

29 May 2023

Committee Members
Legislative Council Government Administration Committee 'B'
Parliament House
Hobart TAS 7000
Email: csjs@parliament.tas.gov.au

Dear Committee Members,

Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters

I am writing this letter regarding the current inquiry into Tasmanian adult imprisonment and youth detention matters. I note the Committee was given the following Terms of Reference:

To inquire into and report upon Tasmanian corrective services and justice system matters related to adult imprisonment and youth detention including:

1. Factors influencing increases in Tasmania's prisoner population and associated costs;
2. The use of evidence-based strategies to reduce contact with the justice system and recidivism;
3. The provision of, and participation in, services for people in prison and leaving prison (health housing and legal services);
4. Training and support initiatives for corrective service staff related to increasing individual well-being, professionalism, resilience and reduced absenteeism;
5. Innovations and improvements to the management and delivery of corrective services that may be applied in Tasmania, including to future prison/detention centre design; and
6. Any other incidental matters.

These Terms of Reference are specifically relevant to my area of expertise as well as new research into incarceration in Tasmania conducted by the Institute of Public Affairs.

I was Dean of Law at Swinburne University, Melbourne, from 2019 to 2022, and have worked in Australia and internationally as a renowned expert in punishment and sentencing. I have authored over 30 books and 200 articles on sentencing reform published in the top three per cent of leading Australian and international journals. This research has been cited in over 100 court judgments in both the High Court of Australia and superior courts internationally.

Until March 2023, I collaborated in a research partnership with the Institute of Public Affairs (IPA). The IPA is the most prominent research organisation investigating the emerging incarceration crisis in Australia. Relevantly, the IPA has conducted new analysis of the incarceration problems facing Tasmania specifically. The findings of this research are enclosed in this letter.

Given this background, I hope you will consider exercising your discretion to invite myself and a representative of the IPA to appear as witnesses before the Committee at the public hearing for the inquiry to discuss this research.

IPA research of the emerging incarceration crisis in Tasmania

Incarceration is at a crisis point in Australia. Despite the national population growing by 86 per cent since 1975, the prison population has grown by 355 per cent.¹ In Tasmania, the adult incarceration rate is now 138.1 per 100,000 of the adult population.² Whilst other Australian states such as Western Australia have higher incarceration rates, Tasmanian prison numbers have grown at a rate far exceeding the nation average in recent years.

Since 2015 the adult incarceration rate in Tasmania has increased by 6.6 per cent.³ The national average incarceration rate grew by 2.6 per cent over this same seven-year period.⁴ Therefore, Tasmania's incarceration rate is increasing at more than 2.5 times the national average.

It is vital that Tasmania acts quickly to remedy this escalation in prison numbers before they climb to levels seen in Queensland, where the government is struggling to regain hold of their own justice systems against a surge of crime.

Tasmania already spends the most per prisoner per day of all the states in Australia, with the cost of housing one prisoner for one day reaching \$561 in 2021-22.⁵ Annually, this amounts to \$204,710 for one prisoner which is well above the national average of \$147,890.⁶ The total net operating expenditure and capital costs of prisons in Tasmania for the period of 2021-22 was over \$101 million.⁷

Concerningly, Tasmanian prisons are at 88 per cent capacity.⁸ If the incarceration rate continues to increase, new prisons will need to be built in order to accommodate the greater number of prisoners. Tasmania is close to a tipping point, whereby only an extra 90 prisoners would result in current prison capacity exceeding 100 per cent, and therefore requiring the potential construction of new costly prison facilities.

This is an avoidable problem. Of those imprisoned in Tasmania, 37 per cent have been incarcerated for non-violent offences.⁹ The Australian Bureau of Statistics defines non-violent offences as those committed against organisations, government, and the community in general rather than an offence against another person.¹⁰ Prisons are the most serious form of punishment that a government can inflict on offenders, and it should be reserved to the people that are a danger to the community, rather than the offenders the community is merely angry at. Finding alternatives to incarceration for this category of offenders would save the state government a significant amount of money without compromising community safety. IPA research has found that the cost of incarcerating nonviolent offenders for a year in Tasmania is approximately \$47

¹ Australian Bureau of Statistics, *Prisoners in Australia 2022* (Catalogue 4517.0, 24 February 2023) Table 1.

² *Ibid* Table 17.

³ *Ibid*; Andrew Bushnell and Daniel Wild, 'The Use of Prisons in Australia: Reform Directions' (Research Report, Institute of Public Affairs, December 2016).

⁴ *Ibid*.

⁵ Productivity Commission, *Annual Report on Government Services* (Report, 32 January 2023) Volume C Section 8 Table 8A.19.

⁶ *Ibid*.

⁷ *Ibid*.

⁸ *Ibid* Table 8A.15.

⁹ Australian Bureau of Statistics, *Prisoners in Australia 2022* (Catalogue 4517.0, 24 February 2023) Table 16.

¹⁰ Australian Bureau of Statistics, *Australia and New Zealand Standard Offence Classification* (Catalogue 1234.0, 2 June 2011).

million, making up a significant portion of the total budget spent on prisons for the year of 2022.

Prison Fails to Achieve Sentencing Objectives

Sentencing objectives in Australia include community protection, general deterrence, specific deterrence, rehabilitation, and retribution. IPA research has found that prisons only provide transient protection for the community, counteract the objective of rehabilitation, and do not serve as a sufficient deterrent of criminal behaviour.¹¹

Incapacitation

Prisons only provide transient protection to the community for the period in which the offender is incarcerated. Violent and dangerous criminals, especially those who have committed a sexual offence, must be incarcerated, often for far longer periods of time than is currently the case. However, the effects of prison can be counter-productive when involving non-violent offenders, as incarceration which is unnecessary and lead to criminogenic behaviour.¹² Therefore, the use of prisons must be reserved for violent offenders whose incapacitation is essential to ensure community safety.

