

NSW STATE ELECTION: 26 MARCH 2011

Prison System: Submission and Questionnaire



Pre 2011 State Election penal reform questionnaire and submission on need for specific reforms to the NSW Prison System

Table of Contents

High economic and social cost of the decade long “law and order” campaigns, failure to reduce crime	4
Lack of incentives to rehabilitate	4
High recidivism rates and inadequate pre release programs	5
Indigenous issues	6
Cultural & linguistic Diverse (CALD) communities	7
Women prisoners	8
Aboriginal women prisoners	9
Children of prisoners	11
Justice health	11
Mental health	13
Bail Act & Remand issues	15
Juveniles in custody	16
Bail Act & Juveniles	17
Refugees and the Criminal Justice system	18
Education/skills and training	19
Better education, training & career opportunities for prison officer	22
Addressing health & safety concerns of prison officers	22
Privatisation of prisons	23
Safety	24
Domestic and International prison transfers	24
Value for money	25
Governance and transparency in the prison system	26
Conclusion	27
Endnotes for cover letter	28
Endnotes for questionnaire	29



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High economic and social cost of the decade long 'law and order' campaigns failure to reduce crime

Support has decreased for changes introduced in the 1990s around diversion and detention as a last resort, with an increased focus on "law and order" and "getting tough on crime".¹ This growth in "getting tough on crime" rhetoric from politicians in NSW in the last decade also led to changes to the *Bail Act 1978* over that time, with 18 amendments being made since 2000.² However a causal relationship between higher incarceration levels and reduced crime has not been convincingly evidenced. Instead the causes of crime need to be considered in law and order campaigns. Pure reliance on the prison system as a consequence of crime and the sole mechanism for justice and reduction in crime does not solve the social and economic determinants of crime. NSW Shadow Attorney-General, Greg Smith MP, has recently made a public statement to the effect that a coalition state government would move to reduce the prison population by a fifth in reassessing treatment of mental health and sentencing for minor offences.

Issues for Reform

- Will you commit to addressing causes of crime in 'law and order' campaigns through positive programs which also have regard to the health, education, disability, welfare and housing systems.
 Yes No
- Will you commit to increasing investment into 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 amending sentencing legislation to remove mandatory sentencing and to restore to the judiciary greater discretionary sentencing functions under the law.
 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].

Lack of incentives for prisoners to rehabilitate as the result of the truth in sentencing policy

Sentencing changes including 'truth in sentencing', standard parole periods and loss of remission all result in longer sentences. Models offering mandatory rehabilitation or extended imprisonment are problematic,³ and raise the question as to whether health, education, employment and community ties can be forced instead of supported. For example, the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010* (NSW) proposes mandatory participation in rehabilitation and education programs as a sentencing option for the judiciary for convicted criminals facing custodial terms of no more than two years. The Premier of NSW has said that the new sentencing option proposed by the NSW Government is designed to 'punish and incapacitate offenders while forcing them to confront the causes of their offending behaviour'. This mandatory model for rehabilitation and education however involves orders coinciding with a suspended prison sentence which may be revoked by the State Parole Authority should the order be breached. Government should consider an approach to restorative justice similar to that proposed by the UK prisons minister to allow offenders to reduce their sentences by making personal apologies to their victims.

There should also be greater willingness to support and assess diversionary non-imprisonment options such as Intensive Correction Orders (ICOs) which allow prisoners to serve their sentences in the community.

Issues for Reform

- 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 Sentencing Council reporting annually on use of ICOs and review the functioning of ICOs within two years.
 Yes No
- Will you commit to directing the Bureau of Crime Statistics and Research to evaluate the impact of ICOs on repeat offending.
 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].

High recidivist rate and inadequate pre-release programs

A number of studies indicate that prisons have not worked in terms of one of the principle objectives of rehabilitation. This is evident in the high rates of recidivism in NSW, 43 percent within two years of release and 68 percent at some time after release.⁴ Undetected offences and non-custodial sentences are not included in these numbers. The NSW prison system has been relied heavily upon as a mechanism for justice. Relapses into crime need to be considered with the causes for crime. For example there is a strong correlation between disadvantage and crime meaning that poverty, poor education, poor and inappropriate parenting, drugs and alcohol, mental illness, lack of adequate human services and support in the community and locational disadvantage continue to exacerbate crime.

As part of their agreed objectives, Corrective Services aim:

‘to reduce the risk of re-offending among prisoners and offenders by providing services and program interventions that address the causes of offending, maximise the chances of successful reintegration into the community, and encourage offenders to adopt a law-abiding way to life.’⁵

Issues for Reform

- Do you agree with the stated aim of Corrective Services above?
 Yes No
- Will you commit to imposing more non custodial and community based sentences and including a range of alternative options to prison.
 Yes No
- Will you commit to each prisoner taking part in a needs assessment prior to release which identifies major issues that may place the person at risk, which would increase the likelihood of recidivism such as housing and health needs.
 Yes No
- Will you commit to ensuring key services for prisoners prior to release through proper case management which includes education, training, housing and mental health services.
 Yes No

- 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 under the Community Funding Program.
 Yes No
- Will you commit to regular evaluations of programs to ensure that they are meeting prisoner and community needs including assisting prisoners with integration and participation back into the general community.
 Yes No
- Will you commit to education in conflict resolution for corrective services and support staff.
 Yes No
- Will you commit to expanding the DCS Restorative Justice Unit which is currently inadequate. Presently, there are five or six people only to service 10,000 inmates - applicable in limited circumstances.
 Yes No
- Will you commit to increasing resources on court ordered programs such as sex and violent offender programs.
 Yes No
- Will you commit to increase support for family support programs (eg facilitating phone access and visitation rights).
 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].

