

## **Post Election Forum 2012 - Public Forum: Politicians, Promises and Prisons.**

*The CJC and ICJ Public Forum was held to examine the progress being made on a list of major reforms presented to each party prior to last year's election in order to question each party's commitment to reform of the criminal justice system.*

On the 21<sup>st</sup> of April 2012, Attorney-General Greg Smith (Minister for Justice, Australian Liberal Party), Shadow Attorney-General Paul Lynch (Australian Labor Party) and David Shoebridge (Justice Spokesperson, Greens Party) presented their views on the reform issues.

Below is a summary of the Forum as presented by the respective speakers.

CJC Vice-president John Dowd introduced the forum and stated that the previous elections had been law and order auctions. However, he noted that the most recent one was exceptional by deliberately avoiding to be the same. He acknowledged that there is a strong need to change issues that are in relation to Mental Health and the need to amend the Bail Act and include the examination of Police Bail and S32 Criteria - thus stating that the condition of the Criminal Justice System is a poor reflection on politicians and the public. Mr Dowd also explored the pre-election promises, which sought to:

- Establish a second metro drug court
- Expand drug treatment facilities
- Increase funds for education and training
- Increase non-custodial alternatives for people charged with petty offences
- Expand the number of offenders on Intensive Correctional Orders.

### **ATTORNEY-GENERAL GREG SMITH:**

#### Summary of comments -

- Refused to engage in a law-and-order auction. While strong penalties for violent offenders who show no remorse are important, prison should not be used for minor offences;
- Government needs to reduce the NSW reoffending rate: for prisoners released in 2008/09 who returned to prison within 2 years this was 43% of rate of 37% in Victoria and national average rate of 39.7% (*justified his previous comment by stating that the recent rise of 3 – 4% in Victorian rate can be explained by a law & order auction starting in Victoria*)
- Cost per inmate per day in adult detention is \$200 = \$70K per year; noted that more than 50% detainees are on remand
- Juvenile system costs \$650 per inmate per day = \$238K per year
- AOD addictions need to be addressed: 59% under influence of AOD when crime committed; AOD problems impact on: health, employment, relationships, community safety and crime

#### Claims of achievements during the first 12 months of Government:

1. Second Metro drug court, Downing Centre, to commence in May will direct drug dependent offenders into programs; evaluation of Drug Court was positive
2. IDATP established at JM and Dillwynia, commenced January with initial intake of 62 prisoners; prisoners (mostly under age of 25) will receive 6 months treatment before release and transition to NGOs for treatment after release
3. WDO scheme is now permanent - will reduce vicious circle of fines and loss of licence and loss of employment. The government has improved administration, widened eligibility and expanded scheme state wide. People with AOD issues have to do AOD programs. SA and ACT governments are now introducing WDOs.
4. Bail review by LRC has been completed and is now being considered; impact of S22A has been adverse – it was designed to address vexatious multiple applications

for bail by more affluent persons but result has been to increase remand population; eg: in JJ 50% of inmates are on remand, 80% of whom do not receive custodial sentences when case is heard in court.

5. Review of Juvenile Justice - review of Acts is now underway; there have been public consultation with 55 submissions.
6. Sentencing Review now underway: there is a need to ensure more non-custodial and community options for less serious offences and to simplify sentencing laws so there are fewer errors. A recent BoCSAR study shows that length of sentence has little impact on crime rate and that a more effective strategy should be more about increasing risk of arrest, less on increasing punishment. In past 20 years, there has been a steady increase in prison terms with no drop in crime rate for specific offences. Introduction of standard NPP in 2003 has led to an increase in average sentences and there is lack of consistency in Section 54B Table of standard NPP. Impact of High Court decision on Muldrock will complicate applications for guideline judgements as previous guidelines were affected by expanded NPP. Legal Aid is conducting a review of several hundred cases that may have been affected by this decision and there are likely to be hundreds of appeals.
7. Mental Health – LRC is to report on Sentencing and Diversion for MH and cognitive impaired offenders; two-part report due in May and November 2012. The Hon Smith has met with Skinner and Humphries with goal of preventing people with MH problems from offending and improving treatment. The Mental Health Commission for NSW announced in March will operate from July 2012. Diversion of people with MH illness is supported by NSW 2021 target. Currently 20 local courts assess people for diversion but more MH beds are needed and the community sector needs more funding. MH Commission with Commonwealth commitment hope to expand number of beds.
8. This government is taking a pragmatic approach, as it addresses need for sympathy for prisoners as well as for victims of crime and focuses on addressing underlying causes of crime through meaningful rehabilitation. This will produce safer communities and savings that can be spent on education, employment, hospitals etc.

