

NSW State Election 2015 Prisons Questionnaire



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The Community Justice Coalition's Pre-Election Questionnaire is designed to canvas political parties' responses to a spectrum of prison-related and criminal justice issues prior to the 2015 election. The Questionnaire has been created by experts in their fields, providing a unique opportunity to inform future collaboration and communication between political parties and community stakeholders in the area of criminal justice.

The importance of an approach that fosters bipartisan policy development can be seen in the recent achievement by Prisoners Aid of ensuring refunding by the Government to maintain prisoners' property. This is a clear example of the positive results of open examination of policies and community collaboration. We thank you for your attendance and participation in the 2015 Pre-Election Questionnaire.

CJC Questionnaire

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1. Effectiveness of Imprisonment

The NSW Government's current approach to criminal justice relies heavily on incarceration. This has precipitated a 13% rise in imprisonment rates between September 2012 and March 2014.¹ This approach comes at a significant cost to the taxpayer and is not the most effective means of reducing crime.

The Government should adopt sensible reforms that seek to increase the value of the taxpayer dollar in improving correctional outcomes. There is a need for the exploration of rehabilitative and restorative approaches to criminal justice. This would include increasing the rehabilitative potential of the existing regime, through methods including providing effective and accessible rehabilitation and allowing prisoners to earn early release. It also involves adopting effective pre-release and post-release programs that address the causes of crime.

Issues for Reform:

- Will you commit to introducing and funding an approach to justice investment that is based on ongoing, high-quality, research of the causes of crime and recidivism?
 Yes No
- Will you commit to giving local and community agencies a greater role in the implementation of diversionary and post-release restorative and therapeutic programs?
 Yes No
- Will you commit to addressing causes of crime in 'law and order' campaigns through funding and implementing positive programs that also have regard to the health, education, disability, welfare and housing systems?
 Yes No
- Will you commit to supporting sentencing reforms for reduced sentences and parole, including the removal of mandatory sentencing?
 Yes No
- Will you commit to increasing investment into diversionary social crime prevention such as problem solving courts and diversionary schemes including the Drug Court, MERIT scheme, section 32 and 33 applications under the *Mental Health (Forensic Provisions) Act 1990* (NSW) and youth justice conferencing?
 Yes No
- Will you commit to restorative justice and social support measures for prisoners in addition to ICOs involving mandatory participation in rehabilitation and education programs?
 Yes No
- Will you commit to ensuring the funding and implementation of key services for prisoners prior to release through proper case management, which includes education, training, housing and mental health services?
 Yes No

¹ Don Weatherburn, Wai-Yin Wang and Simon Corben, 'Why is the NSW Prison Population Growing' (Issues Paper No. 95, NSW Bureau of Crime Statistics and Research, April 2014).

- Will you commit to ensuring flexible and coordinated support from mainstream agencies, specialist disability services and Aboriginal services involving communication, transparency and consultation between Corrective Services, Justice Health, NSW Health, Ageing, Disability and Home Care (ADHC), Housing NSW, Community Services and the NGO sector to facilitate adequate and appropriate support, including financial support for prisoners post release?

Yes No

- Will you commit to increased funding for post release, rehabilitation, probation and parole services, and to monitoring these programs to ensure that they comply with prisoner needs?

Yes No

2. Bail

BAIL ACT & REMAND ISSUES

In June 2011 the Liberal – National Party Government provided a reference to the NSW Law Reform Commission (NSWLRC) to consider issues related to bail. Forty written submissions were provided to the NSWLRC. Nine months of research and consultation took place before the final Report was provided to the Attorney-General in April 2012.

The NSWLRC Report considered the merits of a uniform presumption in favour of bail and the alternate of an ‘unacceptable risk’ model. It recommended a uniform presumption in favour of bail because, “That would accord with basic legal principles and concepts enshrined in the criminal justice system, particularly the value of personal liberty and its corollary, the presumption of innocence.”²

The *Bail Act 2013* was assented to on 27 May 2013 and came into force on 20 May 2014. It rejected the NSWLRC recommendation for a uniform presumption in favour of bail and supported an unacceptable risk model. Four months after the new *Bail Act* came into force, it was amended. The decision to amend was preceded by several widely publicised decisions to grant bail. The Government called for a review. The *Bail Amendment Act* was assented to on 25 September 2014.

A number of controversial issues arose out of the new *Bail Act* and the *Bail Amendment Act 2014*:

A universal presumption in favour of bail, consistent with human rights and the presumption of innocence, does not form part of the new *Bail Act* or *Bail Amendment Act*;

Section 3, the ‘Purpose of the Act’ required a bail authority, including a court, to have regard to the “presumption of innocence and the general right to be at liberty.” This provision is deleted in the *Bail Amendment Act* and similar words are placed in the Preamble as one of a number of things the Parliament had regard to in enacting the legislation.

² NSW Law Reform Commission, *Bail*, Report No 133 (2012), 123. 2. IBID 116.

A 'show cause' provision has been introduced by the *Bail Amendment Act*. In relation to a large number of more serious offences, the accused person is required to "show cause why his or her detention is not justified" (s16A(1)). This reintroduces a presumption against bail.

The NSWLRC previously considered the range of presumptions and observed: "The overwhelming majority of submissions advocated the removal of the existing scheme of presumptions, exceptions and special circumstances, and its replacement with a uniform presumption in favour of release in some form."³ Even if the accused person is able to show cause they then have to address the 'unacceptable risk' test (s16A and s16B).

The *Bail Amendment Act* provides, as part of the assessment for bail, "whether the accused person has any criminal associations." This is an overly broad generalisation to part of the test under the legislation (s 18(1)(g)).

Issues for Reform:

- Will you commit to amending the *Bail Act 2013* (NSW) to reintroduce a uniform presumption in favour of bail for all offences?
 Yes No
- Will you commit to restoring to section 3 "Purpose of the Act", the need for "regard to the presumption of innocence and the general right to bail"?
 Yes No
- Will you commit to eliminating the 'show cause' requirements in relation to the most serious offences?
 Yes No
- Will you commit to deleting, in relation to a bail assessment, the words in s 18(g), "whether the accused person has any criminal associations"?
 Yes No

³ Ibid 116.

3. Indigenous Issues

As of September 2009, Indigenous prisoners represented 26 per cent of the prison population in Australia, despite the country's total Indigenous population remaining at only 2 per cent. Annually, up to 25 per cent of young Aboriginal men are estimated to have direct involvement with correctional services and figures also suggest a disproportionate growth of rates of Indigenous female incarceration.

Indigenous prisoners comprised around 5 per cent of the NSW prison population in the early 1980s, but four times that proportion (20 per cent) by 2007. The 'normalisation' of prison for Indigenous communities can be seen in the fact that 20 per cent of Indigenous children in Australia have a parent or carer in prison. This raises the prospect of increasing inter-generational transmission of prison culture and experience.

Reasons for this overrepresentation include historical cultural displacement, trauma, disadvantage, lower levels of education attainment, higher rates of unemployment as well as alcohol and drug misuse. Indigenous prisoners, like others from non-English speaking background, also face difficulties in accessing prison rules when these rules are not printed in relevant languages.

Similarly, forensic mental health services systematically fail to meet the needs of Indigenous prisoners. While long-term solutions to address underlying issues are required, there are a number of commitments the NSW Government should make, to help facilitate practical solutions to these issues.

Issues for Reform:

- Will you commit to adequately, and perpetually, fund the Aboriginal Legal Service's (ALS) Custody Notification Service (CNS) (a mandatory scheme provided for under NSW Law, following the arrest of an Aboriginal person⁴, which currently receives no State Government funding)?

