



The Cairns Institute



JAMES COOK  
UNIVERSITY  
AUSTRALIA

Celebrating  
**40**  
YEARS  
1970-2010

# Australian Prison Project

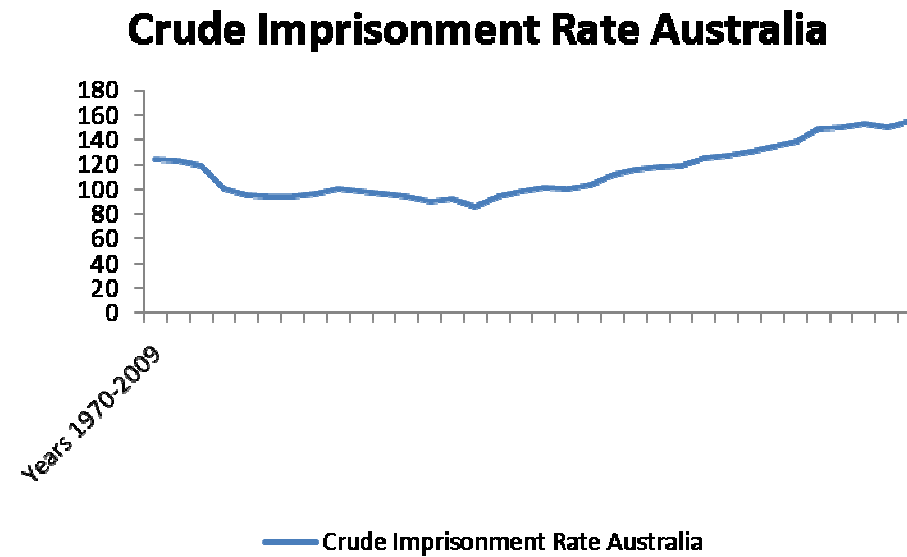
Website: [www.app.unsw.edu.au](http://www.app.unsw.edu.au)

This paper: Cunneen, C, 'Fear: Crime and Punishment' Dialogue, vol 29, no 2, 2010. Baldry, et al, 'Imprisoning Rationalities', ANZ Journal of Criminology (2011).

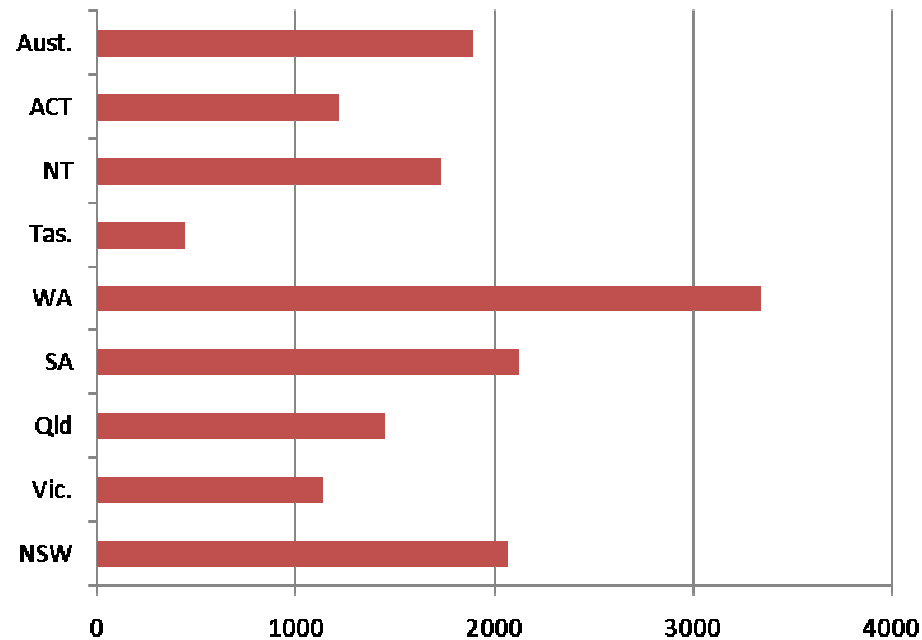
# Background to the project

- Continuing growth in rate of full-time imprisonment (global/localised and uneven)
- Particular increase in
  - Remand [Pre-trial Detention]
  - Women
  - Indigenous
  - Those with mental health disorder
  - The material expansion of the penal estate (more prisons, preventive detention, detention in the community, etc, eg NT largest capital infrastructure project = new 1000 bed prison)

