

Should education in corrections be publicly required and compulsory?

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Abstract

This paper will investigate the purpose of prison education, “compulsory” participation and the lack of a legislative basis to provide for mandatory funding of educational provision. It will examine the question of whether prison education can be compulsory if there is no resource or access guarantees for inmates. The NSW Crimes (Administration of Sentences) Act requires inmates seeking parole or who are under the supervision of the Serious Offenders Review Council to demonstrate a willingness to have participated in rehabilitation or developmental programs. This paper will explore the “compulsory” requirement for inmates to address offending behaviour whilst incarcerated in NSW. It will also examine efforts to improve education quality for inmates, to provide education guarantees and access rights for inmates through legislation or other instruments in NSW. The paper will also examine whether progress has been made towards reaching benchmarks established by policy frameworks, including the Australian Senate Inquiry, Council of Europe, etc.

What is publicly required of correctional education?

In recent years within NSW there has been considerable debate concerning the purpose of education within corrections. Initially this debate focussed around proposals to broadly implement the Canadian criminogenic needs model limiting the capacity of inmates to participate in programmes, on the basis that such participation should address the offending behaviour that had been diagnosed as the cause of the inmates underlying criminal behaviour. This has been described by Duguid (1998: 31-39) from his experience in Canada as the replacement of an opportunities model in adult education where inmates are assumed to develop responsibility for making decisions in regard to their educational growth, to a medical model in which programming for inmates is determined through a criminogenic needs model where there is an underlying assumption that offenders have predispositions towards committing crime that should be addressed.

The opportunities model can be identified as (Ubah, Robinson 2003: 119) providing inmates “with some necessary human capital resources (skills and knowledge) that can help some of them to “go straight” and abandon criminal behaviour when released into free society.” Correctional education programmes provide a “bridge for inmates moving from incarceration to the real world” (ibid), where learning achievements made on the inside can be built upon on release into the community. Correctional education indicates to inmates the “right step in the right direction because the programs can promote change in some inmates, improve their psychological well-being and offer them credentials for the labour market” (ibid).

Findlay (2004: 44) in his recent discussion on the state of corrective services observes that “prisoner education is recognised as one of the few correctional initiatives which seem to correlate with improved recidivism prospects.” For example, improving inmate literacy addresses “one of the simplest and yet most significant factors at work against prisoner reintegration” (ibid). He argues that funding to provide for such cost effective programmes as improving inmate literacy and numeracy has been undermined by the move away from “egalitarian inmate programmes in preference for elite cognitive therapies” and expensive psychological interventions in gaol based on the criminogenic needs model (ibid).

It could be argued that the debate between opportunities and criminogenic needs models in correctional education is in fact a continuation of a long established debate in criminology between psychological and social determinism as described by Findlay (2004: 46). Whilst social determinists would argue that structural conditions in society which are constant such as poverty impact upon families and produce marginalisation leading to crime and imprisonment, psychological determinists “will either blame criminal genealogies, crime as an intergenerational or genetic feature, or learning patterns within families that promote crime” (ibid).

Leading proponents of the criminogenic needs model Andrews & Bonta maintain that: “Mainstream sociological criminology proclaimed (as opposed to documented) that three key truths were well-established. These three “truths” essentially rendered a psychology of criminal conduct, *a priori* and by definition, irrelevant to an understanding of crime” (Andrews & Bonta 1994: 52). Each of these “truths” is instead labelled by Andrews and Bonta as myths. Their argument is that explanations for crime which stress “political economy and structural features of the broader social system” are flawed as the types of concepts used in those analyses such as social class, age sex, ethnicity, poverty, etc., treat individuals as “empty biophysical entities” and ignore individual inadequacies and differences. Andrews & Bonta argue that these so-called truths of sociological criminology are false. They believe that the adoption of psychological models for explanation of criminal behaviour which address so-called offender risks and criminogenic needs should be used in the targeting of programme funding.

Findlay (2004: 46) suggests that “psychological determinism has taken hold in contemporary rehabilitation thinking. A reason for this may be that it holds out a causal connection between prison programmes and the reduction of recidivism. In a more cynical context, it also allows prison administrators to rationalise and restrict programme entry of the basis of risk.”

