



Australasian Therapeutic Communities  
Association

National Conference

Thursday, 2 October 2003

*Opening Address*

By the Hon David K Malcolm AC  
Chief Justice of Western Australia

**Esplanade Hotel  
Fremantle  
Western Australia**



The Hon Graeme Edwards MHR, Patron of Cyrenian House

Mr Eric Allen, President of ATCA

Ms Moira Rayner, Equal Opportunities Commissioner

Ms Sue Donald, President, WATCA

Mr Morton Hansen

Ladies and Gentlemen,

Thank you for the invitation to open this Conference. It is a privilege and a pleasure for me to do so. Looking through the Conference Program, I am impressed by the expertise and wealth of knowledge that has come together to consider the topic *Reconnecting Community* to assist in the pursuit of innovative therapeutic ways of dealing with drug issues in Australia. As the head of the judiciary of the State of Western Australia, I thank you all for your time in sharing your expertise and hope that you will enjoy the hospitality of beautiful Perth.

There is a need for all of us to recognise and learn from the vast pool of experience and expertise to progress the development of a collaborative approaches to alcohol and drug abuse prevention strategies and, secondly, to examine and debate the issues effecting alcohol and drug policy, law enforcement and the implementation of effective strategies.

The harm brought about by drug and alcohol abuse cannot be ignored. Its effects are widespread throughout the community. Resources have to be directed away from other areas of law enforcement, criminal justice, health and education to deal with drug and alcohol issues. Drug



and alcohol abuse affects our rates of crime, imprisonment, hospitalisations and death. It is evident from statistics and research that changes need to be made in the way drug and alcohol dependent offenders are dealt with by law enforcement agencies and by the courts. It is also evident that the prevention of drug and alcohol dependencies would save so much in the long term.

In April 1989, I opened the Australian Institute of Criminology's *Alcohol and Crime Conference* with the statement:

*“The subject of alcohol and crime is one which is perennially topical. One is reminded constantly that substantial percentages of criminal offences, particularly offences against the person and specifically sexual and other assaults, are committed by persons who have consumed substantial quantities of alcohol.”*

Unfortunately, this statement is still true some 14 years later. Alcohol related violence remains a major cause of serious injury in Australia.<sup>1</sup> Amongst young men aged 18 to 24 years, at least 93% of all alcohol consumed is drunk in a way that is potentially dangerous to health.<sup>2</sup> The *Drug Use Monitoring in Australia Annual Report 2001* found that 60 per cent of adult males arrested for a property offence and 45 per cent arrested for a violent offence tested positive to an illicit drug excluding cannabis.<sup>3</sup>

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<sup>1</sup> *Alcohol-Related Violence a Major Cause of Injury in Australia*, Media Release, National Drug Research Institute, 28 April 2002, [http://www.curtin.edu.au/curtin/centre/ndri/news/media/20020428naip\\_bull\\_5.ht](http://www.curtin.edu.au/curtin/centre/ndri/news/media/20020428naip_bull_5.ht), 29 April 2002

<sup>2</sup> *Australians Still Drinking Too Much, Too Often*, Media Release, National Drug Research Institute, 3 January 2002, <http://www.curtin.edu.au/curtin/centre/ndri/news/media/20020120drinking.html>, 29 April 2002

<sup>3</sup> *DUMA 2001 Annual Report*, Media Release, Australian Institute of Criminology, 23 April 2002, <http://www.aic.gov.au/media/2002/20020423.html>, 1 May 2002

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The need to effectively deal with drug and alcohol dependent offenders must be balanced with the need of the public to feel secure. How that can be translated into correctional policies is a very difficult and challenging issue. The community is entitled to feel secure and to see that an offender gets his or her 'just deserts'. Essentially that is the task of the judiciary in sentencing offenders. It is essential that those who commit crimes are punished and are seen to be punished. Doubtless there are some extreme cases in which the offender should be imprisoned and never released. Locking up and throwing away the key is not, however, a universal solution appropriate to all cases of serious crime. Mandatory minimum terms of imprisonment are not the answer, except where life imprisonment is justified. We must not forget that there are significant social and economic dividends in rehabilitating offenders and addressing recidivism. It is a difficult balance to strike.

