 11.9% to 7.1% respectively).² W.A. has the second highest juvenile detention rate at 56.9 per 100,000 (second to the N.T. which has introduced harsher Mandatory Sentencing legislation). W.A. has the highest Aboriginal rate of juvenile detention (714.3 per 100,000 Aboriginal juveniles. This rate was 38 times greater than that for non-Aboriginal juveniles.³ These are disturbing trends.

¹ Sources: *The West Australian* newspaper & Corrective Services Australia, March Quarter 2000 (4512.0)

² Crime and Justice Statistics for Western Australia: 1999, Crime Research Centre, UNWA, 2000, ISSN 1037-6941

In a recent talk, Justice Einfeld made the point that this Office has been making to Government and the community in general for some time when he said,

“Mandatory sentencing, which I prefer to call compulsory jailing, is a nasty, insidious creation of our generation that not even the convict settlement introduced...compulsory jailing laws discriminate against Aborigines and were intended to do so.”⁴

Further on, Justice Einfeld made a point long held by this Office, that politicians ought not be following opinion polls on such important humanitarian matters; they should be leading the community to a better understanding of our obligations towards each other. And especially so towards those most disadvantaged.

It has been a long-standing principle of Catholic Social Teaching that preference ought be given to those most in need, often called ‘preferential option for the poor’:

“The joy and hope, the grief and anguish of the men (sic.) of our time, especially of those who are poor or afflicted in any way, are the joy and hope, the grief and anguish of the followers of Christ as well.”⁵

As Justice Einfeld has pointed out⁶, there are those in our community who would see this as discriminatory. This is far from the truth of the matter. As he points out:

“If two people commence life far apart in assets, whether personal or material, and they thereafter receive proportionally equal benefits, the gap between them actually increases. In other words, equal treatment of people on unequal levels at the outset of the equalisation process, merely perpetuates the inequality.”⁷

This Office has written before about the temptation being offered to Australians by new arrivals on the political landscape, to accept that there are simple solutions to complex problems and that slogans that mention equal treatment for all often mask a more sinister agenda.

³ *ibid.*

⁴ Background Briefing, ABC Radio National, June 3, 2001

⁵ Vatican II, *Gaudium et Spes*, 7 December, 1965, #1

⁶ Background Briefing, ABC Radio National, June 3, 2001

⁷ *ibid.*

Many eminent Australians have called for the abolition of mandatory sentencing, including the former Liberal Prime Minister, Malcolm Fraser, who said in relation to it:

“The consequences of the law fall most heavily on indigenous Australians. It is extraordinary to give police special ‘discretion’ while that discretion is denied to the magistrates...is a basic denial of justice and an abrogation of our International treaty obligations.”⁸

Malcolm Fraser also went on to point out the incongruity of Australia’s criticism of other nations in relation to Human Rights abuses, when we refuse to apply the same standard to ourselves.

A Committee of the Senate of the Commonwealth Parliament made the following points in March last year in reference to Mandatory Sentencing in Western Australia:

1. Action to address the potential for the law to contravene (international Treaty) obligations is required;
2. The social impact (of mandatory sentencing) on individual children was terrible...indigenous children being imprisoned at the rate of up to 9:1 relative to non-indigenous children;
3. The practice (of removing 16 & 17 year olds from detention centres to prisons)...appears difficult to justify under Article 37 (c) (of the Convention of the Rights of the Child requiring separation from adults unless considered to be in the child’s best interests);
4. That more work be done on alternatives to mandatory sentencing;
5. While mandatory sentencing remains “on the books” in Western Australia, regardless of the safeguards which have developed to ameliorate the harsher effects of these laws, there is a case for legislative action by the Commonwealth;
6. Mandatory sentencing contravenes the Convention on the Rights of the Child.⁹

⁸ Vincent Lingiari Memorial Lecture, 25 August 2000

⁹ Chapter 8, Senate Legal and Constitutional References Committee, Inquiry into the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999, March 2000, ISBN 0 642 71066 X

Alternatives to Prison

This topic is also one that this Office has canvassed a number of times. Magistrates themselves have done much in some ways to explore innovative ways to avoid detention for young and indigenous offenders in the Kimberley area. Aboriginal communities have accepted that they have a role to play in this area also, and have, for example, taken on management of a Juvenile Detention Centre in Banana Wells outside Broome.

*Unity of First People of Australia*¹⁰, founded by Ernie Bridge, former MLA for the Kimberley, has initiated a Community Justice Program. This is a self-help program for reducing the over-representation of Aboriginal people in the prison system. We applaud this initiative for Perth based Aboriginal people. As far as we know, there has been no attempt to establish such a scheme in the Kimberley Region. We believe it would be worthwhile.

