



JUSTICE
REFORM
INITIATIVE

JAILING
IS
FAILING

A Paper from the Justice Reform Initiative

STATE OF INCARCERATION
INSIGHTS INTO IMPRISONMENT IN NEW SOUTH WALES

December 2021

Executive summary

On the eve of the COVID-19 pandemic, Australia's imprisonment rate had soared to its highest level in over a century. Rising imprisonment rates are almost a uniquely Australian story – only two countries in the world, Turkey and Colombia, saw a greater growth in imprisonment between 2003 and 2018.¹

Since 2010, the New South Wales prison population has grown by 38%. Crime rates in NSW have been stabilising or decreasing in most major categories. However, our high rates of incarceration are not able to be explained by increases in crime (and our reduced crime rates are not able to be explained by higher rates of incarceration). In NSW increases in imprisonment are driven by systemic failings and policy and legislative choices that end up funneling people unnecessarily into imprisonment. Our overreliance on incarceration as a default response to both disadvantage and offending has resulted in a situation where too many people in the justice system are unnecessarily trapped in a cycle of harmful and costly incarceration.

This report is a snapshot of a system that fails too many in NSW. Instead of reducing the likelihood of reoffending, prison entrenches existing disadvantage and increases the likelihood of ongoing criminal justice system involvement, often over generations. Many people leave prison jobless, homeless and without the necessary supports to build healthy, productive, connected, and meaningful lives in the community.

¹ Melanie, J., et al, 2021, Australia's prison dilemma, Productivity Commission, <https://www.pc.gov.au/research/completed/prison-dilemma/prison-dilemma.pdf>

² Schulz and Cannon (2011), Public opinion, media, judges and the discourse of time, 21(1) JJA, 1-11

The criminal justice system is characterised by a cycle of disadvantage, where people enter and return to prison repeatedly over many years. This 'revolving door' model costs NSW taxpayers \$1.08 billion a year in operating costs. On top of this, the state government has recently spent an additional \$2.4 billion on new prison capacity.

In a reflection of the devastating national picture, NSW imprisons Aboriginal and Torres Strait Islander people at rates many times that of the nonIndigenous population. Other cohorts, including children, people with mental health conditions, people with disability and people experiencing multiple and complex disadvantage, are also imprisoned at a rate that is exceedingly high. These failings – the failure to provide the kind of community support and opportunities that genuinely address the underlying drivers of incarceration – underpin a costly system that doesn't work to make the community safer.

The responsibility for the persistent overuse of imprisonment cannot be solely attributed to one side of politics or the other.

This trend has been replicated across Australia. We have followed the historic approach of the USA: building more and more prisons, at enormous cost, and ultimately failing to reduce reoffending. This situation is compounded through the often relentless 'tough on crime' rhetoric perpetuated in the media which has the capacity to undermine evidence-based reform efforts.²

Yet there are positive signs of change. Even in the United States of America, both Republicans and Democrats are turning away from many of the policies that made the USA the world's "incarceration nation". Across most of Western Europe, there is broad support for evidence-based policies that cut recidivism, turn lives around and make communities safer. The result is an incarceration rate in some countries that is a quarter of that of Australia.

Jailing is clearly failing in New South Wales, as it is elsewhere across the nation. The time has come to put party politics aside and focus on the ideas, policies and practices that work in addressing the underlying issues that funnel many marginalised and disadvantaged people into the criminal justice system and incarceration.

The Justice Reform Initiative is seeking to shift the public conversation and public policy away from building more prisons as the primary response of the criminal justice system and move instead to proven

alternative evidence-based approaches that break the cycle of incarceration.

We are committed to elevating approaches that seek to address the causes of contact with the criminal justice system including responses to housing needs, mental health issues, cognitive impairment, employment needs, access to education, the misuse of drugs and alcohol, and problematic gambling. We are also committed to elevating approaches that see First Nations led organisations being resourced and supported to provide culturally safe and autonomous support to First Nations people who are impacted by the justice system.

While policies from governments of both political persuasions have historically led to poor outcomes in the criminal justice system, the failures of our justice system are not inevitable. As we outline in this report, there are compelling examples of evidence-based programs, policies and services that are working to disrupt criminal justice system involvement, both in New South Wales and nationally.

There are opportunities to build pathways out of the justice system and improve our service delivery response at every contact point. There is the need to significantly scale up programs in the community and expand the capacity of the community sector to enable people who are caught in the justice system a range of opportunities to genuinely re-build their lives.

Programs that have a dramatic impact in improving lives, significantly reducing rates of reoffending and consequently saving taxpayers millions of dollars each year already exist, although they are limited in terms of capacity and only able to work with a very small number of people leaving prison each year.³ For example, the Community Restorative Centre's reintegration and support programs found the number of new custody episodes fell by 62.6% following CRC support, with the number of days in custody also falling by 65.8% and the

3 Sotiri, McCausland, Reeve, Phelan and Byrnes, 2021, They're there to support you and help you, they're not there to judge you, Breaking the cycle of incarceration, drug use and release: Evaluation of the Community Restorative Centres AOD and Reintegration Programs; NSW Health Report

4 Martin, C., Reeve, R., McCausland, R., Baldry, E., Burton, P., White, R. and Thomas, S. (2021) Exiting prison with complex support needs: the role of housing assistance, AHURI Final Report No. 361, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/361>, doi: 10.18408/ahuri7124801.

5 Baldry, E. et al., A Future Beyond the Wall: Improving Post-release Employment Outcomes for People Leaving Prison, 2018, <http://unsworks.unsw.edu.au/fapi/datastream/unsworks:51556/bin0ae90f8c-51ca-48a6-87bc-c78f5e32cb3b?view=true>

number of proven offences down by 62.1%.

Instead of committing to additional expensive prison beds, there is an opportunity for the NSW government to focus attention and resources on evidence-based programs that work to reduce incarceration and decrease recidivism. As the premier state, New South Wales has shown itself to be a leader in many areas of reform and there is a clear pathway for leadership on criminal justice that would deliver better outcomes for all its citizens.

HOW JAILING IS FAILING

Currently, there are 12,730 people in NSW adult prisons. Of those, 26.2% are Aboriginal and Torres Strait Islander people. More than half – 54% - have been in prison before.

The state's rate of imprisonment is 207 per 100,000 adults. This is higher than comparable OECD countries, such as France, Germany and Japan.

Currently more than 3 in 10 people in NSW prisons are unsentenced- an increase of 10 per cent over the last decade.

Over the past two decades, the policy response to the rising population of people in prison in NSW has been to invest more money in the existing criminal justice model, where prison is the default response. New South Wales taxpayers already spend more than \$1.08 billion on custodial services each year, and this is set to grow further if the incarceration rate continues to climb.

The operating cost of the New South Wales prison system is \$79,617 per person in prison, per year, or \$218.13 per day.

People who enter prison often have experienced homelessness and joblessness – being imprisoned as part of

a relentless cycle of disadvantage. One-third of people entering prison have experienced homelessness and more than half expect to be homeless or do not know where they will go when released.⁴ Two-thirds of people re-convicted were not employed at the time of their offending.⁵ When a person leaves prison, their prospects of finding a home or a job deteriorate further. Poverty, and poverty of opportunity, makes offending, reoffending, and a return to prison, more likely.