# Australian prison population growth



# **The profound racialisation of punishment in Australia; the ongoing colonial dimension of the criminal justice system: Age Standardised Indigenous Imprisonment Rates 2010**



## National imprisonment rates (per 100,000 adults)

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
2003-04	161.4	95.1	179.0	202.5	124.1	126.2	73.7	515.6	150.2
2004-05	170.6	92.0	177.2	223.0	126.6	142.0	74.4	544.0	155.0
2005-06	173.4	93.7	177.0	222.9	128.8	136.1	76.0	546.4	156.4
2006-07	178.6	101.6	177.8	229.4	137.6	142.7	65.4	551.6	162.0
2007-08	179.5	103.2	168.7	234.6	149.6	142.5	68.3	562.2	162.6
2008-09	184.8	103.6	168.0	238.9	153.8	136.6	63.4	646.7	165.6
2009-10	196.0	105.5	161.6	272.8	152.8	125.9	100.7	662.6	172.4

# Australian Prison Project

- Eileen Baldry, (UNSW)
- David Brown, (UNSW)
- Mark Brown (UMelb)
- Chris Cunneen (JCU)
- Maggie Hall (UNSW)
- Diana Johns (UMelb)
- Melanie Schwartz, (UNSW)
- Alex Steel, (UNSW)

# APP Nested Studies

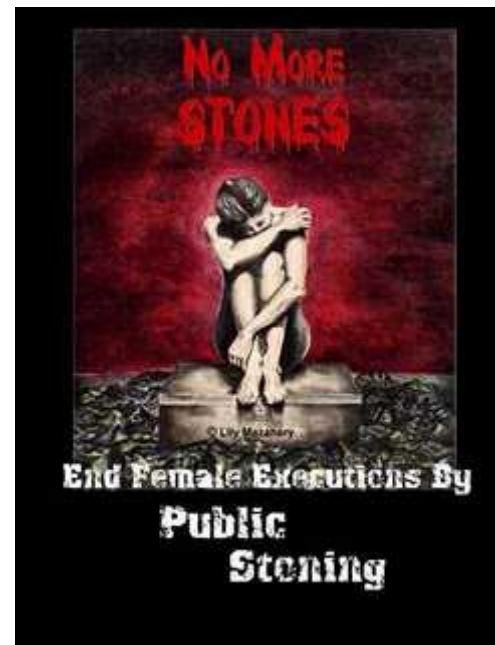
- Vulnerable Populations (Indigenous, Women, MHD&ID)
- Risk (Classification/Sentencing/Preventive Detention [Sex Offenders])
- Sentencing/Remand/Parole [legislative, administrative and procedural changes ]
- Terrorism [Impact of the War on Terror]
- The Prison and Popular Culture/ Media
- The Multiple Costs of Imprisonment
- **Phds**
- Sentencing and Prisoner Experiences
- Post-Release Theory, Practice and Lived Experience

# Study of Penal Culture

- **In short: how imprisonment and the prison becomes culturally embedded within specific settings.**
- punishment is far more than a calculative task by sentencers or a technical apparatus administered by experts. Penalty implies a study of punishment that extends beyond the effects on a discrete offender to the social meaning and cultural significance of punishment.
- the cultural patterns that influence how and why we punish and structure the way we 'feel' about offenders and their punishment: the cultural patterns that explain and justify why and how we do and do not do certain things as punishment (assess, classify, segregate, train, etc). Cultural sensibilities rule in some forms of punishment as 'appropriate' and rule out others as 'unthinkable' (for example, as cruel, barbaric, repugnant).
- often contradictory and competing discourses on punishment











