

CJC/ICJ

Background Paper

Pre-Election

Justice Forum



1. Effectiveness of Imprisonment

The New South Wales Government's approach to criminal justice relies heavily on incarceration. In September 2018, the NSW prison system had 13,372 adult prisoners and is expected to experience growth within the next 12 months.¹

Growth in imprisonment rates has caused overcrowding of the NSW prison system, which is now running close to operational capacity.² Overcrowding in prisons undermines the efficacy of rehabilitative, vocational and educational programs and makes it significantly difficult for corrective services to meet the basic human needs of food, accommodation and healthcare of prisoners.³ The current function of the NSW criminal justice system therefore burdens the taxpayer by costing an average of \$110,000 per year to imprison an offender in Australia.⁴

It should be noted that in 2014, of those convicted offenders sentenced to a term of imprisonment, 41.0% reoffended within 12 months of release.⁵ Conversely, convicted offenders who received a penalty other than prison averaged a much lower recidivism rate (within 12 months of release) of 20.4%.⁶ Therefore, it is imperative that the NSW Government seeks to increase the value of the taxpayer dollar and improve correctional outcomes for both the prisoner and the community.

2. Bail Act & Remand Issues

In June 2011, the Liberal National Party Government raised to the NSW Law Reform Commission (NSWLRC) some issues related to the Bail Act 2013 (NSW). In April 2012, the NSWLRC submitted a final Report to the Attorney General. The Report recommended

a uniform presumption in favour of bail as it "would accord with basic legal principles and concepts enshrined in the criminal justice system, focusing on the value of personal liberty and corollary, the presumption of innocence."⁷

Despite these recommendations, the Bail Act 2013 (NSW), implemented on the 20th of May 2014, did not support the uniform presumption in favour of bail but instead wish to implement an 'unacceptable risk test'. Due to a series of controversial high-profile bail decisions, further amendments were altered from the existing provisions of the Bail Act as summarised below.

Issues prevailing in reformed legislation:

s 3 of the Bail Amendment Act 2014, the 'Purpose of the Act', has been removed from the body of the Act. This had required a bail authority to have regard to the "presumption of innocence and the general right to be liberty". Instead a phrase has been inserted in the preamble, suggesting the importance of the presumption of innocence is being eroded under the new bail reforms.

Furthermore, the introduction of the 'show cause provision' for a number of more serious offences (s 16A(1)) has shifted the burden on the accused to justify their own liberty. This provision encourages bail-refusal to be perceived as a denunciation of an alleged crime and reinforces a presumption against granting bail.⁸

The Bail Amendment Act 2014 also added a number of points under s 17 that need to be considered for the assessment of bail concerns listed in determining

1 NSW Bureau of Crime Statistics and Research, New South Wales Custody Statistics Quarterly Update September 2018, (2018).

2 New South Wales Auditor-General, 'Report on Justice 2017'.

3 Penal Reform International, Overcrowding <<https://www.penalreform.org/priorities/prison-conditions/key-facts/overcrowding/>>.

4 Andrew Bushnell, 'The expensive problem with our prisons: Why spending more doesn't make us feel safer', ABC News (online), 8 August 2017 <<https://www.abc.net.au/news/2017-08-08/expensive-prisons-dont-make-us-safer/8781074>>.

5 New South Wales Auditor-General, 'Law and Order' (Financial Audit Volume Seven 24 November 2015).

6 Bureau of Crime Statistics and Research, Reoffending Statistics for NSW (30 January 2019) NSW Department of Justice <https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Re-offending.aspx>.

