

Reducing Offending and Strengthening Correctional Accountability for a Safer Victoria



human
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Corrections Reform for a Fair, Safer and More Just Victoria

The Baillieu Government has publicly committed to a fair, safe and just Victoria, to enhancing transparency and accountability in government and public services, and to upholding rights and freedoms.¹

Consistently with these commitments, the Baillieu Government should:

- strengthen evidence-based correctional and community policies and programs which target causes of offending, promote rehabilitation and reduce recidivism; and
- establish an independent, effective, publicly accountable and adequately resourced prison inspectorate to monitor and report on prison operations and conditions.

Addressing the Causes of Crime: Time for Victoria's 'Rehabilitation Revolution'?

The Baillieu Government has strongly committed to preventing and deterring crime and to reducing recidivism.² To date, the Government has pursued these aims through policies such as recruiting additional police, outlawing motorbike gangs and reducing the availability of suspended sentences and home detention. There has been limited emphasis, however, on the importance of rehabilitation and reducing re-offending. As nearly half (49%) of Victorian prisoners have been incarcerated before,³ a constructive approach that targets the causes of offending is essential to making Victoria safer.

Over the last decade, prison numbers and spending have increased significantly, with little evidence that this is making our community safer or is a sound investment.

On 30 June 2010 there were 4,537 Victorian prisoners. This represented a 43.9% increase in the number of prisoners over the past decade.⁴ About 49% of Victorian prisoners have been incarcerated before⁵ and 33.7% of prisoners who were released in 2007-2008 had been returned to prison in the two years subsequent to release.⁶

Over the past decade, the Victorian Government's annual spending on prisons has increased 186% to \$640 million in 2010/11.⁷ In the 2010/2011 Victorian Budget, an additional \$81 million was pledged to increase the capacity of the women's prison system and \$46 million for additional capacity in men's prisons over the next four years.⁸

The Baillieu Government has the opportunity to shift from existing policies that are expensive, inefficient and ineffective and advance an evidence-based reform agenda that breaks the cycle of offending and strengthens community safety and cohesion.

Over the last year, the UK Government has outlined a major program for reform of the criminal justice system, called *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*.⁹ The Conservative Lord Chancellor and Secretary of State for Justice, Kenneth Clarke, has described the imperative for reform in the following terms:

In recent years, political debate on law and order between rival parties has rather tended to be reduced to a numbers game. Do we have more police officers? Have we put more people in prison for longer? Have we thrown more money at a particular problem? Sometimes it seems to me that the measure of success has been solely about whether a Government has spent more public money and locked up more people for longer than its predecessor did in the previous years. The consequence of that is that more and more

offenders have been warehoused, sometimes in outdated facilities, and we spend vast amounts of public money on a growing prison estate and ever more prisoners.¹⁰

The phrase ‘rehabilitation revolution’ has been used to summarise key aspects of the ‘Breaking the Cycle’ program. It contains a range of concrete targets and accountability mechanisms to reduce the prison population and the rate of re-offending and to promote rehabilitation and social re-integration.

Reforms to Target Causes of Offending, Promote Rehabilitation and Reduce Recidivism

Drawing on the ‘rehabilitation revolution’ which has been well-received in the UK by both civil society organisations and the wider community,¹¹ the Baillieu Government should consider the following corrections reforms for Victoria:

- enhancing the availability of non-custodial sentencing options . such as community corrections orders . that provide a wide scope for rehabilitation and treatment and increasing sentencing options and judicial discretion so that courts can better tailor orders to reduce re-offending;¹²
- increasing access to effective and appropriate drug and alcohol treatment services, both in prison and the community;¹³
- increasing the availability of diversionary programs and treatment services for offenders with mental illness;¹⁴
- strengthening and resourcing post-release employment, education and housing support programs, with a stable job and secure housing being major factors contributing to reduced re-offending and increased social and economic participation;
- introducing a ‘payment by results’ system whereby social service providers working with offenders are paid to achieve reductions in offending and improved social outcomes; and
- continuing and expanding early intervention and therapeutic and restorative justice approaches that work, such as the Victorian Court Integrated Services Program, the Drug Court and the Koori Court.

Together, these initiatives have the potential to make Victoria a more fair, safe and just place to live.

Transparency and Accountability in Prisons

A commitment to the values and practice of transparency and accountability is a key pledge of the Baillieu Government and also a key principle underlying the UK Government’s ‘Breaking the Cycle’ correctional reform.

Mechanisms for the independent investigation and inspection of places of detention are essential to ensure the effective protection against torture, ill-treatment and other human rights breaches. A comprehensive system of inspection and investigation is required *in addition to* a complaints-based system to protect the human rights of persons deprived of their liberty.

Unlike many comparable jurisdictions, such as Western Australia, New Zealand and the United Kingdom, Victoria does not have an independent body responsible for monitoring and oversight of prisons and other places of detention.¹⁵ This is despite Victoria’s Ombudsman publishing a number of recent reports which have been highly critical of detention conditions and practices, including in youth detention facilities, police cells and the Melbourne Custody Centre.¹⁶ The reports have variously described conditions as ‘appalling’, ‘disgraceful’ and incompatible with basic human rights.