The promotion of the criminogenic needs model in a number of jurisdictions has been based on the prediction that expensive intensive cognitive skills programs would be able to reduce recidivism, particularly amongst high-risk groups. On the basis of this prediction traditional educational delivery based on the opportunities model in many jurisdictions, particularly Canada, has been displaced. Robinson in a review of the effectiveness of cognitive skills programmes in Canada conducted by the Correctional Service of Canada found that: “The effects associated with risk of recidivism provided important information about offenders who

need more than Cognitive Skills Training for successful release. While it was expected that high-risk offenders would gain most from completing Cognitive Skills, the data did not support the assumptions for offenders who receive the programme in institutional settings. On the other hand, low risk offenders appeared to benefit from the programme regardless of whether they received it in institutional or community sites. Generally, programme assignment is based on the principle that offenders who are at high risk of recidivism should be given priority for treatment. It is assumed that allocation of services to low risk offenders is wasteful because the latter group recidivate at rates which are too low to be affected by interventions" (Robinson 1995: 50-51).

Findlay argues that "when criminogenic needs programmes themselves are unpacked they seem to contain little which is different from the teaching methodologies employed by prison teachers in general curricula" (2004: 46). It has been elsewhere argued, that the contention that the criminogenic needs model will significantly reduce recidivism through programming of cognitive skills promoting behavioural change is merely the appropriation of teaching methodologies which are normally incorporated in the curriculums delivered by teachers working in correctional settings (de Graaff 2001: 10). This of course begs the question as to why there has been a focus in recent years on targeting funding towards expensive psychological interventions whilst correctional education programmes have at times struggled to maintain funding and continuation has had to be justified in terms of reducing recidivism and addressing offending behaviour rather than being promoted in terms of inmates educational needs.

Indicative of this shift in public policy expectations of the function of correctional education is the intervention by Noonan (2004: 181) in this debate who argues that its provision should not be justified in terms of equity or social justice. He suggests that a social justice approach would justify correctional education on the basis of "redressing injustice and disadvantage to overcome inequality and barriers to learning. Many individual prisoners have experienced substantial social, economic and educational disadvantage" (ibid). Consistent with the criminogenic needs theorists, who ignore that social and economic disadvantage may have contributed to offending behaviour, Noonan maintains that specific criminal behaviour should not be used as rationale for government intervention in terms of a social justice framework and funding for correctional education programmes. Rather that correctional education should be justified in terms of contributing to sentence management.

This debate over opportunities vs. criminogenic needs models, over social vs. psychological explanations for crime, is symptomatic of broader public expectations of incarceration and correction, and what is required of prison education programmes.

Since the early 1990s there has been a massive increase in the size of the inmate population in NSW and a corresponding expansion of building new Correctional Centres. This growth in the size of the inmate population arose as politicians, media and then the community demanded "truth in sentencing", changes to bail laws including removing the presumption in favour of bail for repeat offenders, and incapacitation of criminals through incarceration based on the belief that crime would be reduced whilst offenders were in custody. Concomitant with these

beliefs have arisen notions which question the release of offenders to parole on the grounds of public safety unless it can be demonstrated that the cause of the initial offending behaviour has been addressed, and that there is a reduced or little likelihood of re-offending behaviour. This was demonstrated in the case of inmate Kable in the mid-1990s where the NSW Parliament passed a specific Act to prevent his release to parole on the basis of the concept of preventative detention and community protection. That is, in the absence of the commission of a crime and the imposition of a sentence as a punishment, but instead the prediction of a possible future commission of a crime Kable was detained in prison (cf. *Kable vs. The Director of Public Prosecutions For New South Wales*).

The change from a just deserts based approach to sentencing where the “time fits the crime” to a criminogenic needs model of addressing offending behaviour can be seen in changes for example to the NSW Department of Corrective Services Mission Statement. It now describes its primary function as addressing offending and re-offending behaviour rather than secure containment of those deprived of liberty. This is also consistent with legislative changes to what is now known as the *Crimes (Administration of Sentences) Act*. Legislation in NSW has previously been known as the *Prisons Act*, and then the *Correctional Centres Act*.

The *Crimes (Administration of Sentences) Act* states concerning the duties of the Parole Board in making decisions concerning inmates that it must take into regard a number of matters whilst making its considerations including at:

Section 135(2)(f) “*the offenders conduct to date whilst serving his or her sentence, including:*

- (i) the attitudes expressed by the offender, and*
- (ii) the offender’s willingness to participate in rehabilitation programs.”*

Similarly in regard to the functions of the Serious Offenders Review Council, the *Act* requires that the Council provide advice and recommendations concerning classification, placement and “developmental programs provided for serious offenders” (Section 197(2)(a)(iii)). The Council is also required to make reports to the parole Board, Supreme Court, Minister and other persons and bodies on serious offenders as prescribed. Inmates in NSW do not receive remissions which may contribute to reducing the time served of a sentence in NSW for participating in educational programmes.

