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CONSIDERATIONS RELEVENT TO THE INTRODUCTION OF A NEEDLE AND SYRINGE PROGRAM TO THE ACT PRISON

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THE EFFECTIVENESS OF NSPS

There is strong evidence that NSPs reduce the spread of HIV/AIDS, hepatitis C and other infections.

ACT Government acceptance of a prison NSP

2. The new ACT prison commenced operation in March 2009 without a needle-syringe program. At the time, the Government and Corrections believed that the ACT would be successful as no other prison had been in keeping drugs out. At the same time the Government committed itself to review the need for an needle-syringe program aft the prison had been in operation for 18 months. The Government's position at the time was reflected in the ACT Corrections Health Plan of March 2008 which stated:

> "A full and comprehensive evaluation of the proposed drug policies and services, and their subsequent effects on the prisoners and staff within the Alexander Maconochie Centre, will be undertaken 18 months after the commissioning. If, after this evaluation, further consideration of a trial needle exchange program is warranted, ACT Health will investigate the feasibility of introducing such a trial to the Alexander Maconochie Centre" (ACT Health (2008) p. 22).

3. This review is presently underway. It is being conducted by the Burnet Institute in Melbourne in a tender let by the Department of Health. It is described as an "Evaluation of drug policies and services and their subsequent effects on prisoners and staff within the AMC." The Government expects to receive the report in December.

4. In the light of evidence that sophisticated supply reduction measures to keep drugs out of the prison were failing, Ministers have conceded that from a health point of view there is a need for a needle-syringe program:

> *The Canberra Times* on 16 September, 2010 (p. 1), reported the Chief Minister as saying: "I would accept, on the information that is available and on the knowledge that we have, illicit substances are still finding their way into Alexander Maconochie despite our best efforts and there is access through whatever illegal means to contraband within AMC."

5. During Estimate Committee Hearings on 18 May 2010 the Health Minister, Katy Gallagher confirmed that a detainee had contracted Hepatitis C while in the prison. She was asked whether she was in favour of a needle exchange in the prison to which she replied:

> **Ms Gallagher**: From a health point of view, it is a no-brainer; you have a needle and syringe program in the jail as soon as you can. From a corrections staff point of view—I have said this in these forums a number of times—it is more complex than that. Corrections staff have mixed and strongly held views around the commencement of a needle and syringe program. It would be a brave new step. We would be the first jail in the country to head this way—not the first jail in the world but the first jail in the country (http://www.hansard.act.gov.au/hansard/2009/comms/estimates16.pdf).

6. The Attorney-General, Simon Corbell had earlier made known that he would support in Cabinet a submission in favour of a prison needle-syringe program.

Background:

7. The finalised Adult Corrections Health Services Plan 2008-2012 summarises the overseas experience of prison NSPs in the following terms:

> "Needle and syringe programs have proven to be an effective harm-reduction measure that

reduces needle sharing, and therefore the risk of blood borne virus transmission, among people who inject drugs. The incidence of needle sharing and Hepatitis C is significantly higher in prison communities than the general population. Six countries (Switzerland, Germany, Spain, Moldova, Kyrgyzstan, and Belarus) have extended needle exchange programs into prisons (Rutter, S., Dolan, K., Wodak, A., & Heilpern, H. 2001; Dolan, K., Rutter, S. & Wodak, A. 2003; Lines, R, Jürgens, R, Betteridge, G, Stöver, H, Laticevschi, D, Nelles J, 2004).

"The experience and evidence from the six countries where prison needle and syringe programs exist demonstrate that such programs:

- do not endanger staff or prisoner safety, and in fact, make prisons safer places to live and work;
- do not increase drug consumption or injecting;
- reduce risk behaviour and disease (including HIV and HCV) transmission;
- have other positive outcomes for the health of prisoners;
- have been effective in a wide range of prisons; and
- have successfully employed different methods of needle distribution to meet the needs of staff and prisoners in a range of prisons" (p. 22).

8. Since the publication of the Health plan further countries have introduced or expanded the use of needle-syringe programs in their prisons or expanded their use. Programs have now been established in more than 50 prisons in 12 countries in Europe and in central Asia. A pilot program is also under way in a Scottish prison (Aberdeen).