The Victorian Office of Correctional Services Review, an internal business unit within the Department of Justice which reports to the Secretary of the Department, is not sufficiently independent, empowered or

publicly accountable to undertake this function. The OCSR's lack of independence is exacerbated by the fact that it does not publicly publish its reports or findings.

An Independent Inspectorate to Promote Transparency and Accountability in Prisons

Consistent with its commitment to transparency and accountability in government and public services, and to upholding human rights, the Baillieu Government should establish an independent, statutory, publicly accountable, adequately resourced monitoring and oversight body for prisons and other places of detention.

An independent Victorian prisons inspectorate, similar to that established under the *Inspector of Custodial Services Act 2003 (WA)*, could examine systemic issues in detention, provide independent and expert advice to the government and parliament, and enhance community confidence in the correctional system.

¹ See generally The Hon Robert Clark, Attorney-General, 'Towards a Fair and Just Victoria' Human Rights Week Speech, Melbourne, 8 December 2010.

² Ibid.

³ Australian Bureau of Statistics, *4517.0 - Prisoners in Australia*, 2010, at www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0.

⁴ See Department of Justice, *Statistical Profile of the Victorian Prison System 2004-05 to 2008-09* (2009), 8 and *Corrections Statistics FAQs*, at www.justice.vic.gov.au.

⁵ Australian Bureau of Statistics, *4517.0 - Prisoners in Australia*, 2010, at www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0.

⁶ See Department of Justice, *Corrections Statistics FAQs*, at www.justice.vic.gov.au.

⁷ Victorian State Budget papers show the prison budget for 2010/11 is \$640 million compared with \$224 million in 2001/02: see www.dtf.vic.gov.au.

⁸ Victorian Budget 2010-2011 Overview, 10, at www.budget.vic.gov.au/CA2576BD0016DD83/pages/budget-overview.

⁹ See <http://www.justice.gov.uk/consultations/breaking-cycle-071210.htm>.

¹⁰ Kenneth Clarke, *The Government's Vision for Criminal Justice Reform*, Speech at the Centre for Crime and Justice Studies, King's College, London, 30 June 2010.

¹¹ See, eg: press releases of the Howard League for Penal Reform (www.howardleague.org); J Bartley, UK Coalition: A Revolution in Justice *Open Democracy*, 1 July 2010; The Prison Reform Trust has called the proposals a blueprint for moderate and sensible reform and should mark the end of sterile debate on toughness or softness on crime. D Thomas, 'The Government's Green Paper on Sentencing is to be Welcomed' *The Guardian*, 8 December 2010; Revolving Doors Agency, 'Clarke's green paper offers hope to victims by tackling the causes of repeat offending' 7 December 2010; and Institute for Public Policy Research, Media Release, 'IPPR Welcomes Ken Clarke's Green Paper on Rehabilitating Offenders' 7 December 2010.

¹² Although imprisonment is appropriate for some offenders, community corrections orders are cost-effective and can reduce recidivism. According to the Council of Australian Governments, the average real net operating expenditure per prisoner per day in 2009/10 was \$240.66, while the average real net operating expenditure per Community Corrections offender per day in 2009/10 was \$18.50. Offenders on community corrections orders have lower rates of re-offending: Department of Justice, *Corrections Statistics FAQs*, at www.justice.vic.gov.au. In the UK, 'There is growing evidence that properly enforced community sentences can be an effective response. In 2007, reoffending of those offenders starting community orders was 7% lower than for similar offenders who had served short term prison sentences' Ministry of Justice, *Breaking the Cycle: Effective Punishment, Sentencing and Rehabilitation of Offenders*, December 2010, at 6.

¹³ A 2006 report found that approximately 50% of the Victorian prison population had two or more characteristics of serious disadvantage, including unemployment, intellectual disability, drug or alcohol issues, homelessness and prior admission to a psychiatric institution: Department of Premier and Cabinet, *Growing Victoria Together Progress Report, 2005-2006*, (2006) Appendix B . Service Delivery, 358-359.

¹⁴ Inadequate mental health services have been blamed for the over-representation of people with mental illnesses in prisons, with one study finding prevalence rates for psychotic illnesses in Australian prisoners ranged from 10 to 30 times higher than amongst the general population: see D Rogers, 'Out of Sight, Out of Mind: Mentally Ill in Queensland Correctional Centres' (2008) 1(2) *Queensland Law Student Review*. See also White & Whiteford (2006) 'Prisons: mental health institutions of the 21st century?' 185(6) *Medical Journal of Australia* 302, 302.

¹⁵ Western Australia has established an independent, publicly accountable prisons inspectorate with similar functions under the *Inspector of Custodial Services Act 2003*. New Zealand has established a National Preventive Mechanism to independently monitor, inspect and report on the operation and condition of places of detention: see Human Rights Commission, *Monitoring Places of Detention: Annual Report of Activities under the Optional Protocol to the Convention against Torture* (2010) at www.hrc.co.nz/hrc_new/hrc/cms/files/documents/15-Dec-2010_11-21-36_HRC_MonitoringPlacesofDetention_2010.pdf.

¹⁶ See, eg, Ombudsman Victoria, *Investigation into Conditions at the Melbourne Youth Justice Precinct* (2010).