In terms of facilities available to the Courts to direct that alcohol or drug dependent offenders undertake treatment, I acknowledge that the Court already possesses extensive powers to make such directions. Those directions, however, can only be imposed by the ordinary courts by way of conditions in the context of the imposition of a non-custodial sentence. While assessment and treatment may be made available to offenders who are not in custody, once an offender is imprisoned, such assessment and treatment are much more difficult to obtain. A Court sentencing an offender to imprisonment cannot make orders or directions about these matters. The Court can only make recommendations. In my opinion, while the community's interest in punishment must be acknowledged, the present

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lack of facilities for inmates dealing with alcohol and drug dependence issues is entirely contrary to the community's interest in reducing or eliminating the possibility that an inmate will re-offend on his or her release.

The need for secure facilities for the therapeutic treatment of drug addicts sentenced to a period of imprisonment is paramount. In one case that came before the Court of Criminal Appeal, the offender had an extensive history of juvenile crime and drug abuse. He was arrested and remanded to appear before the Supreme Court for sentence for an armed robbery. The offender's drug addiction was so powerful that he sought and obtained drugs in prison, promising a payment that he could not make. He was forced to disclose his parents' address. Associates of his supplier went to his parents' home and demanded payment, which they enforced by threats of violence.

Experience with the pilot Drug Court in Western Australia has confirmed experience elsewhere that a treatment regime directed and supervised by the Court can be effective. The Drug Court is presided over by a Magistrate. Cases are referred to the Drug Court where there is potential for the case to be dealt with under the Drug Court regime. Significant numbers of cases have been referred both from the Magistrates' Courts and from the District Court pursuant to an agreed protocol. Because of the serious nature of the cases which are dealt with by the Supreme Court, although a protocol for referral has recently been adopted, I am not aware of any referrals to the Drug Court from the Supreme Court.

In about 10 per cent of armed robbery cases where the maximum penalty is life imprisonment, the offender would be suitable for a drug treatment programme. This can be achieved by way of an Intensive



Supervision Order, but this regime does not have the same degree of supervision as that imposed in the Drug Court regime.

While the cases are likely to be relatively rare, the machinery now exists for referrals to the Drug Court. It would be desirable for the position to be clarified by legislation. In some cases, notwithstanding that the offence of armed robbery was committed to feed on addiction, the need to protect the community may require the imposition of a custodial sentence. This is a real possibility in the case of repeat offenders.

The only current alternative in circumstances where the offender may find methods of avoiding controls on access to drugs is to imprison the offender.

It is in this context that I have called for a separate and secure treatment facility for drug-dependent offenders. Such a facility will provide the protection that the community demands from repeat offenders but at the same time focus on the offender's drug problem by treatment. Desirably such a facility would be part of a separate prison established for young offenders between the ages of 18 and, say, 24 who should be separated from more mature offenders and the prison culture, including sexual assault, violence and exposure to the internal and illicit drug trade in prisons.

An example whereby such facilities are currently being tested is in association with the Parramatta drug court trial. Beds were made available within other prison facilities such as the Metropolitan Remand and Review Centre Detoxification Unit. This is a secure facility. Other beds were to be made at other treatment services throughout the state health regions as well as non-government residential services. More will be known about the



effectiveness of this trial when the New South Wales Bureau of Crime Statistics and Research reviews it at the conclusion of the trial.

We cannot simply imprison those who are alcohol and drug dependent and then expect them to resume their place in society upon release. The abuse of alcohol and/or drugs needs to be prevented from happening in the first place or stopped by an appropriate treatment regime. Unless we as a community can settle upon an alternative method of addressing crime, and the rehabilitation of offenders, Western Australia will continue to see an increase in the number of alcohol and other drug dependent offenders coming before the Courts. In my view, it is important that we develop a greater understanding of the causes of crime and the purposes of punishment. As Burt CJ said in *Peterson*<sup>4</sup>:

