INDEPENDENT AND INTIMATE: THE SERIOUS OFFENDERS' REVIEW BOARD, NEW SOUTH WALES

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THE SERIOUS OFFENDERS' REVIEW BOARD (SORB) IN NEW SOUTH WALES has the responsibility of managing all prisoners who fit the definition of a serious offender. Set up under the Prisons Act 1952, the Board has an independence, which it always values, often stoutly defends and very occasionally revels in.

The Board meets its clients every six months and has formal and informal dealings with many of them in between. It has long-maintained files, regularly recorded interviews and a stability of membership. SORB knows its clients well and has fostered a degree of intimacy with them, which is rarely found in the official channels of gaols.

Constitution

The Board is constituted by the Prisons Act 1952 ss. 59–72. It has the following ten members: chairperson and deputy chairperson; Head of Community Corrections; Head of Prison Security; Principal Psychologist; a police officer and four community members. The chairperson and deputy are both retired judges of the district court. All members, other than those nominated by the Director-General, Department of Corrective Services, are appointed by the Governor. The present Board includes only one woman, a departmental nominee.

There is no formal provision for the type of person to be appointed as a community member but the present members are a retired Director-General of the Department of Corrective Services, a retired New South Wales
policeman, a practising Queen's Counsel and the father of the victim of a notorious murder in 1986.

This membership gives the Board a conservative cast. It does not, however, pursue a rigid ideology and is sometimes conservative and sometimes liberal. The Release on Licence Board (ROLB), appointed by the previous Labor government, had a mildly liberal outlook but did not act in a significantly different way from the present Board. The Chairperson of the SORB also chaired the ROLB. Both Boards are, inevitably, formed somewhat in his image. The Board came into being on 12 January 1990.

**History**

The Board inherited most of the mantle of its predecessor, the Release on Licence Board. That Board, similarly constituted, had been set up following the 'early release scheme' scandal of the early 1980s, which eventually led to the gaoling of the Minister for Corrective Services at the time. Though the prime reason for that Board's existence, which was from February 1984 until January 1991, was to recommend release on licence for life sentence prisoners, its secondary role of the management of those prisoners, soon came to dominate its work.

In contrast the role of the SORB is almost entirely management, a role similar to that of its predecessor, the non-statutory and less powerfully constituted Indeterminate Sentence Committee. There is, therefore, a recent history of separate management of serious offenders.

**Functions**

To understand the functions of SORB it is necessary to define and identify the serious offender.

**Definition**

Regulations define serious offender as one who falls into one of the following categories:

- has been sentenced to a term of natural life (the new 'life is life' sentence);
- has been sentenced to life under the old laws;
- has had a life sentence imposed under the old laws replaced by a minimum and an additional term;
- has been convicted of murder, whatever the sentence;
- has a minimum term between three and twelve years and has special needs, because of the nature of the crime or notoriety;
- has a minimum term of twelve years or more;
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- has been ordered by the court to be managed by the Board;
- has been convicted of an escape in the last three years.

This means that just on 400 of the state's approximately 6,000 prisoners are regarded as 'serious' and are managed by the SORB.

Classification and placement

These are the most significant aspects of the day-to-day management of prisoners and they take up most of the Board's time.

Prisoners are encouraged to move through the gaol system towards eventual release. The most common movement is from maximum security, after about half the sentence, to medium security for a couple of years and to spend the last four to five years moving through the three grades of minimum security. The Board encourages people to spend the final six to eighteen months of their sentences on work release. This provides a final test of a person's ability to live a crime free life and gives him or her a chance to save some money.

Most changes to classification and placement occur following discussions between the prisoners and the Board's visiting committee. The committee's recommendations are considered by the full Board and if accepted, as they usually are, go forward as formal recommendations to the Director-General of Corrective Services. Recommendations are almost always approved.

The Board has absolute power of refusal. If the Board does not agree with an application for a change of classification or transfer to another gaol, that is the end of the matter.

The Board takes the view that lower classification and more congenial gaols should be earned by prisoners' efforts and used for other than just an enhanced feeling of freedom. Needless to say, these aims are not always achieved and it is perhaps a re-affirmation of the resilience of the human spirit that craft and cunning occasionally outwit careful deliberations and well-ordered plans.

