IMPRISONMENT as a front-line criminal justice strategy

The Australian Prisons Project will keep tabs on prison population, as well as policy. ANNE Susskind reports.

NSW has twice the imprisonment rate of Victoria, but it is not the case that people here are twice as criminal, says Professor Chris Cum- neen, the NSW Global Chair in Criminology in UNSW's Faculty of Law and, if growth at the current rate continues, NSW will need a new prison every 12 months.

Professor Cumneen, who is on the research team of the newly launched Australians Prisons Project, said the "quite significant changes" in bail legislation, particularly since 2002, and particularly in NSW, were the most obvious factor behind the dramatic growth in imprisonment nationwide.

The lack of non-custodial sentencing options was also a problem, he said. But the reasons why NSW had experienced the biggest growth in prison population - with twice the imprisonment rate of a comparable jurisdiction, Victoria - were not as clear.

"There have been a number of suggestions made, but no hard evidence. It is not related simply to issues of crime. There is a view that punishment reflects crime, but that is not the case."

Perhaps, he said, it was about NSW's "law and order politics", which had seen a lack of consultation of any alternative by government and the opposition, which had voted with each other to see who could be toughest on crime. "There is (in NSW) a tradition of being more punitive, and less of a tradition of considering alternatives, particularly over the last 20 years," Cumneen said.

The new project, "a research hub" for prison-related issues, is supported by an Australian Research Council grant, and will look at issues such as why NSW is different, Professor Cumneen said.

It would also examine the nature, dynamics and underlying reasons behind the growth in prison population, and its work would hopefully lead to change in the way sentencing worked.

"There is a view that punishment reflects crime, but that is not the case."

Some of the other things we are doing are looking at the impact of imprisonment on specific groups of people such as Indigenous people and women and people with mental illnesses and who are vulnerable and have special issues while in prison...and why the figures for women have gone up so much, disproportionately. It's a very bleak picture..."

In a recent online article, Professor Cumneen and co-author Melanie Schwartz, also of UNSW's Law Faculty, said that the latest NSW Corrective Services figures showed that the number of prisoners in the state's jails was approaching 10,500, 800 more than at the same time last year.

Overall, nationally, prison numbers had increased by more than 50 per cent in the last decade or so. The rate at which women were being imprisoned was growing twice as quickly as men.

With regard to bail, they wrote: "Tinkering with bail legislation on an ad hoc basis and in politically charged moments of public attention has had a dramatic effect on the number of people we lock up prior to them being sentenced for an offence."

"For example, the changes made off the back of the Cronulla riots in 2005 - making bail harder to get for people accused of committing offences in the course of public order disturbances..."

An increased reliance on "risk assessment" mechanisms to decide whether someone should be at liberty or detained was also impacting on the prison population. It was being used in bail and parole determination, in structuring post-release supervision, and perhaps most controversially, to justify preventative detention of sex offenders after their term of imprisonment had expired.

There were, Cumneen and Schwartz said, very good economic reasons to look closely at why imprisonment rates were going "through the roof", particularly in an environment of stable crime rates.

Government figures for 2007/8 showed that prison expenditure was $2.6 billion, and the annual growth rate was around 5.5 per cent which was the fastest growing expenditure in the justice area, approaching twice that of police services. The social costs of imprisonment, too, which were borne disproportionately by the most marginalised and minority groups, were high, and imprisonment did not prevent them from reoffending. In NSW, more than 70 per cent of prisoners in prison had been previously imprisoned.

Cumneen and Schwartz said that identifying changes in the penal culture in the last 25 years that had led to imprisonment - a "front-line criminal justice strategy" - would perhaps provide some ideas of where to find the road back. "

Professor Chris Cumneen says NSW's 'law and order politics' may be behind the state's disproportionately high imprisonment rate.

July 2009

July 2009

Law Society Journal 19