

Keeping Women Out of Prison (KWOOP)

KWOOP Parliamentary Breakfast 16th March 2022

Notes for an address by Robert Tickner Chair of the Justice Reform Initiative.

Thank you so very much for the honour to speak at this important event on the work of the Keeping Women Out of Prison campaign which enjoys such strong cross-party support here at the NSW Parliament House this morning.

I begin by acknowledging the Gadigal people as the traditional owners of the land on which we meet this morning and I acknowledge other Aboriginal people who are here today and who have so long campaigned against the over-representation of their people in the prisons of this country.

I hope that the non-Aboriginal people here join with me in noting that we must do much more than acknowledge the traditional owners as important as that is. We must also recommit ourselves do more to support the aspirations of Aboriginal people which is fundamental if we are ever to have a just reconciliation in this country.

As we gather here today, we are not much more than a few hundred metres from the place where the incarceration began in this country with the arrival of the First Fleet in 1788. My forebear John Cross was a part of that day down the hill when he arrived as a convict transported from England on the ship Alexander. Ironically, in some ways, the earlier colonial Governors had a more enlightened approach to turning around the lives of those who had been incarcerated than has existed at various recent times in our past State and Territory Governments. I say this because several Governors including Macquarie (as you know the Governor after whom the street, we are in was named) put in place positive policies directed to emancipated convicts and giving them an opportunity to rebuild their lives. Sadly, this has not always been the case in the state of NSW.

As things have developed both in NSW and in the wider Australia, just prior to the outbreak of the COVID virus we reached the high point of incarceration numbers in this state and around most of the rest of the country. Although the numbers have dropped off slightly, they will surely come back unless we can turn around the current policies of Governments.

It needs to be said at the outset that my words are not intended to be an attack on the current NSW Government or for that matter the current NSW Opposition. We need to acknowledge however that both sides of politics in this state and indeed around Australia have, over recent decades, often engaged in a so called "law and order auctions" which has not made our communities safer, while creating high recidivism rates and which come at great cost to the public who have to pay for all this.

For women in particular, the statistics are staggering, as my colleague Dr Mindy Sotiri the Executive Director of the Justice Reform Initiative has reported:

- Over the last decade the incarceration rate for women has been among the fastest growing areas of jailing and particularly for Aboriginal women. This is overwhelmingly because prison is used as a first resort, partly because alternatives in the form of social support simply do not exist or those few which do receive funding, survive on the smell of a proverbial oily rag and only often operate in limited parts of the state.

It is any wonder then that our state produces this outcome for women incarcerated in NSW (and around Australia):

- At least 70% of women in prison have survived some form of gendered violence.
- 77% have a diagnosed mental health condition.
- 23% have some form of disability.
- 77% have drug and alcohol issues related to their offending.
- One third are homeless on release.
- Of particular concern is that over 60% of women in prison have children who are under the age of 18. The statistics on the consequences of this do not lie and the consequent intergenerational impact of their incarceration is documented beyond doubt. The damaging impact on families and especially children is yet another reason why jailing is failing.

However the punishment does not stop at the prison gate as they leave!

- As the Keeping Women Out of Prison campaign has reported many support services (including mainstream domestic violence, homeless, and drug and alcohol services) do not work with women who have experienced incarceration.
- Finally, women who require support on release from custody are frequently excluded explicitly by policies prohibiting referrals straight from prison or policies prohibiting women with criminal histories or histories of violence.

In relation to the size of Australia's prison population generally, there has been a 38% increase over the last decade alone and the highest growth has been in the Aboriginal incarceration rate. This is even though the Royal Commission into Aboriginal Deaths in Custody, thirty years ago, included as one of its central recommendations that incarceration be a last resort. As the Minister responsible for the national co-ordination of the Royal Commission response I am proud of the fact that we secured Commonwealth support for 338 of the 339 recommendations, the endorsement of the recommendations by every single state and territory Government and with the support of both sides of politics in every jurisdiction. Despite this high-water mark and the express commitments to implementation, Governments have not honoured those commitments either to Aboriginal and Torres Strait Islander communities or to the wider Australian community.

Despite the fact that every jurisdiction has legislated over time for imprisonment to be the last resort, this principle has been obliterated by legislation: ripping away

judicial discretion; imposing mandatory sentencing in a multiplicity of forms; legislating to erode bail legislation; and through the so-called law and order auctions I have already referred to. Contributing even more to the incarceration numbers is the failure to invest in alternatives to incarceration which would divert many people from the criminal justice system into proven programs which can turn lives around and address the underlying issues I will speak about in a moment.