However, we do not believe that enough has been done to explore with indigenous people the possible implementation of alternatives like those of the *Restorative Justice Network* in Perth.¹¹ This sort of alternative ought be explored by the Ministry of Justice for implementation in the Kimberley. The aim of this process is well described by Fr Jim Consedine in the leaflet advertising this service:

“Retributive justice always asks first, how do we punish the offender? Restorative justice asks, how do we restore the wellbeing of the victim, the community and the offender?”¹²

The Catholic Bishops of New Zealand, in a statement issued five years ago raised this issue from a Christian perspective when they wrote:

¹⁰ PO Box 1053, West Perth, Western Australia 6872. Phone (08) 9321 7997; Fax (08) 9321 7996

¹¹ 879 Albany highway, East Victoria Park W.A. 6981. Phone (08) 9472 4227; Fax (08) 9472 4226

¹² *ibid.*

“...no criminal justice system can afford to be built upon a philosophy of retribution, focusing primarily upon punishment flowing from feelings of revenge; a negative philosophy will produce negative results.”¹³

We are also concerned about what appears to be the increasing numbers of people being imprisoned for fine defaulting. This again is affecting the Aboriginal population more than other sections, and more disturbingly, the female Aboriginal population. These people represented 46% of the female Aboriginal prisoners. The consequent absence of these women from the family, especially from their children, can have serious social consequences.

Again, we wish to stress that these points are relevant to the considerations of the HREOC because they affect Aboriginal people in a disproportionate fashion.

Privatisation of Prisons

This is a new phenomenon in Australia that began to gain wide acceptance with Governments intent on pushing an ‘economic rationalist’ philosophy. It is interesting to note that in the U.S. where this has been a fact of life in the penal system since the 80’s, the Government Accounting Office concluded that ‘the cost difference between operating a private penal facility and a public one is small.’¹⁴ There are other concerns with the move towards privatised prisons also in relation to the implementation of some of the recommendations of the *Royal Commission into Aboriginal Deaths in Custody (1991)*. Amongst those recommendations were the following:

- 168. Prisoners should be placed in institutions as close as possible to their place of residence;
- 170. Adequate facilities for family visits in relative privacy and with provision for children to have normal interaction with prisoners;
- 171. Consideration to attend funerals and other significant family events;
- 184. Opportunity to perform meaningful work and undertake educational courses.

¹³ Pastoral Letter from the Roman Catholic Bishops of New Zealand, August 1995

¹⁴ Quoted in “Prisons for Profit”, George M. Anderson, America, November 18, 2000

However, the very existence of private prisons “raises an ethical issue: what are the implications of basing the operation of a prison on a purely profit motivation?”¹⁵ Anderson notes that it is to the advantage of these companies to keep their beds filled. Thus the longer prisoners remain in their custody, the greater the financial gain for the companies. The more the companies are expected to meet expectations like those recommended in the Royal Commission, the more costly will be the operation of the facilities. When the prisons are expected to make a profit, companies will be inclined to ‘cut corners’ when it come to provision of educational services for prisoners and other efforts aimed at rehabilitation of prisoners. They will be inclined to spend less on training for their employees – including appropriate cultural training. The provision of any ‘additional services’ such as psychologists and social workers would be another profit depleting exercise. In the U.S., private prisons have been investigated for poor service to their inmates. “Overall physical conditions were characterised by inadequate food and a lack of warm clothes for cold weather. Little was done in the way of education and health care...The number of mentally ill juveniles at both institutions, moreover, was disproportionately high.”¹⁶ As one commentator put it, a better response from the community (and presumably Government) would be one “focused on making investments that strengthen families and communities”. These, however, are not the kinds of investments calculated to increase the profits of private prison companies¹⁷, nor it would seem, the popularity of Australian politicians.

In terms of local concerns, we are not in favour of proposed plans to move the current Broome Prison to a site some distance out of the town. Shire acting President Nik Weavers was quoted in the Broome Advertiser as saying “as the town grew, people might not want a prison ‘smack bang in the middle of town’.”¹⁸ There are alternatives that need to be explored before this action is taken. Such a movement would have a detrimental effect on the nearly 90% Aboriginal

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ Broome Advertiser, Wednesday May, 10, 2000

population of the facility. We believe that it is a case of the potential for economic gain being put ahead of what might be in the best interests of the Aboriginal people.

We reiterate our comments published last year:

“But let’s not lose the message that its current position gives to the inmates, to the residents and to the visitors. This community accepts responsibility for its prisoners; they are still a part of the community. The rate of crime is something that the community needs to reflect upon. With the prison in the centre of things we can hardly forget. The prisoners have easy access to community facilities for recreation, education and training, and to places to engage in community work. Visitors, especially those without private transport, have ease of access to prisoners. Many of these things were recommended in the Royal Commission into Aboriginal Deaths in Custody Report in 1991.”¹⁹

Social Justice for Aboriginal People

While not wanting to go over this ground in detail, we believe that the Federal Government’s constant reference to initiatives in “housing, employment, health, justice and policing, education and social services”²⁰ as efforts in ‘practical reconciliation’ are being used to disguise the fact that these basic, universal, human rights are being supplied to Aboriginal people at a level far below that of the remainder of the community.

Many of the Aboriginal people of the Kimberley display the symptoms of victims as outlined in the Discussion Paper on Page 13.²¹

Despite some efforts being made to repair the underlying damage that these symptoms expose, we believe that it is only with a proper response from the Federal government that this can be achieved. An implementation of principles and guidelines mentioned on page 17 would go a long way to ensuring that this happened.