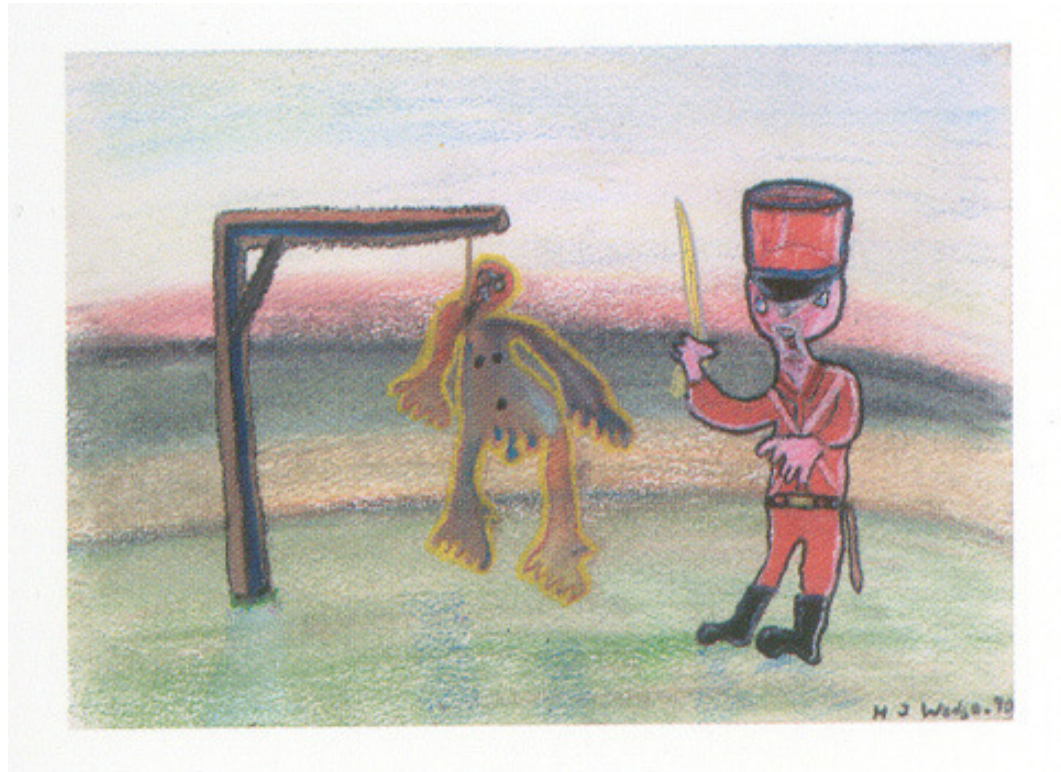
Gordon Syron's *Judgement by His Peers*  
Source: Indigenous Law Bulletin

# Penality and Indigenous People

- the continuance of public executions of Aboriginal offenders after their cessation for non-Aboriginal offenders
- The use of 'special courts' (eg Courts of Native Affairs in WA)
- the extended use of physical punishments (lashings, floggings) for Aboriginal offenders
- "the aboriginals are getting cheekier... and the only punishment aboriginals appreciate is a flogging" Wells, J. NT Supreme Court

- the formal and informal segregation of penal institutions along racialised lines
- these different modes of punishment were justified by (and reproduced) racialised understandings of Aboriginal difference
- ‘Aboriginality is a judicial perception working to the disadvantage of Aboriginals in both areas of the law. Judicial recognition of pronounced, or even assumed, cultural differences militates against almost all segments of Aboriginal society other than that tiny minority still in a tribal state’ (McCorquodale 1987:51).





H J Wedge *British Justice* (1990)  
Source: Ryan (2004:101)

- Today we understand both sentencing and punishment through concepts of race and culture:
- the *Fernando* principles
- Koori, Nunga and Murri courts, circle sentencing courts
- Indigenous prisons such as Balund-a and Yetta Dhinikal
- the Howard Government's *Crimes Amendments (Bail and Sentencing) Act* in 2006.



These cultural assumptions vary:

- Some positive (Aboriginality as a positive attribute)
- Some negative (Aboriginality as a liability)
- Some reinforce hierarchies of Aboriginality (ie who is 'really' Aboriginal)

And what has been the net impact?

# **Punishment as Social Policy**

- rising imprisonment is not directly related to increases in crime.
- a number of factors appear to have contributed to the increased use of imprisonment, including changes in sentencing law and practice, restrictions on judicial discretion, changes to bail eligibility, changes in administrative procedures and practices, changes in parole and post-release surveillance, the ascendancy of 'risk' aversion, the limited availability/use of non-custodial sentencing options, the limited availability of rehabilitative programs and a judicial and political perception of the need for 'tougher' penalties.