Yes No

- Will you commit to providing funds for community correction options to increase the opportunity for Aboriginal persons to participate in diversionary programs, and thus combat the mandatory imposition of custodial sentences on Aboriginal people?

Yes No

- Will you commit to legislative reform requiring judicial officers to consider factors of Aboriginal disadvantage in sentencing, overturning the High Court's decision in *Bugmy*⁵, and thus combatting issues of overrepresentation for Aboriginal people?

Yes No

- Will you commit to providing internal, external and transparent oversight of the use of Taser guns by police to address the issues identified in the High Court's decision in *Bugmy*?

Yes No

- Will you commit to promote nationally binding targets for reducing incarceration rates, with a particular emphasis on 'closing the gap' between Indigenous and non-Indigenous Australians, through increased resourcing of diversion, rehabilitation and treatment options; a focus on strengthening family groups; support for models such as the Victoria Koori Courts; and facilitating the transition from prison to the community?

Yes No

⁴ Law Enforcement Powers and Responsibilities Regulation 2005 (NSW) r 33.

⁵ *Bugmy v The Queen* [2013] HCA 37.

- Will you commit to research which differentiates between Indigenous and non-Indigenous prisoners and ensure that incarceration prevention, treatment and rehabilitation interventions are culturally sensitive, evidence-based and appropriately evaluated (ie taking into account diabetes, renal failure, mental illness and substance abuse)?

Yes No

- Will you commit to expanding the role of Aboriginal Community-Controlled Health Services (ACCHS) in providing culturally appropriate health care to prisoners incorporating a focus on both health and community?

Yes No

- Will you commit to investigating new methods for recruitment and retention of correctional services staff of Aboriginal and Torres Strait Islander descent?

Yes No

- Will you commit to providing greater and more flexible visitation rights for Indigenous community members?

Yes No

[If there is any additional information or comments you would like to provide concerning the above questions please use the lines provided here. Any additional information may be attached to this document].

4. Women

Women in Australia are being incarcerated at an increasing rate. In particular, the proportion of Aboriginal and TSI women prisoners has risen to approximately 31 per cent of women in prison, an appallingly disproportionate rate. Research has shown that Indigenous women, *for the same offences*, far more likely to go into prison than non-Indigenous women.

The majority of women in prison come from severely disadvantaged backgrounds with many reporting experiences of childhood and adult sexual, emotional and physical abuse. Women who fall into the criminal justice system also have a far higher rate of mental or cognitive impairment than the general population. Aboriginal women prisoners, in particular, are predominantly young women, with an average age of 25, and largely have low levels of educational attainment and high levels of unemployment; and have long and serious histories of sexual and violent abuse.

Women in prison face unique challenges that are much greater and more complex than those of men. They have specific needs for gender based programs and services

There are many areas for concern and reform must be tailored to the needs of women in order to ensure effective rehabilitation programs, managed in accordance with the UN Bangkok Rules. Current issues which need to be addressed include drug use by women, prevalence of mental disorders, the unique challenges women face as primary carers for children, deficiencies in employment and educational opportunities, avoiding intrusive strip searches, and developing a diversionary model akin to that adopted in the UK.⁶

⁶ United Nations, United Nations Rules for the Treatments of Women Prisoners and Non-custodial measures for Women Offenders (The Bangkok Rules), 6 October 2010; (Accessed: 22 October 2014); <http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf>.

Drug abuse: Women prisoners have a much higher incidence of drug use than male prisoners, both before and during incarceration. Aboriginal women, in particular, are likely to have a history of drug and alcohol use. Many of these equate their drug problem to their experiences of past violence and sex abuse, and their inability to get help with it. There is a clear link between child sexual assault, drug addiction and the patterns of offending behaviour that have led to imprisonment.

Overall, 56 per cent of women reported previous or current drug use compared to 42 per cent by men.⁷ In 2009 45 per cent of women in prison tested positive to Hepatitis C. While this is a 19 per cent decrease since 2001, the high rate threatens not only the wellbeing of the incarcerated women but the broader community too. The prevalence of Hepatitis C is six times higher than in the general community.⁸

Despite the strong links between drug use and offending behavior, drug and alcohol programs are currently inadequate and are not gender specific, leading to low rates of completion and ultimately unsuccessful rehabilitation.

Mental disorders: The prevalence of mental disorders including psychosis, anxiety and affective disorders was higher among women prisoners than amongst male prisoners. 90 per cent of women in NSW prisons self-report having at least one of these mental disorders in the 12 months prior to imprisonment.⁹ 39 per cent of women had attempted suicide at some stage.

Children and families: Women prisoners confront unique challenges as the primary carers for their children. At least 85 per cent of women in prison, have children under the age of 16 years.

Most Indigenous women in prison are single mothers with between two and four children, and many are also responsible for the care of non-biological children or older family members such as parents, uncles or aunts.

As a result, the emotional, social and economic consequences for mothers, children and families can be extensive. For example, it can lead to children experiencing emotional and behavioral problems. Aboriginal women prisoners, in particular, can suffer from severance from their cultural responsibilities and dislocation from their communities. This forced separation often causes mothers great anxiety and despair.

When women are imprisoned, their children are also punished for their offence. Children of prisoners are held in foster care or with other family members, sometimes in situations of potential violence and abuse. They face a high chance of experiencing abuse, isolation, disruption, dislocation and poverty. Many later end up in detention themselves. There is little opportunity in prison for women to make amends with their children and learn better parenting skills. There are fewer prison facilities for women and, as such, women are more likely to be further away from their families than male prisoners.

The frequency of family visits directly correlates with the security level of the prison, distance from the prison, availability of transport and the limited visitation hours. Extended contact should be encouraged, where it is in the best interests of both mother and child. Rebuilding relationships with children can be particularly difficult for women after their release, and regaining custody often does not happen immediately. Some women may never again be granted custody.

Notes 27 and 28: It is suggested that for inter-State visits, visiting times can be arranged, and that in 2015 more flexible transport options will be implemented, possibly including vouchers to assist families. See questionnaire.

⁷ Australian Institute of Health and Welfare, 'The Health of Australia's Prisoners' 2012, Canberra: 2013 p77.

⁸ Department of Health – Hepatitis C Subcommittee, Ministerial Advisory Committee on AIDS, Sexual Health and Hepatitis, 'Hepatitis C Prevention, Treatment and Care: Guidelines for Australian Custodial Settings' 2008.

⁹ Australian Institute of Health and Welfare, 'The Mental Health of Prison Entrants in Australia - 2010', June 2012, 2.

Employment and education: Women prisoners are less likely to undertake education or training during their sentences because of the need to earn the higher wages available in prison industries. Lack of access to education and employment opportunities is frequently a precursor to unemployment and recidivism once released. Encouraging prisoner education and training programs can be done through implementing computers in cells, thereby giving prisoners access to a range of counseling and other resources conducive to rehabilitation efforts.

Degrading strip searches: Women in prison face considerable human rights problems. Strip searches are conducted after every family visit. These are degrading, humiliating and traumatic, especially for women who have suffered sexual abuse. Strip-searching is ineffective, with only a minute percentage of contraband found. Alternate ways of searching for contraband should be adopted, such as new types of scanners now being developed.

