

Legislative Council Select Committee on the Increase in Prisoner Population, Interim Report, July 2000; Final Report, November 2001: A Review

Introduction

In November 1999 the NSW Legislative Council resolved to appoint a Select Committee to inquire into and report on: ‘the factors responsible for, and the consequences of, the increase in prisoner population since 1995 (being 40% in females and 20% in males)’ together with a range of more specific issues concerning the effectiveness of imprisonment, community corrections, and post release services, with particular reference to specific categories of prisoners such as women, Indigenous, and non-English speaking prisoners, and ‘those with special needs, such as ... intellectual, physical and psychiatric disabilities’ (*Final Report 2001:iv*). The Committee consisted of three government (ALP) members: Jan Burnswood, Peter Primrose and Janelle Saffin; two opposition members: John Ryan (Lib) (Chair) and Jenny Gardiner (Nat); Lee Rhiannon (Greens) (Deputy Chair) and Arthur Chesterfield-Evans (Dem). The Committee was asked to produce an *Interim Report* (2000) dealing specifically with women, which was duly released in July 2000, with the *Final Report* released in November 2001. This article seeks to give a brief overview of the two Reports.

Interim Report: Issues Relating to Women

The terms of reference of the Committee included consideration of:

- (e) the adequacy or otherwise of building a new women’s prison as the most effective method of addressing the problems of increasing numbers of women in prison and the adequacy or otherwise of the plans, terms and conditions of any contract entered into or proposed to be entered into in relation to a new women’s prison (*Final Report 2001:iv*).

Although the *Interim Report* dealt with many detailed and more specific issues this issue of whether NSW actually needs a new women’s prison was the most controversial and key political issue. At the risk of both passing over important specific issues concerning services and of simplification, this review will focus mainly on this issue and attempt to briefly summarise the main argument adopted in the *Interim Report*.

First, the Committee noted the significant recent increase in the women’s prison population, an increase of 41% from January 1995 to January 2000. The disproportionate rate of imprisonment of Indigenous inmates was spelt out (31% of all NSW women prisoners (at 15)) along with the rapid rise in the numbers and proportions of remand prisoners and the specific problems faced by Indigenous, non-English speaking and disabled prisoners. The high levels of violence and abuse experienced by women prisoners as children was noted from a Department of Corrective Services Report, *Census of Women in Custody in NSW, 1998* (42% reported physical violence and 33% reported sexual violence as children, *Interim Report 2000:24*). High levels of drug or alcohol abuse were reported. The report summarised the ‘typical female inmate’ thus:

normally young, drug addicted, has experienced violence and abuse in her child and/or adult life, is single or in a de facto relationship and has dependent children. She is usually economically and socially disadvantaged, has had limited education and is usually

dependent on social security. A high percentage of women suffer a mental illness. Often there is a man involved in her crime — that is, a stand-over person or pimp. The average length of sentence served by a woman offender is 3-4 months ... A significant proportion of offences committed by women are property related. Between twenty-five to thirty-one per cent of female inmates are Indigenous at any one time (at 57).

A range of factors contributing to the increase in the women's prisoner population are then discussed, including patterns of offending; increasing heroin use; policing practices (eg targeting and overcharging); legislative and policy changes such as increases in penalties, restrictions on access to bail and guideline sentences; poverty disadvantage and homelessness; drugs, alcohol and gambling; mental illness and intellectual disability; and the general tenor of the law and order debate. This is followed by discussion of the effectiveness and social and economic costs of imprisonment; and evaluations of the operation of a range of services and programs within the prison, with particular emphasis on the problems with case management, drug and alcohol, education, health and welfare and pre-release programs and the mothers and children's programs. A chapter on community based corrections follows with an examination of various sentencing alternatives to full time imprisonment with particular emphasis on the establishment of specialised bail hostels, post release halfway houses and greater use of existing alternatives for women and especially for Indigenous, intellectually disabled and drug addicted offenders.