Resentencing reports

Under legislation proclaimed at the beginning of 1990, prisoners previously sentenced to life imprisonment can apply, after they have served eight years, to have their sentence redetermined and a minimum and additional term set instead. Of the 230 prisoners entitled to apply, 150 have done so.

The Board is obliged to prepare a report for the court stating all details concerning the prisoner's progress in prison. These reports are comprehensive with the concluding paragraph usually indicating what the Board believes the court should do. The early reports were tentative in their expression of opinion. Experience from forty resentencing hearings has shown that the Supreme Court judges who hear the applications value the reports, making much use of them in arriving at their decisions.
The reports are drafted mainly by the Board's staff, with a small number being done by a now retired Department of Corrective Services (DCS) staff member and member of the ROLB.

The pressure from prisoners for their reports to be completed is intense; however, pressure of other duties allows an average of only four to be done each month.

**Release reports**

The Supreme Court sets minimum and additional terms. The power to release on parole after the minimum term has expired belongs to the similarly named Offenders' Review Board (ORB) which is a parole board.

When the parole of a serious offender is being considered, the SORB reports to the Offenders Review Board. A member has a right to be heard during the ORB's deliberations but has no vote. At present the SORB report to Supreme Court is accepted by the ORB but as the time between resentencing and release consideration increases, so will the need for report writing.

**Licensees**

The Board still exercises suzerainty over those released on licence under the old system and the parole service carries out supervision on behalf of the Board. The Board can vary the conditions of the licence and revoke it as long as the judicial Chairperson agrees. The revocation power is a strong one—if a life sentence prisoner's licence is revoked he or she cannot be released again until resentenced and due for parole. There are no 'slap across the wrist' revocations.

**Practices**

**Meetings**

The Board meets for at least one full day a month. Two day meetings are scheduled four times a year to help clear the backlog of Supreme Court reports, brought about by the large number of life sentence prisoners, immediately eligible for resentencing. A court reporter attends each meeting. Formal motions are rare and votes taken only occasionally—decisions are usually reached by consensus after a few minutes of discussion. Some cases cause controversy and opposition but there is little open tension. A committee meets as required to consider special matters referred to it.

Each member is provided with a file. The agenda is detailed and by word processing and compression is turned into the minutes and subsequent submissions to the Director-General on Board recommendations.

**Visits**

Most of the Board's work arises from twice yearly visits to prisoners. An ad hoc visiting committee is set up at each meeting to carry out the visits scheduled for the coming month. As far as possible, a committee is made up of either the Chairperson or Deputy, one of the DCS representatives and one
of the community representatives. In the writer's four years with the Board, none of the police representatives has ever gone on a visit. Each has considered his presence on a committee likely to arouse too much hostility among prisoners to be of much help.

The DCS representatives tend to view the visits as a chore, while the community representatives are quite enthusiastic and there is genteel competition for a place on the committee.

Prisoners view the visits with anticipation and a good deal of anxiety. The interview, which lasts an average of twenty minutes, is their most tangible contact with the powers that control their daily lives. It is through these interviews that those daily lives are most able to change for the better by reduced security classifications, moves to other gaols and increases in freedom.

Discussions with the superintendent and staff always precede the interviews with prisoners. The worth of these varies according to how well the prisoners are known.

**Expert opinion**

The Board seeks expert opinions, wherever it can from education officers, psychologists, custodial staff, welfare officers, chaplains and anyone else with a knowledge of the prisoners. Some gaol staff lose objectivity when they work closely with prisoners tending to become advocates for the prisoners rather than dispassionate observers and assessors. The Board is aware of this and will discount an opinion it feels contains too much advocacy. It is accepted, however, as just another human facet of gaol life. An involved, advocating opinion may still present a previously unobserved side of someone.

Psychiatric opinion is relied upon quite heavily. The Board uses a number of psychiatrists to assess prisoners, in the same way as a court. If there is some aspect of the crime that seems beyond reasonable explanation, or if it is felt that a psychiatric assessment of the prisoner would provide useful insights, then a psychiatrist is engaged. The prisoner's agreement is always obtained.