7 NSW Law Reform Commission, Bail, Report No 133 (2012), 123.

8 D Brown and J Quilter, 'Speaking in soon: the sabotage of bail reform in NSW' (2014). International Journal for Crime, Justice and Social Democracy 3(3).

mental impairment.²¹ ATSI women have an increased likelihood of coming into contact with the criminal justice system, as they are particularly vulnerable due to the intersecting factors of gender and race²², further impacted by the low education and high unemployment levels, and the lack of programs addressing their particular needs.²³ Moreover, there are serious issues with the medicating of incarcerated women; anti-depressants and anti-psychotic medications are often overprescribed, causing further health problems, especially post-release. More heavily controlling prescriptions, and offering sufficient health and counselling options post release, would be beneficial for these women. Educational, employment, housing and health opportunities for women being criminalised must be improved, and this implementation of community diversionary and restorative justice programs would help decrease the recidivism rates of incarcerated women.

Similarly, women prisoners face a unique set of circumstances whilst in prison, including inadequate access to medical tests such as cervical cancer screenings and mammograms, and emotional and mental challenges of being separated from their family and children.²⁴ According to research, 56% of women in custody reported having a cervical cancer screening within the last two years and 1 in 68 women reported ever receiving a mammogram in prison.²⁵ Moreover, incarcerated mothers can lose care and control of their children, such as the removal of a particular woman's mobile devices through which she contacted her daughters. This is particularly notable in Aboriginal women's cases, which illustrate the lack of focused attention and medical services available for female prisoners and reiterate the unique set of challenges they face.

5. Juveniles in Custody

Protecting the rights of juvenile detainees and minimising contact with the juvenile justice system is of paramount importance for effective rehabilitation and reintegration into society. While aiming to reduce recidivism and incorporating skills and opportunities that allow youth to integrate into society, we must also ensure that the rights of juvenile offenders are upheld.

Greater emphasis must be placed on diversionary or interventionist programs, which aim to minimise contact with the juvenile justice system and consequently reduce government expenditure. In 2015-16, the Australian Institute of Health and Welfare estimated that it cost \$1,391 per juvenile per day (adding up to half a million dollars annually), placing a significant burden on the Australian taxpayer.²⁶ The development of individual transition plans and ongoing support services has resulted in higher rates of education and training, and lower rates of recidivism. Queensland's Transition 2 Success (T2S), an alternative education and occupational training program, has been highly effective, with 75% of young people who have completed the program having no re-offences in a six-month follow up.²⁷ These qualifications achieved through the T2S are taught by highly trained youth workers and are recognised across Australia. They are an effective gateway for young people to develop their education and to broaden their future employment opportunities.

Due to the lack of alternative community based sentencing options in regional and remote areas, Aboriginal and Torres Strait Islander people have been sentenced to imprisonment terms that would have not been imposed had they lived in a metropolitan area. This imprisonment significantly impacts their ability to maintain connections to their family and community, resulting in poor and difficult transitions back into society. The proposed Walama Court for Indigenous juvenile offenders adopts features of the NSW Drug Court and aims to keep Indigenous offenders out of custody and in community-based programs. It has demonstrated to be both more cost-effective than conventional sanctions and more effective in reducing recidivism,²⁸ and would result in a 37% decline in offenders being reconvicted of any offence. Offences against the person, property offences and drug offences would also see a 65%, 25% and 58% decline, respectively.²⁹

Specifically, (but not exclusively), in the Don Dale Youth Centre, the excessive use of tear-gassing, abuse, solitary confinement and under-trained staff demonstrates the current juvenile injustice in Australia.³⁰ In a recent review of juvenile detention fa-

21 McEntyre, above n 3.

22 Ibid.

23 Ibid.

24 Australian Institute of Health and Welfare, 'The Health of Australian Prisoners 2015' (Report, Australian Institute of Health and Welfare (2015) 31 <<https://www.aihw.gov.au/getmedia/9c42d6f3-2631-4452-b0df-9067fd71e33a/aihw-phe-207.pdf.aspx?inline=true>>.

25 Ibid, xiii.

26 Australian Government, Youth Justice in Australia 2015-16 (Bulletin 139, Australian Institute of Health and Welfare, March (2017).

27 Queensland Government, Transition 2 Success <<https://www.qld.gov.au/law/sentencing-prisons-and-probation/young-offenders-and-the-justice-system/youth-justice-community-programs-and-services/transition-2-success-for-the-futures-of-young-offenders>>.