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 suggest a disproportionate growth of indigenous female incarceration.⁶ Indigenous prisoners comprised around 5 per cent of the NSW prison population in the early 1980s, but four times that proportion (20%) by 2007.⁷ The 'normalisation' of the 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, raising the prospect of increasing inter-generational transmission of prison culture and experience.⁸ Reasons for this overrepresentation include historical cultural displacement, trauma and disadvantage, lower levels of education attainment, higher rates of unemployment and alcohol and drug misuse. Also, forensic mental health services systematically fail to meet the needs of indigenous prisoners.⁹ Indigenous prisoners, like others from a non English speaking background, also face difficulties in accessing prison rules when these rules are not printed in relevant languages.¹⁰

Issues for Reform

- Will you commit to promotion of 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
- 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, evidenced-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].

Culturally and Linguistically Diverse (CALD) Communities

There is a gross overrepresentation CALD communities within the NSW prison system. There are disproportionate rates of imprisonment in communities such as those from South-East Asia (particularly Viet Nam), the Middle East and the Pacific Islands. In many instances prisoners face particular culturally-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 with low levels of literacy and skills in the English language.

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

[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].

Women prisoners

Women in NSW are being incarcerated at an unprecedented rate (particularly Aboriginal and Torres Strait Islander women), far surpassing that of men. The majority of these women come from deeply disadvantaged backgrounds with many reporting experiences of childhood and adult sexual, emotional and physical abuse.

Women in prison face unique challenges that are much greater and more complex than those of men. They have specific needs that are not met by programs predominantly aimed at male prisoners. It is being increasingly recognised across a range of other sectors that programs and services need to be gender based, due to the differing experiences of men and women, if they are to have any success.

There is a higher incidence of drug use amongst women prisoners than male prisoners both before and during incarceration.

- 76% of women reported that their sentence was linked to drugs
- 74% of women used drugs regularly in the 12 months prior to incarceration
- In 2007 64% of women tested positive to hepatitis C

The prevalence of mental disorders including psychosis, anxiety and affective disorders were higher than amongst male prisoners. 90% of women in NSW had at least one of these mental disorders in the 12 months prior to imprisonment. 39% of women had attempted suicide at some stage.

Women prisoners confront unique challenges as the primary carers for their children. As a result the emotional, social and economic consequences for mothers, children and families can be extensive. For example it can lead to their children experiencing emotional and behavioural problems. Aboriginal women prisoners, in particular, can suffer from severance to their cultural responsibilities and dislocation from their communities.

At least 85% of women in prison have children under the age of 16 years, the great majority of these being sole parents. Accordingly, their forced separation often causes mothers' great anxiety and despair.

By incarcerating a woman, their children are also punished for their offence. Children are held in foster care or with other family members, sometimes in situations of potential violence and abuse. Children of prisoners 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 to 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. 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 be granted custody.

Approximately one third of female prisoners have been through the childhood care system, the vast majority spending over 2 years in care. This is a higher rate than amongst male prisoners.

60% of women had been sexually abused before the age of 16. Even more disturbing, 36% experienced actual or attempted intercourse on one or more occasions before the age of 10.

Most women are in prison for non-violent offences, their problems should be dealt with in the community, at less cost and with more effective social support.

Women in prison face considerable human rights problems. Strip searches are degrading, humiliating and traumatic, especially for women who have suffered from sexual abuse. There are alternate ways of searching for contraband, strip searching is ineffective with only a minute percentage of contraband found.

Issues for Reform

- Will you commit to implementing policy that recognises women prisoners have particular needs that are different to male prisoners?
 Yes No
- Will you commit to implementing policy that recognises women prisoners have dependent children issues e.g. Mothers and Children Program at Emu Plains.
 Yes No

- Will you commit to implementing policy and services that recognises the specific cultural and social needs of Aboriginal and Torres Strait Islander women?
 Yes No
- Will you commit to implementing policy and services that meet the specific needs of women with disability and women with mental health issues?
 Yes No
- Will you commit to implementing policy and services that provide support to women post-release, for example mentoring programs?
 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].

Aboriginal women prisoners

Aboriginal women constitute approximately 31% of all women prisoners in NSW an increase of 14% since 1995. Aboriginal women in prison are predominantly young, with an average age of 25, and largely have low levels of educational attainment and high levels of unemployment. Most of the women in prison are single mothers with between two and four children and many are also responsible for the care of children other than their own biological children, and many are also responsible for the care of older family members such as parents, uncles or aunts.¹¹

Many of these women have long histories of involvement with the criminal justice system. Also Aboriginal women in particular have a history of drug and alcohol use. There is a strong linkage between the drug use and offending behaviour.

Aboriginal women in prison also have long and serious histories of sexual and violent abuse. A high percentage of these women having been sexually assaulted as children have stated that they have a drug problem, and most equate their drug problem to their experiences of past violence 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 lead to imprisonment.¹²

Issues for Reform

- 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 alternatives to the Mothers and Children Program, that caters specifically for Aboriginal mothers in prison and incorporates the extended Aboriginal family.
 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 expanding the existing Drug Court zones to include western NSW and inner city (Sydney). That the Attorney General establish social work/ sexual assault counselling programs for women attending the drug court and MERIT programs.
 Yes No
- Will you commit to identifying strategies to support Aboriginal women serving sentences in the community, as alternatives to prison, that these strategies specifically cater for the family, and other needs of 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 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 expanding the Probation and Parole service to include regional and metropolitan Aboriginal identified workers specifically for Aboriginal women.
 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 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 and reviewing standards to assess the proper provision of health services for Aboriginal women in prison, with a strong focus on providing adequate access to immediate medical and dental services and adequate resourcing for appropriate psychological services for female inmates.
 Yes No
- Will you commit to establishing an Aboriginal women's healing and drug and alcohol detoxification strategy. That strategy should aim specifically to provide drug programs and programs that address the underlying causes of drug use in Aboriginal women. That the strategy aim to provide such services to Aboriginal women prior to them coming into contact with the criminal justice system.
 Yes No
- Will you commit to establishing Aboriginal identified counsellors that can work with victims of child abuse, especially child sexual assault.
 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].

