



**LEGISLATIVE COUNCIL SESSIONAL COMMITTEE GOVERNMENT  
AND ADMINISTRATION**

**INQUIRY INTO TASMANIAN ADULT IMPRISONMENT AND  
YOUTH DETENTION MATTERS**

**SUBMISSION FROM PRISONERS LEGAL SERVICE TASMANIA (March 2023)**

**INTRODUCTION**

This submission is on behalf of the Prisoner's Legal Service Tasmania (PLS). We welcome this opportunity provided by the Parliament to examine in a holistic way the Tasmanian Prison system. This submission deals with the current prison environment and its failings and proposes a series of reforms, including the abolition of short sentences.

In addition, the Submission deals with the issue of a proposed northern prison and provides alternative models which should inform any planning of such a facility.

**WHAT IS THE PLS?**

1. The PLS is an incorporated association with DGR status. It was established in 2011 and emerged from its advocacy predecessor, Prison Action and Reform. The PLS is chaired by one of its founders, Greg Barns SC and its committee members are Jonathan Budgeon, Deputy Chair, David Palmer, Jackie Slyp, Emily Hindle, Tony Bull and the Executive Officer and Manager of the Preventive Lawyering Program, Anne Cleal.

2. The PLS receives funding from the Tasmanian Government, the Solicitors Guarantee Fund and private donations.
3. The PLS advocates for prisoners and their families. It assists prisoners, and ex-prisoners, in relation to parole, community corrections orders, prison discipline issues, and prisoner welfare. The PLS has just commenced running a groundbreaking Preventive Lawyering Program designed to provide prisoners who are to be released within 3 to 6 months, with a legal health check. This program is designed to reduce stress and recidivism on release.
4. PLS undertakes research and engages with students, law and social work, to assist in clinics and projects. In this context, we are grateful to the University of Tasmania law student, Jo Palmer, for the research she undertook for this submission.

## **THE CURRENT PRISON ENVIRONMENT**

5. The Tasmanian prison system is under resourced, often punitive and demonstrably fails to reduce offending. It is also an example of failure in government policy to deliver value for money for taxpayers.
6. The Tasmania prison system is prone to overcrowding, lockdowns, the use of solitary confinement and lack of commitment by government to ensuring proper human rights practices inform the prisons operations and the corrections system generally. We note that the Office of the Custodial Inspector has made similar observations over a number of years <sup>1</sup> referring to the ongoing issues of concern such as;
7. “the lack of drug and alcohol treatment programs for all prisoners;
8. Insufficient and inadequate assistance is provided to prisoners pre and post release;
9. very few applications for section 42 leave for rehabilitation and reintegration purposes are approved.”
10. The most recent Productivity Commission Report on Government Services sets out some disturbing statistics about the Tasmanian prison system:

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<sup>1</sup> See, for example, Office of the Custodial Inspector, *Annual Report 2021-2022* 6.2

i Average number of prisoners daily; 2012-2013, 473; 2021-2022, 642<sup>2</sup> 24% of prisoners on an average number daily basis are indigenous;

ii Real Net Operating Expenditure 2021-2022, \$101,348,000.00; 2012-2013, \$56, 968,000.00<sup>3</sup>

iii Prison population per 100,000 in 2021-2022 is 279 and in 2012-2013 it was 119<sup>4</sup>

11. The recidivism rate, which is the number of persons returning to prison within two years of release is a staggering 51%, up from 40% eight years ago.<sup>5</sup> The average cost per day of housing a prisoner is around \$330 per day<sup>6</sup>

12. If we had statistics like this in our health system which, for example indicated that one in two person released after a heart attack were returning in two years to hospital, we would, rightly, be outraged.

### **FAILINGS OF THE CURENT SYSTEMS OF DETENTION**

13. The Tasmanian prison system tolerates high levels of mental illness<sup>7</sup>, acquired brain injury or cognitive impairment<sup>8</sup>, poor levels of literacy and numeracy. Its through care for prisoners is virtually nonexistent.