The general drift of the *Interim Report* is thus that existing sentencing options such as probation, home detention, community service orders, and drug court programs should be expanded to divert women from full time imprisonment; bail hostels could take some of the expanding remand population out of prison; rehabilitative programs in the prison could be improved and targeted to vulnerable groups and post release services increased in ways which may reduce levels of re-offending. The analysis builds on many of the detailed recommendations contained in the earlier excellent reports of the Standing Committee on Social Issues: *Children of Imprisoned Parents* (1997), Standing Committee on Law and Justice *First Report: Crime Prevention Through Social Support* (1999) and *Second Report: Crime Prevention through Social Support* (2000). This earlier research which the Committee called to be supplemented with further evaluation and monitoring of programs and further research, set the stage for the Committee's key recommendation in relation to the proposal to build a new women's prison at South Windsor.

The Committees recommendation was that:

The Minister for Corrective Services undertake a cost benefit analysis of the proposal to build the new women's correctional facility at South Windsor and of the alternative Community based measures recommended in this Report. ... The Minister ... review the decision to build the new women's correctional facility ... in light of the results of that analysis (2000:160).

A further recommendation was that:

To help ensure the proper targeting of resources at the reduction of imprisonment numbers and the utilisation of alternatives to imprisonment, the Minister for Corrective Services impose a moratorium on the total number of prison beds for women in New South Wales. Any new gaol proposed and/or established shall replace existing prisoner accommodation numbers only so that the total number of women in prison does not exceed current levels.

Essentially then, what the Committee is saying is 'lets put the plans for the new women's prison, involving considerable public expenditure, on hold, while we implement some of the diversionary and community based corrections measures, and then evaluate the outcomes and compare them against the criteria of effects and costs, both financial and social'. It is an approach which is open-minded, constructive and pragmatic. It is an

approach which is saying in effect, lets have a mixed penal economy, not an old state command economy model. The Committee is saying, lets see what works, lets evaluate different approaches, lets compare the cost and effectiveness of building a new prison as compared to community based measures.

What then was the response to the *Interim Report*? Press reports of the Committee's main recommendations, concentrating on the recommendation to suspend plans for the new prison, carried instant repudiations of the recommendation from both the ALP government and the Liberal/National Party opposition; so much for the work of their of their own members on the Committee and so much for a 'what works', 'evidence -led' approach to criminal justice policy. Both government and opposition pledged to build the new prison because the number of women prisoners was increasing and likely to go on increasing. This was the immediate response, but was the later more considered response any different?

Unfortunately the answer is no. The *Final Report* of the Select Committee (2001) contains the recommendations from the *Interim Report* together with the NSW government's responses to each recommendation. The responses to the recommendations quoted above were: 'The reasons for building a new facility have been stated at length and publicly. Mulawa is overcrowded. The Committee visited Mulawa and agreed that this was the case' (2001:146). So much for debate; this petulant tone permeates the government responses to many of the recommendations in the *Interim Report*. The drift of it is that everything possible is already being done and that there is insufficient evidence to justify establishing bail hostels and probation hostels and other forms of diversion and post release assistance, despite the much cheaper financial cost involved in a proliferation of smaller and more targeted facilities and programs and a range of other potential social benefits.

If there is a potential weakness in the *Interim Report* it lies perhaps in the secondary recommendation for a moratorium on the increase in prison beds, which has become something of an item of faith amongst those opposing further expansion in prison capacity. It was a cornerstone of the argument against building a new women's prison in the mid 1980s in the *Report of the NSW Women In Prison Task Force* (1985) which suggested setting a ceiling on NSW women's prison beds based on Victorian imprisonment rates (Brown et al 1988). While the Select Committee's call for a 'freeze' or 'moratorium' was intended to highlight the social and political construction of imprisonment rates and the reduction in numbers that can be achieved through diversion, there is a tendency to produce the reverse effect and imply that the current ratio of prison beds to population holds some sort of magic. The main argument in the opposition case is that the current number of beds is an artifact of a whole raft of complex factors and practices, including law making, policing, sentencing, diversionary, post release and welfare policies, to mention but a few, all of which are open to change and are not immutable. Imprisonment rates are not a reflection of crime rates. Similarly 'prison capacity does not have a significant bearing on the size of the prison population and nor does it explain differences between jurisdictions' (Freiberg & Ross 1999:84; quoting Young & Brown (1993:34) cf Vinson's 'iron law of penology' quoted in the *Final Report* (at 153)).