RISKS FROM NEEDLE STICK INJURY

9. The greatest risk to custodial staff from needle stick injuries arises from searching for contraband needles

10. In a survey in Victoria and Western Australia of custodial officers reported that 17 had suffered a total of 21 needlestick injuries.

11 of the 17 needlestick injuries considered (being the most recent injuries) "occurred during searches of inmates, cells or other areas, with the remainder occurring during other routine duties" (Larney & Dolan).

Background:

11. Sarah Larney & Kate Dolan, "An exploratory study of needlestick injuries among Australian prison officers" in *International Journal of Prisoner Health,* vol. 4, no. 3, pp. 164-168 (September 2008)

NSP can eliminate accidental needle stick injury

12. Arrangements can be made for syringes in prisons to be stored in a known, visible location.

13. In overseas prisons, "needles and syringes held by the inmate must be stored in a rigid container in a designated area of the inmate's cell, reducing the risk that an officer may receive a needlestick injury" (Larney & Dolan).

NSP does not increase weapons risk

14. There has been no case of a syringe being used as a weapon in prisons where sterile syringes are provided.

15. The only documented case of a custodial officer being attacked with a syringe and contracting a blood borne disease was in NSW where there is no NSP.

Background:

16. Geoffrey Pearce, then aged 22, was an officer at Long Bay Gaol who was still on probation. He had only been working in the prison for 3 months. He was escorting a prisoner – Graham Farlow – into the exercise yard when he was stabbed in the buttocks. Graham Farlow was known to be HIV positive and mentally ill. The syringe was filled with Graham's own blood. Geoffrey Pearce died of an AIDS-related illness in 1997. As did Graham Farlow. (John Ryan, CEO, ANEX)

NSP eliminates a cause of violence

17. The blanket prohibition has made syringes a scarce, high-value commodity in prison. They are the subject of stand over tactics, threats and actual violence among detainees.

18. Tension over the highly sought contraband like syringes is itself a threat to good order and discipline within prisons. This ground is eliminated when syringes may be legitimately obtained.

Countries with NSPs in prison

19. NSPs have now been introduced in prisons in at 12 countries.

20. According to Larney & Dolan writing in 2008: "Prisons in at least six countries, including Spain, Switzerland and Germany, offer sterile equipment to drug-injecting inmates" (Larney & Dolan).

CORRECTIONS AND EFFECTIVENESS OF NSP

In a media release of 10 December 2002, the Chief Minister noted that: "No prison or remand centre in the world has been able to achieve this goal [of preventing needles entering remand and detention centres]" (Chief Minister, media release no. 351/02 dated 11 December 2002). ACT Corrections, on the other hand, had assumed that it would be possible to prevent drugs and syringes entering the ACT prison. Moreover, Corrections seems not to have accepted the effectiveness of needle-syringe programs in preventing blood borne diseases. Rather it denied the effectiveness of the those programs and has also been reluctant to discuss the merits of a prison NSP.

ACT Corrections rejects the consensus of scientific opinion

21. The ACT Corrective Services' own *Drug, Alcohol and Tobacco Strategy, 2006 - 2008* makes no mention of the importance of sterile syringes in impeding the transmission of blood borne viruses. It does not list any of the large body of scientific literature that attests to the effectiveness of this intervention. To the contrary, the Strategy lists two papers by Dr Kerstin Kall, an ideologically driven Swedish writer who has attended a conference of Drug Free Australia and whose denialist position runs counter to scientific opinion which forms the basis of government funding throughout Australia and the rest of the world in respect of NSPs in the community.

22. The Corrections' *Drug, Alcohol and Tobacco Strategy, 2006 – 2008* (6 Sept. 07) makes no mention of even the future possibility of a prison NSP. It merely refers, under "future actions and services" of harm minimisation to "The provision of bleach or detergent (depending on the outcome of clinical advice and consultation with staff) for disinfecting needle and tattooing equipment" (p. 27). This is an admission that needles and syringes were expected to be in the AMC.

Background

23. The papers concerned are:

> Kall, Dr Kerstin. (2005). *What Science Tells Us About Needle Exchange Programs.* Presentation, Committee on the Prevention of HIV Infection Among Injecting Drug Users in High Risk Countries, Institute of Medicine of the National Academies, Washington, DC.
>
> Kall, Dr Kerstin. (2007). *The Effectiveness of Needle Exchange Programs*. Presentation at the International Conference on Drug Abuse. Drug Free Australia conference, 27-29 April, Adelaide.