# **Punishment as Social Policy**

- the use of prison is a function of government policy, legislation and judicial decision-making.
- 48% increase in Indigenous imprisonment rates in NSW between 2001 and 2008: 25% caused by more Indigenous people being remanded in custody and for longer periods of time, and 75% caused by more Indigenous people being sentenced to imprisonment (rather than to a non-custodial sentencing option) and being sentenced to gaol for longer periods of time.

## ‘governing through crime’

- that criminalisation and imprisonment has become increasingly used as a tool of social policy
- extended various modes of surveillance into a range of institutions (eg home, schools, hospitals, other public and private spaces)
- civil and political order which is increasingly structured around ‘the problem of crime’

# **Racialisation, punishment and social policy (1)**

## **A Short History of the NT**

The functions of the existing prisons [are to] warehouse bodies, prevent escapes and to keep the prison as neat and clean as possible” (Hawkins and Misner 1974).

### **Looking Back to the 1970s and 1980s**

- What immediately stands out from the official Northern Territory literature over the 1970s and early 1980s was the constant identification of the need to reduce prison numbers (particularly Aboriginal), to decriminalise certain offences and to increase the range of non-custodial options.
- There was a clear focus on reform through lowering prison numbers (eg Hawkins and Misner reports; Wared Select Committee)

**The changes from the late 1970s to late 1980s included:**

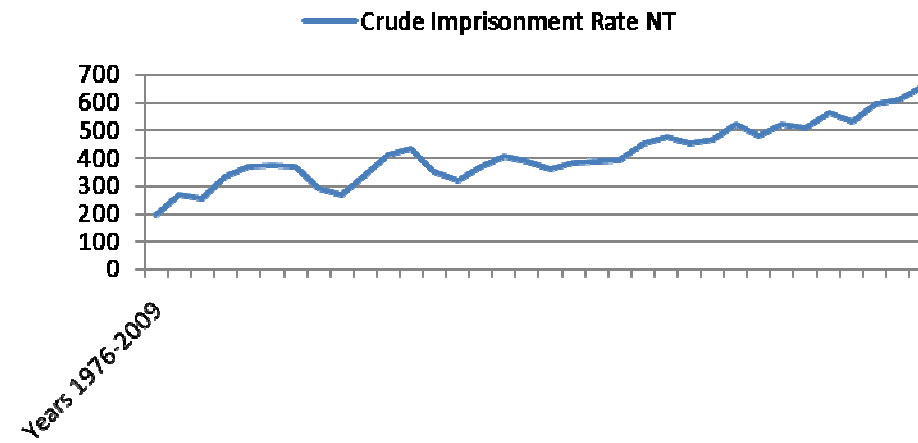
- the decriminalisation of public drunkenness
- the introduction of the fine default diversionary program
- the introduction of the home detention program,
- the establishment of the Aboriginal Community Corrections Officers

**From the (mid) 1990s there were:**

- Amendments to the juvenile justice legislation making it more punitive
- The introduction of mandatory sentencing
- Changes to public order legislation
- Calls for harsher sentences
- An official endorsement of zero tolerance policing approaches.

**By the mid 1990s the focus moved from reducing Indigenous imprisonment to retributive rhetoric aimed at 'offenders'**

## Crude Imprisonment Rate NT



## **Racialisation, punishment and social policy (2)**

- Indigenous re-imprisonment rate (66 per cent within 10 years) is much higher than the retention rate for Indigenous students from year 7 to year 12 of high school (46.5 per cent) and higher than the university retention rate for Indigenous students (which is below 50 per cent)



- imprisonment rates for Indigenous people have been increasing. Nationally the rate increased by 45.5 per cent for Indigenous females and 26.6 per cent for Indigenous males between 2000 and 2008. Meanwhile, Indigenous participation in university and TAFE decreased across all age groups between 2001 and 2006
- Indigenous men are 2.4 times more likely to be in gaol than in a tertiary institution at any one time (*2006 Census*).