The dangers of a moratorium approach are firstly that it tends to detract from the strength and appeal of the primary 'lets try to alter the flow of women into prison by changing a range of diversionary practices and then see if we need a new prison' argument; and secondly, that in the absence of changes in practices and processes of criminalisation, prosecution and sentencing, it can amount to a recipe for overcrowding and deteriorating conditions, leading to the charge that opponents are more concerned with holding the line on numbers than with actual prison conditions for those forced to endure them. Of course

this is far from the truth, but a line of argument which has an open, 'lets see' character, such as the *Interim Report's* recommendation for a cost benefit analysis after exploring greater diversion is, in my view, not only more convincing intellectually, practically and morally in this instance, but also has most chance of gaining broader community support.

This was indeed largely the approach of the No New Women's Prison Campaign (see campaign Charter in Appendix 1 to this review) which engaged in a range of activities including a vigil outside the South Windsor site in November and early December 2001. The campaign drew sympathetic and in depth media coverage (see eg Cameron 2001b) although news reports suggested that the arguments of the Committee and of the Campaign fell on deaf ears as far as the Minister of Corrective Services was concerned. Deborah Cameron in 'No get out of jail card for women' (2001a) stated that the Minister 'does not accept that women who are a low security risk should be kept out of jail' and quoted Mr Amery as saying: 'I am not going to find new innovative ways of keeping women out of prison if they don't deserve to be.' In short the NSW government seems determined to push ahead with the building of the new \$48 million women's prison whatever the strength of the arguments of the Legislative Committee and many others.

Final Report

The *Final Report* consolidated much of the discussion in the Interim Report, applied it more specifically to the dominant male prison population, and perhaps most distinctively and constructively, picked up the argument that Professor Tony Vinson and Eileen Baldry have been running for some time, that the key to a reduction in prison numbers lies in diverting those who are sentenced to six month terms or less.

The *Final Report* details the rise of the NSW prison population of 20% between 1995-2001, the rise being particularly marked in the years 1998-2000, and compares them to trends in other jurisdictions, many of which have experienced similar rises, with the exception of Victoria. A profile of the prison population that is depressingly familiar follows, including shocking statistics such as:

- 60% of inmates are not functionally literate or numerate;
- 60% did not complete year 10;
- 64% have no stable family;
- 20% have attempted suicide; and
- 60% of males and 70% of females had a history of illicit drug use (2001:xiv-xv).

A revealing chart examines the sentence length of all receptions into NSW prisons in the year 2000. Of the 8135 receptions in 2000, 41% are for sentences of less than three months and 65% are for sentences of less than six months (at 29). As well as short term offenders the proportion of remandees has increased from 18.7% of the total NSW prison population in 1995 to 28.6% in 2000. The number of sentenced prisoners in 1990 was 5230 compared with 5206 in 1995. By contrast remand prisoners had increased from 1201 in 1995 to 2098 in 2000 (at 40). The keys to stemming the increase in and reducing the current imprisonment rate lie in stemming the flow of unsentenced prisoners and of short term prisoners.