The financial cost of all this is something which our governments must now be accountable for. As a nation we spend in excess of 4 billion dollars per annum on the recurrent annual expenditure costs of prisons. In NSW the annual cost per person in prison is \$80,000 per annum (\$218 per person per day) but averaging out closer to \$100,000 per person in other jurisdictions. Capital costs for new prisons in NSW are \$3.8 billion dollars for the period 2015-2022 and of course there are comparable costs in the other Australian states as the Queensland Productivity Commission recently independently reported in respect of that state. Despite all these jails, the average recidivism rate is 50% or more in some jurisdictions.

In the case of youth and child detention centres, the costs are massively proportionately higher with each child in detention in Australia costing in the order of \$1547 PER DAY in some jurisdictions. As the Australian Institute of Health and Welfare has reported some 70% of these children will be back in juvenile detention or adult prison within two years. Isn't it time we started to redirect this funding into evidence-based programs and intensive support for these kids which will turn young lives around.

When we benchmark ourselves as a nation to comparable countries we are significantly lagging behind them with an incarceration rate which is higher than all the countries of Western Europe and Canada. The Australian Productivity Commission recently reported that only two countries in the world had a higher growth in their incarceration rate than Australia in the years 2013 to 2018 and they were Columbia and Turkey. Even the United States of America did not beat us in our race to become one of the globally leading incarceration nations.

So how did we get in this diabolical position of jailing more and more people in more and more prisons at such enormous financial cost to the community in institutions which failed to turn lives around?

I think the answer is-- that both sides of politics forming government in Australia in every state and territory and nationally have copied the approach adopted by the United States of America which has until now incarcerated a higher proportion of its population than any country on earth. Both Republicans and Democrats fought law and order auctions in the USA over recent decades and their counterparts in Australia followed their lead at great cost to our country and its people.

However, you need to know that, even though Australia has not yet shifted its prison growth trajectory, in the United States, Republicans and Democrats are increasingly working together in a shared commitment to cut the prison population and to hold legislators and governments accountable for wasteful prison expenditure. I do not pretend that the USA does not have a long way to go to reduce its prison population given the global records it has set in incarceration. It is however undeniable that

there has been a seismic shift in attitudes and policy.

In numerous places it is the Republican led states which have taken leadership in states like Texas, Louisiana, and many others. In the second Presidential Debate last year between Mr Biden and Mr Trump both of them were trying to outdo each other in championing their own respective credentials as justice reformers. You can find this debate on the internet and if you fast forward 1 hour 31 minutes into the video you will see Mr Biden and Mr Trump blaming the other for the excessively high rate of incarceration in the USA and then each claiming the high moral ground as leaders who had significantly cut the incarceration numbers.

Mr Trump himself hosted a major event at the White House in 2019 in which he urged the employers of America to give people coming out of prison a second chance. I hope I am not doing anyone a disservice, however, so far as I can ever recall I do not think that there has been an Australian Premier or Chief Minister of any political party in any jurisdiction in Australia which has ever encouraged Australian employers to do this.

As someone who is no longer a member of any political party and who has not been in one since 1996, I remain however a keen student of the political processes and I have welcomed these developments on both the Republican and Democrat sides of US politics.

In preparing for this speech, I went searching for the quote from Winston Churchill the legendary leader of the UK Conservative Party and the war time leader of Britain we all know so well. I had remembered that he had adopted an evidence-based approach to prisons and the criminal justice system in Britain beginning over 111 years ago when he was a young MP. I was astounded but pleased to find these quotations on the website of the very conservative Charles Koch Foundation in the United States. The most well-known quote is there, quoting Churchill as believing that "The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of any civilisation of any country."

However, if you believe that Churchill only had an agenda of ameliorating the worst aspects of incarceration you should read what he had to say to the House of Commons at the start of his term as Home Secretary in February 1910. He said he was "glad to be able to announce it to the House of Commons the first real principle which should guide anyone trying to establish a good system of prisons should be to prevent as many people as possible getting in there at all."

I embrace this principle and believe that 111 years ago Winston Churchill recognised that jailing is failing.

You can do another simple internet search to find another amazing example of how things are shifting in the USA in public attitudes towards incarceration. I am sure there will be setbacks in the movement from time to time given US history and current hyper partisan challenges, however I do believe that the movement for reform will not be stopped as the evidence is overwhelming.

If you just search for the words “Law Enforcement Leaders” you will find the public website of the US group called “Law Enforcement Leaders to Reduce Crime and Punishment”. This group includes nearly 200 current and former police chiefs, federal and state police prosecutors, attorneys general, and correctional officials from all 50 states. In case you think it is a gathering of rural sheriffs or minor officials, let me assure you that we are talking about really senior people including current or previous police chiefs from cities like New York, Chicago, San Francisco, Los Angeles and other major American cities throughout the length and breadth of America.