## **Waste management prison**

- ‘the waste management’ prison ‘promises no transformation of the prisoner... Instead, it promises to promote security in the community simply by creating a space physically separated from the community’
- metaphorically useful in capturing some of the changes which have occurred as a result of penal expansionism
- the physical expansion of the penal estate
- more prisoners per prison officer

- far greater reliance on various technical forms of surveillance and security in the new prisons
- Economies of scale are being used to try and push down the average cost per prisoner
- Correctional services still prioritise rehabilitation as a core goal, alongside security, but...
- The problem is that greater and greater resources have to be allocated to building and operating prisons, and less is available for programs within prisons and for non-custodial sentencing options and other support services outside of prison

# Costs

- Financial Costs
- Opportunity Costs
- Social Costs



Fiona Foley *The Annihilation of the Blacks* (1986)  
Source: Morphy (1998: 293)

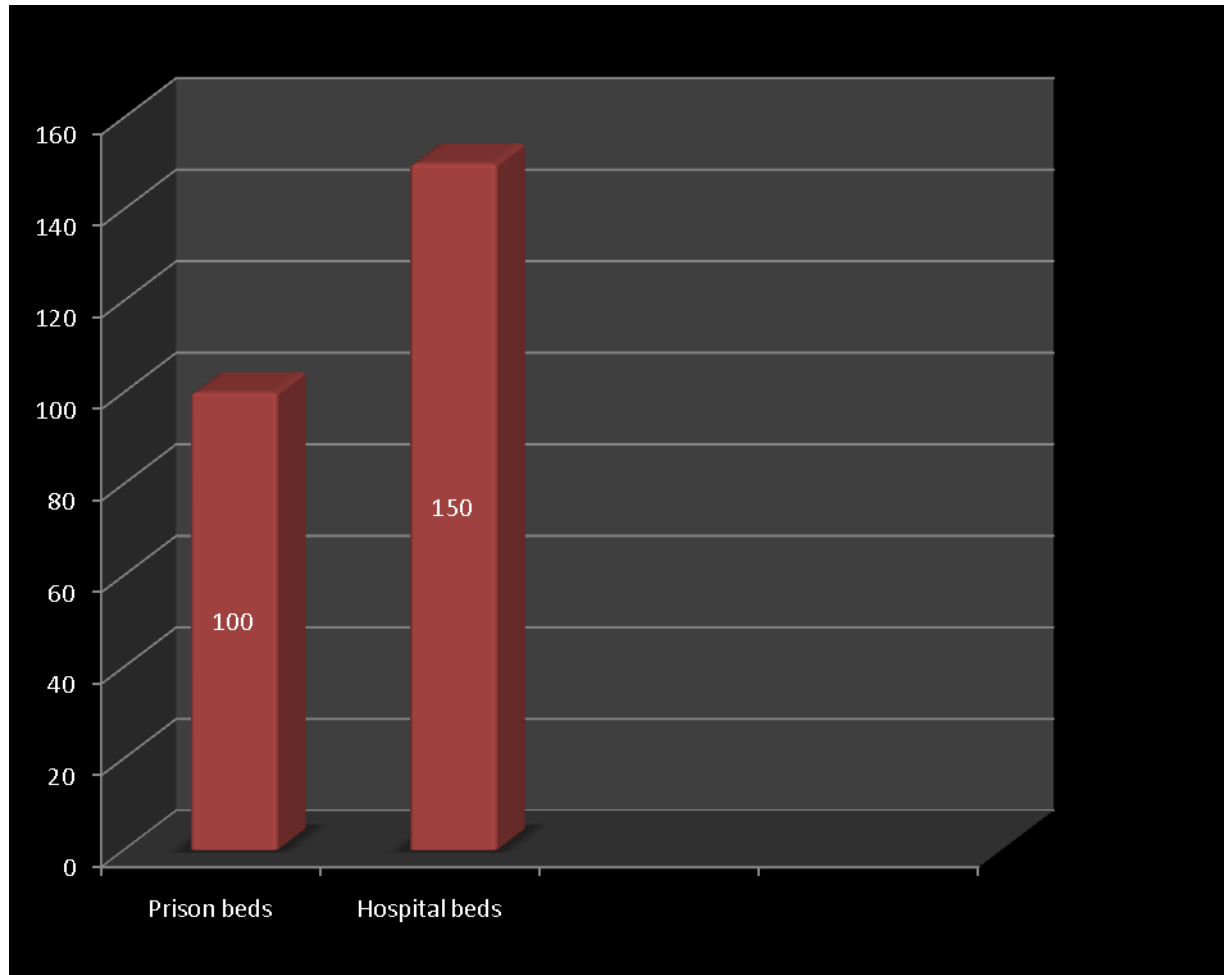
# Financial Costs

- NSW has 57 custodial facilities compared to 14 in Victoria
- NSW spends over \$1 billion per annum on corrections compared to less than \$500,000 in Victoria
- NSW spends nearly 40% of total national budget on prisons