Diversion/decarceration: As outlined above, women prisoners have multiple and complex support needs, which cannot be properly met within the prison system. Most women are in prison for non-violent offences and lower end offences. They are imprisoned for short periods, hindering useful rehabilitation. One-third are on remand. They leave prison with minimal support and ill-equipped to avoid falling back into the social setting which led to their offending. The recidivism rate is high. It would be more effective to deal with these women in the community, at less cost and with appropriate social support that could give these women a chance to improve their lives.

The UK Diversionary Model for female offenders was implemented in the UK, as a response to the Corston Report, to improve outcomes for women. The object is to promote rehabilitation and reduce recidivism by addressing social, health and welfare needs through the provision of women-focused policy and services. A number of womens' only community justice centres now provide multidisciplinary services, including health, education, employment and counseling in a safe environment, with a link to the probation service.

These centres have helped to substantially reduce the rate of recidivism for women. It is an option we should develop for women, many of whom have already experienced trauma, violence and abuse.

Issues for Reform

- Will you commit to implementing policies that recognise women prisoners have particular needs that differ from those of male prisoners?

Yes No

- Will you commit to implementing policy and services that recognise the specific cultural and social needs of Aboriginal and Torres Strait Islander women?

Yes No

- Will you commit to implementing policy that sets targets for the reduction of women prisoners?

Yes No

- Will you commit to implementing policy and services that support the establishment of appropriate community services for women offenders which will enable courts to divert women to participate in community programs and services as an alternative to imprisonment?

Yes No

- Will you commit to identifying strategies to support Aboriginal women serving sentences in the community, as alternatives to prison, strategies that specifically cater for the family, and other needs of Aboriginal women?

Yes No

- Will you commit to implementing policy that recognises women prisoners have dependent children issues e.g. Mothers and Children Program at Jacaranda Cottages, Emu Plains?
 Yes No
- Will you commit to establishing alternatives to the Mothers and Children Program that cater specifically for Aboriginal mothers in prison and incorporate the extended Aboriginal family?
 Yes No
- Will you commit to implementing policy and services such as transport from local stations and extended hours which facilitate visits to women prisoners by their families, and especially by their children?
 Yes No
- Will you commit to implementing policy and services that collect data on the outcomes of intrusive strip searches of women prisoners and which reduce the need for such searches by providing alternate means of scanning?
 Yes No
- Will you commit to implementing policy and services that provide adequate gender specific health care programs for women prisoners?
 Yes No
- Will you commit to establishing and reviewing standards to assess the proper provision of health services for Aboriginal women in prison, including adequate access to immediate medical and dental services and adequate resourcing for appropriate psychological services.
 Yes No
- Will you commit to implementing policy and services that meet the specific needs of women prisoners with disability and with mental health issues?
 Yes No
- Will you commit to implementing policies that ensure better access for women prisoners to drug and alcohol rehabilitation programs and support women's reintegration into the community?
 Yes No
- Will you commit to establishing an Aboriginal women's healing and drug and alcohol detoxification strategy which includes programs that address the underlying causes of drug use in Aboriginal women, and which are available to Aboriginal women before they come into contact with the criminal justice system?
 Yes No
- Will you commit to implementing policy and services that meet the needs of women who have a history of suffering sexual abuse, trauma and other forms of violence?
 Yes No
- Will you commit to establishing Aboriginal identified counselors that can work with victims of child abuse, especially child sexual assault?
 Yes No

- Will you commit to implementing policy and services that provide better employment opportunities for women prisoners, and better access to education and job training without having to accept lower pay?

Yes No

- Will you commit to implementing policy and services that enable women prisoners to access a range of counselling services, education and training programs and other resources conducive to rehabilitation efforts, by providing computers in cells with controlled internet access?

Yes No

Notes 35, 37: The comment outlines the education programs, the current pilot programs for computers in cells

- Will you commit to implementing policy and services that provide support to women post-release, for example mentoring programs, training programs, housing support?

Yes No

- Will you commit to establishing a pre release program for Aboriginal women that is available to all Aboriginal women serving sentences in NSW Prisons?

Yes No

- Will you commit to supporting the expansion of Aboriginal community based post release support programs designed for Aboriginal women, such as that coordinated by the Yulla Wirri Nurai Aboriginal Women's Post Release organisation?

Yes No

- Will you commit to establishing a transitional centre for Aboriginal women being released from prison similar to that currently operating at Parramatta?

Yes No

- Will you commit to expanding the Probation and Parole service to include regional and metropolitan Aboriginal identified workers specifically for Aboriginal women?

Yes No

- Will you commit to exploring funding options to provide housing support to Aboriginal women immediately upon their release from custody?

Yes No

- Will you commit to exploring the feasibility of establishing an Aboriginal Women's Healing Place, for Aboriginal women serving both minimum and maximum terms, with a site for Aboriginal women on remand, which would consider programs, visits, welfare services, post release, case management, counselling and health services?

Yes No

- Will you commit to establishing a community based support program for Aboriginal women in prison, that can provide regular support to women in prison and provide linkages between women in prison and their families similar to the former Aboriginal Women in Custody Support Group?

Yes No

- Will you commit to establishing Aboriginal (female identified) counselling positions, specifically sexual assault counselling positions for women in Grafton, Broken Hill, Mulawa and Emu Plains?

Yes No

- Will you commit to conducting a similar study to 'Speak Out Speak Strong' examining the needs of female Aboriginal juveniles in detention?

Yes No

[If there is any additional information or comments you would like to provide concerning the above questions please use the lines provided here. Any additional information may be attached to this document].

5. Juveniles in Custody

Protecting the rights of juvenile prisoners is of paramount importance for a number of reasons. Due to their age, their prospects for rehabilitation are greater than older prisoners. Paradoxically however, they may be vulnerable to institutionalization especially when exposed to the influence of older, more hardened inmates accused/convicted of more serious offences. Their rights are protected by a number of international instruments ratified by Australia, such as the International Covenant on Civil and Political Rights¹⁰ and the 1987 Beijing Rules for the Administration of Juvenile Justice.

Children and young people who enter the juvenile justice system will do so with well known risk factors including family dysfunction, intellectual disability, poor mental health, lack of education, and homelessness. As recognised in the Australia Law Reform Commission's report 'Family Violence – National Legal Response (ALRC Report 114)', one of the most significant factors associated with young people being remanded in custody is the lack of available and appropriate accommodation for young people.¹¹ A court is often forced to remand a young person in detention rather than release him or her on bail if the young person has no safe or stable home to go to, or if there is no suitable adult guardian to supervise and support the young person to meet their bail requirements.¹²

In 2011, the NSW Audit office estimated that juveniles in detention cost the system \$652 per person per day or \$237,980 annually – a significant burden on the taxpayer. While privatisation of the prison system may decrease the amount of money spent on juvenile justice, it does not meet the needs of prisoners.¹³ Measures aimed at reducing recidivism and giving youths the skills and opportunities to integrate into society as productive members are preferable for all stakeholders to those aimed at punishment. This is especially true for Aboriginal juveniles in custody, who are overrepresented and have a significantly greater adult recidivism rate than the general juvenile population. 56% of youths in detention in NSW are Aboriginal and this overrepresentation continues to persist with 90% re-appearing in adult court.

¹⁰ Gen com 21: para 13. article 14 (4) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

¹¹ J Wood, Report of the Special Commission of Inquiry into Child Protection Services in NSW (2008), [15.8]; M Dumbach, 'Homes for Homeless Children' (2007) 32(3) Alternative Law Journal 170.

¹² See Part 13.

¹³ <http://www.abc.net.au/news/2012-07-03/experts-baffled-as-axe-falls-on-youth-drug-court/4108366>.

