

## INQUIRY ON THE INCREASE IN PRISONER POPULATION

Presentation by John Ryan, MLC to NCOSS "Scales of Justice" Conference, 25 July 2002

### **The Inquiry**

On 17 November 1999 the Legislative Council appointed a Select Committee to inquire into factors responsible for the increase in the prisoner population in NSW since 1995, and the consequences of that increase. The inquiry received 197 submissions, held 16 hearings and conducted several site visits and consultations. The Interim Report of the inquiry, which focussed on women prisoners, was tabled on 28 July 2000. The current report addresses issues affecting the entire population of prisoners, of which 93 % are male.

### **The NSW Prison System**

The NSW prison system comprises 28 main correctional centres with varying capacities, security classifications and specialist purposes. The current capacity of the prison system is 8,105. The NSW Government has recently announced it will expand this capacity to nearly 10,000 by the year 2005 to address the continuing growth in the number of inmates.

### **The Size of the Increase in the Prison Population**

The prison population in NSW has risen by 20.9% between 1995 and 2001. For women this increase has been especially rapid, representing a 67.6% increase, and an 18.6 % increase in male prisoners. The increase has mainly occurred in the two years beginning from 1998, but the NSW prison population has continued to increase, at a slower rate, up to the current date.

The prison population fluctuates on a daily basis, but at 30 June 2001 it was 7,750, of which 7,232 were male and 518 were women. This represents an imprisonment rate of 112.7 per 100,000 persons, or 172 per 100,000 adult persons.

Other states in Australia have also experienced significant increases, however Victoria has maintained an imprisonment rate of almost half that of NSW during the same period. Also, subject to the reliability of international comparisons, several European countries have also had minimal increases or decreases in their imprisonment rates during the time in which the NSW imprisonment rate has significantly increased. The different trends in imprisonment rates in different jurisdictions raises the questions as to whether more people are incarcerated in NSW than is necessary.

### **Prisoner Profile**

Approximately forty per cent of the prison population has been sentenced for a serious act of violence such as murder, armed robbery or sexual assault. The next largest category of offenders, amounting to about 30 per cent, are those whose most serious offence was a robbery or stealing charge. The balance of the prison population is made up of those who have committed drug offences (12%), driving and traffic offences (5%), offences against good order (6%) and those who have breached a community based sanction such as probation, parole or community service orders (5%).

The prison population consists of men and women who are, on average, of lower socio-economic status, of poorer health and of lower levels of education than the rest of the population. For example:

- 60% of inmates are not functionally literate or numerate;

- 60% did not complete year 10;
- 64% have no stable family;
- 21% have attempted suicide; and
- 60% of males and 70% of females had a history of illicit drug use.

Indigenous men and women and those with an intellectual disability or a mental illness are significantly over represented. The average age of the inmate population is increasing, although the majority (64.4% of males, 73% of females) are aged 18-34. A number of prison inmates were state wards or care leavers, however the exact number is unknown. The majority of prisoners who pass through the prison system each year serve sentences of less than six months.

### Causes of the Increase

The causes of the increase in the prison population are complex. The prison population can fluctuate considerably as a result of legislative, judicial and policy changes, irrespective of any changes in actual crimes committed. There has been no evidence from agencies such as the Bureau of Crime Statistics and Research to support the proposition that an increase in actual crime, as opposed to increase in police activity, is an underlying cause of the increased prison population.

A major increase in the remand population appears to be the most significant contributing factor to the increase in the total number of people in custody. Other factors include longer sentences and increased police activity. The underlying causes of these factors are, however, less clear.

#### (a) Increase in Remand Population

At 30 June 2001 there were 2,188 prisoners held on remand, awaiting sentence, representing more than a quarter of the prison population. This number has almost doubled since 1995.

The following table shows the number of prisoners present on the last Sunday of the financial year for the years 1995 - 2000, with those on remand highlighted.

	25/6/95	27/6/96	28/6/97	29/6/98	30/6/99	25/6/00
Full-time custody	6407	6261	6374	6452	7240	7328
Unsentenced	1201	1278	1272	1451	1862	2098
Sentenced	5206	4983	5102	5001	5378	5230

It can be seen there is a significant increase in the remand population, both in absolute terms and as a proportion of the total prison population.

The increase in the remand population may in part be due to factors such as:

- increased bail refusals,
- changes to the Bail Act removing a presumption of bail in many cases,
- the inability of people to meet bail conditions, and
- police "over-charging" (charging offenders for several offences in the hope that one will result in a guilty plea)

#### (b) Increased Police Activity

Increased police activity has resulted in a 22% increase in the number of persons coming before NSW courts since 1995. This has coincided with an increase in police numbers and resulting increase in police activity.