14. Prisoners are returning as citizens with unstable accommodation at best, little or no employment opportunities, and lack of mental and physical health facilities and services and supports. Furthermore, incarceration is linked to “many chronic diseases and geriatric syndromes even after accounting for socioeconomic status.”<sup>9</sup>

15. We know this to be the case because we work with prisoners before and after release. We also maintain concerns about the sometimes petty and punitive

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<sup>2</sup> Productivity Commission, *Report on Government Services 2023* Table 8A.4

<sup>3</sup> IBID Table 8A.2

<sup>4</sup> IBID Table 8A.5

<sup>5</sup> IBID Table CA.4

<sup>6</sup> Productivity Commission, “Australia’s Prison Dilemma -research paper” 29 October 2021.

<sup>7</sup> The AIHW reports 2 in 5 prisoners (40%) “reported having been told they had a mental health disorder at some point during their lives. Females (28%) were almost twice as likely as males (15%) to be dispensed mental health-related medication.” AIHW *Health of Prisoners*, 7 July 2022

<sup>8</sup> 42% of adult prisoners in Australia have cognitive impairment – in the population generally the figure is 2% ; see *Criminal justice system issues paper*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability 2020

<sup>9</sup> Ilana R. Garcia-Grossman et al, *History of Incarceration and Its Association With Geriatric and Chronic Health Outcomes in Older Adulthood*, JAMA Network Open. 2023;6(1), 1-11, 1

culture of community corrections in relation to breaches of parole ease. Some of these breaches are for minor infringements such as use of cannabis, failing to attend an appointment, or other similar matters. We provide this example to illustrate the concern.

16. A few years ago, we assisted a young person coming back in to the community after serving a term of imprisonment. This person was establishing a cartage business and we helped him obtain a ABN. He had just started this business when police alleged he had been drug driving in circumstances where there was real doubt about his guilt.
17. He was arrested and sent back to jail. He lost his business opportunity and remained incarcerated for some months.
18. We are able to expand on the culture concerns if the Committee seeks to hear evidence from us.
19. We are also concerned at the practice of de facto solitary confinement. Lockdowns and maximum security rules means that prisoners are confined to their cells for up to 22 hours per day. This is a clear breach of a number of international human rights instruments.<sup>10</sup>
20. No doubt there will be a number of submissions made to the Committee in the context of this inquiry about prison conditions, we do not seek to replicate them.
21. Instead, this submission is seeking to focus on avenues of reform.

## **PROPOSALS FOR REFORM**

22. The Tasmanian government has proposed building a prison in the north of the state. The PLS has been long concerned that families and prisoners who live in the north and north west of Tasmania are prejudiced in terms keeping valuable social connections with their loved ones because of long travel times to Hobart.

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<sup>10</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), Rule 45.1

23. However, unless a new facility serving the north of the state is a wellness centre in the true sense of that term, then to build it will simply mean the repeating the disaster of the current expensive system.
24. When we say wellness centre, we mean a facility focused on mental and physical well-being, education and through care for those leaving the facility. In this respect we note that there are number of models overseas which the Tasmanian government should be examining and the features of which it ought to seek to replicate in this state.
25. This Committee will be aware that Scandinavian prisons in particular are seen as demonstrably superior forms of punishment and imprisonment than those in the Anglo-American world.
26. The key features of the Scandinavian prison system can be described as follows:
- i smaller sized facilities;
  - ii normalised interactions between officers and inmates;
  - iii general quality of prison life – diet, cleanliness, quietness, personal space visiting arrangements in both open and closed prison is much higher in Scandinavia;
  - iv there are higher levels of prisoner involvement in work or classes in Scandinavia;
  - v there is a much higher proportion of inmates in open prisons in Scandinavia and security has less of a defining role.<sup>11</sup>
27. In relation to a more positive social climate, which is the case with Scandinavian prisons, there is research which indicates that a good prison social culture is likely to improve outcomes for prisoners in particular in relation to rehabilitation.<sup>12</sup>
28. Harding in fact notes that recidivism rates are impacted by enabling positive self-image- if prisoners have a “good citizen” mindset that it is an influential factor in lowering recidivism rates.<sup>13</sup>