Children of Prisoners

In 1997 the NSW Parliamentary Standing Committee on Social Issues released *A Report into Children of Imprisoned Parents*. The report contained 97 recommendations covering a broad range of themes such as the need for: improved data collection, the establishment of a network of Children of Prisoners Officers throughout the state, a review of all the visiting arrangements in the state's correctional facilities, the provision of child friendly and appropriate visiting areas and the development of strategies to assist families to visit prisoners that are some distance away from their home.

Issues for Reform

- Will you commit to considering support for recommendations made by the NSW Parliamentary Standing Committee on Social Issues in *A Report into Children of Imprisoned Parents*, 1997 with a view to implementing these recommendations.
 Yes No

- Will you commit to providing child access to parents via Barnardos etc, also if father is in gaol.
 Yes No

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Justice Health

The right to health is enshrined in international human rights law, even if these rights do not appear under the explicit title of 'the right to health'.¹³ Health treatment refers, inter alia, to physical, mental and dental health. This right imposes immediate obligations including the guarantees of non-discrimination and equal treatment,¹⁴ 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.¹⁵ This right has been widely interpreted in human rights treaties to apply to people who inject drugs, including HIV-positive IDUs.¹⁶ Therefore there is a legal basis for states to respect, protect and fulfil, equitable and in a non-discriminatory manner all IDUs' human rights. This includes comprehensive harm reduction programmes 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.¹⁷ There are also other UN standards applicable to the treatment of prisoners.¹⁸ The lack of HIV education; harm reduction measures and voluntary and confidential testing for HIV infection; adequate pre- and post-test counselling and treatment for HIV-infected prisoners; as well as mandatory HIV testing and segregation of HIV-positive prisoners, undermine the public health response to HIV/AIDS, are contrary to human rights and compromises the human dignity of the person. The Australian National Council on Drugs (ANCD) conducted a study on harm reduction programmes implemented in the ten years from 1990-2000. According to the findings, harm reduction programmes were successful.¹⁹ While governments often fear that programmes 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 States²⁰ have all shown that such programmes – 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. The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment has recently recommended

- 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 which are culturally sensitive.
 Yes No
- Will you commit to supporting the trial of a needle and syringe programme in appropriate correctional facilities with independent evaluation of the outcomes of any such trial.
 Yes No

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Mental Health

In NSW, 43 per cent of prisoners met the diagnostic criteria for at least one mental illness, in comparison to a 15 per cent 12-month prevalence rate of mental illness in the wider community. Psychosis is at least 10 times more prevalent in prisons than in the community. 12% have been diagnosed with some form of psychiatric disorder, including depression, anxiety disorder, schizophrenia, or bipolar disorder, 2.6% have been diagnosed with schizophrenia, 33% have undergone some form of treatment or assessment for emotional and psychological problems and 21% have attempted suicide.²⁹ Of greater cause for concern, 30% of males and 50% of females had had contact with public mental health services in the 12 months prior to incarceration.³⁰

A 1997 Corrections Health survey identifies that of the 50% of women and 33% of men in NSW prisons needing treatment for a diagnosed mental illness, a proportion were not receiving it. Only 8 per cent of males and 23 per cent of women were on psychiatric medication. Out of 17,600 prisoners received into NSW gaols annually there are only 90 hospital beds to treat psychiatric illnesses. About 11 per cent of male prisoners and 14 per cent of female have a history of psychosis, which suggests that about 1,000 psychotic prisoners may be without appropriate medication and need to be isolated from other prisoners in a health setting rather than a prison cell.³¹

There are insufficient psychiatric services in Australian prisons to treat the number of inmates with mental illness. Conditions within prisons in Australia have also been inadequate for physical and mental health. For example, solitary confinement has exacerbated the symptoms of some prisoners with mental illness. 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. 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 secure treatment centres.

The operation of correctional facilities as surrogate institutions for people with a mental illness was a major concern of the Select Committee on Mental Health during the Inquiry into Mental Health Services in NSW in 2002. Government policy was considered contradictory to deinstitutionalisation in that large 1980 mental institutions have been replaced with gaols although there are more mentally ill people in gaols than ever were in the asylums. Further, that instead of being treated by health professionals with medication they are being treated by prison wardens in a punitive environment.³² Forensic patients are frequently inappropriately held for indefinite periods in maximum security gaols, instead of the least restrictive environment.

Issues for Reform

- Will you commit to review and upgrade of the provision of psychiatric and psychological services for people in custodial care.
 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.
 Yes No
- Will you commit to funding a secure forensic mental health facility for women.
 Yes No
- Will you commit to developing a National Prisoner Mental Health approach including: best practice standards on mental health and co-morbidity issues; healthcare treatment guidelines in prisons for mental health and drug users; best practice approach to prisoners with an intellectual disability; and support for a National Prisoner Mental Health Act.
 Yes No
- Will you commit to providing prisons with funding to improve the facilities for the treatment of women with a mental illness or disorder. The funding allocation should cover the following:
 - ▶ Comprehensive occupations health and safety (OH&S) review by an independent WorkCover accredited consultant; and
 - ▶ Implementation of the OH&S review recommendations. Yes No
- Will you commit to ensuring that any future maximum and medium security forensic hospital built in NSW should incorporate segregated accommodation suitable to male and female patients.
 Yes No
- Will you commit to improving the transition from prison to the community for those with a mental illness 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 commit to ensuring forensic patients are not subjected to the same lock in requirement as other inmates in custody.
 Yes No
- Will you commit to creating criminal justice life course histories, highlighting points of agency interactions, diversion and support.
 Yes No
- Will you commit to review of proscribing practices.
 Yes No

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Bail Act and Remand issues

The proportion of remand prisoners has nearly doubled in the decade 1997-2007 and is approaching one in every four prisoners.³³ In NSW the increasing proportion of remand prisoners stems from an ever expanding list of exceptions to the presumption in favour of bail created in the *Bail Act 1978* (NSW). In particular, 2002 amendments targeting repeat property offenders have made bail much harder to obtain, including for juveniles, as has a recent change which restricts bail applications to one.