# Opportunity Costs

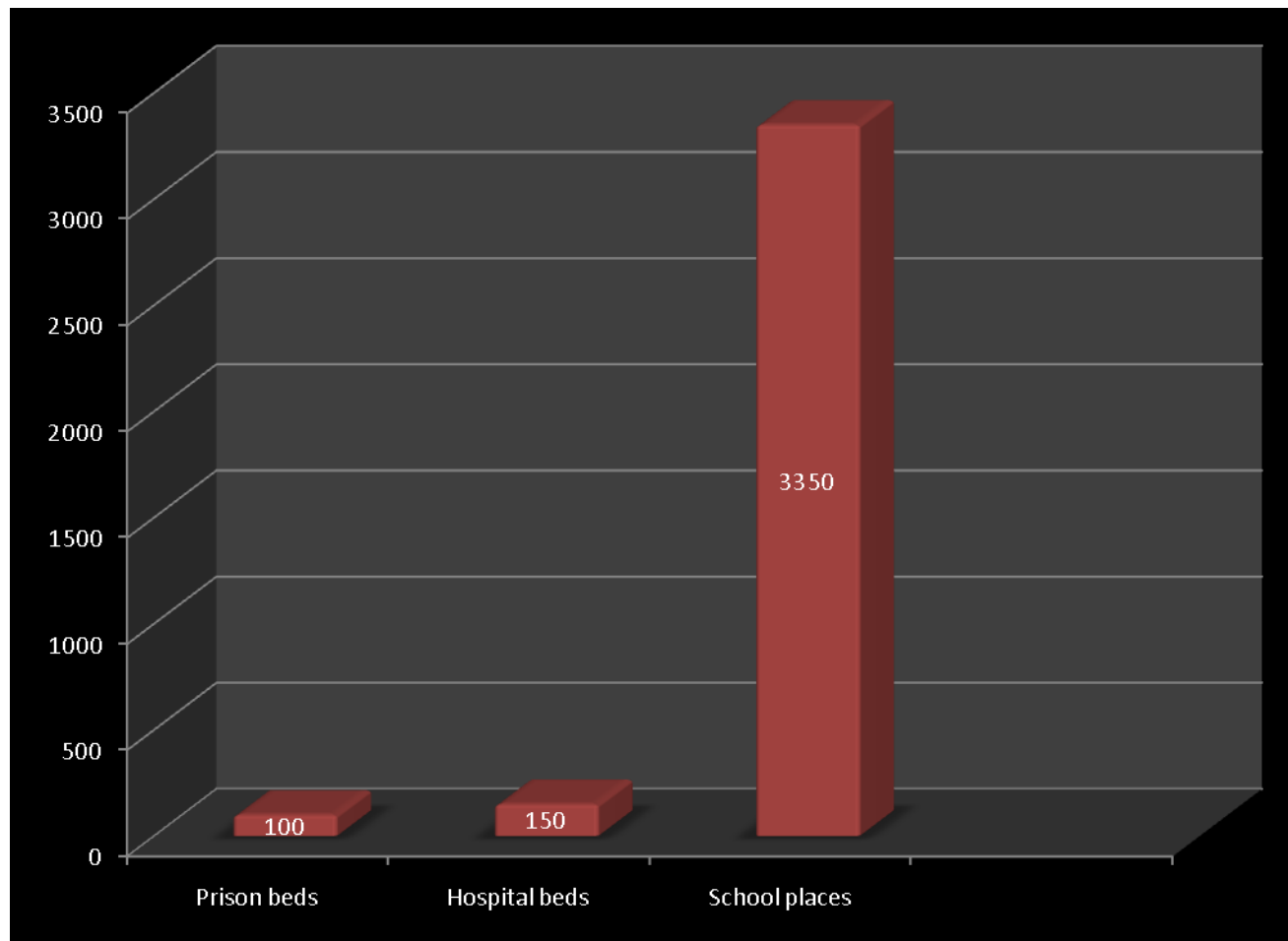
- The cost of passing up alternatives when making a decision to invest (eg the farmer who grows a crop of potatoes forgoes the potential profit from a crop of carrots).
- So what are we passing up with prison building and operating costs?
- **Construction costs:**
  - ❖ per bed medium security prison between \$222,000 - \$268,000
  - ❖ per bed for a typical 250 bed hospital in Sydney \$180,000
  - ❖ per student for a typical 2 level school in Sydney \$8000