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<sup>11</sup> J Pratt and A Ericksson (2011), “Mr Larsson is walking out again.” *The origins and development of Scandinavian prison systems*, Australian and New Zealand Journal of Criminology, 44(1), 7-23

<sup>12</sup> R Harding (2014) *Rehabilitation and Prison Social Climate: do “What Works” rehabilitation work betters in prisons that have a positive social climate*, Australian & New Zealand Journal of Criminology 47(2), 163 to 175.

<sup>13</sup> *ibid*, 168

29. Harding discusses therapeutic communities within prisons and in particular focuses on the Grendon Underwood Prison in the UK as an example of a positive environment on the prison having a direct correlation with a reduction of recidivism rate of 20%.
30. To return to Scandinavia, the Norwegian model in particular has been a very successful one in terms of creating a positive social climate for prisoners and achieving high rehabilitation outcomes.
31. Norway is known for what is called normalization in prisons. Prisoners wear their own clothes, are responsible for preparing and cooking their own meals are treated equitably and have a high quality of living similar to that in the outside world.
32. The essence of the Norwegian proposition, and one which in theory is the case in Australia, but sadly not in practice, is that the punishment is in fact the loss of freedom and movability outside the prison. While in the prison, the emphasis is on increasing skills and life capacity and self-confidence and self-improvement.
33. The prison system which focuses on outcomes, should, as the Norwegian system does, ensure that a person who leaves is a person who has been able to self-improve, who has increased self confidence and who then has a very good chance and opportunity of post incarceration employment and pro-social relationships.<sup>14</sup>
34. It is worth noting that in Norway recidivism is around 20%. Further, aggression and violence which are normalised within prisons in Australia, and including Tasmania, are a rarity in this type of prison environment.
35. Whilst it is often remarked that the Scandinavian situation is unique to the political and social cultures of those nations, this proposition is simply not true. There is no reason why the practices and philosophies in the Scandinavian prison system, cannot be translated in to the Tasmanian environment.
36. In that context we note that in North Dakota, a number of judicial officers and prison officials visited Norway in 2015 and since then they have implemented a number of programs underpinned by the philosophical approach of Norway.

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<sup>14</sup> M Denny, (2016) *Norway's Prison System: Investigating Recidivism and Reintegration* 10(2) Bridges: A Journal of Student Research.

37. At the Missouri River Correctional Centre, not all of the residents live within the prison walls, many live in a transitional housing unit and the approach taken is, and this is also the case at the former maximum-security facility in North Dakota, to ensure that prisoners' self-confidence and autonomy is improved.
38. The changes in the prison system in North Dakota has seen a drop in the prison population of around 6.5%. The results in North Dakota has seen other states in the United States such as Oregon, Alaska, Idaho and Wyoming now looking to northern European prison systems.<sup>15</sup>
39. It is not only in the United States that a move away from the punitive prison environment of the Anglo European model is occurring.
40. We note that in Scotland, the influence of Scandinavian prison culture is evident in one of its newest prisons, HMP Grampian which includes the following features:
- i natural light, painted walls and living space;
  - ii community facing prison;
  - iii custodial facilities includes; kitchens, laundry, educational spaces and recreational resources.
41. The number of good practices in this particular prison, and the benefits of this style of imprisonment, have been documented by the Prison Inspector in Scotland in a report in 2019.<sup>16</sup>

## **ABOLITION OF SHORT PRISON SENTENCES**

42. Short prison sentences can be defined as prison sentences of six months or under. They are regularly imposed by the Magistrates Court and the Supreme Court in the context of drug offending, fraud, driving offences and assaults.
43. The difficulty with short prison sentences is that they serve no purpose in terms of rehabilitation or reduction in recidivism, but they cause social dislocation and are expensive to administer. There has been a good deal of work undertaken

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<sup>15</sup> C Janzer (2019) *North Dakota Reforms its Prisons Norwegian Style*, U S News, February 22, 2019  
<https://www.usnews.com/news/best-states/articles/2019-02-22/inspired-by-norways-approach-north-dakota-reforms-its-prisons>

<sup>16</sup> HM Inspectorate of Prisons for Scotland, *Full Line Inspection Report on HMP YOIG Grampian*, February 2019

in other jurisdictions in relation to short prison sentences, including some jurisdictions abolishing them.