There have been concerning moves such as the axing of the effective NSW's Youth Drug and Alcohol Court, which imposed community and rehabilitation-focused programmes as an alternative to criminal sentencing.¹⁴ An alternative, the 'Youth on Track' initiative, which offers those who have come into contact with the police, a chance to work with a social services worker to resolve the underlying issues, is currently being trialled in NSW.¹⁵

Changes to the *Bail Act* in 2013 gave police greater discretion to explore alternatives to gaol and dispensed with requirements for bail, which led to a fall in the arrest rate for serious offences and more flexibility in granting bail to defendants. The number of juveniles in custody had fallen significantly since the start of 2014, coinciding with a drop in the general adult custody population.¹⁶ After peaking at 338 in February, the number of juveniles in custody fell by 16 per cent within four months, reaching a low of 284 in June.¹⁷

A further issue is that a quarter of those detained in the NSW juvenile justice system could have intellectual disabilities. This is a complex health-related question, which will require careful consideration by Government.¹⁸ Juvenile prisoners are also entitled to special protection in custody.¹⁹

Issues for Reform

- Will you commit to resourcing and implementation of effective early intervention programs, targeted at disadvantaged communities, such as the Aboriginal communities where youth are at high risk, addressing the causes of juvenile crimes and prevention of future detention?

Yes No

- Will you commit to a bipartisan approach to juvenile justice based on rehabilitation and diversion, which practices detention of young people as a measure of last resort?

Yes No

- Will you commit to supporting the reintroduction of Youth Drug and Alcohol Court?

Yes No

- If found to be successful, statewide implementation of the Youth on Track initiative?

Yes No

- The development of policy strategy that supports a juvenile correctional framework, which promotes culturally appropriate rehabilitation integrated with family and broader communities? For example, a cultural day for trusted Aboriginal youth in the system as supervised by elder(s) without the attendance of juvenile justice officers may serve as reward for good behaviour.

Yes No

¹⁴ <http://www.abc.net.au/news/2012-07-03/experts-baffled-as-axe-falls-on-youth-drug-court/4108366>.

¹⁵ <http://www.abc.net.au/local/stories/2013/03/12/3713379.htm>.

¹⁶ NSW Bureau Of Crime Statistics And Research (BOCSAR): NSW Custody Statistics: Quarterly update June 2014.

¹⁷ Ibid.

¹⁸ Australian Human Rights Commission, Human Rights and Prisoners, Information Sheet, p.1.

¹⁹ New South Wales, Department of Juvenile Justice, Annual

- Establishing and providing support services and programs focused on successful reintegration into the community and reduction in recidivism?

Yes No

- Special care and protection of juveniles' health in custody, particularly for those with disability or who cannot find suitable accommodation?

Yes No

[If there is any additional information or comments you would like to provide concerning the above questions please use the lines provided here. Any additional information may be attached to this document].

6. Education and Training in Custody

Learning in prison, through educational programs, has been proven to have a positive impact on recidivism, reintegration and, more specifically, employment outcomes upon release. Education is however much more than a tool for change. Education is imperative, as detailed in all relevant UN Declarations and Conventions.

Public opinion is supportive of education being provided to prisoners whilst in detention. Sadly, many politicians have been reluctant to embed prisoners' right to education in legislation, or to support models of education and delivery consistent with the full development of the human personality.

There is inadequate access for prisoners to, and resourcing of, vocational education and training courses. Prisoners' education levels considerably below the general community. 60 per cent of inmates are not functionally literate or numerate; 60 per cent did not complete year 10; 64 per cent have no stable family; and 60 per cent of males and 70 per cent of females have a history of illicit drug use. There is also particular concern about the adequacy of programs available to inmates in remand and forensic patients in custody.

The consequences of failing to offer the opportunity to use prison time to stimulate interests and generate self-esteem will impact on both the individual and the community upon release. This is an unsatisfactory outcome when time in prison could provide a valuable opportunity for learning skills that would later benefit both the individual and their community.

Issues for Reform:

- Do you support the right of access to an accredited broad education program, aimed at improving prospects of reintegration, rehabilitation and the development of the full potential of each detainee?
 Yes No
- Do you support the rights of publicly employed teachers working in correctional facilities to have access to adequately resourced, safe teaching facilities, including appropriate technology.
 Yes No
- Do you support the legislative right to education in correctional facilities, regardless of status - including prisoners on remand or under punishment?
 Yes No
- Do you support the right for all prisoners to have access to a computer in their cell within a secure network environment?
 Yes No
- Do you support enhancing funding for self-learning and distance education courses?
 Yes No
- Do you support addressing interruptions and terminations of prisoner access to education, caused by prison administrators, officers, frequent lockdowns and abrupt transfers between institutions?
 Yes No
- Do you support the development of educational programs that are culturally appropriate to prisoners from marginalised groups, including Indigenous people, women, GLBTI groups and prisoners with disabilities?
 Yes No

7. Health

The right to health is enshrined in international human rights law, even if specific health-related rights do not appear under the explicit title of 'the right to health'.²⁰ Health treatment refers, inter alia, to physical, mental and dental health. This right imposes immediate obligations including the guarantees of non-discrimination and equal treatment²¹, as well as the obligation to take deliberate, concrete and targeted steps towards the full realisation of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.²²

²⁰ See Preamble of the Constitution of the World Health Organisation at <http://www.who.int/governance/en/>. Australia is also a signatory to the Ottawa Charter for Health Promotion (November 1986) and the Jakarta Declaration on Leading Health Promotion into the 21st Century (July 1997) which commit to this principle.

²¹ The right to non-discrimination is enshrined in Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965.

²² The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, is reflected in Article 25(1) of the Universal Declaration of Human Rights, 1948; Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966; Article 24 of the 1989 Convention on the Rights of the Child 1989; and Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women, 1981.

This right has been widely interpreted in human rights treaties to apply to people who inject drugs, including HIV positive 'Intravenous Drug Users' (IDUs).²³ Therefore there is a legal basis for states to respect, protect and fulfill, in an equitable and non-discriminatory manner all IDUs' human rights. This includes comprehensive harm reduction programs, as well as providing treatment, care and support, including anti-retroviral therapy for HIV-positive IDUs, if medically recommended.

The principal international human rights documents clearly obligate states to protect the human rights of prisoners.²⁴ There are also other UN standards applicable to the treatment of prisoners.²⁵ The lack of HIV education, harm reduction measures, voluntary and confidential testing for HIV infection, adequate pre and post-test counselling, treatment for HIV-infected prisoners and mandatory HIV testing and segregation of HIV-positive prisoners, undermine the public health response to HIV/AIDS and are contrary to human rights in compromising the human dignity of the person.

The Australian National Council on Drugs (ANCD) conducted a study on harm reduction programs implemented in the ten years from 1990-2000. According to the findings, harm reduction programs were successful.²⁶ While governments often fear that programs that facilitate IDUs access to clean needles and syringes might result in more injecting drug use, the evidence does not support this view. Studies in Australia, Canada, Sweden, the United Kingdom and the United States²⁷ have all shown that such programs – particularly in concert with other interventions – help reduce the sharing of injecting equipment and the transmission of HIV. There was no evidence that they increased either the number of injectors or the frequency of injecting drug use.

Needle Syringe Programs are necessary as they contribute to harm minimisation, in reducing infections from needle use in prisons, which is vital. There is a dramatic 50 per cent rate of infections through needle use in the prison population. However there are no NSP's in Australia despite the agreement in the ACT to introduce a NSP trial.