Rehabilitation

In Tasmania, 67 per cent of prisoners have previously been imprisoned.¹³ Nationally, the percentage of reimprisoned offenders is 60 per cent.¹⁴ Thus, Tasmanian prisons are performing worse than the national average at rehabilitating prisoners and directing them to more productive paths. Further contributing to high reoffence rates are the short sentences given to offenders in Tasmania. In 2022, 79 per cent of defendants were sentenced to a correctional institution for less than one year.¹⁵ Research finds that high recidivism is associated with frequent and short prison sentences.¹⁶

General and Specific Deterrence

General and specific deterrence of criminal behaviour cannot be used to justify prison sentences. Research has found that imposing harsher penalties on offenders does not dissuade them from committing an offence.¹⁷ Whilst offenders do consider the costs and benefits before offending, research shows that this analysis is shallow.¹⁸ It is the fear of being apprehended for the offence and receiving any form of penalty that deters offending.¹⁹ Therefore, there is no compelling evidence linking higher penalties to less crime. Rather, the most effective method

¹¹ Mirko Bagaric, 'Australia's Emerging Incarceration Crisis: Proposed Reforms of the Australian Sentencing System' (Research Report, Institute of Public Affairs, October 2022).

¹² *Ibid.*

¹³ Australian Bureau of Statistics, *Prisoners in Australia 2022* (Catalogue 4517.0, 24 February 2023) Table 14.

¹⁴ *Ibid.*

¹⁵ Australian Bureau of Statistics, *Criminal Courts, Australia 2021-22* (Catalogue 4513.0, 3 March 2023) Table 66.

¹⁶ Productivity Commission, 'Australia's Prison Dilemma' (Research Report, Australian Government, October 2021).

¹⁷ Bagaric (October 2022).

¹⁸ Marta Nelson, Samuel Feineh and Maris Mapolski 'A New Paradigm for Sentencing in the United States' (Research Report, Vera Institute of Justice, February 2023).

¹⁹ Bagaric (October 2022).

of reducing crime is to increase the perceived likelihood of apprehension in an offender's mind and therefore the fear of receiving some form of sanction for committing the offence.²⁰

Alternatives to Prison

Nonviolent offenders who do not pose a threat to community safety should not be incarcerated. Rather, they should be subject to alternative punishments which can be imposed to a degree sufficient to retribute offenders and deter criminal behaviour whilst at the same time reduce taxpayer expenses.

Offender employment programmes

Non-violent low-risk offenders should be eligible to work for willing business in sectors experiencing labour shortages.²¹ Rather than being a burden on taxpayers, these non-violent offenders should be working, paying tax, and helping to address worker shortages. Employers would have full knowledge of the offender's criminal history and the program would function similar to community-based orders, however offenders would be paid award wages and work full-time.

Financial Sanctions

Many crimes are motivated by financial interests. That is why a financial sanction should be imposed for non-violent criminals to deter motivation of financial gain. Offenders should be subject to a property ownership disqualification which prevents them from owning or possessing any assets for either a specified time or forever.²² Alternatively, an offender taxation levy could be imposed which would operate so that two-thirds of all income derived by the offender would be payable as taxation.²³ The total owed would be double the amount wrongfully attained.²⁴ Not only would this reduce the burden of incarceration costs on law-abiding taxpayers, but it would also see offenders held financially responsible for the harm inflicted by their crimes.

Technological Advancements

Technological incarceration should be advanced as a criminal sanction.²⁵ The advantage of this sanction is that the physical parameters and restrictions imposed on an offender can be tailored to the offence committed so that it is proportionate and limits the ability of the offender to reengage in offending. GPS tracking of offenders who are required to wear effective ankle bracelets is a demonstrated effective means of monitoring the location of offenders. It should be used more frequently for non-violent offenders. In addition this, Tasmania should consider developing tamper-proof sensor equipment and visual recording equipment which could be attached to offenders to monitor their movements and send an alert if they were to engage in any suspicious behaviour.²⁶

²⁰ *Ibid.*

²¹ Mirko Bagaric and Morgan Begg, 'Let Them Work: How Criminal Justice Reform Can Help Address Australia's Worker Shortage' (Research Report, Institute of Public Affairs, March 2023).

²² Mirko Bagaric and Morgan Begg, 'Make Them Pay: Proposed Sentencing Reforms for Fraud Offences' (Research Report, Institute of Public Affairs, November 2022).

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Bagaric (March 2023).

²⁶ *Ibid.*

Reallocation of Resources – More Cops on the Beat

The taxpayer funds saved from reducing incarceration costs could therefore be redirected to other policing efforts which serve to limit the incidence of crime and thus the number of victims suffering at the hand of offenders. As stated above, when contemplating an offence, offenders consider the possibility of apprehension into their decision making. If police presence was increased, so would be the fear of apprehension, thus decreasing the incidence of crime.

In addition to the analysis contained in this letter, I have enclosed for the Committee's interest several research reports on matters relating more broadly to incarceration and which explain in greater detail alternative proposals to prison:

- *Australia's Emerging Incarceration Crisis: Proposed Reforms of the Australian Sentencing System* (October 2022).
- *Make Them Pay: Proposed Sentencing Reforms for Fraud Offences* (November 2022).
- *Let Them Work: How Criminal Justice Reform Can Help Address Australia's Worker Shortage* (March 2023).

The IPA and I would greatly appreciate the opportunity to discuss further this research at the public hearing for the inquiry.

Kind Regards,

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