Prison entrenches disadvantage rather than allowing people to turn their lives around. Failure to invest properly in programs that are proven to reduce reoffending means that prisons can ultimately make communities less safe.

Meaningful education, training and support programs in prison, alongside programs that genuinely prepare and

support people for release are critical to reducing the recidivism rate. Housing and homelessness services data highlights that people leaving custody have been the fastest growing client category over

most of the last decade.⁶ People leaving prison are immediately thrust into unstable and difficult situations that place them at high risk of reoffending and returning to custody.

Many children who enter the youth justice system come from backgrounds where they have already experienced disadvantage and trauma, with a significant number also having experienced out of home care. Prison increases disadvantage and disconnection. Children in the youth justice system need family and community support, education, and life opportunities, not punishment that compounds disconnection and disadvantage.

Aboriginal and Torres Strait Islander people are overrepresented in the New South Wales criminal justice system. Young Aboriginal and Torres Strait Islander children – those between 10 and 17 years old – make up 41.6 per cent of the youth prison population and are significantly overrepresented in detention compared to non-Indigenous children. More than a quarter (26.2%) of the adult prison population is of Aboriginal or Torres Strait Islander descent, which is 13 times the rate of the non-Indigenous population.

Many of the figures in this report were recorded on the eve of the 30th anniversary of the Royal Commission into Aboriginal Deaths in Custody. Although governments across Australia accepted almost all the Commission's recommendations, the majority have not been implemented; this includes the need for imprisonment to genuinely be a 'last resort'. Many of the underlying systemic issues which the Royal Commission identified as the cause



of the disproportionate rate of incarceration among Aboriginal and Torres Strait Islander people have not been addressed by Government.

Successive New South Wales governments have identified the need for evidence-based programs that reduce recidivism. The Justice Reform Initiative believes there is a genuine opportunity in New South Wales to shift the direction of our justice policies, and build an evidence-based justice system that makes the community safer, reduces reoffending, provides pathways out of prison for people who need support in the community, and saves taxpayers millions of dollars each year.

ABOUT US

The Justice Reform Initiative is an alliance of people who share long-standing professional experience, lived experience and/or expert knowledge of the justice system, who are further supported by a movement of Australians of good-will from across the country who all believe jailing is failing, and that there is an urgent need to reduce the number of people in Australian prisons.

The Justice Reform Initiative is committed to reducing Australia's harmful and costly reliance on incarceration. Our patrons include more than 100 most eminent Australians, including two former GovernorsGeneral, former Members of Parliament from all sides of politics, academics, respected

6 Martin, C., Reeve, R., McCausland, R., Baldry, E., Burton, P., White, R. and Thomas, S. (2021) Exiting prison with complex support needs: the role of housing assistance, AHURI Final Report No. 361, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/361>, doi: 10.18408/ahuri7124801.

- » The Hon Geoff Gallop AC, former Premier of Western Australia and currently Emeritus Professor in the Faculty of Arts and Social Science at the University of Sydney
- » The Hon Katrina Hodgkinson, former Minister for Primary Industries (including lands and water), former Minister for Small Business, former Assistant Minister for Tourism and Major Events
- » Dan Howard, former President, NSW Mental Health Review Tribunal, former Commissioner, Special Commission of Inquiry into the Drug 'Ice'
- » Ken Marslew AM, CEO of Enough is Enough community support group for victims and offenders.
- » The Honourable Ruth McColl AO SC, former Justice of the NSW Court of Appeal
- » Dr John Paget, former Asst Commissioner NSW Corrective Services, CEO SA Correctional Services and NSW Inspector of Custodial Services

Aboriginal and Torres Strait Islander leaders, senior former judges, including High Court judges, and many other community leaders who have added their voices to end the cycle of incarceration in Australia.

Our New South Wales patrons include (in alphabetical order):

- » Professor Eileen Baldry AO, Deputy Vice Chancellor Equity Diversity and Inclusion and Professor of Criminology, University of New South Wales
- » Professor Larissa Behrendt, Professor of Law and Director of Research at the Jumbunna Indigenous House of Learning at the University of Technology Sydney
- » Jody Broun, inaugural female co-chair of the National Congress of Australia's First People
- » Nicholas Cowdery AO QC, former Director of Public Prosecutions NSW
- » Rev. Bill Crews AM, Founder of the Rev. Bill Crews Foundation, Broadcaster and National Living Treasure
- » The Honourable Bob Debus AM, former AttorneyGeneral of NSW and former Federal Minister for Home Affairs
- » The Hon John Dowd AO QC, former AttorneyGeneral of NSW, former Justice of the Supreme Court of NSW and Vice President of the International Commission of Jurists
- » John Feneley, former Mental Health Commissioner NSW



- » The Honourable Greg Smith SC, former AttorneyGeneral of NSW
and former Minister for Justice
(including Juvenile Justice and Corrective Services)
- » Dr John Vallance, NSW State Librarian



Jailing is failing – the New South Wales prison population is booming

- » The New South Wales prison population has grown by 38% over the past decade.
- » 32.6% of people in New South Wales’ prisons are unsentenced – this has grown by nearly 10% in the past decade.

The New South Wales prison population has risen by over 38 per cent in the past decade, from 9,710 to 13,430 people.¹ Over the same period violent offences and property offences have been declining.²

While New South Wales observed an initial decrease in prison numbers at the start of the last decade,

this then steadily increased, peaking in 2018 with a slight decrease in 2019 and further in 2020 through the impact of COVID-19 measures. The underlying social and economic determinants of crime have compounded systemic failures,³ and securing a genuine, sustained decrease in prison numbers requires addressing these drivers of incarceration.