Research into remand inmates in NSW found that 56% of remand inmates received into NSW correctional centres during March 1999 were discharged without a custodial sentence, 41% were given custodial sentences and 3% were still on remand after a year.³⁴ The disadvantages experienced by those on remand compared to their counterparts at liberty have been well documented.³⁵ Not only do those on remand have fewer resources to prepare their defence, they may make a less favourable impression when they appear in court (they will probably be less well dressed and have experienced a loss of morale). They also miss the opportunity to impress the court by showing that they have met their bail conditions and appeared in court. The accused on remand will have limited opportunities for rehabilitation, will endure upset to their family life, and will suffer stigmatisation and possible contamination by contact with criminals. Furthermore, judicial officers may feel obliged to justify pre-trial custody by guiding the outcome of the trial towards a guilty verdict.³⁶ Aboriginal offenders are also less likely to have their bail dispensed with, and more likely to have their bail refused.³⁷ The Aboriginal Justice Advisory Council has found that 11% of Aboriginal defendants who are refused bail are either found not guilty or have their case dismissed, and 45% of Aboriginal remandees do not receive a custodial sentence when their matters are finalised.

In 2001, the average time on remand in Australia was 4.5 months, with 10% of remandees spending more than 10.3 months in custody.³⁸ It has been suggested that the increasing number of people refused bail may be a result of a general increase in the number of persons appearing in NSW courts, the fact that persons are appearing in greater numbers for offences with high bail refusal rates, such as robbery and break and enter, and the fact that magistrates themselves are less willing to grant bail.³⁹

Issues for Reform

- Will you commit to amending the *Bail Act 1978* (NSW) to reducing the number of provisions enacted which prevent the presumption in favour of bail.
 Yes No
- Will you commit to establishing a system of prisons which separates remand prisoners who are not convicted of any offence from convicted prisoners.
 Yes No
- Will you commit to reducing length of time remandees are in custody pre-trial.
 Yes No
- Will you commit to providing greater access to facilities for remandees held within the Remand Centre including legal resources and adequate access to a lawyer.
 Yes No
- Will you commit to addressing issues relating to court cell location overcrowding/facilities and length of stay for remandees before being transferred to Remand centre.
 Yes No

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Juveniles in custody

The rights of juvenile prisoners are protected by specific provisions of article 10.2 and 3, as well as by articles 14 (4.) and 24 of the *International Covenant on Civil and Political Rights* and are significantly represented under the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, known as the Beijing Rules, 1987.⁴⁰ Other applicable UN standards are within the *United Nations Guidelines for the Prevention of Juvenile Delinquency*, 1990; and the *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*, 1990.

Since the introduction of the *Young Offenders Act* in 1997 there has been a significant increase in the numbers of children and young people under control orders, a large growth in the numbers held on remand, a continued overrepresentation of Indigenous young people in the NSW juvenile justice system, and while a steady decline in the re-offending rate has occurred, it remains at approximately 57.3% overall (and at 65.6% for those in custody).⁴¹ In considering the *Children (Criminal Proceedings) Act* and the *Bail Act*, changes to the *Bail Act* are considered to have had a range of unintended consequences that have negatively impacted on the juvenile justice system.⁴² 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, dislocation from education, and homelessness. Another issue is that a quarter of those detained in the NSW juvenile justice system could have intellectual disabilities. This is considered a complex health-related question which will require careful consideration by Government.⁴³

Juvenile prisoners are also entitled to special protection in custody.⁴⁴

Issues for Reform

- Will you commit to a bipartisan approach to juvenile justice based on a recognition that children and young people are both important and different, that rehabilitation and diversion underpin the State's approach to juvenile justice.
 Yes No
- Will you commit to acknowledging that unintended consequences on children and young people as a result of changes to the *Bail Act* can be overcome by having the *Children (Criminal Proceedings) Act* take precedence over the *Bail Act*.
 Yes No
- Will you commit to introducing a children and young person's impact statement into the legislation and policy development and amendment process.
 Yes No
- Will you commit to developing a policy strategy or framework to offer a range of services, projects, programs to children and young people and to building youth friendly infrastructure for juvenile justice centres.
 Yes No
- Will you commit to providing services and programs to young offenders on a voluntary basis beyond their court ordered mandate (control and supervised orders) in order to ensure successful reintegration into the community.
 Yes No
- Will you commit to research into how interventions may be made early in the lives of children at risk to divert them from entering the juvenile justice system in addition to NSW Police diverting offending behaviour through the use of the *Young Offenders Act*.
 Yes No
- Will you commit to addressing the complex causes of juvenile crime involving a range of community solutions and agencies besides Juvenile Justice and the Department of Human Services with amendments to bail determination and compliance.
 Yes No

- Will you commit to arrest, detention and imprisonment of children only being used as a last resort and for the shortest appropriate length of time.
 - Yes No
- Will you commit to acknowledging that juvenile prisoners have the right to maintain contact with their family through correspondence and visits.
 - 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].

Bail Act and Juveniles

A bail outcome of itself may have a punitive quality, and have the effect of an “interim sentence”. A young person who is refused bail, or who has been granted bail but cannot meet bail conditions, is remanded in a juvenile detention centre. On average, on any given day, there are 125 young people remanded in custody awaiting court appearances, which represents approximately 44% of all young people in custody.⁴⁵ Particularly in circumstances where the young person is charged with a minor offence, a young person’s experience of being held on remand, or subject to harsh bail conditions, may effectively be the main component of “punishment”.⁴⁶ This is fundamentally contrary to the purpose of bail, which is simply to ensure a young person’s appearance in court, and to protect the community from further offending.