28 Law Society of New South Wales, Submission to the Attorney, 28 March 2018.

29 Ibid.

30 Elias Clure, 'Don Dale Youth Detention Centre 'not fit for purpose', judge says releasing young offender on bail', Australian Broadcasting Corporation (online), 26 July 2018 <<https://www.abc.net.au/news/2018-07-26/don-dale-youth-detention-not-fit-for-purpose-nt-judge-says/10039708>>.

cilities by the NSW Inspector of Custodial Services, the rate of strip-searches and isolation punishments have well surpassed the recommended guidelines established in 2015, where isolation accounted for more than 70% of punishments dealt by correction officers.³¹ The use of strip-searches, in particular with young people who have often experienced sexual abuse, can be highly humiliating and distressing.³² Aboriginal and Torres Strait Islanders are 33% more likely to be targeted with such punishments.³³ In September 2018, there were 283 juveniles in custody, 136 of whom were Indigenous.³⁴ While approximately only 5% of young people aged 10-17 in Australia are Aboriginal, around 48% of those under community-based supervision were Aboriginal and 58% of those in detention were Aboriginal.³⁵ The Australian Law Reform Commission formally recommended the need for individualised case management that are culturally appropriate.³⁶

6. Education and Training in Custody

As detailed in all relevant UN Declarations and Conventions, education is vital.³⁷ A strong correlation between high levels of education (through learning programs) and lower rates of recidivism has been consistently established by studies conducted throughout the past two decades.³⁸ Despite strong public opinion in support of education being provided for prisoners in detention, there is no legislation that upholds prisoners' right to education. There is insufficient support for models of education and delivery consistent with the development of the human as an individual.

In addition, despite the increasing reliance of society on digital technologies, prisoners' access to these technologies has been restricted.³⁹ This limitation disadvantages prisoners and offenders from interacting with modern academic materials and information. The example of the ACT shows that access to digital technology can be managed securely in a prison environment.

The inadequate access to resources of vocational education and training courses for prisoners means that education levels of prisoners fall far below that of the general community; sixty percent of inmates are not functionally literate or numerate, did not complete year 10, and there is also particular concern regarding the adequacy of programs available to inmates in remand and forensic patients in custody.

It is important that time in prison is used positively to stimulate interests and generate self-esteem as failure to do this may negatively impact both the individual and the community upon release. With more than 50% of prisoners in the early 21st century having young children, higher levels of education could instigate the growth of both their own and their children's education.⁴⁰

The privatisation of prisoner education has resulted in the replacement of qualified teachers with vocational trainers.

7. Health of Australian Prisoners

The right to health is enshrined in international human rights law.⁴¹ This right imposes immediate obligations on signatory countries, including the guarantees of non-discrimination, equal treatment⁴² to ensure nations make advancements towards high standards of physical and mental health. The Health of Australian Prisoners 2015 Report, conducted by the Australian Institute of Health and Welfare, stated that in the 12 months prior to entering prison 67% of inmates had used an illicit substance, with non-Indigenous prisoners more likely to have consumed illicit drugs than Indigenous.⁴³ The high prevalence of drug use by prisoners commonly linked to offending behaviours needs to be addressed through rehabilitation and treatment programs that can target substance abuse issues and educate the prisoner on their understanding of drugs and harm.

31 Kevin Nguyen and Angeli Lu, 'NSW youth detainees subjected to inappropriate strip searches and isolation, report finds', Australian Broadcasting Corporation (online), 24 November 2018 <<https://www.abc.net.au/news/2018-11-24/nsw-youth-detainees-strip-search-excessive-force-isolation/10551528>>.

32 Ibid.

33 Ibid.

34 Bureau of Crime Statistics and Research, 'New South Wales Custody Statistics Quarterly Update September 2018' (Quarterly Update, Bureau of Crime Statistics and Research, 29 October 2018) 7.

35 Ibid.

36 Australian Law Reform Commission, 'Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples' (Report No 133, Australian Law Reform Commission, December 2017) 14.