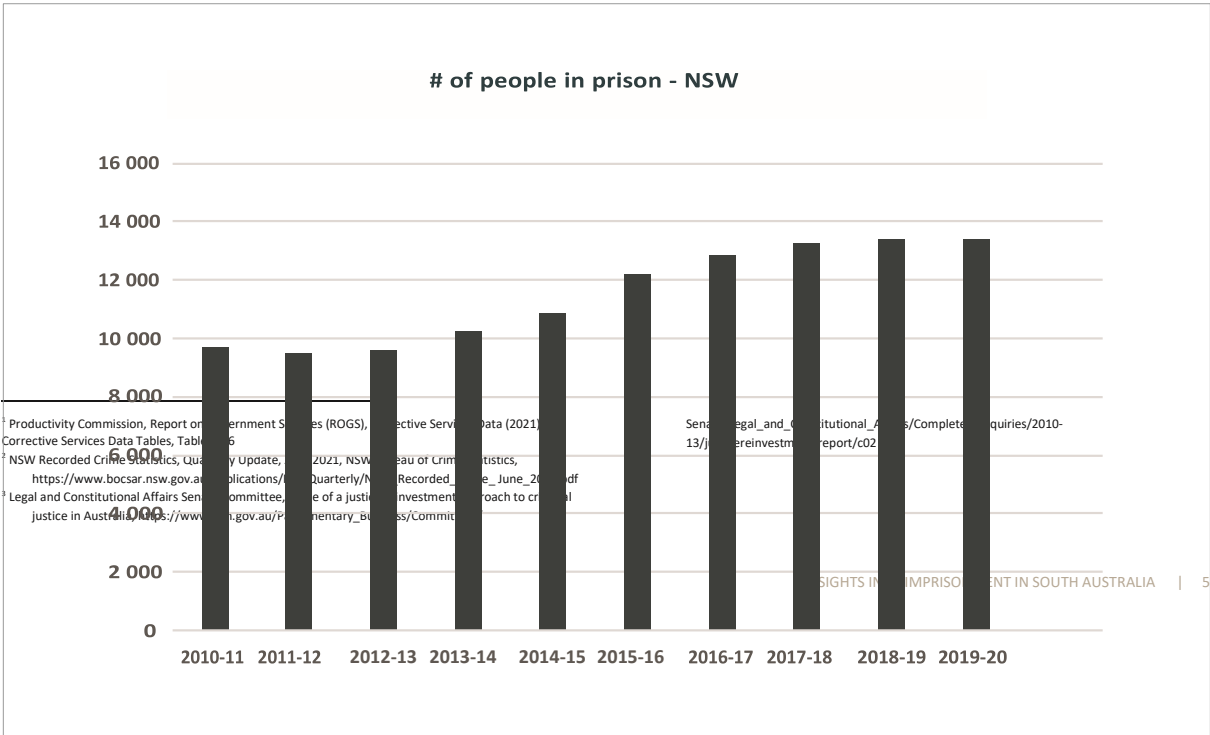


Chart 1: ROGS data – Corrective Services Data Tables, Table 8A.6

The growth in the number of people in prison is in large part associated with the increased use of remand. About one-third (32.6 per cent) of all people in NSW prisons are imprisoned without a sentence. This is almost 10 per cent higher than a decade ago, and remand numbers have increased by over 1650 people during that period. Currently, 4,150 of the 12,730 people in prison in New South Wales are unsentenced.⁴

This growing reliance on remand exacts a severe toll on an individual's work, housing, and family relationships. Remand, especially where the person on remand is the primary carer of children, can have a substantial and disruptive effect and increases the likelihood of children being placed into out-of-home care.⁵ Additionally, people incarcerated on remand tend not to have access to meaningful programs and services in prison.

People often end up serving more time on remand than they would have spent in custody were they to be sentenced, especially with increasingly congested courts. Over a five-year period, there has been a 65 per cent increase in people sentenced to 'time already served' - that is, people held on remand were immediately released upon receiving their sentence as they had spent more, or the equivalent, time of the penalty imposed.⁶

The latest data shows 53.2 per cent of people in NSW prisons have been held on remand for more than three months. More than a third have been held on remand for more than six months and 15.4 per cent for longer than a year. New South Wales keeps more people in prison for more than a year – without being sentenced – than any other state or territory.⁷

Some of those people on remand will be found not guilty, while others will be acquitted or have the cases against them withdrawn. The overuse of remand has serious consequences for individuals and their families. Strategies to reduce the numbers of people on remand require immediate exploration.

In NSW, reducing the number of unsentenced people in prison to the rate seen in 2010 would result in close to 1,248 fewer people in prison in New South Wales.

The over-reliance on remand is even more apparent among children and young people. In September 2021, 107 children and young people were in prison without having been sentenced, with 68 children and young people detained under sentence. In the June quarter 2021, the number of people held in prison without being sentenced was more than double the number detained under sentence.⁸



⁴ Note 2, ABS, Prisoners in Australia 2020, Table 31, Australian Bureau of Statistics (ABS), Prisoners in Australia 2020, Table 31

⁵ Legal and Constitutional Affairs Senate Committee, Value of a justice reinvestment approach to criminal justice in Australia, Chapter 3, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/c03

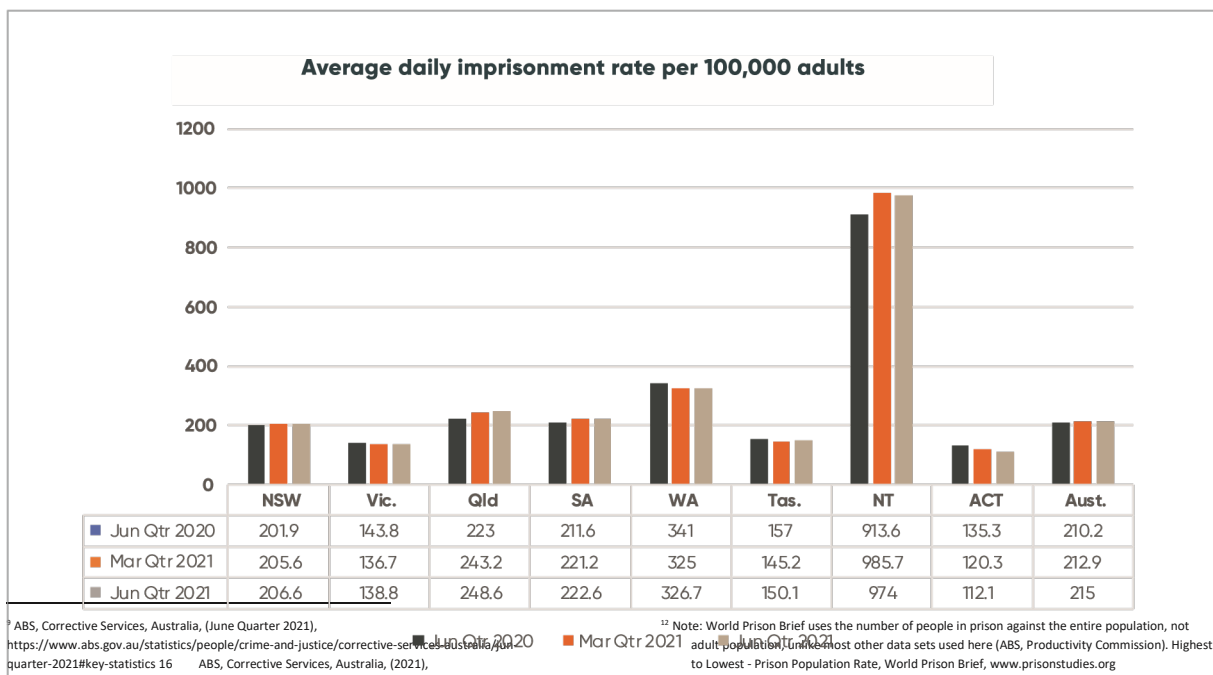
⁶ Ramsey, S and Fitzgerald, J Offenders sentenced to time already served in custody, 2019, NSW Bureau of Crime Statistics and Research, <https://www.bocsr.nsw.gov.au/Publications/BB/2019-Report-Offenders-sentenced-to-time-already-served-in-custody-BB140.pdf>

⁷ Australian Bureau of Statistics (ABS), Prisoners in Australia 2020, Table 32

⁸ pg. 6, 1.1.2 JUVENILE CUSTODY POPULATION BY LEGAL STATUS, https://www.bocsr.nsw.gov.au/Publications/custody/NSW_Custody_Statistics_Sept2021.pdf

The imprisonment rate in New South Wales is climbing, with the latest ABS data showing 207 people per 100,000 adults are incarcerated in New South Wales.⁹

This figure is also high compared with most OECD nations – except for the United States which is a global outlier – with countries like Japan, Finland, France, and Germany all imprisoning fewer than 100 per 100,000 people.¹⁰ While the United States still stands out as an outlier due to years of policies such as the “war on drugs” driving the creation of an oversized prison system, lawmakers in states such as Texas, California, Mississippi and Michigan are reversing the incarceration trend and the overall prison population is falling. In the United States, the prison population peaked around 2009 and has been declining since that time.¹¹ Meanwhile prison numbers in New South Wales – and Australia – have significantly increased over the same period.