Part 2 – The treatment of Refugees and Asylum Seekers

Once again, this Office has been making statements and writing letters to politicians on this issue for some time. We have had several incidents that have

¹⁹ Broome Diocesan Office of Justice, Ecology & Peace, Media Release, 19 May, 2000

²⁰ HREOC Discussion Paper, Page 11

received coverage in the national press that indicate that not all is well in the Detention Centres in the North of Australia, and specifically at Curtin, outside Derby.

The introduction to the Discussion Paper makes the point that, “The general trend of countries in the ‘industrialised world’ to introduce stricter migration policies is often seen as an example of xenophobia” (page 8). What would be made of the harsh treatment of refugees and asylum seekers?

National bodies associated with the Catholic Church have also spoken out strongly on this issue. This Office supports the views held by *the Australian Catholic Social Justice Council* and *the Australian Catholic Migrant and Refugee Office*. These views include the following:

- ✓ Unless there are compelling reasons to believe that asylum seekers represent a serious danger to the community in terms of past criminal activity or by reasons of uncertain health status, they should not be interned or detained.
- ✓ There is a concern that the Australian Government may be in danger of breaching the principle of non-refoulement.
- ✓ Asylum Seekers ought
 - be able to access adequate legal and welfare/health assistance provided by the Federal Government
 - be informed automatically of their entitlements to legal advice and assistance with asylum claims
 - have the right of appeal to the courts against an adverse decision by a refugee determination body, including an administrative or review tribunal.²²

Political use of Language

We believe that the attitudes and utterances of the current Federal Government in relation to off-shore refugees and asylum seekers constitute an obscuring of underlying racism and an incitement of the community to racism. Continually using terms such as ‘illegal immigrants’, ‘queue jumpers’ and ‘thieves’ who have

²¹ *ibid.*

²² Position Paper on *The Plight of Asylum Seekers*, Australian Catholic Social Justice Council, August, 1999

stolen the places of those who have been waiting for years to come to Australia under other migration schemes, is patently inaccurate at best and deliberately misleading at worst.

Marcus Einfeld has responded to these claims well when he says:

“Refugees do not form queues, they escape persecution and possibly death or starvation for themselves and their children, they do not fix or regulate the times of their terror...Australia has an obligation to all refugees, not just to some.”²³

Detention Centre operations

What of the detention Centres themselves? As this Office wrote on 6 April,

“Clearly, the current system is not working. If people who are anxiously awaiting a favourable outcome for their case are driven to undertake actions that could clearly jeopardize that outcome, surely it is a sign that they are desperate. These people are being housed in a very confined area in a very harsh climate in close proximity to people that they would not normally associate with. They are kept in these conditions for long periods of time with little or no contact with the outside world. Why are we surprised that frustration is the result?”²⁴

These people are placed in remote areas of Australia away from networks of support and the scrutiny of the public. The United Nations High Commissioner for Refugees has stated that:

“Only in exceptional circumstances is a State entitled to temporarily detain an asylum seeker and detention should never be automatic, prolonged or imposed as a penalty or deterrent to others; it should certainly not be indiscriminate.”²⁵

Need for Judicial Inquiry

This Office supports the calls from Malcolm Fraser for a judicial inquiry into the Government’s refugee policy. Such an inquiry ought include a testing of “the appropriateness and reasonableness of Australia’s policy of mandatory detention and whether it contravenes Australia’s international obligations” and investigate other models that are “more humane, cost-effective, reasonable, efficient and consistent with Australia’s international obligations than the current mandatory

²³ Background Briefing, ABC Radio National, June 3, 2001

²⁴ Broome Diocesan Office of Justice, Ecology & Peace, Media Release, 6 April, 2001

²⁵ Quoted by Marcus Einfeld in Background Briefing, ABC Radio National, June 3, 2001

detention system.”²⁶ We hope that the pressure brought to bear by the HREOC in Australia, the international community (through agencies like the U.N. and its various agencies) and the expected outcomes from the Durban Conference in August will force a change of heart in the policies of the major political parties in Australia in relation to treatment of refugees and asylum seekers.

Conclusion

This Office believes that the actions of the Australian Federal Government in relation to refugees and asylum seekers and certain aspects of reconciliation with and treatment of indigenous people constitute discriminatory behaviour.

This Office believes that the actions of the Western Australian Government in relation to mandatory sentencing and conduct of prisons constitutes discriminatory behaviour.

We hope that closer public scrutiny of these actions, both at home and overseas, will bring about better education of people of Australia in relation to them and increased local and international pressure to have them changed.

This Office thanks the HREOC for the opportunity to contribute to the discussion on Racism, Racial Discrimination, Xenophobia and Related Intolerance. We congratulate the Commission on the Discussion Paper it has prepared and for the sponsoring of the community consultations it plans to hold around the nation.

²⁶ Malcolm Fraser, quoted in *The Age*, Wednesday, 2 May, 2001

Prepared for the Broome Diocesan Office of Justice, Ecology & Peace
By Br Shane J. Wood cfc
Coordinator
11 June, 2001