After a careful review of the increase in the prison population the Committee offers the following summary:

The causes of the increase in the prison population are complex. The immediate causes appear to be a major increase in the remand population, longer sentences and increased police activity. The underlying causes of these factors are, however, more complex. Regarding the increase in the remand population, it appears increased bail refusals, changes

to the *Bail Act* removing a presumption of bail in many cases, and the inability of people to meet bail conditions have all had an impact. There is, however, the need for research to identify and quantify what impact these and other factors have had. Regarding increased police activity it may be that increased police numbers and the practice of 'over-charging' are important factors. If the increased number of arrests is due to an increase in crime there has been no evidence from agencies such as the Bureau of Crime Statistics and Research to support this as an underlying cause of the increased prison population (at 62).

An extensive list is provided of legislation over the last decade which has resulted in increased penalties of imprisonment, followed by a much smaller list of reductions in penalties or decriminalisations (at 67-69). It is noted that the cost per inmate per day is \$181.14 for maximum security (\$64,485.84 per annum); \$163.19 for medium security (\$58,095 per annum); and \$138.93 per day for minimum security (\$49,459 per annum). By comparison 'the average cost per day when completing a community based program delivered by the Probation and Parole Services is \$8.63' (at 71). In terms of the expenditure of the NSW Department of Corrective Services of \$549.6 million in 1999/2000, 10% was spent on 'community supervision', 73% on the 'containment and care of inmates' and 17% on 'assessment, classification and development of inmates' (at 71-72). The total annual expenses of the Department of Corrective Services has increased by 37% in real terms since 1994 (at 73). It is noted that the Productivity Commission 'reports that the internationally agreed standard for prison utilisation, which is a measure of prison overcrowding, is between 85-95 per cent'. The NSW rate 'exceeds 100%' (at 90).

A discussion of the difficulties facing Indigenous inmates, Non-English speaking inmates and those with mental illness follows, with particular reference to the persistent difficulties facing the case management program under the increasing weight of prison numbers and affecting programs and services available during imprisonment and after release. Sentencing alternatives and diversionary programs are discussed with particular reference to the benefits of non-custodial sentences, arguments for bail hostels and probation hostels and evidence that some community based alternatives are under-utilised. Evidence was given before the Committee that 87% of supervision orders of probation and parole, 82% of community service orders and 79% of home detention orders were successfully completed (at 115). The Committee concludes:

There are many prisoners currently in full time custody who may be more appropriately and cost-effectively supervised under alternative sentencing options. These 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. The Committee believes more information is needed on why some options are not used, why some 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 (at 134).

It is here that the Committee takes up the Vinson and Baldry suggestion to attack the increase in prison population by attempting to remove short term prisoners who constitute such a significant proportion of the prison population. The Committee notes that the Western Australian Attorney General recently released a proposal to legislate to prohibit courts in that state from imposing sentences of six months or less (at 110) and that legislation already exists in WA prohibiting sentences of less than three months (s86 *Sentencing Act* (WA)). The Committee recommends that:

the Government should initiate a comprehensive research and public consultation process aimed at introducing legislation in NSW to abolish full time custodial sentences of six months or less, similar to that introduced in Western Australia ...

The merits of such a proposal are that it would have a significant impact on the size of the increasing prison population in NSW and it would enable better targeting of scarce resources in that the expensive option of full time custody should be reserved for more serious offenders, while the less expensive but very effective community based penalties are best employed on less serious offenders (at 111).

The media reception of the Committee's *Final Report* concentrated on the proposal to abolish six month prison terms (Jacobsen 2001) and was balanced and considered. An editorial in the *Sydney Morning Herald* reviewed the *Final Report* concluding:

While putting people in jail has become the benchmark in measuring the community's response to crime, the report raises questions over the efficacy of such a policy. Obviously, such a radical proposal to do away with short term jail sentences must be proceeded with slowly. Judges and magistrates are already required to give reasons for imposing a sentence of six months or less, or to say why a non-custodial sentence is appropriate. If the report leads to a greater emphasis on rehabilitation, and it actually works for minor offences, there should be little complaint, in spite of the prevailing notion that jail is the only real form of punishment (*Sydney Morning Herald* 2001).