Jailing is failing as a deterrent – people in New South Wales keep returning to prison

- » ABS data notes that 53.7% of people in New South Wales' prisons have been in prison before (not including those on remand), second only to the Northern Territory among Australian states and territories. In the 2019 NSW Inmate Census, 68.9% of people were recorded as having spent time in prison previously (including those who were in custody on remand).
- » 49.9% of people exiting prison receive a prison sentence within two years of their release.

It is well established that each contact with the criminal justice system, as it currently operates, increases the likelihood of further contact. More than half of the people in prison in New South Wales have been in prison before - this trend is not declining. In fact, the known prior imprisonment rate rose from 51.6 per cent in 2016 to 53.7 per cent by 2020.²⁰

With the known prior imprisonment rate increasing, the recidivism figures in New South Wales are currently the highest in Australia except for the Northern Territory. The Productivity Commission notes that in 2019/2020, 49.9% of people released from prison in New South Wales returned to prison within two years. This is higher than 2014/2015.²¹



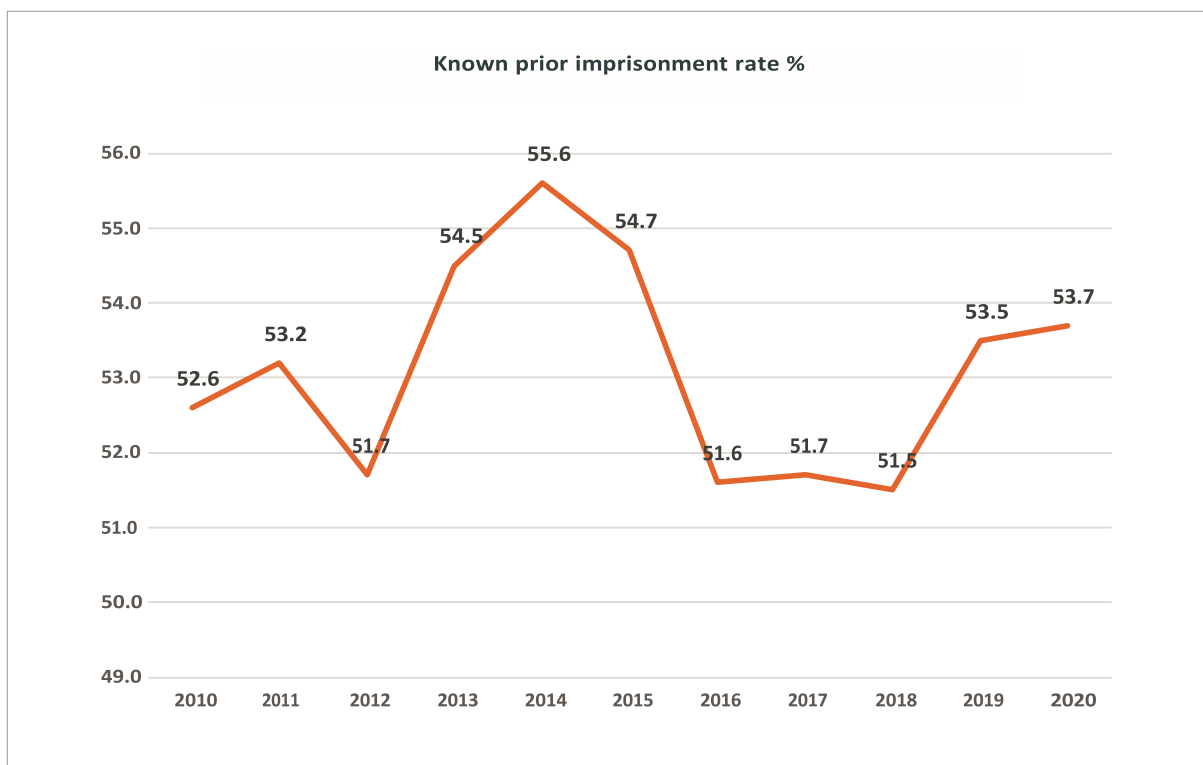


Chart 4: ABS data – Prisoners in Australia reports 2010-2020, Table 15

20 ABS, Prisoners in Australia 2020, Table 15

21 Productivity Commission, Report on Government Services (2021), Table CA.4

Table 1 Adults released from prison who returned to prison or to corrective services with a new correctional sanction within two years (a)

	Unit	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	AUST
Adults released from prison who returned to prison with a new sentence within two years (b)										
2019-20	%	49.9	44.2	45.3	36.6	34.8	47.1	37.1	60.8	46.0
2018-19	%	50.6	43.3	44.6	40.1	37.5	47.1	42.4	59.4	46.4
2017-18	%	50.8	43.7	42.7	38.5	37.1	46.3	44.2	55.9	45.6
2016-17	%	51.3	43.6	40.2	37.8	36.2	44.3	38.6	57.1	44.8
2015-16	%	50.7	42.8	39.7	38.1	36.9	39.8	41.0	58.3	44.6
2014-15	%	48.1	44.1	40.9	36.2	38.1	39.9	38.7	59.5	44.5
who returned to corrective services with a new correctional sanction within two years (c)										
2019-20	%	56.1	54.8	57.5	44.4	42.3	56.6	63.4	63.7	54.9
2018-19	%	54.2	57.0	56.2	48.2	44.9	56.0	71.3	63.1	54.9
2017-18	%	55.8	58.2	53.7	45.3	45.7	55.5	69.9	58.7	54.2
2016-17	%	55.8	57.7	51.1	44.9	45.0	55.0	58.5	60.1	53.4
2015-16	%	55.1	55.6	49.8	45.7	46.1	49.8	61.3	61.0	52.6
2014-15	%	52.9	53.7	49.1	42.7	46.0	50.0	59.8	61.6	51.3

- (a) Refers to all prisoners released following a term of sentenced imprisonment including prisoners subject to correctional supervision following release, that is, offenders released on parole or other community corrections orders. Data include returns to prison resulting from the cancellation of a parole order.
- (b) Includes released prisoners who returned to prison only, or who returned to both prison and community corrections.
- (c) Includes a prison sentence or a community corrections order.

Report on Government Services 2021, PART C: RELEASED ON 22 JANUARY 2021, Table CA.4, <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/justice>



Jailing is failing New South Wales taxpayers – building more prisons is not the answer

» In 2019-20 the real net operating expenditure on prisons and correctional services in New South Wales was \$1.32 billion. Of this amount, \$1.08 billion was spent on prisons, and \$239.7 million on community corrections.