37 UN Human Rights Council, Report of the Special Rapporteur on the right to Education on The right to education of persons in detention, 11th sess, Agenda Item 3, A/HRC/11/8 (2 April 2009) [4] ('Right to Education Report').

38 Prison Studies Project, Why Prison Education? (2018) Teaching Research Outreach <<http://prisonstudiesproject.org/why-prison-education-programs/>>.

39 Julie Willems, Helen Farley and Jane Garner 2018, 'Digital equity in Australian higher education: how prisoners are missing out', (Paper presented at 41st HERDSA Annual International Conference, Adelaide, 2-5 July 2018).

40 Ibid.

41 See Preamble of the Constitution of the World Health Organisation at <http://www.who.int/governance/en/>. Australia is a party to the International Covenant on Economic, Social and Cultural Rights, article 12 of which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Article 25(1) of the Universal Declaration of Human Rights, 1948; Article 24 of the 1989 Convention on the Rights of the Child 1989; and Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women, 1981.

42 The right to non-discrimination is enshrined in Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965.

43 Australian Institute of Health and Welfare, Health of Australian Prisoners 2015, Report No 207 (2015).

With prisoners who inject drugs, the sharing and re-using of dirty needles is a major issue, as it causes the spread of blood borne viruses. This is reinforced by the proportion of prison entrants testing positive to such, with 31% positive for Hepatitis C, and 18% for Hepatitis B,⁴⁴ and an overwhelming 55% of prison entrants who have injected drugs.⁴⁵ Thus, the Australian Government is legally obligated to take immediate and responsive action, especially in light of the tragic case of Steven Freeman's death (2016) in custody.⁴⁶ However, the introduction of practical proposals, such as the needle and syringe program and accessible naloxone (for reversing opioid overdoses), have been rejected by Corrective Service Officers despite the failure of the current programs to eliminate the risks involved in the current levels of drug use.

Furthermore, the disparities between Australian and Indigenous cultures and languages have recently resulted in an inability to communicate and address Indigenous health problems. That officers' failure to intervene contributed to Jeremy Tunkin's death (2017) in Alice Springs Correctional Centre is a notable example of such issues and their effects.⁴⁷ The lack of communication and its negative impact on the health and conditions of Australian prisoners is further exemplified by the 53 deaths in prison custody in the most recent 2012 figures.⁴⁸

Notably, health services such as Medicare are rarely accessible to Australian prisoners before their release to the community⁴⁹ and consequently, prisoners suffer ill health disproportionately to those who are not incarcerated.⁵⁰

8. Mental Health

Mental illness is highly prevalent in Australian prisons, affecting one in four prisoners during their sentence.⁵¹ Mental health support and rehabilitation

networks are insufficient within Australian jails and prisoners suffer as a result. In NSW, 49% of prisoners met the diagnostic criteria for at least one mental health disorder and suffered psychological distress within four weeks of entering prison. Only one in four of these prisoners were medicated.⁵²

The most commonly diagnosed mental health disorders include depression, anxiety, and drug dependency. Psychosis is three times more prevalent in prisons than it is in the wider community.⁵³ One fifth of prisoners have attempted suicide, often having made multiple attempts. Of the prisoners who had been assessed or treated for mental health problems prior to their incarceration, 63% had no contact with a community mental health service in the three months prior to entering prison.⁵⁴

Another pertinent issue is a lack of ongoing support networks upon release from prison. Most ex-prisoners are left without access to mental health support or employment opportunities due to the underfunding of psychiatric care services and this under-resourcing of mental health programs often inhibits the most vulnerable and the least able individuals from overcoming adverse mental health issues.⁵⁵

Patients are often denied the proper provision of adequate legal representation and effective advocacy, as well as the freedom to select a representative they trust and are comfortable with. This then leads to a lack of accessibility and affordability of expert services, witnesses and opinions, which can have a significantly adverse effect on challenging the findings of a mental health treating team. Such representation is necessary to protect the rights of mental health patients and to provide assistance in navigating the complex provisions of the Mental Health Acts.

