

Greens NSW Submission

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By email: justiceproject@lawcouncil.asn.au.

Submission re: The Justice Project

The Greens NSW strongly supports this initiative by the Law Council of Australia. Identifying the unique legal issues that arise for people from specific disadvantaged groups – such as Aboriginal and Torres Strait Islander people, asylum seekers, homeless persons, and more – allows us to address these issues systemically and increase access to justice for all people. Creating better educational opportunities, greater self-determination and economic equality, and better drug rehabilitation, rather than pouring money into new prisons, is a key way to improve outcomes for all.

We believe that NSW urgently needs a Bill of Rights to ensure our civil liberties are given proper protection under law. This will put NSW on equal footing with many other jurisdictions who have already adopted similar legislation; including the UK, Canada and New Zealand.

Human rights are necessary for people to live lives of dignity and value and are essential to a democratic and inclusive society. They should be appropriately codified so that individuals and authorities know what their rights and obligations are, and so they are included in the development and interpretation of legislation. While Australia is now the only advanced liberal democracy not to have a Bill of Rights, the ACT and Victoria have each enacted a Bill of Rights within their own State jurisdiction.

The Greens NSW believe that the following basic principles of criminal justice must be protected:

- Freedom from prolonged detention without charge or trial
- The presumption in favour of bail
- The legal presumption of innocence until proven guilty
- The right to a trial by jury for all serious indictable offences
- The requirement for unanimous jury verdicts
- The independence of the judiciary from political interference.
- Judicial discretion in sentencing and bail.

Justice re-investment should be expanded across NSW and Australia. By reducing the use of custodial interventions for remand and sentencing we can release public funds that should be directed to the prevention of crime and the resolution of underlying social problems that can give rise to criminal behaviour. Policing and custodial services should not be privatised under any circumstances.

Priority should be given to programs that promote a reduction in the likelihood of entry into the criminal justice system, including:

- access to education, training and work opportunities;
- drug and alcohol treatment and rehabilitation centres; and
- breaking the cycle of social disadvantage that may result in child abuse and neglect.

We strongly need specific services for Indigenous Australians, people from Non-English Speaking Backgrounds, people with mental illness and people with disabilities. We also need to increase early intervention programs, such as community based residential, counselling and other support services. Effective support systems should be provided within the courts for those with intellectual disabilities and those with mental illness. Funds should be increased for Legal Aid, Community Legal Centres, and Aboriginal Legal Services to increase the capacity for advice, representation, community legal education, and law reform.

We need effective programs to rehabilitate incarcerated offenders and reduce recidivism, including education, training schemes, employment opportunities, post release social support and other social and vocational services and these services should also be available for remand prisoners. We note that in NSW in particular many prisoners do not complete rehabilitation programs before their release due to funding and other constraints, this should urgently be addressed.

Aboriginal justice

Addressing the over-representation of Aboriginal people in the criminal justice system in New South Wales must be a priority. It should be a requirement for all police to undertake Aboriginal cultural awareness training. Reforms and programs that ensure the NSW justice system and NSW Government agencies incorporate cultural awareness and best cultural practice relating to Aboriginal and Torres Strait Island peoples should be supported.

The Greens NSW support necessary legislative changes and priority funding of successful programs that:

- Provide community-based alternatives to incarceration as sentencing options where appropriate; and
- Assist with integrating Aboriginal and Torres Strait Island people back into the community after release from custody.

The outstanding recommendations of the Royal Commission into Black Deaths in Custody (1991), the National Inquiry into the Separation of Aboriginal and Torres Strait Island Children from their Families (1997), Breaking the Silence: Creating the Future Report (2006), and the Bringing Them Home Report (as relevant to NSW) must be implemented, with full participation by Aboriginal and Torres Strait Island peoples. This is vital to reduce Aboriginal suicide and over-representation of Aboriginals in custody.

We support justice diversion, justice reinvestment and customary sentencing programs as alternative approaches to the criminal justice system to address the over-representation of Aboriginal youth and adults in custody and to empower communities and build community capacity to respond to crime and disadvantage.

Juvenile justice

There are a number of steps we can take to help keep young people out of the criminal justice system. Funding should be provided to community-based programs that identify and provide counselling and support to juveniles at risk of committing crime. Reports relating to juvenile justice published over the last decade should be reviewed, with a view to implementing the relevant recommendations of these reports. We need to recognise the contribution and needs of young people and create structures conducive to effective youth participation so young people can influence policies, decisions and actions. Adequate and appropriate care should be provided for young offenders who are victims of abuse (sexual, physical, emotional), neglect or exploitation.

The Greens NSW support community conferencing for juvenile offenders and their victims, and community-based, educational and vocational programs for juvenile detainees with the aim of reducing recidivism and providing opportunities upon release. Bail or community-based supervision regimes should be supported for juveniles charged with all but the most serious of offences. The Bail Act should be amended to reduce the amount of time young people are kept in custody including following minor breaches of bail conditions. Young people detained on care and protection matters must be separated from those incarcerated on criminal matters.

Over-policing of young people, especially young Indigenous Australians and young people of non-English speaking backgrounds, needs to end. This can be achieved by introducing training for all general police officers in working with and managing young people in public and private spaces, including negotiation and communication skills, and repealing all laws which infringe upon the civil liberties of children and young people or prohibit young people from congregating in public places. The end of the NSW drug dogs program would also assist with this.

We must take immediate steps to implement strategies, policies and programs which will reduce the massive over-representation of Indigenous young people in custody. It is important that we recognise that young Indigenous Australians and young people of non-English-speaking backgrounds come from rich cultural heritages, have special needs and face particular problems, particularly those caused by social and economic disadvantage. All actions taken must be consistent with the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

Women

We must ensure safety, both psychological and physical, for all women at home, in the community, and in the workplace. The Greens NSW support continually reviewing all laws that have a bearing on violence against women including:

- Sexual and domestic assault and treatment of survivors and perpetrators;
- Stalking, harassment and exposure via social media or internet; and
- Intimidation and bullying;

We need to establish a national inquiry into all forms of sexual assault, including assault within marriage and relationships, and implementation of uniform sexual assault laws. Providing education from early primary school onwards on non-violent conflict resolution could help foster a change in the culture of domestic violence.

We need to monitor and implement necessary reforms to minimise stress on complainants in sexual assault and rape trials, consistent with a fair trial, investigation and court procedures, and develop further options for the protection of victims and the naming of perpetrators.

Special provisions must be made for geographically remote communities, and services provided that are culturally appropriate for indigenous Australian women, refugee women, and women from ethnically, culturally and socially diverse backgrounds. We must ensure access by women, including refugee women, to safe and secure accommodation through a comprehensive housing policy and the provision of adequate emergency housing.

Expanding crisis services for women, with and without children, by providing refuges and services to victims of rape, incest, female circumcision and domestic violence is vital. This can be achieved through increased joint Commonwealth/State funding of community-based Women's Health Centres.

Police

We must end the NSW Police practice of using sniffer dogs in public places to carry out searches. This program is invasive, ineffective and unfair. Drug law reform should be implemented based on harm minimisation principles.

The system for the investigation and resolution of complaints about police actions/inactions must be independent, transparent, accessible, effective, and adequately resourced. The measures and mechanisms in place for the prevention and investigation of corruption within the NSW Police Force must be independent and effective.

Thank you for your consideration of this important matter.

Kind regards,

A handwritten signature in black ink, appearing to read 'D. Shoebridge', written in a cursive style.

David Shoebridge, Greens NSW MP
Spokesperson for Justice