Currently, the Bail Act is generally applicable to anyone charged with an offence, regardless of whether they are an adult or a child.⁴⁷ The sole section which provides some mitigation for this general application is s 32(1)(b)(v), which requires that, in making a bail determination, a court must take into consideration any “special needs” which may arise from the fact that a person is under the age of 18. The connection between the granting of bail and the common law presumption of innocence of an accused is reflected by a general presumption in favour of granting bail in the Bail Act.⁴⁸ However, amendments to the Bail Act have eroded the applicability of the overarching presumption in favour of bail.⁴⁹ The Bail Act currently has no specific presumption in favour of granting bail to young people who have been arrested. It should be noted that Queensland’s *Juvenile Justice Act 1992* (Qld) contains a presumption in favour of bail for children.⁵⁰ Under this Act, in deciding whether to keep a child in custody, the court or officer must decide to release the child, unless, according to the criteria under the Act, the child poses an unacceptable risk.⁵¹ The explanatory notes to the Bill that introduced these amendments observed that these provisions are consistent with the implementation of the juvenile justice principle that for a child, detention is the option of last resort.⁵²

Issues for Reform

- Will you commit to implementation of a presumption in favour of bail for all young people charged with offences.
 - Yes No
- Will you commit to legislating a statutory requirement that children be granted bail unless there are exceptional reasons for holding them in custody.
 - Yes No
- Will you commit to implementation of a presumption in favour of bail for young people, save where there is a presumption against bail.
 - 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].

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 had 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 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 counselling 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 and standards. 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 and 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 and immigration incarceration, sometimes 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 and to 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 and in consequence, have particular problems within the community in relation to education, employment, housing and health, amongst others.

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.
 Yes No

- 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.
 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

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

[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].

Education/Skills Training

Learning in prison through educational programmes is generally considered to have an impact on recidivism, reintegration and, more specifically, employment outcomes upon release.

Education is, however, much more than a tool for change. It is an imperative in its own right.⁵³ No text allows for forfeiture of this right and, more essentially, forfeiture is not necessitated by the fact of incarceration.⁵⁴ Public opinion, often indifferent to and ignorant of detention, is often supportive nonetheless of education being provided to prisoners whilst in detention, although the main responsibility rests on the State through its public policies of education.⁵⁵ Sadly, many politicians have been reluctant to embed prisoners' right to education in legislation and to support models of education and delivery consistent with the full development of the human personality.⁵⁶ The juvenile justice system has also been unable to provide sufficient quantity and quality of training and education to the children detained.⁵⁷ There is inadequate access for prisoners and resourcing of vocational education and training courses. 60% of inmates are not functionally literate or numerate; 60% did not complete year 10; 64% have no stable family; and 60% of males and 70% of females history of illicit drug use.⁵⁸ Consequences of what does or does not happen to those who experience it will also be felt by the community into which the majority of prisoners are released.⁵⁹ The UN Special Rapporteur on the right to education has emphasised the fact that prison systems are, although modified by real and challenging practical realities, the result of State and institutional policy. The availability or otherwise of resources may affect the implementation of policy although do not dictate that policy.⁶⁰

There is particular concern about the adequacy of programs for inmates in remand, and forensic patients in custody.

Issues for Reform

- Will you commit to the provision of education in correctional settings should be guaranteed in legislation.
 Yes No
- Will you commit that prisoners will have access to vocational education and training which should include classroom subjects, adult basic and general education, accredited vocational education sensitive to trends in the labour market, distance education, creative and cultural activities, physical education and sports, social education and pre- and post-release programmes.
 Yes No
- Will you commit that the development of educational programmes in correctional settings should recognise the diverse backgrounds and needs of prisoners, with respect to education, vocational education and personal development.
 Yes No

- Will you commit that the development and resourcing of programmes should be set within the context of, and underpinned by an understanding of the overrepresentation of Indigenous people in the criminal justice system, and their specific needs.
 Yes No
- Will you commit that educational programmes should be accredited and integrated with the educational and vocational education and training system so that after release, prisoners can continue with their education and vocational training with less difficulty.
 Yes No
- Will you commit that teachers teaching in correctional settings should be fully teacher qualified with their professional status recognised.
 Yes No

Will you commit that within correctional facilities:

- All prisoners should be provided with access to educational programmes which are comprehensive and which meet individual needs and aspirations, no matter what their legal status;
 Yes No
- Education should have no lesser status than work and no prisoner should be disadvantaged financially or otherwise for taking part in education;
 Yes No
- Appropriately resourced teaching facilities including a library or similar facility with a range of appropriate resources and technology should be available for all inmates;
 Yes No
- All prisoners need to have access to information on sexuality and HIV/AIDS.
 Yes No

Will you commit that all students in correctional settings have the right to access an accredited programme of education, including vocational skills training, for the purpose of improving their overall level of education and their life chances after release. Specifically:

- Young prisoners and those with special needs should be given priority;
 Yes No
- Young prisoners subject to compulsory education should have access to such education;
 Yes No
- Prisoners from indigenous backgrounds should have access to programmes which are culturally appropriate and relevant to their needs;
 Yes No
- Prisoners from traditionally marginalized groups including women, persons from linguistic minority groups, GLBTI and prisoners with disabilities should have access to appropriate education programmes;
 Yes No
- Prisoners with literacy and numeracy needs, and those without basic or vocational education should also be given priority;
 Yes No

- Prisoners in correctional facilities have the right to educational programmes which deliver recognized qualifications.

Yes No

Will you commit that teachers working in correctional facilities have the right to:

- Be protected by industrial awards and agreements which ensure their conditions of work;

Yes No

- A safe and healthy working environment protected by OH&S legislation which covers blood borne communicable diseases;

Yes No

- Be represented by their union, especially within their working environment;

Yes No

- Approved courses of teacher training, and access to well resourced, ongoing professional development;

Yes No

- Secure employment, with appropriate additional financial compensation for the particular circumstances of their working environment.

Yes No

- Will you commit to addressing the interruption and termination of prisoner access to education caused by prison administrators, officers , frequent lockdowns and abrupt transfers between institutions.