These leading law enforcement officers from both Republican and Democratic parties have signed up to a statement of goals. They make clear on their website that “the goals of reducing crime and reducing incarceration are not only compatible but are also mutually necessary. Through decades of our experience, we believe unnecessary incarceration is counter-productive, as it can create more crime, waste taxpayer dollars, and further divide law enforcement from the communities we seek to protect. We aim to build a smarter and stronger criminal justice system by replacing ineffective policies with new, modern practices that reduce both crime and incarceration”.

Before I turn to the question of what we can do to turn things around in our country I want to conclude this opening part of my speech with two extraordinary statistics. The first is that, factoring in the remand population, 70% of people in NSW prisons have been there before and in women’s prisons the figure is an extraordinary 87%. If we had this failure rate in our schools, we would have a Royal Commission in every state and nationally and we would be closing down the current model of schooling and looking for evidence-based alternatives which ensured that children left the education system having obtained a sound education to prepare them for life. We need to apply no lesser standard of rigorous accountability to the billions we spend on prisons year in and year out, right across this country.

To change our country for the better one of the first things we need to do as people working for change, is to build a unity of purpose and a grass roots campaign that so far, we have been lacking. I think this is undeniable despite all the wonderful people and organisations on whose shoulders we all stand.

The Justice Reform Initiative has been formed because, until now, Aboriginal people and organisations have been doing all the heavy lifting when it comes to prison and criminal justice reform despite the fact that many of the reforms being advocated will benefit the non-Aboriginal population as well. Until now, there have been many community leaders and interest groups which have not come out as criminal justice reformers. It is also the case that, until now, we have not seen many or any shoots of cross-party commitment to justice reform which I believe is essential if we are going to be successful in educating the public and shifting public policy in this area. Neither side of politics comes to this debate with historical clean hands but in states like NSW we have new leaders. We have a new Premier and a new Opposition leader who can draw a line under the past and with the support of other people and parties in the parliament of goodwill we can start to turn things around.

The Justice Reform Initiative is a national organisation with Patrons in Chief being

the former esteemed Governors General Sir William Deane and Dame Quentin Bryce and over 110 other respected patrons in every state and territory and nationally.

We come to this debate and campaign with a commitment to work and collaborate with all the many people and organisations who have been working in this space for decades as many of us in the Justice Reform Initiative have.

Our central objective is to shift the public conversation and public policy in this country away from building more and more prisons as the primary response of the criminal justice system for many offenders and to shift to proven alternative evidence-based approaches which break the cycle of incarceration.

There are so many examples, in Australia and globally, of evidence-based alternatives for many offenders which will help turn lives around and also make our communities safer. We are crucially aware, as you are, that the underlying issues which so often give rise to contact with the criminal justice system must be addressed including housing, mental health issues, disability, employment, education and drug and alcohol dependencies among others.

In all our work, we will continue to strive for cross-party co-operation on these issues and to ask all our parliamentarians to pledge to work for evidence-based policy in criminal justice reform. That is why I am so pleased to see such strong cross-party representation at this morning's breakfast and so many of you from both sides of politics and I am also delighted to see David Shoebridge MLC here representing the Greens.

We look forward to meeting representatives from other political parties and from the ranks of Independents as we move forward with our work. Cross-party support for our work also sends a powerful message to the wider community as political parties and others in the parliament are not empty vessels who simply respond to public opinion but at times lead it in matters of principle and good government.

At least that is my experience in public life, and I passionately believe that there are, as my late dear friend Tom Uren used to remind me, "men and women of goodwill" are everywhere and our task as reformers is to help bring them together to find common cause on this issue-- as I hope we are already doing.

When we talk about evidence-based alternatives it is important to give examples. The first example of outstandingly successful programs is those run by the Backtrack organisation in Armidale which survives on philanthropic funding. The organisation has been featured in the book written by the founder of Backtrack Bernie Shakeshaft and also featured in a publicly available documentary which you can find online. The Backtrack program, which some of you may be aware of, relies in part, on engaging and bonding the young kids in the program with dogs who become such a huge presence in the lives of the kids teaching them so many things including responsibility, loyalty, skills and a growing belief in themselves and their capacities. Most, if all the kids in the program have had a difficult life for people so young but if you watch the documentary, unless you have a heart of stone you will be moved to tears as these young people get the solidarity, mentoring and training from the

leadership group in Backtrack. This support diverts them from the otherwise inevitable ongoing contact with the criminal justice system which young and homeless people often find themselves in and which is a pathway to adult prisons. The program provides a bridge from a school system which has failed them to the adult world. The objective is to take them to a place of development that they have a capacity to get a job and take their rightful place in the world. I am sure that others could describe the program in much greater detail, but you get the picture. Instead of juvenile justice institutions which cost over half a million for each child held there these kids are living in a supportive environment where they are able to turn their lives around. They are inspirational to me.