These reports, from experienced forensic psychiatrists are usually helpful but, of course, they come with no guarantees. It is interesting to note that there is a degree of predictability in the reports. Psychiatrist A is usually more pessimistic than psychiatrist B. There is a danger that an opinion may be sought from a particular psychiatrist because the Board will be told what it wants to hear.

There are no answers in dealing with serious offenders, just lots and lots of questions and guesses which are, at best, informed.

**Right to be heard**

It is perhaps a measure of the Board's success that, overwhelmingly, the movement of serious offenders through the system is, by way of ever increasing freedom, to release. There are times, however, when that movement for certain individuals is interrupted and even reversed.

When the rules are broken, the Board insists on resolving the matter, by way of a charge. If misbehaviour is to be dealt with by a major step back, such as a move to a higher level of security, the Board always asks the
prisoner, usually by letter, to say why it should not happen, before it happens. In at least one case, where the man concerned was barely literate, the Board deferred any action, until the visiting committee had heard what he had to say on the matter.

The right to be heard extends to formal oral hearings, before a licence is to be varied unfavourably or, in the ultimate disaster for a licensee, revoked. None has been held by the SORB; a few were held by the ROLB.

**A1 Program**

The security ratings used in New South Wales prisons are:

- Maximum A1
- Medium B
- Minimum C1, C2, C3

Almost all maximum security prisoners are classified A2 and until recently A1 was so rarely used that it was virtually unknown. Its revival does not represent a return of the Visigoth style of custodial management but is a recognition that Visigoths sometimes lurk among the prison population and need to have a humane, systematic way of management. A program of this type is in operation at Goulburn. It houses the prisoners austerely but not brutally and rewards their improving behaviour by increasing privileges and more pleasant surroundings.

Prisoners classified A1 are reviewed more frequently than others and are not locked away and forgotten. It is, nevertheless, a very secure, highly directed existence, devoid of the daily comforts and opportunities for social interaction available in normal maximum security life. The Board does not run the program but has some of its serious offenders in it.

**Open meetings**

The Act provides for 'proceedings before the Board to be open to the public' except in special circumstances. The probable intention of this was to cover oral hearings but an adventurous chairperson interpreted this more widely and, as a result, all meetings of the Board are open to the public.

The Board's first meeting took place in the presence of television cameras. Media interest and attendance have been sporadic. Occasionally relatives of Board clients attend and, more rarely, relatives of victims. Sometimes such a person has asked to speak; this has usually been allowed. However, most meetings see the small public gallery empty. Interest seems to increase in proportion to secrecy.
Advantages of the Serious Offenders Review Board

Independence

It is not possible to overestimate the value of the Board's independence. The Prisons Act gives the Board its independent existence and by regulation sets out its rights and responsibilities. The Board guards those rights and responsibilities jealously and is not afraid to assert them when gaol administrators ignore them.

The assertion of the independence it always held (as SORB or ROLB) has increased in the last few years. Before this time, it seemed the Board was viewed as an appendage to the prison system, rather than a vital part of it. Some resurfacing of old practices, by the 'shanghai' and increases of classification without reference to the Board, was recently met with strong Board reaction.

The 'shanghai' is a sudden transfer of a prisoner, regarded as troublesome, from one gaol to another. It often followed allegations of misbehaviour, which were never resolved by charges.

The Board's independence is enhanced by powers similar to those of a royal commission. It can call people to give evidence, require the production of material and inform itself in any way it sees fit.

Judicial leadership

At present, the chairperson and deputy chairperson are retired District Court judges. Until 1987, neither judge in these positions with the ROLB (not the same men who now head the Board), was retired. The time they could devote to Board work was limited and visits were hurried affairs compressed into two exhausting six week periods each year.

Retirement means that true leadership can be exercised by the current chairperson who has had the time to go through the Prisons Act and Regulations with great deliberation, finding rights, obligations and privileges previously not thought available.