However in the lead up to the 2003 NSW state election prospects that the NSW Government might attempt to promote a discussion around the Legislative Council Reports do not look good. In March 2002 the Premier Bob Carr announced new changes to the bail laws which would make it more difficult for repeat offenders to get bail (Bail Amendment (Repeat Offenders) Bill 2002). He acknowledged that this would blow out the remand population even further and pledged to build a fourth new prison in the next two years (including the women's prison) to accommodate the expected extra 800 remandees who will be affected by the changed bail laws (Wainwright 2002).

A Different Style of Politics

The members of the Legislative Council Select Committee deserve congratulations for their well researched and compellingly argued Reports. Levels of community cynicism about politicians are high, understandably so in some respects. But in this exercise we see that members of the NSW Legislative Council from nearly all major political constituencies could engage in an open-minded process of inquiry over two years and agree on a method of approach to the issues which included:

- calling for more research where evidence was lacking;
- seeking to stimulate a more informed and evaluative approach around 'what works' rather than an acceptance of established views based largely on retributivism;
- focusing on the differentiated nature of the prison population and the differential experiences of particular disadvantaged groups;
- a preparedness to envisage a more plural, experimental, diverse approach to corrections, what might be called a 'mixed penal economy', rather than accept the inevitability of the traditional centralised state command model;
- taking up the argument that Tony Vinson and Eileen Baldry have been putting for some time, that NSW seriously look at the suspension of short term prison sentences;
- a commitment to public consultation and a recognition of the need to build up constituencies of support; and
- a recognition that the issues are those for a 'whole of government' approach.

The approach of the Committee has been democratic, open, largely non, or at least significantly less, factional, based on issues, pragmatic in the best sense, far less ideological, and based on the evidence. It is the type of politics we could do with much more of, as against the 'button-pushing', 'poll driven', 'message sending', 'wedge', 'dog whistling' and factional politics of posture, name calling and appeals to sentiments of anxiety, fear and exclusion, which we have seen so much of lately. Particular praise should go to the Chair of the Committee, Liberal MLC John Pryan. Congratulations are also due to those social movements and community groups outside the Committee who have conducted the campaign against the building of the new women's prison. While this review has done less than justice to the detail of the two Reports hopefully it might have persuaded readers to explore the richness and innovative thinking that lies within them, for themselves.

As if to counter a sense of resignation and being overwhelmed by the force of law and order politics evident in the response of the NSW government to the Reports, the Committee closes the *Final Report* with a lengthy extract from a speech on women in prison delivered by the (ALP) Western Australian Minister of Justice and Legal Affairs, Mr Jim McGinty, to the WA Legislative Assembly. The speech offers an alternative approach to that pursued by the NSW (ALP) Government, and one close in spirit to the two Reports of the NSW Legislative Council briefly reviewed here. In short, a different approach is not just misty-eyed wishful thinking, it is a real, practical possibility, which the WA government is actively pursuing.

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Appendix: Charter of the No New Women's Prison Campaign

It is incumbent upon citizens of goodwill to bring before public attention the costs associated with the growing numbers of women imprisoned in New South Wales:

