Issues in Prisons

Edited by Justin Healey
## CHAPTER 1  
**IMPRISONMENT IN AUSTRALIA**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is prison about?</td>
<td>1</td>
</tr>
<tr>
<td>Prisoner characteristics, Australia</td>
<td>3</td>
</tr>
<tr>
<td>Number of prisoners rises</td>
<td>4</td>
</tr>
<tr>
<td>First steps down the US path? Crime and punishment in Australia</td>
<td>5</td>
</tr>
<tr>
<td>The state of imprisonment in Australia: it’s time to take stock</td>
<td>8</td>
</tr>
<tr>
<td>Daily life in prison</td>
<td>10</td>
</tr>
<tr>
<td>Prisoners and prison conditions</td>
<td>12</td>
</tr>
<tr>
<td>The health of Australia’s prisoners</td>
<td>14</td>
</tr>
<tr>
<td>Prisoners report some improvements to health and health behaviours during incarceration</td>
<td>14</td>
</tr>
<tr>
<td>This is why you should care about the health of prisoners</td>
<td>16</td>
</tr>
<tr>
<td>Should prisoners be allowed to vote?</td>
<td>18</td>
</tr>
<tr>
<td>Youth detention population in Australia</td>
<td>19</td>
</tr>
<tr>
<td>Abuse in youth detention is not restricted to the Northern Territory</td>
<td>20</td>
</tr>
<tr>
<td>Data gaps mean indigenous incarceration rates may be even worse than we thought</td>
<td>22</td>
</tr>
<tr>
<td>How ‘tough on crime’ politics flouts death-in-custody recommendations</td>
<td>24</td>
</tr>
<tr>
<td>How can we mitigate the crime that is female over-imprisonment?</td>
<td>26</td>
</tr>
<tr>
<td>Do we care about old people behind bars, and should we?</td>
<td>28</td>
</tr>
<tr>
<td>Call to address corruption in the prison system</td>
<td>29</td>
</tr>
<tr>
<td>Private prison operators still hide from scrutiny, despite reform</td>
<td>30</td>
</tr>
<tr>
<td>The argument for prisons privatisation</td>
<td>31</td>
</tr>
</tbody>
</table>

## CHAPTER 2  
**ALTERNATIVES TO IMPRISONMENT**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are prisons for? Answering that is the starting point for reform</td>
<td>32</td>
</tr>
<tr>
<td>What should punishment achieve in our criminal justice system?</td>
<td>34</td>
</tr>
<tr>
<td>Reducing imprisonment rates in Australia</td>
<td>36</td>
</tr>
<tr>
<td>Prisons policy is turning Australia into the second nation of captives</td>
<td>38</td>
</tr>
<tr>
<td>How to reduce indigenous imprisonment rates</td>
<td>40</td>
</tr>
<tr>
<td>Should we be locking people up in prisons at all?</td>
<td>42</td>
</tr>
<tr>
<td>Crime and punishment and rehabilitation: a smarter approach</td>
<td>44</td>
</tr>
<tr>
<td>Justice reinvestment: investing in communities not prisons</td>
<td>46</td>
</tr>
<tr>
<td>We need to raise the bar of our criminal justice system</td>
<td>48</td>
</tr>
<tr>
<td>Rethinking justice: vulnerability report</td>
<td>49</td>
</tr>
</tbody>
</table>

**Exploring issues – worksheets and activities**  
| 51 |

**Fast facts**  
| 57 |

**Glossary**  
| 58 |

**Web links**  
| 59 |

**Index**  
| 60 |
Issues in Prisons is Volume 423 in the ‘Issues in Society’ series of educational resource books. The aim of this series is to offer current, diverse information about important issues in our world, from an Australian perspective.

KEY ISSUES IN THIS TOPIC
Australian imprisonment rates have increased annually for five consecutive years. Why are prison numbers rising, and what are the alternatives to imprisonment?

This book examines imprisonment rates and criminal justice reform options. How do the four current prison system justifications – retribution, deterrence, incapacitation and rehabilitation – stack up? Is the incarceration of offenders deterring them from re-offending and reducing crime rates? What are the human and financial costs of imprisonment, especially for detained young people and Indigenous Australians?

How can we work towards more effective rehabilitation, crime reduction and justice reinvestment? Is it possible to unlock the prison problem and set it free?

SOURCES OF INFORMATION
Titles in the ‘Issues in Society’ series are individual resource books which provide an overview on a specific subject comprised of facts and opinions.

The information in this resource book is not from any single author, publication or organisation. The unique value of the ‘Issues in Society’ series lies in its diversity of content and perspectives.

The content comes from a wide variety of sources and includes:

- Newspaper reports and opinion pieces
- Website fact sheets
- Magazine and journal articles
- Statistics and surveys
- Government reports
- Literature from special interest groups

CRITICAL EVALUATION
As the information reproduced in this book is from a number of different sources, readers should always be aware of the origin of the text and whether or not the source is likely to be expressing a particular bias or agenda.