Outside input

More than half the Board's members come from outside DCS, are therefore free of gaol culture and not tainted with the tendency to see everything the departmental way. They bring a range of views and experiences to the Board which influence their relationships with prisoners and each other. They are realistic and pragmatic. This outside membership is a vital part of the Board's constitution and is also responsible for a large measure of its success. In dealing with serious offenders, doctrinaire approaches or those that are just part of the usual DCS processing are not always the best. Outsiders bring freshness and so long as their ignorance of gaols is not exploited, a different point of view combined with legally protected independence can be powerful.
Intimacy

The Board comes to know its prisoners very well, with the visits the main way to develop this degree of intimacy. Interviews are informal and sometimes lengthy, perhaps several hours.

Serious offenders are not considered by the local gaol committees or dealt with by the general classification system. Indeed, regulations preclude the local committees from dealing with them and limit the main classification committee to an initial classification and placement only.

In all other management matters, serious offenders interact only with the Board. Apart from the visits, prisoners' contact with the Board is by official gaol application forms, informal letters and telephone calls. The Board staff eschews a formal bureaucratic approach and this further increases the intimacy between Board and clients. The relatively small number of serious offenders (400) and the small staff (four) encourage and facilitate such an approach. Personality and natural inclination are important, as well. Small numbers alone do not guarantee intimacy.

The longest serving Board members, the chairperson and the principal psychologist, know most of the Board's prisoners very well. Names, crimes, backgrounds, hopes, fears and expectations are known. This deep knowledge may also mean that some prisoners feel exposed in front of the Board. There is nothing, however, to show that this has ever been a major problem.

The chairperson, in particular, knows and has access to the most senior officers in the DCS. This has enabled the Board to avoid the trammels of departmental policy, when that policy has been seen by the Board to interfere with its aims.

A recent example illustrates: DCS policy changed to ensure that prisoners liable to deportation were not housed in less than C1 security and were not on work release. The Board took the view that, in some cases, this was an unnecessary precaution. Its careful consideration of each case and independent contact with Immigration authorities entitled it to be satisfied of the correctness of its recommendation that two of its prisoners, who were affected, should proceed to work release. The Director-General agreed with the Board's view. (Liability to deportation does not preclude work. If the person is an illegal immigrant, however, Department of Immigration permission to work is needed). Both men will probably be deported immediately, after their release. The Board's intimate knowledge, gave them a privilege, which policy did not allow other prisoners.

This intimacy has led to considerable success with some particularly recalcitrant prisoners. It would be fair to admit, nevertheless, that a few difficult people remain impervious to the Board. Another example will illustrate:

M is a very long term criminal in his early thirties. His in-gaol behaviour has rivalled the extent of his law breaking outside. He is very well developed and walks with the menacing, always tense muscles of the gaol 'heavy'. After many years in gaol, M was still in maximum security. His list of gaol offences, major and minor, is very long. M, a man of some intelligence, saw he could not go on forever that way and hope for release, while still young. He wanted to change and was encouraged,
aided and abetted by the Board to do so. Minor infractions were ignored by the Board, so long as he kept his eye on the prize. A strategic lowering of classification and change of gaol showed the rewards possible and gave further encouragement. M could be frank, astonishingly so at times, with the Board's committee and feel confident that everyone at the gaol would not know about his thoughts and desires. The Board has enlisted the aid of sympathetic gaol staff and M's progress continues and is quickening.

A Supreme Court judge, who is aware of the Board and its work, canvassed the idea of sentencing a newly convicted drug importer to an 'old' life sentence (the convicted man's committal date gave the judge this option), because of the advantages of the Board's close attention. He eventually imposed a determinate sentence.

Special successes

The Board has enjoyed success in the sometimes murky world of prison operations, where punishment by administrative action, following nothing more than rumour and innuendo is not unknown. The most notorious of these has been the 'shanghai'—the sudden, speedy move from one gaol to another, sometimes accompanied by an increase in security classification.

The Board concedes that the occasional 'shanghai' is necessary, but it insists upon its regulated right to be consulted and to recommend the move beforehand. After a few memorable confrontations and threats of dire action, the Board is now contacted first and the permission of the chairperson or deputy or one DCS member and a community member, according to availability, is sought. It is not always given. The permission is ratified at the next meeting and finally submitted to the Director-General for approval. The Board accepts that an emergency might impel a superintendent to move the prisoner before the Board can be contacted but believes that such instances should be rare.