#### Questions & Answers -

- Stuart Burkitt: CJC received a letter from David Clarke which stated that the \$21.3M promised for prison education would also be covering expenditure on Drug Court and Drug Treatment initiatives. This seems confused given the election commitment. Please explain.

Greg Smith: The government did commit \$21.3M and also made promises on new drug treatment gaol and new drug court but no allowance was made for these in budget. 10 years ago, 60% of prisoners were receiving education and now it is 33%. The reduction is explained by earlier lock downs and greater use of methadone for managing behaviour as well as addictions. Taking methadone makes prisoner lethargic and reduces interest in work and study.

This government inherited \$130M budget deficit. To make savings, this government has closed 3 gaols and cut staff in prisons by 700 (including 380 VRs). However, there will be additional savings through the Hamburger Review (in Head Office, reduction in SES positions, more authority to regions) and these savings will go to funding promises. It may not be \$21.3M but it will not be far off it.

- Q: Will the Government introduce controlled NSP into prisons?

Greg Smith: This Government considered trial of NSP but decided against it because it would expose staff to unacceptable level of risk. This was also the view of the previous Government.

- Pearl W. (representative of Jigsaw Ministry) requested support for their work in prisons

Greg Smith: Has great respect for Ministry groups. He believes that rehabilitation can

occur because of acceptance through faith

- Steve: Re pilot scheme of Social Impact bonds to connect prison with community system, why not fund prisons funds saved by any reduction in rate of reoffending?

Greg Smith: Social Impact bonds pilot will involve Mission Australia and Parklea and Junee prisons if it works – that is not yet known. Trial in one prison in the UK has not been completed yet. Smith's support is cautious.

- Ann Symonds: Did the Minister know about work of SHINE for Kids and how many children are affected by imprisonment of mothers, and will the Govt consider reviewing custodial sentences for women with children eg so mother does not go to prison while she is breastfeeding, after which she can take child to prison with her?

Greg Smith: is very interested in this idea but it would be hard to say No to prison if mother committed a serious crime. SHINE does great work, but when working in the courts he and other magistrates noticed tendency for women who are charged to then get pregnant, and highly pregnant women would attend court at time of partner's sentencing.

*(Ann Symonds interjected that the children are innocent and should not be punished)*

There are always innocent victims of crime, however the Government is open to ways of helping children and mothers and also fathers - there are now facilities for prisoners to have Audiovisual contact with families and they can read stories onto tapes/CDs for their children. It is important to keep families together. Is interested in Ann's proposals and is open to ways of helping children with a mother or father in custody.

## **SHADOW ATTORNEY-GENERAL PAUL LYNCH:**

### Summary of comments -

- Is opposed to mandatory sentencing.
- Supportive of all Greg Smith's strategies though noted that most of their programs are continued from the previous government - with exception of Graffiti legislation that is now stuck in the Upper House.
- Bail should not be a punishment – that one quarter of prison population are on remand is obviously wrong
- Downward trend in prison population not due to Govt policies because Govt has approved 550 extra police who will lead to more arrests and reduction in prison staff may result in less focus on rehabilitation.
- Complaints that programs are under-funded:
  1. There are excessive lock downs in area where CUBIT is running - C1 and C2 prisoners doing CUBIT are locked in the cells 17.5 hours a day – this will undermine the positive effects of the program, is his problem due to reduced staffing?
  2. COSPs are another good program not being implemented properly – COSPs address post release homelessness, however, as they are run they just delay the transit into homelessness
- Commented on the Hamburger Review: set up to address outdated business model and spiralling costs. Hamburger has already conducted reviews of QLD and VIC prison systems. Its interesting that he's described on his website as "expert in outsourcing to private sector" Queensland has become the first jurisdiction to outsource high security prisoners to a private sector. There is a statement in the budget estimates that "cannot rule out further privatisation". Treasury pressure is likely to favour privatisation. However, ALP position is that there is no scope for further privatisation.
- In Paul Lynch's view, "market mechanisms are not the best drivers of rehabilitation"
- There is potential to address Mental Health and cognitive impairment problems properly through the National Disability Insurance Scheme
- Targeting resources at disability includes people who might go to gaol and also divert from incarceration and reduce offending behaviour. ALP policies are not what they once were and now include listening to people not lecturing.