» The real direct cost per (adult) person in prison per day is \$218.13 or \$79,617 per year.

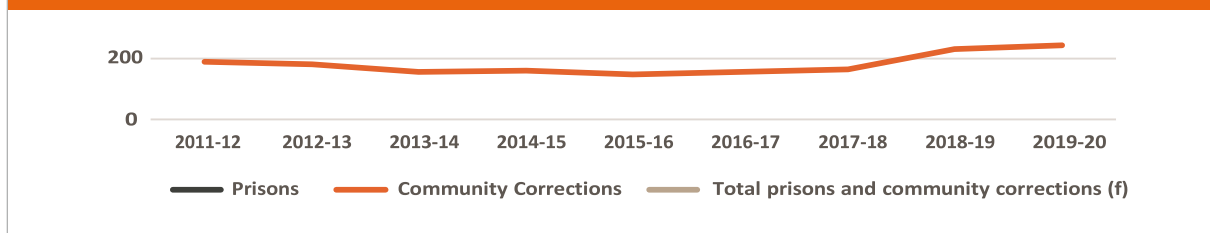


Chart 5: Productivity Commission, Report on Government Services 2021 Table 8A.2

New South Wales' prison and correctional services costs have risen by 28% since 2011-12²³ while at the same time we have seen rising recidivism. Yet NSW is continuing to spend more money on increasing prison capacity, with new and expanded prisons across the state. This has included a series of 'rapid build' maximum-security prisons to respond to increased demand.²³

In 2016 the NSW Government committed \$3.8 billion on the expansion of prisons in NSW. Between 2015 and 2022 government noted that more than \$2.4 billion has been spent so far on the Prison Bed Capacity Program..²⁴

²³ Corrective Services NSW, <https://correctiveservices.dcj.nsw.gov.au/csnsw-home/correctional-centres/new-prisons.html>

²⁴ Budget Paper No.3, 2021-22, Infrastructure Statement, NSW Parliament, <https://www.budget.nsw.gov.au/sites/default/files/2021-06/Budget%20Paper%20No.%203%20-%20Infrastructure%20Statement%20-%20Budget%202021-22.pdf>

²³ Productivity Commission, Report on Government Services 2021 Table 8A.2





Chart 6: Table 8A.20, Report on Government Services 2021, 8 Corrective Services

The cost per person of running the prison system has been increasing in New South Wales since 2015-16. Taxpayers spend \$218.13 per day per person in prison or \$79,617 per year.

In 2018, the Australian Institute of Criminology looked at the costs associated with community corrections orders and prison sentences over a five-year period. The research, commissioned by Corrections Victoria, compared 804 people entering the prison system and 804 people with community corrections orders who were matched based on demographic fit, current offending, offending history, and risk of offending.

The cost of imprisonment was almost three times higher than a community corrections order when comparing those charged with equivalent offences: an average \$144,480 compared to \$49,633.

While the direct sentence costs were almost \$60,000 higher for those in prison, the loss of earnings and lost productivity

The largest multiplier effect was on the care and protection of children where the cost was almost 17 times higher for the prison cohort, with most of that spent on out of home care.²⁵ Numerous reports have demonstrated the negative life outcomes for children whose parents are imprisoned.²⁶ Almost one in five people entering prison had at least one parent or carer who had been in prison during their childhood.²⁷

Addressing the cycle of incarceration has clear benefits to the community as well as the potential to deliver significant savings by adopting approaches that do not rely on imprisonment and have a higher likelihood of reducing recidivism. Imprisonment is an expensive model that increases the likelihood of ongoing criminal justice system contact. Investing in housing, child and family services, accessible drug and alcohol treatment, mental health and disability support, and community development has a far greater potential to reduce crime.

The vast majority of people leave prison in NSW without access to the social supports they need to assist with the often complex transition into the community.

Effective transition from prison into safe housing,

25 Morgan, A, Australian Institute of Criminology (2018), How much does prison really cost? Comparing the costs of imprisonment with community corrections, pages 71- 73, https://www.aic.gov.au/sites/default/files/2020-05/rr_05_240418_2.pdf

26 Justice Health & Forensic Mental Health Network Strategic Plan 2018 – 2022, pg. 14, <https://www.justicehealth.nsw.gov.au/publications/BookletStrategicPlan20182022.pdf>

27 AIHW, The health of Australia's prisoners (2018), <https://www.aihw.gov.au/news-media/media-releases/2019/may-1/prisoners-more-likely-to-be-homeless-unemployed-an>

for paid and unpaid work also costs thousands of dollars per person, for both cohorts.

employment, community activities and health and social supports, are critical factors in reducing recidivism.

Jailing is failing to transition people back into the community

- » 50% of people will be or expect to be homeless on release from prison.
- » Two-thirds of people re-incarcerated were unemployed at the time of committing their offence.
- » Hundreds of children and young people are being held in New South Wales' prisons due to lack of stable housing.
- » People in prison experience complex health issues including mental illness, at rates much higher than the general population.

Two-thirds of re-incarcerated people are unemployed at the time they commit an offence, with employment identified as a key factor in crime diversion.²⁸ For many people leaving prison the issue is not re-integration, but integration into a community that they were never fully included in, due to severe social disadvantage.²⁹

There are however community-led programs and services that are operating to reduce incarceration in NSW that provide insights into how we might genuinely look at decreasing recidivism. Post-release accommodation support services play a vital role in integration and reducing recidivism in New South Wales, and yet are unable to meet demand. It is estimated that one-third of prison entrants had previously been homeless.³¹ More than half expect to be homeless or don't know where they will be staying on release, and one in seven people leaving prison had requested support from specialist homelessness services.³²

Currently people are being held in prison who would have otherwise gained parole if suitable housing was available. In 2019-20, 236 children were held on remand because they simply had nowhere else to go.³³ Holding a person in remand is a costly way to deal with the problem of unstable housing and causes greater contact with the criminal justice system.

The majority of adults incarcerated in NSW have a history of mental illness (63%)³⁴; a disproportionate number have a cognitive impairment (between 10% and 30%)³⁵; more than 60% have a drug and/ or alcohol problem³⁶, 50% are homeless³⁷, and a disproportionate number come from a small number of 'post-codes of disadvantage' where access to education, health-care, support, and employment are all comparatively lacking.³⁸

The intersection of disadvantage is also pronounced for children and young people. Justice Health Research notes that 83 per cent of incarcerated children and young people had a psychological disorder; 59 per cent had an attention and/or behavioural disorder; 68 per cent had an experience of childhood abuse or neglect; 21 per cent were placed in care for some period before turning 16; 82 per cent had previously been in detention; and 17 per cent had an IQ that placed them in the range of intellectual disability.³⁹

These health statistics – all much higher than the general population – indicate wider systemic issues that need addressing.

People coming out of prison face homelessness, joblessness and significant health and social issues. While there are valuable services operating in New South Wales, there is a

Case study: Community Restorative Centre's reintegration and support programs having an impact

A major recent study examining the impact of the Community Restorative Centre's reintegration and support programs has found they have a dramatic impact in improving lives, significantly reducing rates of reoffending and consequently saving taxpayers millions of dollars each year.³⁰ A comparison analysis showed the number of new custody episodes fell by 62.6% following CRC support, with the number of days in custody also falling by 65.8% and the number of proven offences down by 62.1%.