Turning to the separate question of potential diversionary sentences for adults who would otherwise end up in the adult prison system, it makes more sense to instead for magistrates and judges to divert them to available programs which will address the underlying issues which got them into trouble in the first place. Otherwise, such people often get sentenced to short term sentences, receive no treatment or support for their underlying conditions while in prison and then get released and are often homeless still without treatment or support and then find themselves in the revolving door of incarceration and back in prison within a short period of time.

Sadly, for most people the services and support necessary is not available or not to the extent necessary and, where they do exist, they are poorly funded and often not available in country areas. Our previous state Governments over previous decades have, too often, been focussed on “funding sentences not services” which are so critical to addressing mental health challenges, substance dependency, homelessness, health, education, employment, and other key determinants of life outcomes.

I am sure you all know that there are so many wonderful people and organisations already providing services in these areas however there is also a need for other organisations to enter this space and particularly Aboriginal community-based organisations to provide services to their people in line with the Closing the Gap Strategy supported by both sides of politics. The fact is that, in this state, there is a need for a very substantive investment in Aboriginal and other NGOs who can deliver community-based programs to turn lives around and cut the 50% recidivism level which exists around the country.

For people leaving prison, the evidence demonstrates conclusively that intensive support programs for people leaving prison like those developed and delivered by the NSW based Community Restorative Centre (CRC) can dramatically reduce the recidivism rate. In a landmark evaluation supported by the University of NSW it has been shown that the intensive support programs and related services directed towards addressing the underlining issues I have already spoken about, has been proven to bring about a 65% reduction in the rate of repeat offending.

Currently programs of this kind are only delivered by NGOs to only between 5% and 10% of the 20,000 people who are leaving NSW prisons every year. It makes sense to invest significantly more in these programs which will significantly cut the prison population by cutting the reoffending rate and still deliver significant budget savings after factoring in the additional cost of service provision. The mathematics do not lie

on this, and it is a perfect example of evidence-based policy which will also self-evidently results in crime reduction and creating safer communities.

It is important that I emphasise that, adopting these ideas and policies, is the very opposite of being soft on crime. It is about being smart on crime and smart about investing in addressing the key underlying issues or the causes of crime which resulted in contact with the criminal justice system in the first place.

It is also an approach which will bring about a better deal for victims of crime and that is why Ken Marslew, who many of you will know, and who has been such a long-standing advocate for victims of crimes is one of our patrons. Victims of crime and their families often struggle with the inadequacies of the present system and many welcome the increasing appeal of restorative justice approaches which focus more on the impact of the crime on the victim or their families.

Let me say a little bit about how the Justice Reform Initiative will work to advance these goals.

We come to this space without ego, and we are not headline hunters but rather focussed on results. We believe that the responsible government in this state and nationally with cross-party support can reduce the prison population by 50% by 2030. Even if we do that, we will still have an incarceration rate which is way higher than many Western European Countries and still almost twice the level of Scandinavian countries who have some of the lowest crime rates in the world.

We commit ourselves to work collaboratively with others working in this sector including organisations like Keeping Women Out of Prison who we value as one of the most valued partners we stand beside. Those partners are growing around Australia, and we are proud of them all listed on our website: justicereforminitiative.org.au They include small local organisations in various parts of Australia as well as national organisations like the Australian Medical Association and the Law Council of Australia. We seek to collaborate with them all and to build up campaigns of public education and public awareness about the need for prison and justice reform in local communities right around Australia.

While recognising that the primary responsibility for reform lies at the feet of State and Territory Governments, we also believe that the Australian Government has an important role to play, operating in a cross-party way but also supporting the national movement for reform by its shared leadership role and by funding programs and initiatives where existing funding sources are inadequate. We need to see this failing of jailing as a national issue which is costing all Australians and all our governments many billions each year by way of lost human opportunity as well as the cost of actually operating the current massive prison systems which the Australian Productivity Commission has so decisively costed and chronicled.

May I conclude by encouraging each and every one of you, and all those who later read this speech, to get behind the Justice Reform Initiative and the Jailing is Failing campaign.

Please visit our website, check out our patrons and sign up your support for our work. There will be many volunteering opportunities opening up in this grass roots movement, so we encourage you to volunteer your time and resources to turn this issue around in the interests of all Australians.

Perhaps this place, and all those who work and serve here in the NSW Parliament, at the top of the hill where the incarceration nation began with the arrival of the First Fleet, can show the rest of Australia the way of reform and do it as men and women of goodwill coming together in support of the evidence based criminal justice policy which we advocate.

Robert Tickner
Chair of the Justice Reform Initiative
Jailing is Failing Campaign
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