

22 May 2013

**Dr Liz Curran**  
**Senior Lecturer**  
**Legal Workshop**  
**ANU College of Law**

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia  
[legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Canberra ACT 0200 Australia  
[www.anu.edu.au](http://www.anu.edu.au)

Dear Ms Dennett,

**Re: Value of a justice reinvestment - Senate Legal and Constitutional Affairs  
Committee Inquiry**

Thank you and the committee for allowing me time to make a submission after the closing date of submissions. As you are aware, I did not know of the Inquiry until after the due date and emailed requesting an extension of time which was granted.

This submission is made for a number of reasons firstly as my Doctoral thesis 'A Comparison of Different Approaches to Children and Young Offenders in the Criminal Court in New Zealand and Victoria' in 2007 was in the area of youth justice. This thesis involved a literature review, court observations, where the focus was on judicial interaction, interview material with 'innovative' service providers, exploring system strengths and weaknesses, and the relevant law. The research examined the legislation and common law approaches in New Zealand and Victoria within the criminal justice system, to child and youth offenders.

Secondly, I have had a long history of engagement with young people both as a lawyer and as a secondary school teacher. Thirdly, in my capacity as a lawyer I have also had experience working with adults in prison or on other orders. I also note that my practice involved me working not just with offenders but also with victims of crime and that sometimes offenders have themselves been victims of crime and so the demarcation is not always easy to make. Finally, I was a member of the Victorian Correctional Stakeholders Forum for a decade.

Rather than answer all the questions in the terms of reference this submission will examine some and provide short responses. The focus of the submission will be on youth offending.

**(a) the drivers behind the past 30 years of growth in the Australian imprisonment rate;**

A focus on law and order, the reduction of judicial discretion and the desire to make the public see 'action' has often fuelled a growth in prison populations. This has often been knee jerk and not based on the research and available empirical data on the down sides to imprisonment and the actual causes of crime. Research also shows that when the public are actually given full information about the nature of offending, they are less punitive and are more considered (see Sentencing Council of Victoria). The involvement of private prisons in policy contexts has also fuelled growth as there is an imperative to increase prison populations rather than find solutions that reduce prison populations as this is where the profits lie.

**(b) the economic and social costs of imprisonment;**

Given the expense per prisoner of imprisonment and the limited range of options in terms of behavioral change, well-funded rehabilitation options and variety in community based dispositions per prisoner there is an imbalance. The statistics reveal large numbers of people in prison have mental health issues and intellectual disabilities. This is an indictment on society and reflects a lack of support for people in the community before issues escalate and suggests the warehousing of people with mental and intellectual impairment.

In addition, many people in prison have experienced trauma in their lives for a range of reasons including institutional abuse or a lack of parenting and frameworks in their early lives. Many have left school early and have not experienced developmental support and have limited education. Issues of homelessness, drug addiction and poverty also feature prominently in the prisoner profile. Imprisoning people is not effective in reducing crime it merely fulfills the retributive element of sentencing regimes whilst ignoring the sentencing issues around prevention of re-offending which is in the broader community interest, reform and rehabilitation and does not deal effectively underlying problems that cause criminal behavior.

**(c) the over-representation of disadvantaged groups within Australian prisons, including Aboriginal and Torres Strait Islander peoples and people experiencing mental ill-health, cognitive disability and hearing loss;**

My Doctoral thesis concludes, 'The systemic issues around adequacy of income, racist approaches, family fragmentation, availability of appropriate services and school retention need to truly be addressed to fundamentally target the causes of offending. Constructive leadership is needed to resuscitate or renew communities. A lot more is needed than the mere responding to the offender and an individualising or isolating of their problems divorced from the context from which the child or young person emerges...It has been observed in the field research and in an examination of the literature that sometimes in an effort to simplify complex issues, administrators resort to individualising problems which sit within a broader context and seek to devise 'assessment tools' to ensure resources are allocated according to departmental imperatives.'