*"It seems to be assumed, although I have considerable reservations about the assumption, that when an offence becomes prevalent the public demand retribution and they see increased punishment as being the sure way of reducing the number of such offences and even of persuading persons not to commit them at all. If that be the case then I would say, and say with great respect, that the expectation exceeds the capacity of the criminal law as an instrument controlling human behaviour. That is not to say that the idea of deterrence is to be abandoned. It is and it remains an important, and some may say the most important, idea reflected in punishment particularly for offences such as robbery. But it is to say that criminal behaviour is very much the product of factors, and many factors, both personal and social, which are beyond the reach of any court and which have*

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<sup>4</sup> *R v Peterson* [1984] WAR 329



*operated and which will continue to operate to produce anti-social behaviour. The need for punishment must be accepted, but it must be accepted with a full appreciation of its limitations.*<sup>5</sup>

We need to address the root causes of crime and provide facilities and resources to children and young people before they offend. It is well established that socio-economic factors pre-dispose to or are part of the causes of crime. Children at risk can be identified at a very early age. Dysfunctional families can also be identified. A March 2001 project by the Australian Institute of Criminology found that those who use drugs and commit crime are likely to have started using drugs earlier than drug users who do not commit crimes.<sup>6</sup> The conclusion is made that although the dynamics of drug use and crime are complex, it is evident that there is a real association between them.<sup>7</sup>

In proposing alternative methods of dealing with offenders, I am not suggesting that we adopt a more lenient approach to those offenders who have committed serious crimes while under the influence of drugs or alcohol, or in order to support a drug habit. As I said in the Court of Criminal Appeal decision in *Taylor*<sup>8</sup>:

*"In times past banks and building societies were prime targets of armed robberies. In recent years many other businesses have become targets including pharmacies, service stations, delicatessens and other service outlets, particularly those which remain open at night. There are many instances of multiple offences, some by*

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<sup>5</sup> Ibid. at 332

<sup>6</sup> Johnson D, *No. 201 Age of Illicit Drug Initiation*, Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, March 2001

<sup>7</sup> Ibid. at 4

<sup>8</sup> *Taylor v The Queen*, unreported; CCA Supreme Court of WA; Library No 980152; 6 April 1998

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*persons in company. A disturbingly high proportion of these offences are being committed by young offenders to obtain drugs or money to buy drugs. Many of the offenders are drug addicts. The fact that the addiction plays a role in the commission of these offences makes it tempting to suggest that the criminal culpability of the offender is less than that of the drug free offender and the solution is treatment for the addiction. This idea clearly has limitations. While in many cases the breaking of the drug habit may lead to a cessation of offending, treatment in the community is not the answer in a majority of cases. This is because there are no secure treatment institutions. The only alternative for the protection of the community is imprisonment. The community is entitled to expect that protection. Furthermore, there is a need to demonstrate that those who choose to go down the path of drug abuse must accept responsibility for the consequences of that choice, as tragic as the consequences might be for themselves and their families. Until the community finds solutions to the problem of drug abuse and adopts strategies and programmes to significantly reduce or eliminate it, including the provision of secure treatment facilities, save in the most exceptional cases, the courts have no alternative but to impose significant terms of imprisonment.<sup>9</sup>"*

The community's need to feel secure extends to methods of ensuring that offenders, once released, are unlikely to commit another crime. An acceptance of this position must also encompass an acceptance that there are alternative forms of dealing with the causes of crime, which can

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<sup>9</sup> Ibid. at 14-15



achieve these ends much more effectively than the imposition of a term of imprisonment. It is at Conferences such as this that these alternatives can be considered and recommended for implementation. If communities wait to provide assistance to individuals until they offend and are imprisoned, I would suggest, it is too late for both the community and the offender. A concentration of effort and resources into education aimed at preventing drug and alcohol abuse, early intervention programmes and appropriate treatment regimes is required to combat these problems in the long term.

I take this opportunity to congratulate the various organisations which are members of the Australasian Therapeutic Communities Association on their magnificent work which is carried out under very difficult circumstances. Your efforts are worthy of much greater recognition and support.

I hope that this Conference will be both informative and encouraging in this difficult area where drug treatment programmes are often only successful after a number of relapses and interim failure. Fortunately there is a sufficient degree of success achieved to persuade so many dedicated people to keep trying.

I have much pleasure in declaring this National Conference of the Australasian Therapeutic Communities Association to be officially open.