This work adds to Australian and international evidence showing approaches that are led by the community sector can make a profound difference in disrupting entrenched interaction with the criminal justice system, particularly for people who have cycled in and out of prison as a consequence of drug and alcohol use, homelessness, mental illness and disability.

28 Baldry, E. et al., A Future Beyond the Wall: Improving Post-release Employment Outcomes for People Leaving Prison, 2018, <http://unsworks.unsw.edu.au/fapi/datastream/unsworks:51556/bin0ae90f8c-51ca-48a6-87bc-c78f5e32cb3b?view=true>

29 Baldry, E. et al., A Future Beyond the Wall: Improving Post-release Employment Outcomes for People Leaving Prison, 2018, <http://unsworks.unsw.edu.au/fapi/datastream/unsworks:51556/bin0ae90f8c-51ca-48a6-87bc-c78f5e32cb3b?view=true>

30 Sotiri, McCausland, Reeve, Phelan and Byrnes, 2021, They're there to support you and help you, they're not there to judge you, Breaking the cycle of incarceration, drug use and release: Evaluation of the Community Restorative Centres AOD and Reintegration Programs; NSW Health Report

great deal more that needs to be done to invest in community-led interventions for people leaving prison.

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- 31 Martin, C., Reeve, R., McCausland, R., Baldry, E., Burton, P., White, R. and Thomas, S. (2021) Exiting prison with complex support needs: the role of housing assistance, AHURI Final Report No. 361, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/361>, doi: 10.18408/ahuri7124801.
- 32 Martin, C., Reeve, R., McCausland, R., Baldry, E., Burton, P., White, R. and Thomas, S. (2021), pg.9, Exiting prison with complex support needs: the role of housing assistance, AHURI Final Report No. 361, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/361>, doi: 10.18408/ahuri7124801.
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Jailing is failing Aboriginal and Torres Strait Islander people

- » New South Wales has recorded a 58% increase in the Aboriginal and Torres Strait Islander adult prison population since 2010-11.
- » Aboriginal and Torres Strait Islander adults are 13 times more likely to be in prison than the non-Indigenous adult population.
- » Aboriginal and Torres Strait Islander adults make up 26.2% of the prison population, compared with 2.9% of the general population.

Since 2010-2011, New South Wales has recorded a 58 per cent increase in the number of Aboriginal and Torres Strait Islander people in prisons, rising from 2,230 to 3,524. Over the same time, the number of non-Indigenous people in prison increased at a slower rate of 32 per cent.⁴⁰

The proportion of Aboriginal and Torres Strait Islander people in the adult prison population is 26.2 per cent, while Aboriginal and Torres Strait Islander people make up 2.9 per cent of the state's total population.⁴¹

The over-representation of Aboriginal and Torres Strait Islander populations in NSW prisons both reflects and reproduces systemic disadvantage. It is impossible to disconnect this over-representation with the social drivers of incarceration identified so clearly in the thirty year old Royal Commission report into Aboriginal Deaths in Custody, including the impact of colonisation, structural racism and dispossession. First Nations organisations and communities have for decades been providing leadership and advocacy in this space, as well as articulating clearly what is needed to prevent this over-representation continuing.

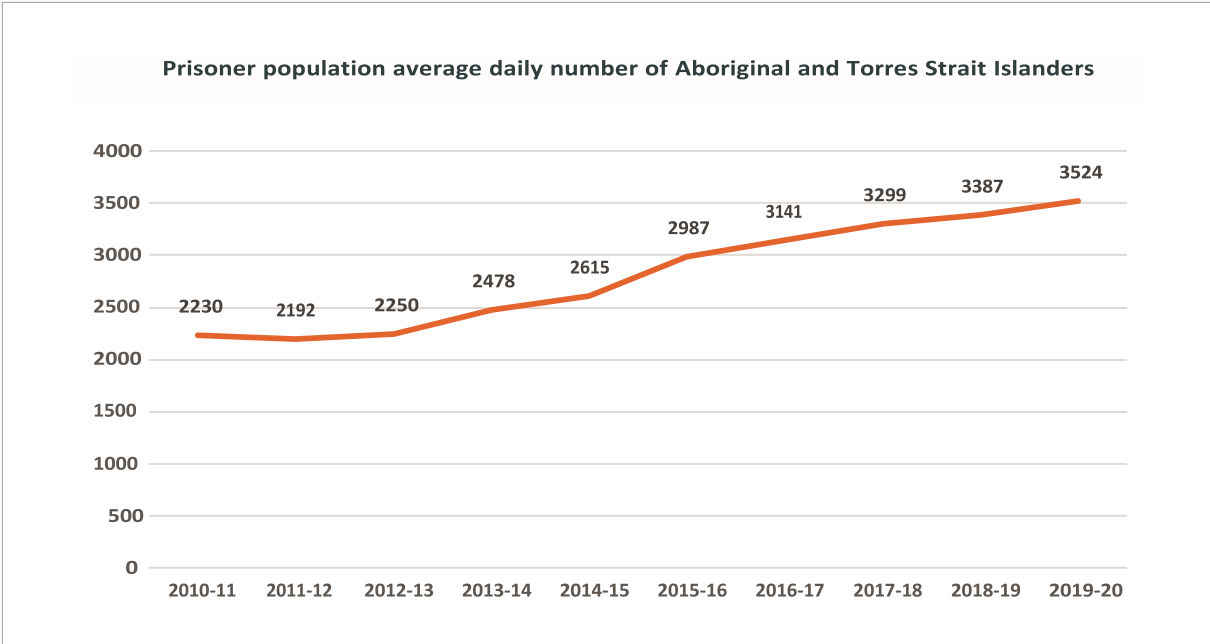


Chart 7: Productivity Commission, Report on Government Services 2021, Table 8A.6

40 Productivity Commission, Report on Government Services 2021, Table 8A.6

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Jailing is failing children - setting them up for a lifetime of contact with the justice system

- » The NSW Government spent almost \$146.5 million on youth detention last year, with a further \$74.7 million spent on community services.
- » The real direct cost per child in prison is \$1,597.97 per day or \$583,259.05 per year.
- » 41.6% of children in detention in NSW are Aboriginal and Torres Strait Islander people.

The cost of detention-based services in New South Wales in 2019-20 was \$146.5 million. This is almost \$22 million less than in 2014-15. At the same time spending on community-based services has increased from \$62.4 million to \$74.7 million⁴² - significantly, we are seeing an increase in non-prison expenditure.

More than 200 young people have entered custody and more than 200 have exited custody every month over the past two years. The revolving door of prison sees a high number of young people flow into and out of detention.⁴³

While the total number of young people in detention decreased from 300 to 221 between 2016 and 2020,⁴⁴ there is a need to break the cycle of children who become engaged with the justice system. More than half of young people in detention are unsentenced.⁴⁵

In the June quarter 2020, 41.6 per cent of children in custody in New South Wales were Aboriginal or Torres Strait Islander (down from 54.7 per cent in the June quarter 2016).⁴⁶ This is still a significant overrepresentation, given that Aboriginal and Torres Strait Islander children make up only six per cent of the Australian population between the ages of 10 and 17.

