

Australia has a prison problem – Arthur Moses SC

Australia has a prison problem with more than 43,000 in jails around the country on any given day.

Over the past decade, the nation's prison population has shot up 50 per cent, yet could it be said that our streets are 50 per cent safer?

Two months ago, Northern Territory's Attorney General Selena Uibo announced an agreement intended to reduce offending and imprisonment of indigenous people in the territory.

The Aboriginal Justice Agreement seeks to engage the Aboriginal leadership and improve services for remote NT communities. At its heart is investing in communities to prevent economic disadvantage by breaking vicious cycles of poverty, offending and incarceration.

Uibo, Australia's first indigenous attorney-general, said the agreement was not about one race – the Aboriginal people.

She described it as “all of us walking together” to make where we live a better place by reducing reoffending and improving justice responses for those who come before our criminal courts.

It should be a model for policy reform across the board in Australia.

Prison can lead to a cycle of incarceration, starting young, which is hard to escape. Almost three in four prisoners have been behind bars before. One in three has been in prison at least five times.

The disproportionate incarceration rates of First Nations Peoples in particular is a national shame – 29 per cent of prisoners are Aboriginal or Torres Strait Islander peoples, despite the fact that First Nations peoples make up just 3 per cent of our nation's population.

The money spent doesn't make sense either. It costs roughly \$331 per prisoner per day to keep them in jail, not including health and transport costs. The national bill is close to \$4bn a year for a system that is not succeeding.

Nelson Mandela famously said: “No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens but its lowest ones.”

The best way to protect our community is to prevent crime – and yet governments of all political persuasions seem to be locked into a bricks and mortar mentality.

NSW is currently constructing another new prison. NT is building a new youth detention centre.

This jailing mentality is despite how prison populations could be lowered in just weeks last year to help minimise the risk of Covid-19 transmission. The NSW Bureau of Crime Statistics found that between 15 March and 10 May 2020 the State's adult prison population decreased by 10.7 per cent, roughly 1500 people, due largely to a drop in the number of people held on remand and more being granted bail.

This was the first time the prison population had dipped since 2011, and it was able to be done without compromising public safety. So why haven't we learnt from this?

Australia's imprisonment rate is significantly higher than Japan, Ireland, Iceland, Germany and Finland. Even the USA, with high incarceration rates and \$80bn a year spent on prisons, is looking to alternatives including rehabilitation.

In February, Queensland announced a pivot of its youth crime policy. Premier Anastasia Palaszczuk unveiled a series of initiatives including a trial of GPS tracking devices and the ability for courts to seek assurances that youth offenders would adhere to bail conditions. While these seemed positive steps, the initiatives also included reversing the presumption of bail in serious indictable offences.

Investing in preventative crime measures and early intervention instead of concrete and wire would be an important step.

So too would providing support in the community instead of criminalisation, and funding social policy responses to the very disadvantage that leads to involvement and entrapment in our criminal justice system.

If we could see inside our juvenile detention centres and prisons, would there be any dispute that the age of criminal responsibility should be lifted to keep more young people out of the system and engaged in school?

Despite much talk, a committee of state and territory AGs has made no progress on the most innocuous of proposals to raise uniformly the age of criminal responsibility from 10 to 14 years old. To his credit, the ACT's AG Shane Rattenbury has broken ranks while his state counterparts have shown a lack of political will. The excuse of some that processes and services for children who exhibit offending behaviour remain inadequate is, regrettably, the same explanation that has been used for years, and it not clear why these things are not yet in place.

It has been eight years since the High Court pronounced that sentencing judges and magistrates were to take into account, as a factor of mitigation, the inter-generational disadvantage experienced by First Nations people.

It is disappointing that despite stakeholder support over many years, the NSW Government is yet to enshrine in legislation the proposed Walama Court as a specialist Court, similar to the Drug Court. The proposal is supported by the Police Association of NSW and the NSW Bar Association. The Justice Department's own secretary called it an "excellent proposal".

The Walama Court would contribute to reducing recidivism through increased cooperation between the justice system and respected persons in First Nations communities, more vigorous supervision orders and diversionary programs. It would save taxpayers money and, in the long term, could save lives.

It is time to stop the revolving door of our justice system. This is about being sensible, not soft, on crime: jail is no panacea.

Arthur Moses SC is a former president of the Law Council of Australia and NSW Bar Association. He is a national patron of the Justice Reform Initiative (www.justicereforminitiative.org.au) which includes retired Governors-General, retired judges, practising lawyers, former police officers and academics.