The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment in a Report recently recommended to the NSW Prison System that "[n]eedle and syringe programmes in detention should be used to reduce the risk of infection with HIV/ AIDS."²⁸

²³ The resolutions passed by the UN Commission on Human Rights in 1999, 2001 and 2003, invited UN bodies, international organisations and NGOs to take all necessary steps to ensure the respect, protection and fulfilment of HIV-related rights (1999/49 of 27 April 1999; 2001/51 of 24 April 2001 and 2003/L.64 of 16 April 2003. <http://www.unhchr.ch/html/menu2/2/sessions.htm>). In May 2000, the UN Committee on Economic, Social and Cultural Rights adopted a general comment on the right to health (General Comment 14, Paragraph 18. [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4,+CESCR+General+comment+14.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4,+CESCR+General+comment+14.En?OpenDocument)). In the Declaration of Commitment, unanimously accepted at the 26th UN General Assembly Special Session on HIV/AIDS, 2001, states made specific commitments relevant to IDUs (UNGASS, Paragraphs 52, 64, 58 <http://www.unaids.org/UNGASS/>).

²⁴ Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) both prohibit torture and cruel, inhuman, or degrading treatment or punishment, without exception or derogation. Furthermore, Article 10 of the ICCPR mandates that 'all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. It also requires that the reform and social readaptation of prisoners be an essential aim of imprisonment. Finally, Articles 2 and 26 of the ICCPR contain, respectively, provisions concerning the discriminatory application of the convention and a general right to equality.

²⁵ See United Nations Standard Minimum Rules for the Treatment of Prisoners, 1957; Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1958; Basic Principles for the Treatment of Prisoners, 1990; Code of Conduct for Law Enforcement Officials, 1978; and Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982.

²⁶ An estimated 25,000 cases of HIV infection were prevented; an estimated 21,000 cases of HCV were prevented; More than 5,000 lives are estimated to be saved up to the year 2010; an investment of almost 150 million Australian dollars has resulted in an estimated return of 2.4-7.7 billion Australian dollars (Australian National Council on Drugs, Needle and Syringe Programs, position paper, March 2002 http://www.ancd.org.au/publications/pdf/pp_needle_syringe.pdf).

²⁷ In April 1998, the then US Secretary of Health and Human Services, Donna E. Shalala publicly announced that the scientific evidence proved needle exchange programs were effective in preventing the spread of HIV and did not encourage the use of illegal drugs. (U.S. Department of Health and Human Services, Research shows needle exchange programs reduce HIV infections without increasing drug use, Press release, 20 April 1998).

²⁸ UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, 14 January 2009, A/HRC/10/44, para. 74.

The Report also noted that, “[w]ithdrawal symptoms can cause severe pain and suffering if not alleviated by appropriate medical treatment”²⁹ and that “denial of medical treatment and/or absence of access to medical care in custodial situations may constitute cruel, inhuman or degrading treatment or punishment and is therefore prohibited under international human rights law.”³⁰

Any introduction of a trial NSP in prison would need to include concerted education programs, with all prison staff and their unions to address their concerns by proving that such programs do not put their safety at risk.

Many countries have established a variety of carefully controlled programs that allow prisoners who inject drugs to access sterile needles.³¹

The first such program was established in Switzerland in 1992. NSPs have since been established in more than 50 prisons, in 12 countries in Europe and Central Asia, including in Spain, Portugal and Germany where the programs are supported by trade unions.³² Where such arrangements have been made, it has not meant that government or prison authorities have become lax on drug supply reduction.³³ Lines et al. provide examples of prison NSPs helping to reduce blood-borne virus transmission.³⁴

They note that NSPs in prison have the following benefits for staff and prisoners:

- ✓ No observable increase in injecting or other forms of drug use;
- ✓ Reduced blood-borne virus transmission;
- ✓ Reduced needle-sharing and re-use;
- ✓ Reduced injecting-related health concerns such as abscesses;
- ✓ Reduction in needle-stick injuries for prisoners and staff;
- ✓ No instances recorded of needles being used as weapons;
- ✓ Acceptance by staff and prisoners.

As has been reported in *The Lancet Infectious Diseases* more recently, introducing NSPs remains compatible with the goal of reducing supply of drugs in prisons, as the provision of sterile needles “has not led to an increase in drug use.” The programs operate on a range of models, and reviews have found that they have not jeopardised the occupational health and safety of prison staff.

In April 2010, the Australian Health Ministers Advisory Council (AHMAC) released the national HIV and national Hepatitis C strategies, as well as the Aboriginal and Torres Strait Islander Blood Borne Viruses and Sexually Transmissible Infections Strategy. These strategies, which cover the period 2010-2013, were introduced by the Australian Government in conjunction with State and Territory Health Departments, and were approved by all Health Ministers. The three strategies each state:

²⁹ Ibid, para 57.

³⁰ Ibid, para 71.

³¹ Rutter S, Dolan K, Wodak A, Heilpern H. Prison-Based Syringe Exchange Programs: A Review of International Research and Program Development. NDARC Technical Report No 112. Sydney Australia: National Drug and Alcohol Research Centre University of New South Wales; 2001.

³² Stark K, Herrmann U, Ehrhardt S, Bienzle U. A syringe exchange programme in prison as prevention strategy against HIV infection and hepatitis B and C in Berlin, Germany. *Epidemiology and Infection*. 2006; 134(4): 814.

³³ Jürgens R, Ball A, Verster A. Interventions to reduce HIV transmission related to injecting drug use in prison. *The Lancet Infectious Diseases*. 2009;9(1):57-66.

³⁴ Lines R, Jürgens R, Betteridge G, Stöver H, Laticevschi D, Nelles J. Prison Needle Exchange: lessons from a comprehensive review of international evidence and experience (second edition). Toronto: Canadian HIV/AIDS Legal Network; 2006.

"In view of the well-documented return on investment and effectiveness of Australian community-based needle and syringe programs, combined with the international evidence demonstrating the effectiveness of prison needle and syringe programs it is appropriate throughout the life of this strategy for State and Territory Governments to identify opportunities for trialling the intervention in Australian custodial settings."³⁵

Therefore, trialling a prison-based needle and syringe program need not be regarded as a radical policy. Rather, it is consistent with current mainstream national health strategies agreed to by all jurisdictions' Health Ministers.³⁶

Issues for Reform:

- Will you commit to justice health remaining a function of the Department of Health and not being transferred to, or limited by, corrective services in delivery of health care, being the sole provider of justice health?
 Yes No
- Will you commit to accepting the principle that people in custodial care have the right (as far as practicable) to the same standard of health care as other members of the community?
 Yes No
- Will you commit to recognising the importance and support for, and funding of, peer-based health education programs in areas of drug use, HIV and Hepatitis C as the most effective approach and provide funding for it?
 Yes No
- Will you commit to provision and review of dental services for people in custodial care?
 Yes No
- Will you commit to making representations to the Commonwealth for amendment of the National Health Act to make Medicare benefits available for prisoners/prison health services?
 Yes No
- Will you commit to recognising the need for the provision of health services that are culturally sensitive?
 Yes No
- Will you commit to supporting the trial of a needle and syringe program in appropriate correctional facilities with independent evaluation of the outcomes of any such trial?
 Yes No
- Will you support a drug summit?
 Yes No

³⁵ DoHA. Third National Hepatitis C Strategy 2010-2013. Canberra Australian Government Department of Health and Ageing; 2010. DoHA. Sixth National HIV Strategy 2010-2013. Canberra Australian Government Department of Health and Ageing; 2010. DoHA. Third National Aboriginal and Torres Strait Islander Blood Borne Viruses and Sexually Transmissible Infections Strategy. Canberra: Department of Health and Ageing; 2010.