Over the past 20 years, 12,992 children aged from 10 to 17 years were placed under sentenced youth justice supervision in New South Wales and, of these, 4,795 (36.9 per cent) had more than one sentence.⁴⁷ This was more than twice Victoria's total and more than 31 per cent of the national total. In 2018-19 an average of 79.9 per cent of children who were released from detention returned to sentenced supervision within 12 months in New South Wales.⁴⁸

During the same 20-year period, nationally there were 88 children aged from 10 to 13 years of age whose first supervised sentence was detention. Of these, 82 or 94 per cent, subsequently received one or more further sentences.⁴⁹ Children who have early contact with the justice system have an increased likelihood of continuing contact.

There is a need to raise the minimum age of criminal responsibility to 14 in New South Wales. The evidence is clear that fourteen is the minimum age developmentally and neurologically that children could or should be held criminally responsible.⁵⁰ There are in fact compelling developmental arguments to suggest this age should be higher.⁵¹

42 Productivity Commission, Report on Government Services (2021), Table 17A.9, <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/community-services/youth-justice>

43 Pg. 13, 1.3.2 AVERAGE LENGTH OF STAY FOR JUVENILES DISCHARGED FROM CUSTODY EACH QUARTER, https://www.bocsar.nsw.gov.au/Publications/custody/NSW_Custody_Statistics_Sept2021.pdf

44 AIHW, Youth detention population in Australia (2020), Table S7.

45 AIHW, Youth detention population in Australia (2020), Table S17.

46 AIHW, Youth detention population in Australia (2020), Table S1.

47 AIHW, Young people returning to sentenced youth justice supervision 2019-20 (2021), Table S6, <https://www.aihw.gov.au/getmedia/9ab91473-38cb-4c2a-83fc-0baf72eae329/aihw-juv-137-Supplementary-tables-2019-20.xlsx.aspx>

48 Ibid, Table S16

49 Ibid, Table S2

50 Farmer E (2011), The age of criminal responsibility: Developmental science and human rights perspectives, *Journal of Children's Services*, 6: 86-95; Cunneen C (2017). Arguments for Raising the Minimum Age of Criminal Responsibility, Comparative Youth Penalty Project. Sydney: University of New South Wales, <http://cyp.unsw.edu.au/node/146>; Australian Medical Association (2019). AMA submission to the Council of Attorneys-General - Age of Criminal Responsibility Working Group Review.

51 United Nation Convention on the Rights of the Child (2019). General Comment No. 24 (2019) on Children's Rights in the Child Justice System.



Over the past 20 years, of all children aged 10 to 17

years whose first supervised sentence was detention (as opposed to community-based supervision), 37 per cent were Aboriginal or Torres Strait Islander children, who comprise approximately six per cent of Australia's total 10 to 17-year-old population.¹⁴

Children – especially young Aboriginal and Torres Strait Islander children – need off-ramps from the criminal justice system into effective supports and interventions. This includes the need for effective supports and interventions that are Aboriginal community-led, alongside the need for housing and homeless services, support across care and child protection, support to retain engagement in education and health systems, and support to address poverty, trauma and disability, alongside support to develop healthy relationships and family dynamics.

¹⁴ AIHW, Youth detention population in Australia (2020), <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2020/contents/summary>



New South Wales can lead with evidence-based reform

During the pandemic, policy makers have had the opportunity to observe the impact of lower levels of incarceration, and to reassess and refocus policy settings. This refocus is especially important as we fall behind comparable international jurisdictions in terms of costs, incarceration and re-incarceration rates and overall outcomes from our criminal justice system.

A measured and dedicated reorientation of funding commitments is required, strengthening the community sector to take pressure off the prison system. For members of the community engaged with the justice system, building

trajectories.⁵⁴ There is also a growing body of more formal research exploring the impact of various models of support.⁵⁵

There is the need for community-based support and services that work to prevent people at risk from entering the justice system; there is the need for diversion at the point of interaction with police; and diversion when an individual appears in court. If a person does go to prison, we need support programs inside custody that are meaningful and valuable in terms of preparing people for release.⁵⁶

Raising the age of criminal responsibility is a critical reform to

53 For example, as detailed in <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/2-context/social-determinants-of-incarceration/>

54 See: WEAVE, *Creating Futures* (Evaluation report, April 2020); Women's Justice Network, *Adult Mentoring Program* (Evaluation report, 2016); Community Restorative Centre, *Alcohol and Other Drugs Transition Program* (Evaluation report, 2016); Sotiri, M (2016) *Churchill Fellowship report*; M Sotiri and S Russell, 'Pathways home: How can we deliver better outcomes for people who have been in prison?', *Housing Works*, Vol. 15, No. 3, 2018, 41; M Borzycki and E Baldry, 'Promoting integration: The provision of prisoner post-release services', *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology: Canberra, No. 2, 2003; J Gilbert and B Elley, 'Reducing recidivism: An evaluation of the pathway total reintegration programme', *New Zealand Sociology*, Vol. 30, No. 4, 2015, 15–37; B Angell, E Matthews, S Barrenger, A Watson and J Draine, 'Engagement processes in model programs for community re-entry from prison for people with serious mental illness', *International Journal of Law and Psychiatry*, Vol. 37, 2014, 490–500; B Hunter, A Lanza, M Lawlor, W Dyson and D Gordon, 'A strengths-based approach to prisoner re-entry: The fresh start prisoner re-entry program', *International Journal of Offender Therapy and Comparative Criminology*, Vol. 60, No. 11, 2016, 1298–314; D Padgett, L Gulcur and S Tsemberis, 'Housing first services for people who are homeless with co-occurring serious mental illness and substance abuse', *Research on Social Work Practice*, Vol. 16, No. 1, 2006, 74–83; S Kendall, S Redshaw, S Ward, S Wayland and E Sullivan, 'Systematic review of qualitative evaluations of re-entry programs addressing problematic drug and alcohol use and mental health disorders amongst people transitioning from prison to communities', *Health and Justice*, Vol. 6, No. 4, 2018; Sotiri, M (2020) *Building Pathways Out of the Justice System: Supporting Women and Reducing Recidivism*, in *Precedent Issue 161*, November/December 2020

55 McNeill, F., Farrall, S., Lightowler, C., and Maruna, S. (2012) *Re-examining evidence-based practice in community corrections: beyond 'a confined view' of what works*. *Justice Research and Policy*, 14 (1) UNSW Sydney.

56 For a recent local example, see: Mercer, et al (2021) *The Violence Prevention Program in South Australia: A recidivism and cost-benefit analysis pilot study*, in *Criminal Justice and Behaviour* 2021

productive lives requires an uplift in community service funding, so that people facing systemic disadvantage, or people leaving prison who face barriers such as homelessness and unemployment, can access “off-ramps” away from the justice system.

All political parties can support efforts to reduce recidivism – there are social, economic and safety reasons to do so. While prison-by-default policies of successive governments have led to poor outcomes in the criminal justice system, there are promising, evidence-based community-led alternatives that are already working to break cycles of imprisonment (albeit often operating at a very small scale) at different touchpoints in the justice system.