# Prison beds or hospital beds?





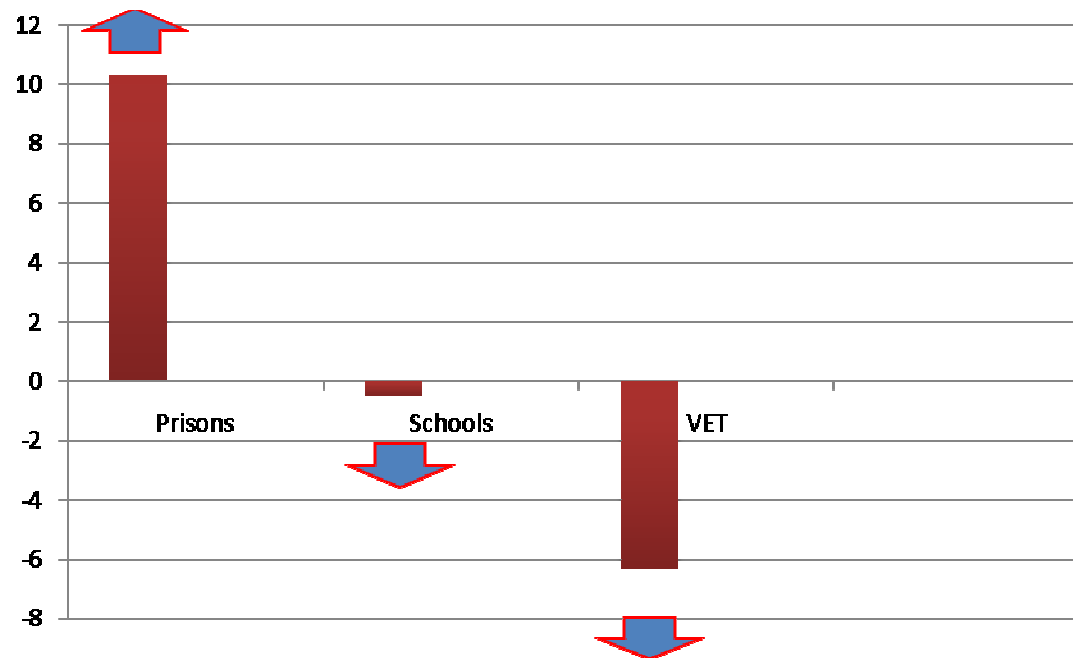
# Prison beds or hospital beds or school desks?



# The Relative Costs and Expenditure are not Static

- Real net operating expenditure on prisons in NSW rose by 10.3% between 2004/05 and 2008/09
- NSW state government recurrent expenditure on schools declined in real dollars by 0.51% between 2003/04 and 2007/08
- In NSW real recurrent expenditure in the Vocational and Educational Training (VET) sector fell by 6.3% between 2003/04 and 2007/08

# Real Recurrent Expenditure on Prisons, Schools and Vocational Training over 5 year period



# Social Costs (1)

Imprisonment doesn't resolve issues relating to:

- alcohol and drug abuse;
- the effects of experiencing physical, sexual and emotional violence as a child and as an adult;
- Prevalence of intellectual disabilities and mental health problems.
- 60% of inmates are not functionally literate or numerate
- 44% are long-term unemployed
- 60% did not complete Year 10
- 64% have no stable family
- A high proportion of state wards (ie previously placed in state care as children).
- Most come from the most seriously disadvantaged communities

# Social Costs (2)

- The failure to properly take into account negative social costs or external costs leads to the over-production of goods that have high social costs.
- There is an analogous argument with imprisonment. Governments do not acknowledge the real social cost of imprisonment – they pass that cost onto the racialised and working class communities from which the incarcerated are drawn.



Sally Morgan *Greetings from Rottnest*  
(1989)  
Source: Milroy (1996: 70)