³⁶ DoHA. Ibid.

³⁷ Indig, D., Topp, L., Ross, B., Mamoon, H., Border, B., Kumar, S. & McNamara, M. (2010) 2009 NSW Inmate Health Survey: Key Findings Report. Justice Health. Sydney, p. 165.

- The Magistrates Early Referral into Treatment (MERIT) program has been successful in preventing crime, do you intend on increasing funding and rolling the program out to more locations?

Yes No

[If there is any additional information or comments you would like to provide concerning the above questions please use the lines provided here. Any additional information may be attached to this document].

8. Mental Health

In NSW, 49 per cent of prisoners met the diagnostic criteria for at least one mental health disorder,³⁷ compared to 20 per cent of the general population (ABS 2008). Almost two in every five prisoners (38 per cent) have been told they have a mental health disorder,³⁸ which is nearly 2.5 times higher than the general population of Australia.³⁹ In NSW, 49 per cent of prisoners self-reported having been assessed or treated for an emotional or mental problem, suggesting that existing data might underestimate the total extent of mental health problems in prisoners. This is troubling, since 78 per cent of male prisoners and 90 per cent of female prisoners were recorded as having experienced a mental health disorder in the 12 month period prior to their incarceration.⁴⁰

Medications for mental health disorders were the most common of all medications used by prisoners (20 per cent overall). The most commonly diagnosed mental health disorders amongst NSW prisoners include depression (35 per cent), anxiety (25 per cent) and drug dependence disorders (21 per cent).⁴¹ Psychosis is at least three times more prevalent in prisons than in the community.⁴² One fifth (20 per cent) of prisoners in NSW have attempted suicide, 60 per cent of which have reported making more than one suicide attempt.⁴³ Of greater cause for concern (among prisoners who had been assessed or treated for a mental health problem prior to their incarceration), the majority (63 per cent) had no contact with a community mental health service in the three months prior to entering prison.⁴⁴ With such a large incidence of mental health patients, both within prisons and institutions, it is clear that increased mental health care services and facilities are needed to address this growing need.

³⁷ Indig, D., Topp, L., Ross, B., Mamoon, H., Border, B., Kumar, S. & McNamara, M. (2010) 2009 NSW Inmate Health Survey: Key Findings Report. Justice Health. Sydney, p. 165.

³⁸ Australian Institute of Health and Welfare 2012. The mental health of prison entrants in Australia 2010. Bulletin no. 104. Cat. no. AUS 158. Canberra: AIHW, p. 6.

³⁹ Ibid, p. 2.

⁴⁰ Butler, T & Allnutt, S, 'Mental Illness Among New South Wales Prisoners' (2003) NSW Corrections Health Service, 42.

⁴¹ Indig, D., Topp, L., Ross, B., Mamoon, H., Border, B., Kumar, S. & McNamara, M. (2010) 2009 NSW Inmate Health Survey: Key Findings Report. Justice Health. Sydney, p. 135.

⁴² Australian Institute of Criminology 2014, 'Mental disorder prevalence at the gateway to the criminal justice system', Trends and issues in crime and criminal justice, No. 483, <http://www.aic.gov.au/publications/current%20series/tandi/421-440/tandi438.html>

⁴³ Indig, D., Topp, L., Ross, B., Mamoon, H., Border, B., Kumar, S. & McNamara, M. (2010) 2009 NSW Inmate Health Survey: Key Findings Report. Justice Health. Sydney, p. p. 141

⁴⁴ Ibid, p. 136

Such statistics point to an issue with both recognizing mental health disorders within our prison system and putting measures in place to foster effective recovery for those suffering from a mental health disorder. Such recovery is only possible through a more holistic approach to mental health treatment, which all too often ignores the voices of the patient. Such a recovery methodology includes consultation and discussion with the patient themselves so as to get their views on what would be effective in meeting their needs. With improved consultation, people with a mental health disorder can have better prospects of complete and effective recovery, rather than just management or treatment. This is partially covered under the new Mental Health Bill, but it has not been properly addressed in order to give proper and meaningful effect.

Conditions within prisons in Australia are also inadequate for physical and mental health. For example, solitary confinement has exacerbated the symptoms of some prisoners with a mental health disorder. This is particularly the case for refugees, some of whom have suffered torture and other abuse. There has also been inadequate access to drug and alcohol rehabilitation and harm minimisation programs, leading to a high rate of blood-borne virus transmission. The Government should also consider an approach to restorative justice similar to that proposed by the UK Prisons Minister, to take addicts and the mentally ill out of the prison system and place them in supportive and less restrictive facilities.⁴⁵

Once the prisoners are out of the prison system, they need better support networks and assistance to access a variety of services in order to continue on the path towards positive treatment and rehabilitation. Such support networks, such as assistance in accessing accommodation, job opportunities and connection with peer groups, could be achieved through increased resources for both community health services and the mental health sector. The care afforded to a patient suffering from a mental health disorder should not cease once they have been released, as they still may require assistance in order to live successful and happy lives within the community. One avenue that can be properly run, with this assistance, is the concept of consumer workers. Provision of consumer workers would address several of the inherent issues currently recognized, such as improving outcomes of treatment and improved employment rates for both those with a mental health disorder and their families.

The operation of correctional facilities as surrogate institutions for people with a mental health disorder was a major concern of the Select Committee on Mental Health during the Inquiry into Mental Health Services in NSW in 2002.⁴⁶ Government policy was considered contradictory to deinstitutionalization, in that large 1980 mental institutions have been replaced with gaols despite the fact that there are more mentally ill people in gaols than ever were in the asylums. Further, instead of being treated by health professionals with proper support programs, they are being treated by prison wardens in a punitive environment.⁴⁷ Forensic patients are frequently inappropriately held for indefinite periods in maximum-security gaols, instead of the least restrictive environment.

Implicit in this potentially unlimited incarceration for a patient, is the issue of limiting terms for forensic patients. The New South Wales Law Reform Commission recommended these limiting terms for people who had been found not guilty by reason of mental illness, yet they have been largely ignored in recent times despite numerous calls for their imposition. Such terms would provide certainty for the forensic patients as to the time period they will be held, as well as placing the pressure on the health professionals to properly and effectively manage the condition of the patients.

⁴⁵ House of Commons Justice Committee, Women Offenders: after the Corston Report, 2nd report of Session 2013-14 p 28, accessed 16 October 2014 < <http://www.parliament.uk/documents/commons-committees/Justice/Women-offenders.pdf>>.6

⁴⁶ Legislative Council. Mental Health Services in New South Wales, Final Report of 2002. Parliamentary Paper Number 368. < [http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/f742b6b2e561abdeca256c73002b7f87/\\$FILE/fullreport.pdf](http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/f742b6b2e561abdeca256c73002b7f87/$FILE/fullreport.pdf)>.

⁴⁷ The Hon Frank Walker, The Quest for Justice with Dignity 2, tabled document, 8 August 2002, p 2.

Additionally, patients are often denied the proper provision of adequate legal representation and effective advocacy, as well as the choice to select the representative they trust and feel comfortable with. Coupled with this is the lack of ability to access and afford the services of expert witnesses and opinions, which can have a significant effect on challenging the findings of a mental health treating team. Such representation is often necessary to protect the rights of mental health patients in front of parties (such as the Mental Health Tribunal), to provide assistance in understanding the sometimes-complex provisions of the Mental Health Acts and ensuring that the voices of the patients are actually heard and listened to.