Erroneously the Strategy lists the author as "Hall" rather than "Kall" which suggests that ACT Corrections had not even read the papers.

ACT Corrections reluctant to discuss need for an NSP

24. In evidence on 1 May 2003 before the Standing Committee on Health, Mr James Ryan, the Director of ACT Corrective Services, canvassed a large number of flimsy objections to a syringe program in ACT corrective institutions. He also proposed mandatory screening for blood-borne diseases and separation of those with such diseases (Legislative Assembly, Standing Committee on Health, *Reference: Access to syringes by intravenous drug users* (2003*)* discussed in FFDLR (2003) pp. 50-62).

25. On 2 July 2004, the day after the Human Rights Act 2004 commenced, the ACT Corrections held a forum entitled "Developing a human rights framework for corrective services." The program queried the human rights principle of equivalence in health care provision extending to "syringe exchange programs" The Director of ACT Corrective Services rejected any discussion of a needle-syringe program for the prison on the ground that the Australasian Police Ministers Council meeting in Hobart three days before on 30 June had unanimously rejected the provision of sterile syringes in prison.

26. Corrections did not contribute to at least three forums on the issue of a prison NSP that have taken place in the Assembly building in the past two years. These were organised by the Human Rights Commission, the second by AIVL and the third by Community Corrections Coalition and FFDLR.

27. In its audit of ACT correctional facilities published in July 2007, the ACT Human Rights Commission made the following recommendation in support of a trial of an needle-syringe program:

> "[a] pilot program for a needle and syringe exchange with provision for safe disposal of needles should be developed for the AMC. Consideration could also be given to establishing a safe injecting room (medically supervised injecting facility)" (ACTHRC (2007) rec. 4.2.1).

28. *At a meeting on 4 February 2008 of the Community Corrections Coalition (CCC) with Corrections at Eclipse, House, Canberra Civic, Corrections was asked how it was possible to engage staff in discussion about the possible introduction into the prison of a needle-syringe program. The CCC was informed that it would be inappropriate for officers who are public servants to comment on, question, or discuss Government policy.*

29. The Corrections Code of Ethical Conduct seeks to limit strictly public comment by staff. "It is not acceptable," the code states, "for ACTCS staff to engage in any form of comment, publicly or otherwise, on information that relates to official ACTCS Policy and Procedures, or any Government issues" (para. 3.3).

30. This meeting took place shortly before the Attorney-General in February 2008, issued a response to the audit recommendations of the Human Rights Commission. This "noted" the recommendation in favour of a pilot needle-syringe program in the new prison. The response then added:

> The British Supreme Court in the Court of Appeal (Civil Division) has determined that the absence of a needle exchange program in a prison does not constitute a breach of human rights (see *The Queen on the Application of John Shelley v Secretary of State for the Home Department* C1/2005/2042).
>
> ACT Government policy does not support a needle and syringe exchange at this time. This is an ongoing matter for policy consideration.
>
> The drug and alcohol service at the AMC will be tailored towards harm minimisation, demand reduction and effective clinical management for substance misusers. The service

will aim to reduce the demand for illicit drugs and move prisoners away from the harmful effects of illicit drug use.

The strategies that will be implemented will include detoxification, suitable opiate replacement therapies, prisoner programs and counseling.

31. Corrections has continued to show no willingness to enter discussion on even an in-principle basis of a possible prison in the light of subsequent developments, namely:

- the issue in March 2008 of the Adult Corrections Health Services Plan 2008-2012 which expresses the Government's willingness to review the need for a prison needle-syringe program;
- the discovery of drugs and syringes in the prison; and
- a documented case of a prisoner contracting hepatitis C within the prison.

Government and staff engagement

32. The Government acknowledges the importance of prison officers and other employees in the prison in creating a culture promoting the Government's objectives of rehabilitation and low rates of recidivism for the prison.

33. The relevant unions, principally the Community and Public Sector Union representing custodial officers, have a right of veto regarding a prison NSP.