Yes No

- Will you commit to increasing the number of safe and stable spaces in which to learn; indifference to needs associated with specific disabilities; withdrawal of educational “privileges” as a punitive measure; absence and/or withdrawal of public funding for, particularly, higher education together with the prohibitive costs of self-funding; financial “penalties” incurred if education is pursued in place of prison employment; discriminatory access to education based on place of detention, sentence length, and/or security category; and discriminatory, inappropriate and inadequate education for women, minorities and those with learning difficulties.

Yes No

- Will you commit to wider consultation on the range of education courses including detainees, prison officers, the outside community, non-governmental organisations and families.

Yes No

- Will you commit to enhancing funding for self-learning and distance education style modular courses that can be completed in a cell from TAFE and Universities.

Yes No

- Will you commit to increasing and improving access to AEVTI courses, and other courses from the public VET provider TAFE

Yes No

- Will you commit to increasing computer access for coursework.

Yes No

- Will you commit to increased computer access for work unrelated to coursework such as preparation for trial or appeal matters and contact with families and communities.

Yes No

- Will you commit to comprehensive education programmes aimed at the development of the full potential of each detainee, which also aim to minimise the negative impact of incarceration, improve prospects of reintegration, rehabilitation, self-esteem and morale.

Yes No

- Will you commit to education programmes in detention being based on current, multidisciplinary and detailed research including cooperation and exchange mechanisms for research sharing and best practice implementations.

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].

Better education and training and career opportunities for prison officers

Issues for Reform

- Will you commit to greater restructuring of prison officer's role in a welfare direction through case management.

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].

Addressing health and safety concerns of prison officers

One of the biggest barriers to trialling a prison-based NSP in Australia is the opposition from prison officers and the trade unions acting on their behalf.⁶¹ Officers are covered by State and Territory branches of the Community and Public Sector Union, all of whom currently oppose the introduction of NSP in prisons. A commonly voiced concern is a fear that a blood-filled syringe could be used as a weapon against prison staff. This can be traced back to an incident in NSW in 1990 when a guard was stabbed with a syringe infected with the blood of a HIV-positive prisoner experiencing mental health problems. The guard later died from an AIDS-related illness, as did the prisoner.

However, the concern that needles provided under a controlled prison-based exchange would be used as weapons against staff is not supported by international evidence. In those prisons that have established needle and syringe programs, not a single instance of the use of needles as weapons has been reported.⁶² In Germany, prison staff have come to support NSPs based upon occupational health and safety grounds.⁶³

Nevertheless, the importance of occupational health and safety assurances for all correctional staff cannot be under-estimated.⁶⁴ For example, prison officers are already at risk of accidental needle-stick injuries during cell and body searches.⁶⁵ Introduction of a controlled prison NSP reduces the likelihood that those needles circulating in prison would be infected with a virus, thereby reducing risks to prison staff.⁶⁶

As employers, correctional facilities have a duty of care to protect the health and safety of prison employees, and it has been strongly argued that introducing a controlled in-prison NSP would in fact make the workplace safer. Corrections facilities management can follow the lead of law enforcement agencies by adapting existing risk reduction practices to cater for the introduction of controlled needle exchange,⁶⁷ as has occurred successfully in other countries.⁶⁸

In considering this issue, Justice Michael Kirby has captured the way in which prison-based NSP must balance officer and prisoner health as part of a broader community health issue:

“The infection of any prison officer by the isolated act of a prisoner is most unpalatable. It is criminal conduct and morally outrageous. The infection of a person who is in the custody of society, because that person does not have access to ready means of self-protection and because society has preferred to turn the other way, is just as unpalatable. As a community we must take all proper steps to protect prison officers and prisoners alike. By protecting them we protect society”.⁶⁹

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.⁷⁰

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

Privatisation

Prisons should remain a state responsibility to maintain government accountability instead of transferring judicial power to corporations in the interests of social democracy and relationship between citizen and state.⁷¹ Additionally, management of offenders under a private prison system would not deliver the required standards of care.⁷² Corporate profit motives only ensure minimum standards for privatised prisons without extending to broader moral considerations of human decency.⁷³ Business incentives in relation to prison management are not in the public interest.⁷⁴ Privatisation is also unviable financially. 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’.⁷⁵

Jane Andrew of the School of Accounting and Finance, 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’ (at page 3) and is driven by concepts of ideology rather than any cost data evidence of financial savings (at page 24).⁷⁶

There is a need for an open, 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 2003.⁷⁷

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. Any additional information may be attached to this document].

Safety

Prisons within Australia have included overcrowded and inhuman conditions. In some cases prisoners have been placed in cells with people they do not feel safe with. There has been an increase in prisoner-on-prisoner violence, some engendered by racial and ethnic streaming and deaths in custody have increased.

Issues for Reform

- Will you commit to the Commissioner directing inmates be kept in segregated custody if it is considered that their association with other inmates is a threat to the personal safety of any other person.
 Yes No
- Will you commit to inmates being held in protective custody if the association of the inmate with other inmates constitutes or is likely to constitute a threat to the personal safety of the inmate.
 Yes No
- Will you commit to decisions on segregation and protective custody being reviewed within a period of 21 days and every three months after the first review.
 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].

Domestic and International prison transfers

Following pressure from the public, including academics, human rights organisations, prisoner support groups and prisoners, 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, provide an administrative structure for transfers and regulate the status of prisoners who are to be transferred. The States and Territories agreed to pass legislation providing the necessary authority for the transfer of State/Territory offenders out of the jurisdiction and to permit the detention within their prisons of persons from outside their jurisdiction.

On 25 October 1996, SCAG endorsed draft Commonwealth and model complementary State/Territory international prisoner transfer legislation. The Commonwealth Bill received royal assent on 18 June 1997. The operational provisions of this legislation will only commence however upon the passing of complementary State legislation.

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. There is a requirement that all transfers must be consensual, requiring the consent of the person to be transferred, the consent of Australian Government - Commonwealth and State-Territory where relevant - and the consent of the government of the other country.

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

There should also be support for a more flexible system allowing for interstate transfers.