Issues for Reform:

- Will you commit to review and upgrade of the provision of psychiatric and psychological services for people in custodial care including online counseling in cells offering appropriate services?
 Yes No
- Will you commit to allocating additional resources to the receptions screening program, including adequate funding and staffing to ensure that remand inmates with a mental health problem are identified and properly assessed?
 Yes No
- Will you commit to funding forensic mental health facilities for women that are in low security and aimed at offering supported accommodation?
 Yes No
- Will you commit to supporting and reinforcing the principles of recovery and consultation with mental health consumers including the right to refuse medication, in order to foster more therapeutic treatment for prisoners suffering with a mental health disorder?
 Yes No
- Will you support the creation of the role of consumer workers? This would involve the provision of greater resources and funding for mental health services, securing funding for the creation of a program and training of appropriate candidates.
 Yes No
- Will you support the movement towards allowing greater choice for patients in selecting their own appropriate legal representation? This would include improving information available to mental health patients about appropriate and qualified legal representation and facilitating such meetings with legal representatives
 Yes No
- Will you support more drug and alcohol rehabilitation centers to deal with drug dependency and consequential crime?
 Yes No
- Will you support an approach to restorative justice similar to that proposed by the UK prisons minister, to take addicts and the mentally ill out of the prison system and place them in supportive and less restrictive facilities?
 Yes No

- Will you commit to improving the transition from prison to the community for those with a mental health disorder including: support networks in the post release period; increased employment opportunities following release; support for access to appropriate and continuing health services; assistance with access to appropriate housing; funding for specific transition programs.

Yes No

- Will you adopt the Law Reform Commission's recommendations for limiting terms for all forensic patients?

Yes No

[If there is any additional information or comments you would like to provide concerning the above questions please use the lines provided here. Any additional information may be attached to this document].

9. Refugees and the Criminal Justice System

Refugees are amongst the most vulnerable members of our community. By definition, refugees are people who have suffered serious violation of their basic human rights as a result of persecution for one of the five Refugee Convention reasons, namely, race, religion, nationality, political opinion or membership of a particular social group.

Australia has a proud record of assisting refugees since the Second World War and over 750,000 refugees have come to Australia for resettlement. Each has their own individual story of violation. Included amongst the refugee programs is a special program to provide entry and ongoing support for women at risk and child refugees.

In addition to refugees and humanitarian entrants who have come to Australia under the government arranged resettlement program, Australia also grants protection visas to approximately 2,500 refugees each year. These people who have entered Australia lawfully or unlawfully, are found to be refugees following the onshore determination process, to meet the Refugee Convention definition. In addition to Australia's obligations to protect and not discriminate against refugees which are enshrined in the Refugee Convention, Australia also has obligations under, amongst others, the International Covenant on Civil and Political Rights and the Convention against Torture.

Many refugees are traumatised and many have suffered torture. In NSW, there is a specialist agency, the Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), which receives government and private funding to provide ongoing counseling and support to refugees.

The Department of Health also operates a specialist refugee health agency, and there are other specialist services in the community to provide ongoing support in the settlement process for refugees. Because of the dislocation to their lives, many refugees, unlike other migrants, are not highly educated and acculturated to Australian living conditions. There is a need for particular understanding of the resettlement problems of refugees.

Unfortunately, some refugees may come into the criminal justice system for a variety of reasons. It is the view of the CJC that refugees need special care and treatment, including ongoing specialist counselling to deal with their pre-existing

trauma and the consequential problems associated with incarceration.

Some refugees have been additionally traumatised as a consequence of Australia's longstanding mandatory detention program. This program of immigrant incarceration sometimes extends for many years pending the outcome of their refugee status determination. In addition, some who have made successful claims within Australia have, until recently, spent many years in the community seeking protection status and have, during this period, been denied the right to work, access other community support services and have suffered compounding trauma in consequence. It is generally accepted by mental health professionals that such conditions result in the creation and/or exacerbation of pre-existing mental health problems.

Many refugees have no local family or community support services and also suffer from a lack of education and appropriate vocational training. Consequently, refugees may have particular problems within the community in relation to a variety of areas including education, employment, housing and health.

In recent years, refugees have been the butt of a major political debate that has added further trauma and uncertainty to their lives as a consequence of the negative stereotyping in the public debate. The reintroduction of the Temporary Protection Visa scheme will have a further significant negative impact, especially on their mental health and will likely bring them into further contact with the criminal justice system.

Issues for Reform:

- Do you accept that there are special needs for refugees within the community who come to the attention of the police and are placed into criminal justice?

Yes No

- Do you accept there are special needs for juveniles similarly affected?

Yes No

- Do you accept that there is a need for specialist health care assessment and ongoing treatment and counselling of refugees within the corrective services and juvenile justice systems?

Yes No

- Do you accept that Justice Health needs to implement special arrangements for the ongoing care and support of refugees within its purview, especially those in the forensic mental health system who often suffer an additional sense of isolation due to language and cultural barriers?

Yes No

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- Do you accept that Department of Corrective Services and Department of Juvenile Justice need to implement special arrangements to identify refugees at risk and needing specialist ongoing support, especially due to the adverse effects of negative side effects they may suffer due to animosity of other inmates prejudiced by ongoing negative stereotyping?

Yes No

- Do you accept that there is a need for specialist education and training programs for refugees within the corrective and juvenile justice systems?

Yes No

- Do you agree that there is a need for specialist language support systems to be put in place for refugees in the corrective, forensic and juvenile justice systems?

Yes No

- Do you accept that there has been no meaningful reform in line with the systemic problems identified by CJC in the 2011 Submission?

Yes No

If you accept the need as outlined, what plans do you propose to address these concerns?

[Also, if there is any additional information or comments you would like to provide concerning the above questions please use the lines provided here. Any additional information may be attached to this document].

10. Cultural and Linguistic Diverse (CALD) Communities

There is a gross overrepresentation of CALD communities within the NSW prison system. There are disproportionate rates of imprisonment in communities such as those from South-East Asia (particularly Vietnam), the Middle East and the Pacific Islands. In many instances prisoners face particular cultural-based difficulties (such as access to halal or other culturally appropriate food, prayer arrangements, literature and educational resources in community languages, interpreter services and transcultural psychiatric issues), all of which are compounded by low levels of literacy and skills in the English language.

The recent Goulburn prison riot, sparked by religious tension, highlights the need for a penal system that is sensitive to religious differences and affords inmates the freedom to practice their faith.⁴⁸ Adversarial responses toward individual actions that target religious liberties are likely to exacerbate tensions, such as the banning of Islamic prayer sessions in the wake of the riot.⁴⁹ Addressing these needs, in a principled manner, will connote the integration of diverse communities within the prison system, will lessen the difficulties currently faced by correctional officers and will assist in the rehabilitation of offenders. It will also help address the issue of recidivism.

Issues for Reform

- Will you commit to providing culturally sensitive programs (eg diet/education) in prisons, which address the needs of the CALD community?

Yes No

⁴⁸ <http://www.abc.net.au/news/2014-10-23/cultural-tensions-near-boiling-point-in-nsw-jails-goulburn/5834864>.

⁴⁹ <http://www.news.com.au/national/nsw-act/goulburn-jail-riot-racial-violence-quelled-with-tear-gas/story-fnj3rq0y-1227066039983>.

- Will you be taking any further measures to address the issue of religious tension and difference in our prison populations?