44 Ibid.

45 Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2015* (2018) xiii [online] Available at: <<https://www.aihw.gov.au/getmedia/9c42d6f3-2631-4452-b0df-9067fd71e33a/aihw-phe-207.pdf.aspx?inline=true>>.

46 Daniella White, 'The Government Does Not Commit to Working on NSP', *The Canberra Time*, 24 August 2018 <<https://www.canberratimes.com.au/politics/act/government-does-not-commit-to-working-on-nsp-20180823-p4zze9.html>>.

47 Bridget Judd, 'Prison health service concedes it missed opportunities to prevent Indigenous death in custody, inquest told', *ABC News*, 27 November 2018 <<https://www.abc.net.au/news/2018-11-27/indigenous-death-in-custody-inquest-disability-alice-springs/10559084>>.

48 Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2015* (2018)167 [online] Available at: <<https://www.aihw.gov.au/getmedia/9c42d6f3-2631-4452-b0df-9067fd71e33a/aihw-phe-207.pdf.aspx?inline=true#page=27>>.

49 University News, *Removing Medicare exclusion would improve prisoner health* (9 October 2018) University of Western Australia <<http://www.news.uwa.edu.au/2018100911019/removing-medicare-exclusion-would-improve-prisoner-health>>.

50 Ibid.

51 Australian Institute of Health and Welfare. (2018). *The health of Australia's prisoners 2015, Mental health of prison entrants* - Australian Institute of Health and Welfare. [online] Available at: <https://www.aihw.gov.au/reports/prisoners/health-of-australias-prisoners-2015/contents/mental-health-of-prison-entrants> [Accessed 18 Dec. 2018].

52 Australian Institute of Health and Welfare, *The health of Australia's prisoners* (2015) <<https://www.aihw.gov.au/reports/prisoners/health-of-australias-prisoners-2015/contents/mental-health-of-prison-entrants>>.

53 Australian Institute of Criminology. (2018). *Mental disorders and incarceration history*. [online] Available at: <https://aic.gov.au/publications/cfi/cfi184> [Accessed 18 Dec. 2018].

54 Australian Institute of Health and Welfare. (2018). *The health of Australia's prisoners 2015, Mental health of prison entrants* - Australian Institute of Health and Welfare. [online] Available at: <https://www.aihw.gov.au/reports/prisoners/health-of-australias-prisoners-2015/contents/mental-health-of-prison-entrants> [Accessed 18 Dec. 2018].

55 Australian Medical Association, *Mental Health 2018* (14 January 2018) <<https://ama.com.au/position-statement/mental-health-2018>>

9. Culturally and Linguistically Diverse (CALD) Communities

There is a significant overrepresentation of CALD communities within the NSW prison system. According to the 2016 NSW inmate census, inmates from Non-English Speaking Background (NESB) account for 16.6% of prisoners in NSW,⁵⁶ often from South-East Asian (particularly Vietnam), Middle Eastern and Pacific Island communities. In many instances, prisoners face culturally based obstacles, such as limited access to culturally appropriate food (like halal), prayer arrangements, literature and educational resources in community languages, interpreter services, and transcultural psychiatric support. Low levels of literacy and skills in the English language further add to these issues.

The Goulburn prison riot in 2014 was sparked by religious tensions, and highlights the need for a penal system that is sensitive to religious differences and provides inmates the freedom to practice their faith.⁵⁷ Adverse responses toward individual actions that target religious liberties are more likely to exacerbate tensions, as seen with the banning of Islamic prayer sessions in the wake of the riot.⁵⁸ Alternatively, such freedom has empowered prisoners to force their radical Islamic ideologies onto others.⁵⁹

NESB offenders are also less likely to understand how the criminal justice system works due to significant language barriers. They often lack understanding of the law, especially regarding their rights in police questioning and accessing bail.⁶⁰

CALD women in Victorian prisons experience feelings of isolation, anxiety and vulnerability due to racism and related factors,⁶¹ and such issues can be assumed the same in NSW prisons.