WHAT WORKS IN KEEPING PEOPLE OUT OF PRISON?

While there is no single ‘reform fix’ to reduce prison numbers, there are multiple proven, cost-effective reforms that can work together to make progress. Many of these reforms are already catalogued in an abundance of government and non-government reports and reviews.⁵³ In addition, there are clear examples and case studies, both Australian and internationally, that point to approaches that are led by the community and health sectors which can make a profound difference in disrupting entrenched criminal justice system

address the high numbers of children in jail. The evidence is clear that 14 is the minimum age, developmentally and neurologically, that children could or should be held criminally responsible.⁵⁷

There is also the need for additional investment in the factors that contribute to young people ending up in the youth justice system, as well as investment and supports for the children who are currently trapped in the youth justice system.

There is clear evidence about the effectiveness of specialist courts in diverting people from the justice system⁵⁸, the effectiveness of pre-charge and other kinds of diversion⁵⁹, the effectiveness of shifting legislative frameworks in reducing re-offending⁶⁰, specific diversionary programs, including diversionary programs for at-risk children⁶¹ and restorative and transformative justice.⁶²

Other evidence-based reform areas operate outside of the justice system and in the community. There is a strong research base to show that if society were to adequately invest in programs and supports for people leaving prison, rates of recidivism could be significantly reduced.⁶³

There are also case studies that point to positive outcomes in reducing justice system contact in several place based Aboriginal-led programs in remote communities, including



Maranguka in NSW, and Olabud Dooghetu in the Kimberley. A life skills program that provides an alternative to custody for women in Alice Springs is also yielding positive results, as is the Yuwaya Ngarra-li partnership in Walgett, New South Wales. The Tiraapendi Wodli project in South Australia is also showing remarkably promising outcomes for the people who participate in culturally appropriate services, which work to support clients holistically, including with housing, health, mental health and strengthening cultural knowledge and pride.

One recent piece of New South Wales research using a time-series analysis and BOCSAR reoffending data found the intervention of a post-release service resulted in an immediate and sustained reduction of contact with the criminal justice system of 65.8 per cent.⁶⁴

This same piece of research found cost-savings to the justice system of \$16 million over three years for a cohort of 275

clients.⁶⁵ This does not incorporate other institutional or community savings.

Investing in evidence-based services instead of incarceration will break entrenched cycles of engagement with the criminal justice system and recidivism. In addition to creating substantial cost-savings to government, this approach will have enormous benefits for populations who have too often been ‘managed’ in justice systems, rather than being supported in the community.

‘Tough on crime’ rhetoric does not make the community safer, nor does our current over-use of imprisonment. If we genuinely want to build a safer, more cohesive community, we need to invest in community-led programs that address the drivers of crime and incarceration.

We need programs that provide off-ramps for people that are trapped in the cycle of incarceration and opportunities to rebuild their lives in the community. We need to embrace a criminal justice model that is not centred around prisons but instead around evidence-based interventions that work.

- 57 See Cunneen C (2017). Arguments for Raising the Minimum Age of Criminal Responsibility. Comparative Youth Penalty Project. Sydney: University of New South Wales. <http://cyp.unsw.edu.au/node/146>; Cunneen C, Russell S & Schwartz M (2021). Principles in diversion of Aboriginal and Torres Strait Islander young people from the criminal jurisdiction, *Current Issues in Criminal Justice*, 33: 170-190; Farmer E (2011). The age of criminal responsibility: Developmental science and human rights perspectives, *Journal of Children’s Services*, 6: 86-95; United Nation Convention on the Rights of the Child (2019). General Comment No. 24 (2019) on Children’s Rights in the Child Justice System.
- 58 Australian Law Reform Commission, Specialist courts and diversion programs (2017), <https://www.alrc.gov.au/publication/incarceration-rates-of-aboriginal-and-torres-strait-islander-peoples-dp-84/11-access-to-justice-issues/specialist-courts-and-diversion-programs/>
- 59 NSW Bureau of Crime Statistics and Research, Diversion (accessed 2021), https://www.bocsar.nsw.gov.au/Pages/bocsar_topics/Diversion.aspx; College of Policing, Police led pre-charge diversion models for young people (accessed 2021), <https://whatworks.college.police.uk/toolkit/Pages/Intervention.aspx?InterventionID=65>; Eugene Police Department (2021), Cahoots, <https://www.eugene-or.gov/4508/CAHOOT>
- 60 Agan, AY, Doleac, JL & Harvey, A, Misdemeanor Prosecution (2021), National Bureau of Economic Research (2021), <https://www.nber.org/papers/w28600>; After crime plummeted in 2020, Jackman, T, Washington Post (2021), Baltimore will stop drug, sex prosecutions, <https://www.washingtonpost.com/dc-md-va/2021/03/26/baltimore-reducing-prosecutions/>
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- 62 Deakin-Greenwood, T, To explore victim-centred restorative justice programs for sexual assault and personal violence (accessed 2021), Winston Churchill Trust, <https://www.churchilltrust.com.au/project/to-explore-victim-centred-restorative-justice-programs-for-sexual-assault-and-personal-violence/>
- 63 See Sotiri, McCausland, Reeve, Phelan and Byrnes, 2021, They’re there to support you and help you, they’re not there to judge you, Breaking the cycle of incarceration, drug use and release: Evaluation of the Community Restorative Centres AOD and Reintegration Programs; NSW Health Report; Semczuk, M; Shakeshaft, A; Knight, A; Maple, M; McKay, K; Shakeshaft, B (2012) An Analysis of the Relationship between a community based program for young people with multiple and complex needs and the prevalence of crime, NDARC Monograph No. 65; see also references at footnote 5
- 64 See Sotiri, McCausland, Reeve, Phelan and Byrnes, 2021, ‘They’re there to support you and help you, they’re not there to judge you’ Breaking the cycle of incarceration, drug use and release: Evaluation of the Community Restorative Centres AOD and Reintegration Programs; NSW Health Report
- 65 *ibid*





The Justice Reform Initiative is an alliance of people who share long-standing professional experience, lived experience and/or expert knowledge of the justice system, who are further supported by a movement of Australians of good-will from across the country who all believe jailing is failing, and that there is an urgent need to reduce the number of people in Australian prisons.

The Justice Reform Initiative is backed by eminent patrons, including former Governors-General Dame Quentin Bryce AD CVO and Sir William Deane AC KBE as patrons-in-chief.

The list includes: former justices of the High Court, a former state Chief Justice and judges from other courts; respected Aboriginal and Torres Strait Islander leaders; a former Federal Police Commissioner, Director of Public Prosecutions, former Australians of the Year and numerous former Federal and state Ministers from both sides of politics. A list is available [here](#).

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The Initiative respectfully acknowledges and supports the current and longstanding efforts of Aboriginal and Torres Strait Islander people to reduce the numbers of Indigenous people incarcerated in Australia and, importantly, the leadership role which Indigenous-led organisations continue to play on this issue. We also acknowledge the work of many other individuals and organisations seeking change, such as those focused on the rate of imprisonment for women, people with mental health issues, people with disability and others.

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