44. In 1995, Western Australia abolished prison sentences for three months or less and in 2003 increased the threshold to six months.<sup>17</sup>

45. There has been discussion in more the United Kingdom in relation to the abolition of short prison sentences.

46. A 2019 report by the UK Ministry of Justice found that short prison sentences, and in case defined as custodial sentences of under 12 months without supervision on release, are “associated with high levels of reoffending than sentences served in the community”, such as suspended sentences and community orders. The study found that the reoffending rate within one year of serving a short term custodial sentences of less than 12 months was higher than if a community based court order had been imposed.<sup>18</sup>

47. These findings are consistent with findings over 20 years ago by a New South Wales parliamentary committee. That committee found that if all prisoners who had received sentences of six months or less were given non-custodial orders, the number of new prisoners received in New South Wales prisons would drop by almost half, the New South Wales prison population would be reduced by 10% and there would be savings of between \$33 million and \$47 million per year in the recurrent cost of housing prisoners.<sup>19</sup>

48. In Scotland there has been a presumption against short sentences known as PASS which was initiated in 2019. The Scottish system assumes that “short custodial sentences are less effective than community sentences at reducing reoffending.”

49. The presumption against short prison sentences in Scotland is now set at 12 months and “is intended to encourage greater use of community sentences and help break cycles of reoffending.”<sup>20</sup>

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<sup>17</sup> *Sentencing Legislation Amendment and Repeal Act 2003* (WA) s33(3).

<sup>18</sup> G Eaton and A Mews (Ministry of Justice), *The impact of short custodial sentences, community orders and suspended sentence orders on reoffending*, Ministry of Justice Analytical series 2019

<sup>19</sup> B Lind and A Eyland, *The impact of abolishing short prison sentences*, New South Wales Bureau of Crime and Justice Bulletin No.73, September 2002, NSW Bureau of Crime Statistics and Research.

<sup>20</sup> Government of Scotland, *Extended presumption against short sentences: monitoring information* – January-December 2020.



50. We are strongly of the view that short prison sentences should be abolished in Tasmania. We have worked over many years with individuals who serve short terms of imprisonment. The impact on the community is disproportionate to any benefits, if any, that may be obtained from a shortened prison sentence.
51. In particular, we note prisoners who serve short prison sentences are more likely to lose employment, and their families are dislocated as a result. Prisoners serving short prison sentences do not receive any form of rehabilitation within the prison system and even if they did have access to rehabilitation programs, as we have noted above, the disrupted state of rehabilitation services means that any rehabilitation tools are ineffective.
52. There is little or no point there is not deterrent factor in sending people to prison for short terms of imprisonment. If short terms of imprisonment were abolished we would see a reduction in the prison population of somewhere between 10 and 20% consistent with the figure that New South Wales cited in 2001.

### **TOO MANY PEOPLE ARE IN PRISON –THE COST TO TAXPAYERS**

53. The majority of individuals in the Tasmanian prison system do not need to be there. The warehousing of individuals is expensive – as noted above – and does not reduce crime. From the perspective of fiscal and broader costs to the government and the community we need to take what might be termed a ‘Law and Economics’ approach to sentencing policies.
54. The Law and Economics approach to criminal justice seeks to “explain and predict the behavior of participants in and persons regulated by the law. It also tries to improve law by pointing out respects in which existing or proposed laws have unintended or undesirable consequences, whether on economic efficiency, or the distribution of income and wealth, or other values.”<sup>21</sup>
55. The unintended and undesirable consequences of incarceration do have an impact on economic efficiency and the distribution of wealth. In simple terms we take out of the labour market hundreds of people each year depriving them of an opportunity to work and build lives, and to exacerbate labour shortages.

