

## SUBMISSION TO INQUIRY ON IMPRISONMENT AND RECIDIVISM

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*The underlying factors behind the increased rates of imprisonment and recidivism are -*

A fundamental failure within our society to recognise that the lives of many if not most citizens are adversely impacted and affected by economic and social forces and pre-conditions over which they have little or no control;

An ongoing failure by society to understand that many if not most citizens have to constantly struggle to achieve an acceptable quality of life for themselves and their family, financially socially and emotionally – and that this struggle has wide ramifications for the whole society;

An ongoing failure by those entrusted by the community at large, i.e. governments, to properly accept, manage and deal with the changes in society as they occur – and to bring the community along with them;

A continuing failure to realise that the extent of crime [or ‘offences against the community’] is not as serious and dramatic as the tabloid press and social media constantly lead many citizens to believe;

The ongoing social campaigns by governments and sections of the media to generate fear in citizens that they are at constant risk of violent crime and/or public disorder and chaos – how governments seek to keep the citizenry under control and compliant – and to justify repressive ‘law and order’ measures on the grounds of ‘safety’ that diminish or extinguish basic rights and freedoms;

The ongoing pressure on governments by some sections of society to adopt measures that are ‘strong on crime’ by imposing harsh penalties on those who offend or disobey what is seen as the generally accepted ‘rules’ of society – these proposed measures are strongly based on fundamentalist religious dogma ;

An ongoing failure to acknowledge that there are more enlightened ways of dealing with people who, through circumstances outside their control or through lack of personal control, do act in ways that damage community

harmony – this failure means that there are no attempts to seriously examine and implement realistic solutions and strategies to reform the justice and penal systems;

An ongoing failure to realise or accept that the so-called ‘war on drugs’ is never going to be ‘won’, and will not be ‘won’ until and unless our society is reorganised socially, politically, and economically – this failure is well demonstrated by the long and unsuccessful battle by politicians and law enforcement to eradicate cannabis from society;

An ongoing failure to understand that addiction to illicit drugs is a medical issue, and that possession of illicit drugs for personal use, and substance abuse should never have been part of the criminal law;

An ongoing failure to understand that many citizens know that some members of the wider community – in the corporate, academic, legal, political and rural sectors - have for years been permitted to legally enrich themselves at the cost of others, and successfully escape any serious sanctions: they know that this fraud and corruption is occurring every day, and many do think that “if they can do this and get away with it for years without any recourse or sanctions, why shouldn’t I try to improve my life in a small way by engaging in low-level activity that’s illegal, but does not have the same impact?”.

### *Objectives of imprisonment-*

The stated objectives of imprisonment are contested in this submission.

Imprisonment clearly does make community safer by removing violent and dangerous offenders from society for a certain time, but using deterrence as a justification for detention of criminals is deeply flawed. It has never been proven that incarceration and harsh treatment of offenders act successfully as a strong deterrent to potential acts of crime. It’s arguable that most people who determine to act with criminal intent, i.e. with premeditation, will not be deterred by the potential consequences of acting. They will simply plan to act in a manner that they think will avoid or reduce the risk of being apprehended.

They will not seriously consider the consequences of their actions no matter how harsh the penalties will be when they are apprehended. Those persons who act in a spontaneous manner due to recklessness or to momentary loss of self-control will never consider the possible consequences of their actions – deterrence will not even enter their minds. This has been proven in countries which execute prisoners or issue whole-of-life sentences; the degree of deterrence has no or little effect on crime rates.

Rehabilitation of offenders is and must be a primary objective of the justice system, but it has never been granted the importance that it deserves by governments or the community. There has always been the attitude of ‘once a criminal, always a criminal’ by so many in the community and in government. Programs designed to rehabilitate offenders are not and have never been a priority of governments and there is grossly insufficient funding and support for such programs.

The stated objective of “fair retribution” is also strongly contested. There should not be, in an advanced civilised society, any place for vengeance or retribution. While victims and their stories must and should be fully heard and understood, the current emphasis on vengeance [“lock them up and take away the key”] is wrong and dangerous, and it will not lead to ultimate redemption and forgiveness. This attitude, loudly promoted by “victims support groups’ does not and will not lead to successful restorative justice outcomes but will perpetuate the religiously-based ‘good vs evil’ dogmas that have put society into the unstable state it is now. This demand for retribution also appeals to the crudest forms of populist politics that continually assert that governments are going “soft on crime”; see the example of the current Opposition Leader who said that this inquiry “sends a terrible message.....we have lost control of our prisons..”

The current balance of the three stated objectives is clearly not achieving the aims of reducing crime and achieving real justice. New objectives should be created –

1. to assist in making the community safe and secure by removing violent and dangerous offenders from the community until the threat and danger are extinguished;

2. to take all necessary actions to ensure that those who offend against the community are fully rehabilitated and restored into society as fully functioning individuals; and
3. to create the conditions and programs to enable restorative justice to be performed, so that both victim and offender can approach a state of redemption and forgiveness .