The thesis also states 'In view of the persistent problems in policing outlined throughout this thesis, especially of youth and Maori or Indigenous people, one proposal could be the removal of police involvement in prosecutions of children and young people with that role being transferred to the Office of the Public Prosecutor. It would enhance independence, accountability and impartiality in the prosecution process.<sup>1</sup> In some cases observed in rural New Zealand and Victoria, the police would use the full force of the law to teach indigenous child offenders a lesson in contrast to their approach to child and youth non-indigenous offenders.<sup>2</sup>

**(d) the cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures;**

In Victoria Koori Courts, Koori Youth Courts, Neighborhood Justice Centres, Drug Courts (although unfortunately limited by postcode), Mental Health Lists, Special Circumstances Lists (in relation to fines) are problem solving courts and approaches that take into account the problems and circumstances of offenders. Many of these have been evaluated favorably and yet their further role out is constrained. Most evaluations have shown such programs have positive outcomes and reduce recidivism.

Unfortunately, these interventions although they make inroads are always subject to resourcing issues or are done on a small regional basis. A Justice Reinvestment approach which sees money diverted to programs such as these makes sense. The Doctoral thesis notes in its conclusion that 'The Youth Court

---

<sup>1</sup> C Corns, 'Police Summary Prosecutions in Australia and New Zealand', (2000) 19 (2) *University of Tasmania Law Review*, 280, 301.

<sup>2</sup> This was a view expressed openly by a police sergeant prior to court commencing in the court in Bairnsdale and a police officer in Auckland court.

and the Children's Koori Court observations revealed how the young person, often for the first time in their lives, could find a committed team working with them, mentoring appropriate adult behaviours, demanding accountability for the young person and demonstrating of faith in the young person. Many of the young people observed, stated in court that they had never experienced such a demonstration of faith or trust in them before. These aspects of Youth Court system in New Zealand and the Children's Koori Court in Victoria form the basis of a useful approach for other jurisdictions.' and

'The major conclusions of the author after observing the cases before the Children's Court and the Youth Court are that - the lives of the young offenders observed were, more often than not, fraught and there was an absence of stability and dysfunction in family and services which made the task of the court difficult. The role of the court cannot be viewed in isolation from the causes and contributors to youth offending which are integral in any success of the court.'

In addition, community agencies and schools have to deal with people often experiencing issues that at an earlier stage with better resourcing, support and training might be averted. It is critical that government funding models at a state and Federal level enable services time and support to work in conjunction with other services to divert people especially young people from offending. Such programs ought to be allowed to be innovative and flexible to respond with each individual in a timely way. Often government bureaucracies can be so proscriptive that the agency's ability to work with individuals in a timely and appropriate way can be inhibited. The waiting lists for programs for people with issues such as mental health, drug addiction and other problems are long and availability of programs for offenders is sparse.

Community Based Orders and other alternatives to imprisonment are often limited in their scope and do not present varied opportunities to be tailored for different offenders. If these were adequately resourced and involved a range of options rather than sweeping leaves or removing rubbish they could be used to respond to identified needs of offenders and also have rehabilitative effect and value.

## **Conclusion**

This experience and research leaves me to the conclusion that there is value in a justice reinvestment approach to criminal justice in Australia.

The Victorian Ombudsman has recently observed in his 2010 Report, *Investigation into Conditions at the Melbourne Youth Justice Precinct* that the health of young detainees is poor, many have psychological disorders, substance abuse and self-harming behaviours. The Ombudsman George Brouwer notes that these young people are detained with little mental health and appropriate support. Is it unsurprising that such vulnerable young people might graduate to more offending advancing up the scale to adult prison, harden, become angry and reoffend thus putting the community members at risk with their symptoms worsening as they are left in isolation and un-supported.

A recalibration of the justice system is needed. Reinvesting the money spent on prisons and incarceration into community, schools and revisiting programs that work and giving them a chance to succeed with appropriate resourcing and professional input as required need to be given a greater priority.

As noted in my conclusions to the Doctoral thesis in relation to youth justice 'Often the support on which the legislation is predicated, is not present or even desirable (in the case of children whose families are offenders themselves engaged in gang activity and in the victimization of their own children). This author believes that if serious inroads into offending are to occur, then systemic changes in approaches by government, community and businesses are needed. These include inroads into adequate income distribution, varied educational and employment opportunities for both parents and young people, more effective responses to mental illness and drug usage caused by trauma, hopelessness and the lack of opportunities in many communities.'

I hope this submission is of assistance to this very important Inquiry.

Yours sincerely

Dr Liz Curran  
Senior Lecturer