## **GREENS SPOKESPERSON FOR JUSTICE, DAVID SHOEBRIDGE:**

### Summary of comments -

- Harsh reality of NSW politics – worthwhile sentiments of people like Greg Smith and Paul Lynch are filtered out by brutal NSW parliamentary system and the tabloid press
- The Criminal Justice System in NSW has failed to deliver a proportionate response to crime.
- The Hon Greg Smith talked about small proposals – he did not address Aboriginal over representation, and his Government did not support an ATSI representative on Sentencing Young Offenders review panel
- WDOs are good and should also operate in prisons
- The expanded Drug Court is good
- But there are contradictions: the bulk of legislation in parliament is pulling in the opposite direction:
  1. Mandatory life sentence for murdering police – where is the benefit in this? BoCSAR study shows this will have no effect
  2. Increased discretionary power for police responding to drunk and disorderly – ends up targeting MH, ATSI, homelessness
  3. Graffiti laws – remove police discretion to use diversionary program (not passed by Upper House)
  4. The government ‘pulled’ funding from WIPAN, and costing order for Justice Action
  5. Bokie laws – maximum prison sentence was increased from 14 to 16 years, however, this will have no effect. Current laws for police to deal with bokies are doing well – no need to ramp them up
- Where are the allies for Greg Smith in his party? He has a hard battle in Cabinet, he is in conflict with Police Minister, and when he referred to the BoCSAR study on sentence length he failed to mention that a 10% increase in income for lowest earning groups had 14 times more effect on reducing than more police and more arrests
- He is concerned that the Government response to Bail review will focus on juveniles because that is politically acceptable to the party and the public. The Greens want the general presumption to be in favour of bail
- A modest step reducing prison population by 10% would save \$85M in first year
- Fine guidelines - are opaque, arbitrary and unfair and need reform. Fine amounts for swearing depends on where the swearing takes place, and there is a need for overall guidelines. 2.8M penalty notices were issued last year, totalling \$550 M in fines.
- However, there was a vicious attack in Parliament from ALP Right to force government to increase penalties for drive-by shooting and shooting police. John Robertson is making Greg Smith’s job harder (*Paul Lynch disputed this – says Robertson did not support the changes and that he has an agreement with Robertson not to ramp up law and order auction*)
- If politicians adopted evidence based policies and reforms, changes will have a real impact

### **Questions & Answers -**

- Q: What did Mr Lynch do to reduce causes of crime in Liverpool and Campbelltown?

A: More schools and factories etc

Comment from the audience: There is a contradiction in increasing number of police to both increase arrests and act as a deterrent. Police need more training to comprehensively deal with ATSI and Mental Health behaviour; intelligent targeting by police is needed. Police are not trained adequately about when to caution, when to arrest, when to implement diversionary scheme

- Q: from mother of son in gaol - He was enrolled in science and maths degree to improve his rehabilitation prospects, however, could not access course materials because of the lack of Internet access.

David Shoebridge: for the last decade inmates have been prevented access to computers with on-line connections. In the ACT prisoners have access to computers in cells and can email families and access while listed websites/pages on websites for education. This has been successful and led to major improvement in prisoner behaviour (because they do not want to risk losing this privilege). This will have an effect on recidivism. CSNSW should try this at SCCC where cells have already been wired up

Paul Lynch: What is actually happening is that while the rhetoric is strong things on the ground are not. If they can't get education right, the reoffending rate will be diabolical

- Q: from a young man who completed a degree in business studies on day leave as a C3 at Parklea, got a job for three years at Dell computers, then volunteered at Hillsong for a year, then got a job with American Express but was sacked (and given a pay out) because of his criminal record. Advised by Ombudsman that this is not illegal

Chris Puplick: LRC report initiated in 1982 and completed in 1990 recommended introduction of provision that discrimination on basis of criminal record is an offence. Both parties rejected this, however, it is law in some other jurisdictions.