1. There are over 500 women in prison in NSW. The NSW Government is spending \$48 mil to build a 200-bed women's prison at South Windsor. Another 100 'beds' are being built elsewhere meaning over 700 women will be able to be imprisoned in two years.
2. Every Inquiry and Report on, or referring to Women in Prison in NSW over the past 20 years has recommended that fewer women be imprisoned, that diversions and non-custodial options be used in preference to imprisonment and that a majority of women in prison could be dealt with better in other settings. (Children of Prisoners 1980; Women in Prison Task Force Report 1985; Prison: the Last Resort 1991; Children of Imprisoned Parents 1997; Law & Justice Committee's Crime Prevention Through Social Support Report 1999 & 2000; Select Committee into the Increase in Prisoner Population Interim Report on Women 2000).
3. The number of women in prison over the past five years has risen by almost 60%. (Select Committee into the Increase in Prisoner Population Interim Report on Women 2000).
4. The proportion of Indigenous Australian women in prison in NSW is an unacceptable 23-25% (whilst they represent only 2% of the general population) with their rate of incarceration rising faster than any group. Indigenous women have also been subjected to higher rates of physical and sexual abuse and have been greatly affected by the removal of Aboriginal children policy of the 1950s -1970s.
5. The proportion of women in prison on remand (unsentenced) has doubled over the past five years and is now over 25%.
6. 70% of women are convicted of non-violent crimes. At least one third of women in prison could be diverted to other than custodial forms of punishment. (Select Committee on The Increase in Prisoner Population Interim Report 2000)
7. It is estimated that more than half the women in prison have children with 30-40% being sole carers. The effects upon their children of even a short prison sentence can be devastating. (Inquiry into Children of Imprisoned Parents, 1997)

8. Most women prisoners have low education and job skill levels.
9. It is estimated that between 75 and 85% of women in prison have a problem with drug/alcohol and much of their offending is associated with this. Prison is an unsatisfactory place to deal with drug abuse.
10. More than half the women in prison have been incarcerated before ie prison has not deterred nor rehabilitated them.
11. A large proportion of women prisoners has suffered physical and/or sexual abuse. One third has a serious psychiatric problem.
12. Parole costs \$5.40 per person per day; probation \$3.95; Community service \$3; community based 24 hour supported rehab. / bail house \$90. Compare with \$121- \$170 in prison.
13. In the light of these facts, we, the members of the No New Women's Prison Campaign and supporters call upon the Government of NSW to review all the above mentioned reports and to develop and implement a plan to reduce the number of women being imprisoned. We call for a third of the budget dedicated to building and maintaining women's prisons to be diverted to more effective other-than-prison means of dealing with women convicted of non-violent crimes.

REFERENCES

- Brown, D, Kramer, H & Quinn, M (1988) 'Women in Prison : Task Force Reform' in Findlay, M & Hogg, R (eds) *Understanding Crime and Criminal Justice*, Law Book Co Ltd, Sydney, pp 273-308.
- Cameron, D (2001a) 'No get out of jail card for women', *Sydney Morning Herald*, 1-2/12/2001.
- Cameron, D (2001b) 'The View from inside', *Sydney Morning Herald*, 1-2/12/2001.
- Department of Corrective Services (1999) *Census of Women in Custody in NSW, 1998*.
- Jacobsen, G (2001) 'Abolish six-month terms to ease jail pressure, say MPS', *Sydney Morning Herald*, 14/11/2001.
- NSW Legislative Council Standing Committee on Social Issues (1997) *Children of Imprisoned Parents*, NSW Parliamentary Papers, Sydney.
- NSW Legislative Council Standing Committee on Law and Justice (1999) *First Report: Crime Prevention Through Social Support*, NSW Parliamentary Papers, Sydney.
- NSW Legislative Council Standing Committee on Law and Justice (2000) *Second Report: Crime Prevention through Social Support*, NSW Parliamentary Papers, Sydney.
- NSW Legislative Council Select Committee on the Increase in Prisoner Population (July 2000) *Interim Report: Issues Relating to Women*, NSW Parliamentary Papers, Sydney.
- NSW Legislative Council Select Committee on the Increase in Prisoner Population (November 2001) *Final Report*, NSW Parliamentary Papers, Sydney.
- NSW Women in Prison Taskforce (1985) *Report of the NSW Women in Prison Taskforce*, NSW Government Printer, Sydney.
- Sydney Morning Herald*, Editorial, 'Emptying the jails', 16/11/2001.
- Wainwright, R (2002) 'The convict state: Carr creates a jails boom', *Sydney Morning Herald*, 20/3/2002.