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<sup>21</sup> R Posner, *Values and Consequences: An Introduction to Economic Analysis of Law* (Coase-Sandor Institute for Law & Economics Working Paper No. 53, 1998), 2

At the other end of the scale we keep imprisoned elderly men and women who pose no threat to society.

56. Recently the Institute of Public Affairs (IPA), a Melbourne based right of centre think tank, has applied the Law and Economics approach to the issue of what is an obsession with imprisonment that political parties have pursued in this nation for over three decades.
57. The IPA paper<sup>22</sup> makes the valid point that, nationwide, “[a]pproximately 42 per cent of prisoners have not committed sexual or violent offences.” So why jail so many?
58. The IPA paper argues that employment schemes for non-violent offenders that have been implemented in the United States have been successful with research showing “many employers are prepared to employ people who have prior convictions for non-violent and non-sexual offences, and when they do employ such people they are invariably pleased with their decision.”
59. As Richard Posner has argued, young offenders are generally fit and healthy and the vast majority of prisoners is under 45. Why are we not, including here in Tasmania, matching these individuals with employers to fill the chronic labour shortages we are experiencing today?
60. The IPA argues; “If Australian governments reformed sentencing so that low risk non-violent offenders were not detained at taxpayer expense, but rather were put to work in industries which urgently need workers, this would deliver substantial benefits to taxpayers without compromising community safety.” The alternative is to continue with the current policy settings which is “where low-risk non-violent offenders are imprisoned, [and] taxpayers bear the burden of detaining the offender in prison, while also being deprived of the taxation revenue that would flow from that offender being employed.”
61. The IPA research finds that “the marginal cost of imprisoning a low-risk non-violent offender is \$107,709 per annum, but if this kind of offender were sentenced to an alternative sanction and able to work for just the weekly minimum wage of \$772.60, and pay tax on that income at a rate of \$94 per week, it would result in a net benefit to the budget of \$112,597 per prisoner, per

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<sup>22</sup> M Begg, *How sensible criminal justice system reform would help solve over-incarceration and worker shortages*, Institute of Public Affairs, March 2023

year. If this reform had been implemented in 2021-22, as many as 14,000 young and healthy adults could have been added to the workforce, which would have improved government budgets by \$1.95 billion in reduced incarceration costs and increased income tax revenue.”

62. Tasmania cannot not afford to ignore this smart justice policy approach.

## **CONCLUSION**

63. The PLS is strongly of the view that prison should be a last resort in terms of forms of punishment. We are concerned that the prison population, and this state has this in common with other jurisdictions in Australia, merely represents a warehousing of people with mental illness, who are homeless and who suffer from acquired brain injuries and generally who have poor literacy and numeracy skills.

64. There is no evidence to support the fact that imprisonment as a tool of punishment generally deters individuals or alternatively that it has any impact in terms of reducing crime.

65. This is not to say that there are a small number of individuals from whom society needs to be protected. However, the vast number of persons who are in prison, would be much better served, and therefore the community better served with non-custodial orders.

66. The Tasmanian prison system is in many ways no different to that which existed at Port Arthur almost 200 years ago.

67. We mean this in a sense that the punitive style of punishment, common in the Anglo American tradition, continues despite some modifications in Tasmania.

68. If there is to be a new prison facility, it should not be the name ‘prison’ but in fact should be a wellness center.

69. Tasmania has an opportunity to lead the nation in terms of a move away from imprisonment as a tool of punishment and furthermore to the extent that it requires prisons that it models them on the Scandinavian experience something which as we note, has been taken up in jurisdictions as diverse as Scotland and North Dakota.

70. Finally, Tasmania should look to reduce drastically the number of people in prison through abolishing short sentences and matching non-violent offenders with appropriate social and economic supports.