

Better to attack the causes of crime than to build more jails



Michael Dawson
Former Chief Executive
Victim Support Service

I have long advocated for improvements to victims' rights, better policies and procedures to improve victim participation in the system, and increased services for crime victims. Much has changed for the better but there is still a long way to go, particularly in terms of changing attitudes about putting victims first rather than last.

Parliament has created much new legislation and, in that process, formalized new crimes, introduced more serious charges available for aggravated and more harmful levels of violence, and defined more severe penalties generally. Police keep catching more offenders and sending them to the courts.

The courts, however, appear to be drowning in the high number of arrests and prosecutions which result from government policy and legislation, as well as more effective policing. More people are on remand here than almost anywhere else in Australia. And the accused are waiting for 18 to 24 months to appear in the District or Supreme Court.

But what is the point of it all? Are we really only chasing our tails as well as those of the offenders? How do we break the cycle and come up with a final solution other than that of building more jails – against which our recent thinker in residence warned?

It is just not working; and we should be asking what sort of society we want our children to grow up in. Do we want one focussed on more and more restrictions, control and punishment, or one based on relationships, respect (of oneself and others), and effective, problem-solving communication.

Another approach to this is to focus on victimization prevention rather than

continuing the 200-year-old tradition of thinking mainly about offenders. The problems are further back in the chain than the point at which the crime was committed. What causes crime?

Crime expert Dr Irvin Waller said on Adelaide radio last year that:

...we are going to have a plan to solve this problem – look at what the causes are. We're going to need to intervene with those and to get serious about it (and have) leadership at the top level of government that brings these agencies together so you don't have a social exclusion unit doing one thing and the police doing another. That you actually have people talking about a whole government (approach) – real concrete operations guided by information and data.

Waller also says that governments have asked voters and been surprised that:

...ordinary people understand crime much better than the media headlines of populist politicians. People know that it (crime) has a lot to do with parenting, more people going out to work, more single mothers below the poverty line, young men dropping out of school because they see no future. They want to see people (offenders) held accountable, not necessarily through incarceration, also through reparation.

The average person, including most victims, wants far more than prison for perpetrators. He or she understands the causes of crime and wants government to intervene.

We know from Dr Waller that spending more and more

on police and putting people in jail reaches a saturation point. It becomes pointlessly wasteful as incarceration soon stops reducing crime any further – one dollar for prevention equals seven dollars for mass incarceration.

We need to tackle the risk factors:

- » Reduce poverty and inadequate housing.
- » Provide consistent and caring parenting and reduce the opportunity for the young to witness intra-familial violence.
- » Increase social and cognitive abilities in at-risk young people.
- » Reduce behavioural problems at primary school.
- » Improve school relevance and retention.
- » Reduce frequent unemployment and resulting limited income.
- » Reduce the culture of violence on television and in the community.

We must invest in strategies to address at least these risk factors as early as possible – especially with youth and younger children when we can enhance their development.

It seems increasingly obvious that waiting until the crime occurs, chasing and catching the offender and, then, trying to convict him or her, is not a sufficient solution.

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Consider carefully broader use of similar-fact evidence



Nigel Hunt
Senior Reporter
Sunday Mail

Ken Turner is a patient man. After more than a decade of highlighting inadequacies in the justice system and lobbying politicians to change laws relating to the use of similar-fact evidence, his efforts have finally been rewarded.

The bold and controversial move was trumpeted by Premier Mike Rann during the election campaign as he unveiled a policy to tinker with the Evidence Act to allow prosecutors to introduce in court evidence of an offender's prior offending.

Ken, whose 22-year-old daughter Shirree was murdered at Oaklands Park in 1993, was justifiably elated at the policy move – one he

believes can help put recidivist offenders behind bars and, quite possibly, save a life one day.

He speaks from sobering experience. He firmly believes that, if the jury in the 1998 trial of Frank Mercuri – the man charged with the stabbing murder of his daughter – had been told that he was in custody in Victoria for the stabbing and attempted rape of a woman when arrested over Shirree's murder, he would have been convicted rather than acquitted.

It then flows that, almost a decade later, in 2007, Mercuri would not have been in a position to murder a Melbourne woman, before then taking his own life.

It is fair to say that the looming changes to the Evidence Act, which may well result in the wider use of similar-fact evidence in court, have been influenced by Ken Turner's tenacity and refusal to simply go away.

While his heartfelt book on his daughter's case, *Halfway to Justice*, shone the spotlight on flaws in the legal system,

Ken was not content to let the matter rest there. Throughout 2007 and 2008, he spent considerable time lobbying politicians to revamp sections of the Evidence Act. Given no firm commitment, and even told to basically forget it by one minister, he turned to Family First MP Dennis Hood for help.

Convinced of its merits, Hood pledged to introduce a Private Member's Bill and last year did just that – despite being given indications by both sides of the House that his bill wouldn't get over the line. Indeed, Ken Turner held out little hope of its success.

There is no doubt election campaigns can produce surprises. Initiatives that were once off the agenda often get dusted off if there is a political need to reincarnate them.

I can still remember Ken's words when I rang him and told him of the government's plan to amend the Evidence Act late on a Saturday night mid-way through the election campaign in March. He was jubilant, considering he thought it was all over.

But his jubilation was matched with trepidation by the legal profession, which sounded the alarm bells. Bar Association president Malcolm Blue, QC, outlined its stance just days after the release of the policy when he called on the government to spell out its plan.

The association urged the government to clarify whether its proposal would restrict the adducing of evidence of past conduct to conduct which

is especially significant in relation to the charged incident or, whether it would permit the adducing of such evidence merely because the accused was convicted or alleged to have committed a previous offence of the same general type.

It argued that similar-fact evidence could already be introduced under existing common law and that any expansion of this was incompatible with the presumption of innocence.

It is on that indisputable point the policy presents somewhat of a sticky dilemma for new Attorney-General John Rau. Until he was elevated to his position in March he was a practising lawyer and now he is the one who will lead the charge on a law that impinges on an accused person's basic right.

No doubt well aware of the quandary, he has already canvassed his former colleagues widely and says this has convinced him of the need for change – although, now, maybe not as far-reaching as first signalled during the heat of the election campaign.

From his initial comments, it appears the existing common law provisions are to be simply clarified and codified and he expects the measure is unlikely to be used more than a few times a year once this has occurred.

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The community certainly needs to do this for the more dangerous and persistent offenders, but in conjunction with investment in programmes for at-risk youth, improving teenagers' attitudes to themselves and others, and continuing improvement to the design of our surroundings so as to reduce opportunities for crime.

There is a huge amount of evidence to show that such crime prevention works. While victims need a responsive, empathetic police service and effective victim support, they would be far better off if the crime did not happen in the first place.

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Well aware of the potential for a repeat of the heated debate over provisions in the bikie legislation between his predecessor and the legal

profession, Mr Rau said he had spent considerable time consulting his legal colleagues who practise in the criminal field.

"What they have told me is the present development of the common law in relation to this has moved a long way in the past 20 years to the point where it is now extremely complicated and often an area for confusion in terms of questions of admissibility of evidence and in the scheme of things that is not good for the criminal justice system," he said.

Perhaps somewhat surprisingly, in asking several detectives their views on the use of similar-fact evidence, they raised concerns. One told me he didn't want to see it available in every case because it could lead to its reliance ahead of some legwork being done to find other more damning evidence.

Another said wryly: "Just because a convicted armed robber is seen drinking in a pub that then gets robbed doesn't mean he did it, does it?"

THE POLICE ASSOCIATION OF SOUTH AUSTRALIA WELCOMES ITS NEWEST MEMBERS

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