Issues for Reform

- Will you commit to supporting procedures for interstate prisoners to serve their sentences in another state.
 Yes No
- Will you commit to passing complementary legislation to the *Commonwealth International Transfer of Prisoners Act 1997*.
 Yes No
- Will you commit to supporting a subcommittee involving two nations to address issues of parole.
 Yes No
- Will you commit to bilateral arrangements for Australians committing offences overseas to be repatriated to Australia to serve their sentences.
 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].

Value for money

NSW has adopted incarceration policies that have led to a prison population that in 2004-2005 was about 10% above the national average.⁷⁸ At the June 2006 census, NSW held the largest number of prisoners in Australia, with approximately 9,800 sentenced and unsentenced people incarcerated.⁷⁹ These policies place a significant burden on the prison system, and NSW now has 35 correctional centres that need to be operated and maintained. Therefore prison building appears to have replaced other community expenditure in criminal justice policy resulting in high economic and social costs. The United States has held the highest rate of imprisonment in the world, however there have been conscious efforts made towards reducing the prison population through sentencing reforms. Such justice reinvestment is also influencing the UK and Australian criminal justice systems as it is clear that over investment in prisons is a waste of money.

In April 2005, the Public Accounts Committee began an inquiry into the 'value for money' of NSW correctional centres. The report states that 'value for money is usually defined as the efficient, effective and economic use of resources',⁸⁰ however no definition of efficiency and effectiveness is provided. There was no discussion in the report of what may constitute 'value'. 'Value for money' is often poorly understood and often equated with the lowest cost.⁸¹ Instead the processes of reform and rationalisation have been driven by formal models over practical substance.⁸²

Issues for Reform

- Will you commit to supporting sentencing reforms for reduced sentences and parole.
 Yes No
- Will you commit to increasing programs and services to reduce crime.
 Yes No
- Will you commit to a recalculation of justice investment based on a system of data driven policies and prison reduction measures.
 Yes No

- Will you commit to delegating greater financial responsibility for justice investment to local community agencies (with a view to affecting crime rates and recidivism).
 Yes No
- Will you commit to research and studies that factor in the effects of imprisonment itself as a generator of crime (ie incarceration itself, fracturing of community, hardening, mental health).
 Yes No
- Will you commit to research and studies that assess post release effects (ie reduced employment opportunities, labelling, effects on families and communities).
 Yes No
- Will you commit to specific research and studies on the effects of high imprisonment for indigenous communities (ie socialisation issues, prison as a shaping institution for whole indigenous population, incarceration as crime producing).
 Yes No
- Will you commit to assessing severity of sentences and suspended sentences.
 Yes No
- Will you commit to increasing expenditure on educational programs and pre and post release services while reducing expenditure on prisons.
 Yes No
- Will you commit to supporting a definition of 'efficient and effective' use of resources for future value for money assessments of NSW correctional centres.
 Yes No
- Will you commit to implementing acceptable means through which the stated (corrective) purpose of provision of correctional centres in NSW can be obtained such as the level of education opportunities, work experience programs and drug rehabilitation considered appropriate to correct 'criminal' behaviour.
 Yes No
- Will you commit to considering alternative criteria for 'value for money' assessments for NSW correctional centres such as safety considerations, educational outcomes, quality of services provided and low recidivism.
 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].

Governance and transparency in the prison system

The position of a statutory officer, The Inspector General of Prisons was abolished some years ago. The position of Prison Visitors, appointed by the Minister, appears to be insecure in that some appointees have found that when they conveyed prisoners complaints to the prison authorities their permits to visit were withdrawn.

The consequences are that now there is no independent scrutiny of prisons and transparency in the prison system is non-existent. Prisoners have no independent person or place to report abuse of power, especially in cases of mentally ill prisoners, violence against prisoners, violence between prisoners and lack of services for rehabilitation.

Issues for Reform

- Will you commit to the appointment of a Statutory Inspector General of Prisons with the status of a District or a Supreme Court Judge, with the right and the duty to visit NSW prisons as and when they see fit; with the duty to ensure that the NSW prisons meet **The UN Standard Minimum Rules for the Treatment of Prisoners 1957 and The Standard Guidelines for Corrections in Australia** and with the duty to report directly to the Minister for Corrective Services at least once a year.

Yes No

- Will you commit to strengthening the role of Prison Visitors by giving them the right to report directly to the Minister when they judge it advisable to do so.

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].

Conclusion

The CJC is of the view that the above issues should underpin your policy considerations on prison reform.

The CJC considers it vital that a comprehensive planning study commence at the earliest opportunity to establish the groundwork for a policy on prison reform in NSW.

In addition to the responses above, are there any matters which you consider should be addressed?

If you are unable to tick yes/no are you able to make other commitments?

(Endnotes for accompanying cover letter)