> "Without implying prior agreement, and for the safety of staff, no needle exchange program, however presented, shall be implemented without prior consultation and agreement by the parties to this Agreement on how such a program can be implemented" (para. 262.1 of Department of Justice and Community Safety Union Collective Agreement 2007-2010).

The purported opposition of prison officers to the introduction of an NSP is often given as a ground for not engaging in discussion of the concept.

34. Reported opposition by individual custodial officers (not necessarily in the ACT) can be vehement and ill-informed, evidenced by the following comments about a prison NSP: "No f…ing way. No. If they introduced anything like that then we are out on strike. I don't care about f…ing Spain. Go and commit crime in Spain if that is what you want" (reported in The Australian Doctor as quoted by John Ryan, CEO of ANEX, 24 June 08).

35. The Government should take measures, such as providing for visits by staff to overseas prisons where NSP operate, that will facilitate consideration of the introduction of an NSP on its merits.

POLITICS AND A PRISON NSP

36. The ACT Government did not regard the existing substantial evidence in favour of prison NSPs as sufficient grounds for their introduction when the new prison opened. Although in the Adult Corrections Health Services Plan it has committed itself to review the need for a prison needle-syringe program it has not committed itself to take that step even if the review recommends that step.

37. As stated in its response to the recommendation of the Human Rights Commission in favour of a pilot NSP: "ACT Government policy does not support a needle and syringe exchange at this time. This is an ongoing matter for policy consideration." (Response to rec. 4.2.1, *Government response to the recommendations of the report of the Human Rights audit on the operation of ACT correctional facilities under corrections legislation*).

Government hedging

38. The following stages in the Government's commitment relating to the introduction of an

NSP are spelt out in the Corrections Health Plan (p. 22 quoted at §2). They give the Government much wiggle room:

1) Evaluation of drug policies and services "18 months after the commissioning";

2) Decision after the evaluation whether "further consideration of a trial needle exchange program is warranted";

3) ACT Health will investigate the feasibility of introducing such a trial; and

4) Decision by Government whether to introduce a trial.

The uncertainty at every step is compounded by the fact that the Health Plan:

1) contains no commitment to gather relevant data from the time of commissioning of the prison;

2) does not specify the criteria to be used in the evaluation;

3) does not specify the trigger points involved in moving from one step to the next;

4) does not specify the grounds which the Government should apply in deciding whether to introduce or reject an NSP after the evaluation process.

39. Irrespective of the political difficulty for Government, an important point for it to keep in mind is that an NSP is not just about the health of prisoners, important though that is. It is also about the occupational health and safety of staff and also about the health of the community at large.

The Government and data collection

40. To date the collection and/or public availability of data upon which to evaluate the need for an NSP has been limited. However it is understood that all relevant data has been made available to the Burnett review. Irrespective of the decision by Government following receipt of the review report, it should continue to monitor fully the health policies of the AMC.

41. The data should include but not necessarily be limited to:

- Health of prisoners on entry and on exit.
- Testing for blood borne diseases of detainees on entry (including remand), release and post release.
- Number of needlestick injuries from syringes suffered by staff, detainees and visitors.
- Circumstances in which those injuries occurred.
- Effect of injury on the physical and mental health of those injured.
- Number of contraband syringes detected.
- Results of drug testing.
- Condition of the syringes detected.
- Individual quantities and types of illicit drugs detected.
- Class of person (detainee, family, other visitor, etc) who is detected smuggling in drugs or paraphernalia.

Background

42. In the absence of official data, Larney and Dolan were driven to do their own less than adequate survey of needle stick injury. They wrote that "Attempts to obtain officially recorded needlestick injury data for comparison to the survey data were unsuccessful".

Clear information collection protocols needed

43. There should be clear protocols in place for the collection and transmission of relevant information between relevant agencies, particularly between Corrections and Health

44. Information relevant to the need for an NSP is likely to be gatherable by different agencies. For instance, Health will gather information on whether detainees have blood-borne diseases and Corrections will gather information on drugs detected.

45. It needs to be clear which agency has responsibility for collection of the information, when and the form the information is passed across to the agency responsible for assessing it.

Transparency of collected information

46. If the Government is committed to basing its decision concerning an NSP on the best available evidence, the regular release of relevant information will prepare interested parties and the public.

47. Release of such information is, in any case, consistent with the Government's commitment to transparency.