Moreover, it is generally recognised that ex-prisoners face a wide range of challenges reintegrating in the community.⁶² These challenges are often worsened

for people from CALD communities due to the stigma associated with offending behaviour in addition to cultural differences.

Generally aggravated by the media, there are beliefs that certain migrant groups are more likely to commit crimes than other ethnicities but social disadvantage is in fact the main contributing factor to offending.⁶³

Addressing these in a systematic, policy-driven manner will result in a greater integration of diverse communities within the prison system, lessen the difficulties currently faced by correctional officers and hence assist in the rehabilitation of offenders.

10. Prison Officer Conditions

The increasing prisoner population has led to overcrowding, placing additional stress on prison officers and resulting in a number of issues with working conditions, particularly considering many prisons require high levels of assistance and interventions.⁶⁴ Recent strikes in NSW correctional facilities have ultimately revealed that prison officers remain unsafe, under-resourced, under-trained and ill-equipped to handle the rising number of prisoners.⁶⁵ This has seen an increase of 142% of officers from 2013-2018, a rate that has nearly tripled in the past three years.⁶⁶ Representatives of prison staff, Together Union have expressed fears of the potentially deadly consequences that may occur if overcrowding and inaction continues.⁶⁷

Therefore, it is concerning that prison officers are not entitled to the same level of worker's compensation benefits as other law enforcement and emergency service workers due to the NSW government's changes to the WorkCover Scheme in 2012. This includes a number of cuts to medical benefits, and leaves a large number of seriously injured officers without fair protections.

With the rapidly increasing prison population, prisoners have less access to telephone calls and exercise ar-

56 Corrective Services NSW, NSW Inmate Census 2016: Summary of Characteristics, <<https://www.correctiveservices.justice.nsw.gov.au/Documents/045-nsw-inmate-census-2016.pdf>>.

57 'Goulburn jail 'riot': Cultural tensions near boiling point in NSW prisons, says justice advocacy group', ABC (online), 23 October 2014 <<http://www.abc.net.au/news/2014-10-23/cultural-tensions-near-boiling-point-in-nsw-jails-goulburn/5834864>>.

58 'Goulburn Jail riot: Racial violence quelled with tear gas', News.com.au (online), 22 September 2014 <<http://www.news.com.au/national/nsw-act/goulburn-jail-riot-racial-violence-quelled-with-tear-gas/story-fnj3rq0y-1227066039983>>.

59 Greg Miskelly, 'Inside NSW jails: Inmates trying to force religion, extreme ideologies onto others', ABC (online), 29 June 2017 <<https://www.abc.net.au/news/2017-06-29/rise-of-violent-extremism-in-sydneys-prisons/8660214>>.

60 Nobars, Culturally and Linguistically Diverse (CALD) Prisoners (2011) <<http://www.nobars.org.au/about-linguistic-prisoners.html>>.

61 Stephane M. Shepherd, 'Criminal Engagement and Australian Culturally and Linguistically Diverse Populations: Challenges and Implications for Forensic Risk Assessment' (2015) 23(2) Psychiatry, Psychology and Law 256.

62 Christy A. Visher and Jeremy Travis, 'Transitions from prison to community: Understanding individual pathways' (2003) 29(1) Annual Review of Sociology 106.

63 Judicial Commission of New South Wales, Equality before the Law Bench Book – Section 3 – People from culturally and linguistically diverse backgrounds (June 2018) <<https://www.judcom.nsw.gov.au/publications/benchbks/equality/section03.html>>.

64 NSW Department of Police and Justice, The Invisibility Of Correctional Officer Work, Report No. 1, 2014.

65 Australian Associated Press, 'Prison Strike Spreads Across NSW As Officers Protest Work Conditions', News.com.au (online), 13 April 2018, <<https://www.news.com.au/finance/work/at-work/prison-strike-spreads-across-nsw-as-officers-protest-work-conditions/news-story/55b01209dc3cc3572b80ff22ad769639>>.