### *What are the causes of rising rates of imprisonment in the State?*

There are several reasons for more citizens than ever being incarcerated. While the sentencing guidelines state that imprisonment as a last resort, it is clear that many accused are being sent to prison when they could and should be managed in ways other than detention, such as diversionary, community orders, fines or restorative justice. A significant number [over 20%] in the prison population is made up of those who have had a connection with illicit drugs due to substance abuse. None of these detainees should be held in prisons as they are currently operated. Not one. Possession of illicit drugs should never lead to incarceration in a prison even if there is proven intent to sell and distribute; these offenders should and could be dealt with in programs which have a chance of rehabilitation and at much lower cost. One of the most obvious ways of achieving this is home detention. Again, the element of retribution should never be considered. But at present, the Courts know that because there is a demand by influential groups for harsher retribution and punishment, there is a need to send some people convicted of crimes to prison, even though this is not in anyone's best interest, because there are no other practicable alternatives available. If the judiciary does not continue to incarcerate non-violent offenders, they will be accused of being "soft on crime" and endangering the community.

The financial and social fabric of society is slowly being torn apart, as the quality of life for a significant minority in the community has been diminishing for more than three decades. For many people, their life is wholly insecure: they have no security of housing, they have no job security, they struggle to properly feed themselves and their family, they may have to seek help from a charity to pay bills, they may have problems with their children's education,

they often have major transport issues, and they often have family and relationship difficulties. They may have a job that is long-term casual, their job and employer is very difficult and stressful, they might be underpaid but cannot complain for fear of losing their job, their vehicle needs imminent repair and registration but they have no funds available, and the utility bill is overdue and the power company is threatening to cut off the power. They may have held down a full-time job but their employer has retrenched them due to business conditions, and they have to seek government welfare. In these circumstances, is it at all surprising that some of these citizens will often look to legal and illicit drugs to escape from their unbearable circumstances, and/or engage in actions that are illegal, without considering all of the consequences that could follow for these actions?

Isn't action taken by government and not-for-profit organisations to improve the quality of life for these people, to offer them all of the support that they need to deal with their crises, the best way to prevent people from crossing the line into illegal actions?

And if the line is crossed, isn't the community in an advanced civilisation required to deal with an offender in a humane, balanced and civilised way so that the offender has at least a fair chance of redeeming him/herself and again becoming a fully rehabilitated member?

*Are indigenous incarceration rates acceptable?*

Clearly the answer is no.

If indigenous incarceration rates were at the same proportion as indigenous citizens are to the whole community, then very few indigenous prisoners would be detained. It is shameful that the section of the community that is most disadvantaged is further damaged by the effects of detention.

*What are the pathways to most offenders being imprisoned?*

Most offenders in prison have strong disadvantages to overcome, many have serious addiction or mental issues, many have had limited education outcomes, and many are limited in what they can achieve in life without

substantial assistance from governments. There are major deficiencies in social and employment programs, and many fall through the cracks.

In addition to these inherent barriers, their interactions with law enforcement further damage their already diminished futures. It is beyond dispute that members of the QPS have for decades victimised and harassed and stalked the indigenous community. I have witnessed this behaviour on numerous occasions, when indigenous citizens who are on the streets, are singled out for attention by the QPS, interrogated, asked for ID, their personal belongings emptied out on to the footpath, and then detained.

Many of these people with issues are then charged with something called “public nuisance” which is an all-encompassing offence aimed at removing potential ‘troublemakers’ from the public gaze. Society finds these people an embarrassment and does not want to accept that in a wealthy state, there are people who are homeless and destitute. So it organises to ship them off to prisons that are out of sight and out of mind. Problem solved.

Over 25000 people are charged every year in this State with ‘public nuisance’ offences and yet we hear nothing of the circumstances of these cases unless the media deems them sensational or supportive of the standard ‘law and order’ demands for punishment.

The Criminal Code needs to be wholly reformed to eliminate all and any offences that do not substantially affect public order. There should be no offences that do no harm to anyone other than the ‘offender’.

There should be no statutes that eliminate or diminish the basic rights of a citizen to exercise his/her freedom of movement, freedom of association, freedom to dissent or protest, or freedom from invasion of privacy.

The Sentencing Guidelines also need to be completely rewritten.

### *What are the causes of recidivism?*

If a person is released from prison without any of the basic social and financial supports to resume a relatively normal life, is it any surprise that that person, who has not been able to function independently for many months or years,

will find it very challenging to return to his/her previous lifestyle and successfully transition back into society.

Why is there not more substantial tangible support for prisoners on release?

What actions does the State take to ensure that former prisoners' needs for secure housing, employment, job training, education, and treatment for health issues are all addressed? It seems from the available evidence that current actions to enable full transition are not adequate or comprehensive.

*The costs and benefits of varying classes of prisoner and type of prison*

For examples of how other countries have attempted to reform the prison system, look to what has been done in Brazil, The Netherlands, and Finland for inspiration. Brazil has created the APAC system in which low-risk prisoners are segregated to a specially designed facility that has no locks, and the prisoners have freedom of movement and action.

In Finland, the prisons, while having secure perimeters, are designed to be very similar to standard detached houses, there are no cells or locks, and the prisoners cook and clean for themselves.

These alternative detention models are successful in that prisoners who are treated humanely and with respect, are much more unlikely to reoffend. The cost to the community of detaining offenders is also much lower than the current high-cost structures.

Why are these programs not considered here?

*Does the system work properly?*

No and it never has, despite what the DCS will assert.

THE END

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