If misbehaviour is alleged, the Board insists that it be resolved by charging the prisoner with an offence. A not guilty decision is accepted as meaning exactly that. If charges are not laid, innocence is presumed. This attitude increases prisoner confidence in the Board, as they can be sure that the Board will not give serious consideration to anything that is not proved.

The Board has also enjoyed success in ensuring that its prisoners subject to segregation orders have been fairly treated and that the orders do not last longer than necessary. The Board's success here arose partly from the inexperience of its community members. The segregated prisoners were held in such isolation that the community members found the experience of interviewing them distressing. Those familiar with gaols are somewhat inured to the inevitable indignities of some aspects of prison life. It was partly as a result of the distress felt that the segregation orders were reviewed and eventually removed.

The Board is likely to have responsibility for segregated prisoners added to its already long list of duties.
Disadvantages

Legal weight

There are three lawyers on the Board, two of them retired judges. Lawyers do not always view the world through the same prism as the rest of humanity. The disadvantage is not really in the nature of the men themselves or their calling, rather it lies in their influence and effect upon the other Board members and the Board's clients. Without obviously meaning to, the lawyers tend to dominate discussion and intimidate other members with their knowledge, argument and sometimes, very presence.

Judges, especially richly experienced ones, are used to dominating their courtrooms and interrupting at will, interruptions which are met in court with instant silence. When this occurs in a meeting, the effectiveness of open discussion is diluted; during interviews with prisoners, it can destroy the communication that should take place. The presence of lawyers and their abhorrence of silence exacerbates a tendency that is present in the very structure of any Board.

Slowness of response

The Board meets only once a month, and the agendas are crowded. This means it can take months before a particular application is finally dealt with and decision made by the Director-General on a Board recommendation. The chairperson or deputy, or a DCS member and a community member, can provisionally consider any urgent matters.

The problem is not major, as assiduous staff efforts have managed to have the rest of the world turn in time with the Board. As Board clients come to understand the process, the need for time in considering any request is understood, if not always accepted. More frequent meetings would mean the Board was in danger of becoming a smaller version of the Department and this might compromise the special relationships it has built up.

Cost

The Board must be paid for out of the Department's budget. In 1990-91 its allocation was $250,000, including the salaries of its four full time staff members. That is about the cost of an ordinary house in parts of Sydney, and only a very small portion of a Departmental budget of about $150 million. Increases in prisoner numbers and an increase in staff by one will see that $250,000 rise but not by much.

The cost of the Board is low when its contribution to the management of serious offenders is taken into account.

Inexperience

Most of the Board members are inexperienced in prison matters. This was discussed above and seen as a strength, but it can have its weaknesses. The
likelihood some prisoners will be duplicitous and show only their very best behaviour to the Board is not always appreciated.

The desire to feel good by pleasing the prisoner sitting across the desk and who is making a nervous application is immense and very human. The Board as a whole, does not always agree with the recommendations of a, perhaps, over-enthusiastic visiting committee. When this happens, prisoners sometimes feel betrayed or, at least, let down.

**Conclusion**

Though not all serious offenders are violent and not all violent offenders are serious, New South Wales has placed a high profile, statutory Board in charge of all prisoners who are defined as serious because of their crime or the length of their sentence. This Board has worked at gaining the trust of its prisoner clients and the confidence of DCS administrators and prison staff. However, trust and confidence do not reside permanently with every prisoner, administrator and staff member and, as can be expected, criticism, resentment, impatience and exasperation sometimes flow in the Board's wake. It would be fair to say, however, that trust and confidence are overwhelmingly features of the Board's operation. The dissatisfaction which occasionally arises is not surprising and emphasises that the Board is operating well.

The twin themes of independence and intimacy enable the Board to engender trust and confidence. The Board's independence is its most valued asset, allowing it to carry out its task without fear. It can and does confront unfairness and unsatisfactory treatment, wherever they are found in the prisons. The Board is not seen as just another part of the prison system, thus giving prisoners the confidence to allow a degree of intimacy, the Board's other strong asset.

It has been said that everything has been tried in the field of prisons, that nothing works very much but everything works a little. The Serious Offenders' Review Board works more than just a little.