- 1 There are a number of standards dealing with prisoners, juveniles, treatment of the mentally ill and codes for law enforcement officers, medical ethics; the *Basic Principles for the Treatment of Prisoners*, 1990 (adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990); the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, 1990 (adopted by General Assembly resolution 45/113 of 14 December 1990); the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988); the *Code of Conduct for Law Enforcement Officials*, 1978 (adopted by General Assembly resolution 34/169 of 17 December 1979); the *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 (adopted by GA resolution 37/194 of 18 December 1982).
These codes are not legally binding as such, but they have considerable moral value, especially when they are clear and not qualified, eg in relation to discipline and punishment.
- 2 *Standard Minimum Rules for the Treatment of Prisoners* (First UN Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1957; approved by ECOSOC, res 663C (XXIV) 31 July 1957 and 2076 (LXII) 13 May 1977).
- 3 First published in 1978. The 1996 edition was adopted by the Corrective Services Ministers' Conference March 1995; ISBN 0 7241 7277 7. (see Australian Institute of Criminology web site: www.aic.gov.au). Other sources include the *Council of Europe Standard Minimum Rules*.
- 4 The primary right of any detainee is that the detention must be lawful and they must be accorded due process of law, including judicial supervision immediately upon detention. That right is secured by article 9 of the Covenant. It extends not only to criminal law detainees, but also to asylum seekers who are held in detention. Beyond article 9, the most important provisions of the Covenant are articles 7 and 10.
Article 7 prohibits torture and cruel, inhuman or degrading treatment or punishment. Its scope is wider than that of the Torture Convention as it is not limited to acts committed by public officials. It also extends to medical or scientific experimentation performed without consent.
Article 10 has a very wide scope. Its first paragraph provides that: 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. [part only]
That provision requires that general prison conditions are compatible with humane treatment and with respect for the inherent dignity of the human person. The underlying message is that persons deprived of liberty do not for that reason lose their inherent dignity as human beings or their entitlement to enjoy all those rights which can be enjoyed compatibly with their loss of freedom. It means that restrictions imposed on the rights of prisoners should go no further than is necessary and unavoidable as a result of their confinement. Paragraph 2 of Article 10 requires the separation of convicted from unconvicted detainees, and the segregation of accused juveniles from adults. The third paragraph of article 10 requires that reformation and social rehabilitation of prisoners be the aim of the penal system. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status. Article 10, and in particular, paragraph 1, applies to all aspects of prison conditions and the treatment of prisoners. The Human Rights Committee has made it clear to States that the relevant United Nations standards, such as the Standard Minimum Rules should be taken into account in applying article 10. (General Comment on article 10, para 5. Costa Rica, Report of HRC to July 1994, Supplement 40 (A/49/40) para 150 ff. 160). Other provisions of the Covenant which are of particular significance for prisoners include the protection of children, protection of the family, privacy and personal correspondence and non-discrimination (Articles 23, 24, 17, 26).
- 5 United Nations Human Rights Committee, General Comment 21, Paragraph 3, 1992.
- 6 *Ibid.*, paragraph 4; see also *Mukong v Cameroon* (No. 458/1991) (10 August 1994), UN Doc. CCPR/C/51/D/458/1991 (stating that minimum requirements regarding floor space, sanitary facilities, provision of food, etc., must be observed, 'even if economic or budgetary considerations may make compliance with these obligations difficult').
- 7 Eg, *Mabo v Queensland* (1992). *Newcrest Mining (WA) v Commonwealth* (1997) per Kirby J; *Kartinyeri v Commonwealth* (1998), per Kirby J.
- 8 Elizabeth Evatt AC, 'Prisoners Rights, International Human Rights Standards (paper presented at a NSW Young Lawyers Event, 14 May 2001) p.5.

(Endnotes for questionnaire and submission)

- 1 Noetic Solutions Pty Limited, *A Strategic Review of the New South Wales Juvenile Justice System*, Report for the Minister for Juvenile Justice (2010).
- 2 *Ibid.*
- 3 <http://www.premier.nsw.gov.au/sites/default/files/100610-mandatory-rehabilitation.pdf>
- 4 NSW Department of Corrective Services, *Facts and Figures May 2009*, 2009.
- 5 *Report on Government Services 2008*.
- 6 UN Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Mission to Australia, 23 November to 4 December 2009, A/HRC/14/20/Add.4, para 74.
- 7 ABS *Prisoners in Australia 2007* (2008) p.40.
- 8 M Levy, Presentation to National Criminal Justice Forum, Canberra, 29 September 2008.
- 9 UN Human Rights Council, above n6, para 79.
- 10 Australian Human Rights Commission, *Human Rights and Prisoners*, Information Sheet, p.2.
- 11 *Ibid.*
- 12 Lawrie, Rowena, 'Speak Out Speak Strong - Researching the Needs of Aboriginal Women in Custody – Digest' [2003] AUIndigLawRpr 29; (2003) 8(2) *Australian Indigenous Law Reporter* 85 <<http://www.lawlink.nsw.gov.au/ajac.nsf/pages/reports>>.
- 13 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.
- 14 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.
- 15 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.
- 16 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.unhcr.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.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.+CESCR+General+comment+14.En?OpenDocument](http://www.unhcr.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/>).
- 17 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.
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 - 37 Aboriginal Justice Advisory Council, *Aboriginal People and Bail Courts in NSW* (2002) Sydney.
 - 38 Australian Bureau of Statistics, *Corrective Services, Australia* (2001) No 4512.0.
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 - 40 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.
Article 24 (1). Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
 - 41 Noetic Solutions Pty Limited, above n1.
 - 42 *Ibid*.
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 - 44 Australian Human Rights Commission, above n10, p.1.
 - 45 New South Wales, Department of Juvenile Justice, *Annual Report 2004-05* at 35.
 - 46 Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, *Seen and Heard: Priority for Children in the Legal Process* (ALRC Final Report 84, 1997) at para 18.170.
 - 47 Section 5 of the *Bail Act 1978* (NSW) states that "the Act applies to a person whether or not the person has attained the age of 18 years".
 - 48 *Bail Act 1978* (NSW) s 9.
 - 49 *Bail Amendment (Repeat Offenders) Act 2002* (NSW); *Bail Amendment Act 2003* (NSW); *Bail Amendment (Firearms and Property Offences) Act 2003* (NSW); *Bail Amendment (Terrorism) Act 2004* (NSW). See G Brignell, *Bail: An Examination of Contemporary Issues* at 1.
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 - 52 "Clause 12 inserts new section 37A and introduces the bail regime to be considered when dealing with a child. Because of the amendment made by clause 128 to section 16 of the *Bail Act 1980*, the 'show cause' provisions in that Act no longer apply to children. This is consistent with the juvenile justice principle that for a child, detention is the option of last resort. The provisions in section 37A provide that a court or a police officer must consider a broad range of matters when deciding the issue of bail and that the child must be granted bail unless there is an unacceptable risk posed by the child against listed criteria. The child must not be released if release would threaten the child's safety (examples are provided of when a child's safety might be threatened by release on bail) and there is no other reasonably practicable way of ensuring the child's safety." *Juvenile Justice Amendment Bill 2002* (Qld) Explanatory Notes at 13.
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