Although the *Act* requires inmates to demonstrate progress as outlined above in regard to Serious Offenders, and in seeking Parole, the *Act* only refers to the provision of education and vocational training in the following terms at

Section 79 “*The Regulations may make provision for or with respect to the following matters:*

- (o) the acquisition by inmates of education and vocational training.”*

The provision of education, vocational training, libraries and a range of other rehabilitation services was only provided for following significant lobbying by prison educators in the *Crimes (Administration of Sentences) Regulations 2001* as amended at Section 60 Inmate Services and Programs. The range of provision outlined in the section such as literacy and numeracy programs, education and vocational training programs, including the provision of libraries, pre-release and post release programs, and the requirement that “special attention is given to the needs of inmates who have low literacy and numeracy” is however limited due to the wording of the *Regulation*.

At Section 60 (1) of the *Regulation* the provision is limited to what the “Commissioner may provide” for, rather than what the Commissioner shall provide for. There is currently no legislative guarantee for the provision of education and vocational training courses, and the provision of libraries to inmates, even though the *Act* requires offenders to demonstrate in regard to the functions of the Parole Board and Serious offenders review Council a willingness to participate in rehabilitation and developmental programs.

What then is publicly required of prison education programmes? Are inmates compulsorily required to demonstrate prior to release attitudinal change through participation in programmes which will address their offending behaviour and the likelihood of re-offending? Are prison education programmes thus justified in terms of addressing criminogenic needs rather than educational needs and opportunity? How is attitudinal change measured when educational and vocational training courses assess outcomes in terms of the achievement of competencies?

Should education in corrections be compulsory?

Prior to the 2003 State Election the NSW Labor Government announced additional funds “over four years for targeted rehabilitation programs in prisons including literacy, numeracy and work skills training.” In a press release concerning the targeting of repeat offenders the then Premier Mr Carr said, “It is extremely difficult to reduce re-offending. Often by the time offenders are sentenced to adult imprisonment, their attitudes and behaviour are deeply entrenched. It is therefore important to expand access to rehabilitation programs.”

Although the provision of these additional funds has been welcomed, neither the *Crimes (Administration of Sentences) Act* nor the *Regulations* guarantee that education and vocational training will be provided to inmates. The *Regulations* outline a range of delivery, but state that provision is limited to what the Commissioner ‘may’ provide for, rather than what the Commissioner “shall” or “must” provide for in the way of education and vocational training programmes. Whilst inmates are required to demonstrate attitudinal change and participation in programmes, the provision of such programmes is not guaranteed. It should be noted that funding for educational programmes is justified against targeting of risk particularly in response to

literacy and numeracy skills deficits, rather than as a guarantee of an entitlement to participate in a broad range of educational courses.

Notwithstanding that within NSW there has been ongoing contestation around the function of correctional education programmes within the context of opportunities vs. criminogenic needs model, at the same time it must be recognised that the NSW Government has demonstrated a commitment to rehabilitation programs in its effort to provide offenders with opportunities for reintegration back into the community upon release.

Over the last ten years there have been considerable improvements to the status of education and vocational training within the correctional system. For example teachers working in the Department of Corrective Services have since 2002 been employed on a permanent basis, thus giving some permanency to education and vocational training provision. Since 1995-96 delivery of education and vocational training programmes to inmates has been undertaken principally by the Department's Adult Education & Vocational Training Institute (AEVTI) which as a Registered Training Organisation delivers courses to inmates which comply with national standards as had been established by the former Australian National Training Authority.

Even though commentators external to correctional education such as Noonan suggest that equity and social justice should not be used to justify funding of courses to inmates, in NSW, AEVTI is committed to and complies with the *NSW Charter for Equity in Education and Training*. The Statement of Purpose contained in the Adult Education & Vocational Training Institute's *Policy and Procedures Manual 2005 – 2006* cites the *NSW Charter for Equity in Education and Training* which states that, "In the allocation of public resources, priority is given to narrowing those gaps in education and training outcomes that reflect needs and prevailing social inequalities."

The NSW Teachers Federation and its members working in Corrections have long been active in seeking to improve the level of provision, breadth of delivery and access of inmates to quality educational courses. The Federation has been able to negotiate the inclusion of Education Quality statements into the *Crown Employees (Education Employees Department of Corrective Services) Award 2004*:

“18.1 In line with the Department's commitment to reducing re-offending, AEVTI is committed to providing adult education programs to inmates and to identified disadvantaged groups within the inmate population.