66 Ana Vujanovic and Tim Swanston, 'Queensland Prison Guards Fear for Safety as Overcrowding Continues, Taking a Mental Toll', Australian Broadcasting Corporation (online), 19 December 2018, <<https://www.abc.net.au/news/2018-12-19/qld-correctional-officers-fear-for-safety-in-overcrowded-prisons/10633344>>.

67 *ibid.*

eas, leading to unrest and increased rates of assaults to prison officers.⁶⁸ In response to the 2011 questionnaire, the government denies the restructuring of prison officers' role in a welfare direction through case management. The Government has claimed that trained professionals like psychologists best meet this role. However, basic training should be still enforced for the greater welfare of prisoners and staff alike⁶⁹ Prison officers are entitled to a safe environment with culturally appropriate training. This should include a high status in supportive working conditions. Prison officers should also have access to a variety of upward pathways and career opportunities where fair wages are not dependent on extended over-time.

11. Governance and Transparency

The endemic structural problems in prisons require an independent body to objectively inspect and report on these issues, possessing a similar function to Her Majesty's Chief Inspector of Prisons in the United Kingdom. In 1995, the NSW Labor government created the Inspector-General position with the authority to enter jails unannounced and report on findings.

Lindsay Le Compte held this role until 2003, during which time he critically analysed the prison system. The government appointed the former Commissioner of Corrective Services to conduct a review on the Inspector-General role, which recommended the abolition of the position and the strength of the 'watch-dog' role was significantly diminished when the job was passed to the Ombudsman, who did not have the same powers as the Inspector-General.⁷⁰ At the time, the Ombudsman said that the former powers and resources of the Inspector-General would be more valuable to correct structural problems in prisons.

Under the Inspector of Custodial Services Act 2012, a new position was established to co-exist with other investigatory bodies, including the Ombudsman. A former Commissioner of Corrective Services, John Paget was appointed as the Inspector of Custodial Services, whose functions are to inspect, examine and review custodial centres at least once every five years and then report to Parliament.⁷¹ The Inspector monitors 'broader thematic and systemic issues arising out of inspections of adult and juvenile correc-

tional facilities and services'. However, this does not include the examination of prisoner complaints.⁷²

The NSW Ombudsman received 5390 complaints in 2017/18.⁷³ Over 77% of formal complaints in correctional centres were dealt with by preliminary or informal investigations.⁷⁴ These statistics support the feedback Justice Action has received from prisoners regarding their lack of confidence in the Ombudsman to effectively rectify their issues. Indeed, the Ombudsman completed zero formal investigations from correctional centre complaints and⁷⁵ this highlights the refusal of the Ombudsman to re-examine cases involving discretions previously determined by the Department of Corrective Services.

68 Anna Patty, 'Prison Officers At Risk As Prison Population Grows', The Sydney Morning Herald (online), 20 May 2015, <<https://www.smh.com.au/national/nsw/prison-officers-at-risk-as-prison-population-grows-20150519-gh4unf.html>>.

69 Community Justice Coalition, Party Responses to 2011 Justice Questionnaire, <<https://www.communityjusticecoalition.org/issues/party-responses-to-justice-questionnaire>>.

70 Edmund Tadros, 'Prison Watchdogs Lose Their Teeth', The Sydney Morning Herald (online), 9 December 2008, <<http://www.smh.com.au/news/national/prison-watchdogs-lose-their-teeth/2008/12/08/1228584743341.html>>.

71 Inspector of Custodial Services Act 2012 s 6.

72 The Attorney General's Second Reading Speech on the Inspector of Custodial Services Bill 2012, 23 May 2012.

73 NSW Ombudsman, 2017-18 Annual Report 80. <https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0011/61697/NSW-Ombudsman-Annual-Report-2017-18.pdf>..

74 Ibid 83.

75 NSW Ombudsman, 2017-18 Annual Report 80 <https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0011/61697/NSW-Ombudsman-Annual-Report-2017-18.pdf>..