Yes No

- Given the increasingly culturally/linguistically diverse composition of our prison population, will you ensure religious beliefs are respected?

Yes No

[If there is any additional information or comments you would like to provide concerning the above questions please use the lines provided here. Any additional information may be attached to this document].

11. Prison Officers Conditions

Prison Officers are entitled to a safe environment with culturally appropriate training. This should include a high status in supportive working conditions. Prison Officers should also have access to a variety of upward pathways and career opportunities where fare wages are not dependent on extended over time.

- Do you commit to upgrading prison officers status and conditions?

Yes No

[If there is any additional information or comments you would like to provide concerning the above questions please use the lines provided here].

12. Governance and Transparency

The structural problems in prisons, that are endemic to a closed system, require an independent body to objectively inspect and report on these issues, possessing a similar function to Her Majesty's Chief Inspector of Prisons in the United Kingdom. In 1995 the Labor government created the Inspector-General position, which possessed the authority to enter gaols unannounced and report on findings. Lindsay Le Compte held this role until 2003, during which time he critically analysed the prison system. The government appointed the former Commissioner of Corrective Services to conduct a review on the Inspector-General role. The review recommended abolition of the position. The strength of a 'watchdog' role was significantly diminished when the job was passed to the Ombudsman, who did not have the same powers as the Inspector-General.⁵⁰ At the time, the Ombudsman said that the former powers and resources of the Inspector-General would be more valuable to correct structural problems in prisons.

Under the *Inspector of Custodial Services Act 2012* a new position was established to co-exist with other investigatory bodies, including the Ombudsman. A former Assistant Commissioner of Corrective Services, John Paget was appointed as the Inspector of Custodial Services. The functions of the Inspector are to inspect, examine and review custodial centres at least once every 5 years and then report to Parliament.⁵¹ The Inspector monitor 'broader thematic and systemic issues arising out of inspections of adult and juvenile correctional facilities and services'. However, this does not include examination of prisoner complaints.⁵²

The NSW Ombudsman received 4,495 formal complaints in 2013/14. Of these formal complaints, none have undergone formal investigation.⁵³ This indicates the unpreparedness of the Ombudsman to confront the administration. Over 85 per cent of formal complaints in correctional and juvenile justice centres were dealt with by preliminary or informal investigations. These statistics support the feedback Justice Action has received from prisoners regarding their lack of confidence in the Ombudsman to effectively rectify their issues. This highlights the refusal of the Ombudsman to re-examine cases involving discretions previously determined by the Department of Corrective Services, unless a problem exists in the decision making process

Issues for Reform

- Will you support the requirement that selection of the Inspector of Custodial Services is seen as independent to encourage trust and deal objectively with systematic problems and prisoner complaints?
 Yes No
- Will you commit to expanding the Inspector's functions to include powers to review complaints from prisoners as was previously held by the Inspector-General?
 Yes No
- Will you commit to funding the Ombudsman to re-examine unfairness in Departmental decisions beyond procedural errors, and to establish objective tests as guidelines for decision making?
 Yes No

⁵⁰ Edmund Tadros, Prison watchdogs lose their teeth (9 December 2008) Sydney Morning Herald <http://www.smh.com.au/news/national/prison-watchdogs-lose-their-teeth/2008/12/08/1228584743341.html>.

⁵¹ Inspector of Custodial Services Act 2012, s6.

⁵² The Attorney General's Second Reading Speech on the Inspector of Custodial Services Bill 2012 (23 May 2012).

⁵³ NSW Ombudsman, 2013-14 Annual Report, 55 https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0007/19798/NSW-Ombudsman-Annual-report-2014.pdf

13. Privatisation

Prisons should remain a state responsibility in order to maintain government accountability and prevent the transfer of judicial power to corporations, in the interests of social democracy and relationship between citizen and state.⁵⁴ Additionally, the management of offenders in a private prison system would not deliver the required standards of care.⁵⁵ Corporate profit motives only ensure minimum standards for privatised prisons, at the exclusion of broader moral considerations of human decency. Business incentives dictating prison management is not in the public interest.⁵⁶ Privatisation is also not financially viable. The decision by the NSW government to privatise Parklea and Cessnock prisons was based on a 2005 report of the Legislative Assembly 'Value For Money From NSW Correctional Centres'.⁵⁷

Jane Andrew, of the School of Accounting and Finance of the University of Wollongong, and Damien Cahill, from the University of Sydney, attacked the report's conclusion that the privatised model of prison management delivered superior 'value for money'. In their paper, 'Value for Money? Neoliberalism in NSW Prisons', Australian Accounting Review 2008, they concluded that 'the report is fundamentally flawed on its own terms'⁵⁸ and was driven by concepts of ideology rather than any cost data evidence of financial savings.⁵⁹

There is a need for an open and independent prison governance system, instead of the current lack of transparency. While performance indicators on a range of criteria have been introduced as a form of monitoring at a national level, NSW prison watchdog agencies such as the Ombudsman have increasingly been muzzled and the Inspector-General's position abolished in 2003.⁶⁰

Issues for Reform

- Will you commit to prisons remaining a government responsibility?

Yes No

[If there is any additional information or comments you would like to provide concerning the above questions please use the lines provided here].

⁵⁴ NSW Parliament Legislative Assembly, Value for Money from NSW Correctional Centres, Report No 156 (2005), 4 [2.9].

⁵⁵ Ibid 11 [3.3].

⁵⁶ Ibid 13 [3.15].

⁵⁷ NSW Parliament Legislative Assembly, Value for Money from NSW Correctional Centres, Report No 156 (2005), 14 [3.17].

⁵⁸ Ibid 3.

⁵⁹ Ibid 24.

⁶⁰ John Pratt et al (eds), The New Punitiveness – Trends, Theories, Perspectives, (Willan Publishing, 1st ed, 2005), 35.

14. Transfers

Following pressure from the public, including academics, human rights organisations, prisoner support groups and prisoners, and evidence of alternative approaches from other countries (US, UK, Sweden and Thailand) and State and Territory Governments, at a meeting of the Standing Committee of Attorneys-General (SCAG) in Perth in July 1992, all jurisdictions, except the Northern Territory, agreed to a scheme involving the international transfer of prisoners.

It was agreed that the Commonwealth would administer the scheme and pass legislation to bring treaties into effect, providing an administrative structure for the transfers and regulation of the status of prisoners who are to be transferred.

The Commonwealth International Transfer of Prisoners Act 1997 (the "Commonwealth Act") provides a framework for Australia to participate in the international transfer of prisoners. The Commonwealth Act provides for the transfer scheme to apply to all offences without exception and includes persons who have been released on parole.

The introduction of the prisoner transfer scheme should be supported on humanitarian grounds, allowing for prisoners to be transferred out of sometimes harsh prison systems, where language problems, inadequate nutrition, inadequate health care, religious intolerance and absence of contact with support networks, including family, make imprisonment more difficult. The use of the prisoner transfer scheme should also mean that prisoners do not have to rely on the pardon systems.

Issues for Reform

- Will you commit to supporting fair procedures for interstate prisoners to serve their sentences in another state?
 Yes No
- Will you commit to bilateral arrangements for Australians committing offences overseas to be repatriated to Australia to serve their sentences?
 Yes No
- Should the Australian standards of justice apply for people like Australian reporter Peter Greste in Egypt following an international transfer, giving discretion with the form of sentence served?
 Yes No

[If there is any additional information or comments you would like to provide concerning the above questions please use the lines provided here].

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