### (c) Judicial Attitudes to Sentencing Alternatives

Judges are given a broad discretion in sentencing decisions, however the sentencing legislation (Crimes (Sentencing Procedures) Act) does embody the notion that prison should be a sanction of last resort. There is a need to examine the impact of individual sentencing practices, and how judges and magistrates perceive, in terms of relative severity, alternatives to imprisonment. Increase in penalties for offences under specific legislation and guideline judgements are examples which may lead to the continuing increases in the use of prison over alternative sentencing arrangements.

### **Whole of Government Problem**

The complex causes of the increase in the prison population raises the issue of how decisions should be made as to who should be imprisoned. The Committee believes this is a whole of government issue but that the Department of Corrective Services should take a lead role in monitoring the impact of decisions on the prison population. There is a need for research to identify and quantify the impact these and other factors have had.

### **Incarceration: Costs**

Since the 1980s there has been an increasing shift in sentencing policy towards seeing the purpose of prison as incapacitation rather than rehabilitation. The adoption of this purpose clearly favours longer sentences and increased use of incarceration as a means to control crime. This increased use of incarceration leads to significant increases in expenditure on programs within prisons, which are much more expensive to deliver than community based programs. There has been no reliable research in Australia or overseas which has shown that increasing the number of people in gaol is an effective or economical approach to reducing crime.

The annual costs of the programs of the Department of Corrective Services have risen by \$145 million in real terms since 1994, a 37% increase. The cost of holding a prisoner in gaol can be as high as \$64,486 per year (\$181 per day) compared to \$3,150 per year (\$8.63 per day) for completing a community based program supervised by the Probation and Parole Service.

### **Incarceration: Programs**

There are promising programs within prison in some areas such as drug and alcohol programs, the Restorative Justice Unit and transition centres. However a lack of continuity in programs has meant there is almost nothing known about the effectiveness of most programs in reducing recidivism. The case management program, which has already been intensively reviewed on several occasions, still appears to be experiencing problems under the weight of increasing prison numbers and the difficulty of assisting short term prisoners.

### **Alternatives to Prison**

Greater examination needs to be made of alternatives to prison sentences. There are many prisoners currently in full time custody who may be more appropriately and cost-effectively supervised under alternative sentencing options. These options include

community service orders, probation and parole, periodic detention, and home detention, as well as diversionary programs such as the Drug court and the MERIT scheme. Some of these alternatives are currently under-utilised, while others are in their early stages and have much promise.

Indigenous offenders are under-represented in these alternative programs. For instance, research suggests that illicit drug use is not as significant a factor for Aboriginal offenders as for the wider prison population, so few Aboriginals benefit from initiatives such as the Drug Court. The alcohol related and violent nature of many offences committed by Aboriginal offenders also precludes them from the criteria for participation in home detention programs. The lack of community service options in rural areas also disadvantages indigenous offenders.

The Committee believes more information is needed on why some options are not more extensively used, whether they are perceived as not effective, and whether new initiatives are deserving of expansion. The gains to the community from greater use of effective alternatives to sentences of full time custody are considerable, and every effort should be made to realise these gains. The Probation and Parole Service needs to be given a more prominent role in the prison dominated culture of the Department of Corrective Services.

### **Abolition of Short Term Sentences**

About two thirds of the people who are sentenced to imprisonment stay in gaol for less than six months.

#### **Prisoners serving short sentences: Receptions into custody**

Financial year	Females	Males	Total less than six months (% of all receptions)
All receptions into Custody, excluding fine defaulters*			
95/96	367	3230	3597 (61%) 5928
96/97	394	3493	3887 (61%) 6332
97/98	430	3651	4081 (61%) 6594
98/99	513	4369	4882 (65%) 7571
99/00	699	4946	5645 (67%) 8478
00/01	577	4434	5011 (63%) 8005

Source: Department of Corrective Services, provided to Committee Chair.

\*After 1996 virtually no fine defaulters were taken into custody, hence the table excludes this category of offenders

It is difficult for the Department of Corrective Services to design and implement effective rehabilitation programs and case management strategies for these inmates and transition to the community after the disruption caused by a prison sentence can be more difficult because they are not supervised by the Probation and Parole Service.

One way of addressing these issues and in countering the increasing size of the prison population, would be for NSW to follow the recent initiative of the Western Australian Government to abolish sentences of six months or less. The Committee recognises that such a move would need to be accompanied by public support. It is also important to address issues such as whether abolishing shorter custodial sentences would only lead to inmates serving longer sentences, particularly if funding was not provided for increased alternative programs. For these reasons the Committee recommends that comprehensive

research and public consultation be conducted into the possible impact of such an initiative before any measures are implemented.

The Western Australian government has also recently announced a major change of direction in its prison system, particularly for women, based upon overseas models. The Committee believes approaches such as these, which creatively consider alternatives to building additional prisons, may hold many lessons for NSW.