18.2 The provision of educational courses shall be in the form of nationally accredited training equivalent to that available in the community. This standard will be maintained by the employment of professional educators within the system.

18.3 Education programs aim to contribute to good order of correctional centres and to the overall well-being of inmates.

18.4 Education programs aim to assist inmates to develop skills and aptitudes to improve their prospects for post release reintegration into the wider community.

18.5 These programs will include classroom subjects, vocational education, creative and cultural activities, physical education and sports, social education and library facilities."

These provisions have sought to reflect the principles found in internationally recognised standards such as Recommendation No. R (89) 12, that were adopted by the Committee of Ministers of the Council of Europe on Education in Prison. Unfortunately the industrial relations changes proposed by the Howard Government will mean that statements such as those on Education Quality in the *Award* may no longer be included in collective agreements.

The *Inmate Handbook* published by the Department of Corrective Services (2004:33-34) states concerning Education programs and Libraries:

"Each correctional centre offers a wide range of education and vocational training courses. Basic courses include reading, writing, maths, computers, art and craft. Inmates who are Aboriginal or from a non-English speaking background can undertake courses in culture and English language. Additional vocational education and training is available in a number of work skill areas with support from Corrective Services Industries.

Courses are offered through AEVTI and TAFE and are nationally accredited so you can continue the studies when you are released.

Each centre has a library with a range of fiction, non-fiction and reference books which will include copies of the Crimes (Administration of Sentences) Act 1999 and its Regulations as well as relevant departmental procedures. Some centres also have a Law Library to assist inmates research matters related to their case. Other centres provide assistance with legal matters through their library."

Such provision is not however mandatory, and in many correctional centres the opportunity to participate in courses and to access libraries is impacted by lockdowns. In one case a law library which had been accessed by inmates for several years was closed down at the direction of a local manager. The *Inmate Handbook* (ibid: 65) then goes on to state in a section concerning inmate rights and obligations that:

"You have a right to expect to participate in education, vocational training and employment, as far as resources are available, and in keeping with your interests, needs and abilities.

You have the obligation to abide by the regulations governing access to such services or activities if you choose to make use of them."

Whilst inmates are required by the *Regulations* at Section 61 to comply with lawful directions whilst participating in a program, there is no legislative basis to the claim that inmates have a right to participate in education programs.

Should education in corrections be compulsory? Within NSW it has been argued (above) that the *Crimes (Administration of Sentences) Act* requires inmates to demonstrate attitudinal changes and a willingness to participate in rehabilitation programmes including education and vocational training. To some degree these requirements impose on certain categories of inmates such as Serious Offenders a compulsory requirement to participate in rehabilitation programmes, and for a program pathway which addresses educational needs such as literacy and numeracy deficits to be addressed.

The real question is whether the breadth of educational quality and provision that is outlined in the documents cited above should be guaranteed and whether inmates should have a right to access educational programmes whilst in prison. That is, should it be compulsory for the correctional system to guarantee provision of education and vocational training, and inmates rights to access it? The Victorian Corrections Act at Section 47 (o) provides for example that inmates have “the right to take part in educational programmes in the prison.” As such guarantees are not currently provided by the *Act* or *Regulations* in NSW are the requirements to address offending behaviour through attitudinal change and a willingness to participate in rehabilitation programs demands made through legislation for media and public consumption rather than genuine principles that provide a bridge to reintegration of inmates back into the community upon release.

The provision of education and vocational training, including the provision of libraries and access to legal research and reference materials needs to be guaranteed by the *Crimes (Administration of Sentences) Act*. The *Act* should also be amended to include an inmate right to education, vocational training and libraries alongside the obligation of inmates to comply with lawful directions whilst engaged in such programs.

Compliance or compulsion?

Although the *Crimes (Administration of Sentences) Act* compels inmates to demonstrate attitudinal change and a willingness to participate in programs to bodies such as the Parole Board and the Serious Offenders Review Council, agreed system principles/standards for delivery in correctional environments are yet to be implemented which require compliance.

Whilst delivery of educational and vocational training programmes to inmates by AEVTI must demonstrate audit compliance with the standards required under the Australian Quality

Training Framework, there are no compliance requirements to meet specific standards around correctional education.

For example, the *Report of the inquiry into Education and Training Correctional Facilities* conducted by the Senate Employment, Education and Training References Committee (1996: vii) recommended that “in each state and territory, the education and training of offenders is identified as a key element of corrections services’ responsibilities and made central to their planning and budgeting processes; included in the accountability and performance requirements of prison managers, and promoted as right not a privilege.”

In NSW the level of education and training provided to inmates in planning and budgeting processes is guided by political and public policy considerations rather than being a central responsibility to which the Department must comply as a result of legislation or regulation. The participation and enrolment numbers of inmates in programmes including education and vocational training is reported by Governors/General Managers on a monthly basis; however there are no accountability and performance requirements in their position descriptions. The impact of lockdowns in limiting inmate access to programmes and the consequences of that on the quality of inmates’ life and achievements is not an accountability or performance measure within the system. Although inmates in NSW have the right to expect to participate in education and vocational training programmes it is not underpinned by legislation as for example in Victoria.

It was recommended by the Committee that National Standards for Education and Training for People in Custody be developed (ibid: viii). Such standards have yet to be implemented.

The Committee recommended in terms of Language and Literacy that there should be commitment “to at least 2 hours of English teaching per prisoner per week for prisoners who have not acquired basic proficiency in the English Language” (ibid: 10). The Annual Report of the Department of Corrective Services in 1997/98 stated that “... approximately 85% of the inmate population did not complete Year 10 at school.” The Department’s Annual Report in 2000/2001 stated that “At least 65% of inmates entering the correctional system have low to non-functional literacy, numeracy and communication skills. Research indicates a correlation between low levels of literacy, low economic status and imprisonment.”

On this basis one would expect that the commitment to Language and Literacy provision would be high particularly since the inmate population in NSW in 2005 has doubled to around 9000. Unfortunately the level of provision has not increased at the same rate as the inmate population has grown.

The Committee (1996: xi) recommended that “prison education centres with personal computers and modems to enable access to the standard range of educational databases and networks available to community-based school and TAFE students and undergraduates. Secure protocols should be installed to prevent system abuse.” In early 2005 across NSW Correctional Centres inmate access was restricted in response to undisclosed security breaches. Inmates are

now only able to access personal computers whilst under the direct supervision of education staff. Inmate access to computers with modem access is not even a consideration. The capacity of education staff to use computers with internet access to utilise educational resources or to communicate with external education providers is extremely limited or non-existent.

It is clear that a clear set of standards relating specifically to the purpose and functioning of correctional education need to be developed and implemented. Correctional education in NSW delivered by AEVTI is expected to meet the standards required for compliance with the Australian Quality Training Framework. It also expected to meet objectives predicated on the criminogenic needs model in the allocation of resources and targeting of programmes according to risk. There are further expectations that the success of such programmes is measured in terms of reducing recidivism. Education providers operating in the broader community are rarely expected to demonstrate compliance with such a broad range of standards and policy objectives.

Other qualities of correctional education such as humanising the penal environment, promotion of psychological regeneration and well being amongst inmates in an ostensibly degenerative environment capable, student satisfaction in programmes, etc are rarely measured as performance indicators of successful delivery. Principles underpinning the standards such as those adopted by the Committee of Ministers of the Council of Europe on Education in Prison provide direction to correctional education in NSW but unless enforced by legislation, regulation or Ministerial requirement for compliance have little force.

Within correctional environments Findlay argues that “In an atmosphere of rationalised prison resources, correctional programmes should be integrated and offender-centred. In this respect, individualised sentence management strategies should be a priority. Life quality concerns will be an important programme focus and relevance indicator. The programmes must operate under straight-forward performance indicators which rely neither on problematic risk measures nor artificial selection criteria such as the diagnosis of original offending”(2004: 50). He suggests that practical indicators would include “average hours engaged in purposeful activity; time unlocked; programme completions; total education study hours; nature of prison employment; releases on temporary (pre-release) license; accommodation in cells beyond their capacity design; prisoners testing positive for drugs; escapes assaults and self harm, cost per uncrowded place” (ibid: 61).

The conclusions which Findlay draws and the measures he suggests as indicators of the quality of life for inmates within a functioning correctional system and successful programmes should be supported. The capacity of systems to provide quality education and vocational training through compliance with national standards must also be maintained to ensure that inmates have access to courses which are at the same standard as those offered in the community. Such courses must also continue to demonstrate commitment to equity principles, and address disadvantage.

Until correctional systems to are required show compliance with recognised standards for correctional education and vocational training including legislated resource guarantees and inmate access rights, the notion that there can be rehabilitation inmates through a compulsion to demonstrate attitudinal change and a willingness to participate in programmes as a pre-condition for parole will remain limited.

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