It is hoped that, as you read about the many aspects of the issues explored in this book, you will critically evaluate the information presented. In some cases, it is important that you decide whether you are being presented with facts or opinions. Does the writer give a biased or an unbiased report? If an opinion is being expressed, do you agree with the writer?

EXPLORING ISSUES
The ‘Exploring issues’ section at the back of this book features a range of ready-to-use worksheets relating to the articles and issues raised in this book. The activities and exercises in these worksheets are suitable for use by students at middle secondary school level and beyond.

FURTHER RESEARCH
This title offers a useful starting point for those who need convenient access to information about the issues involved. However, it is only a starting point. The ‘Web links’ section at the back of this book contains a list of useful websites which you can access for more reading on the topic.

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Prison itself is not a modern idea. Putting people under lock and key, throwing them into the Tower of London, the Bastille in Paris, the Peter and Paul Fortress in St Petersburg, into dungeons underneath big castles or into small lock-ups or bridewells in towns and cities is not new. Even the Bible tells the story of Joseph, who became the trusted servant of Potiphar, one of Pharaoh’s chief ministers. He was thrown into prison after having been falsely accused of impropriety by his master’s wife.1

The use of imprisonment as the main way of punishing crime, however, is different. It is a fairly recent development. In the eighteenth century in England, hanging was the most severe penalty and it was applied widely. You could be hanged for many offences, including murder, violence, theft or property over a certain value, housebreaking, arson and removing parts of Westminster Bridge. As the century wore on, hanging became less acceptable. But even if the offenders found guilty of serious crimes were not to be executed they could not be set free. They had to be kept somewhere and punished somehow. Many were transported to the American colonies, which came to an end in 1776. In the Victorian period, England started to send convicts to the far side of the Earth – Australia. This decision was condemned by a parliamentary committee set up in 1837 to look at transportation “as being unequal, without terrors to the criminal class, both corrupting to convicts and very expensive”.2

Eighteenth-century thinkers saw crime as doctors saw illness. It was contagious, so those suffering from it had to be separated one from another and it could be cured by treatment. Jeremy Bentham dreamt up his idea of a Panopticon, a circular prison where from one place, one guard could see every prisoner all the time, and an inspector would keep under surveillance both the guard and the prisoners.3

The main features of the nineteenth-century prisons are well known. Ingenious devices were employed so that prisoners were kept from having any contact with each other. When walking around the exercise yard, prisoners wore masks, which allowed them to look down at their feet but not sideways or upwards. When prisoners went to the chapel they sat in little boxes so that they could see the chaplain straight ahead but could not make contact with the prisoners on either side. In some prisons the activity for the prisoners was working the tread wheel, a machine that required prisoners to turn a huge cylinder with their feet. This system was not a success. Prisoners succumbed to madness. In 1850, 32 prisoners per 10,000 had to be removed from Pentonville on grounds of insanity. As a result of the high rate of madness some changes were brought in. However, prison continued to be an oppressive and cruel experience.

Penal philosophy moved on and in the early decades of the twentieth century the hopes that had earlier been pinned on religion were transferred to other forms of treatment, including psychology. The prison system moved into the treatment era. Prisoners were seen somewhat as patients in need of cure. Prisons became places for a range of professionals to work at their craft. It was felt that if prisoners were classified correctly and the right medicine was applied then they would be cured of their criminal ways.4

These systems were going to work. Criminals were going to be cured. However, many research studies established that treatment generally did not succeed and disillusionment with treatment set in. Sending people to prison did not cure crime. In fact, prisons seemed to make people worse.

The basis of the treatment idea was that there was something wrong with the personality of the individuals that could be altered by whatever was done to them in...
prison. But the new view was different. It saw prisoners in relation to their families, communities, socio-economic background and life chances.

Thus developed the view of prison that is current in most Western European countries today: prison is damaging to the individual, the family and the community; it has few positive results; its costs are high. Not only direct costs for maintaining prison buildings and its staff, there are also social security costs of a family when the breadwinner has been taken away. Further costs arise from the damage caused by imprisonment – the costs of the ex-prisoner who is homeless, who cannot find a job because of the stigma of a prison record, and the family break-up that can result.

In Crime Pays,5 prisons are described as the “ultimate symbol of state and corporate control over individuals” through the threats of power and violence. It criticised the state’s incarceration of individuals to deal with significant social issues, including systemic poverty and lack of education, which perpetuates crime. Rather than dealing with the lack of public infrastructure in certain communities and establishing effective rehabilitation programs, the government has employed prisons as a fear and control mechanism. Furthermore, it is believed contemporary prisons reinforce racial hierarchies and class systems, as prisoners are stigmatised as lifetime members of the ‘criminal class’. Accordingly, indigenous and migrant groups who are overrepresented in prisons, often become segregated and unable to reintegrate with society upon release. In this sense, the prison system has failed to rehabilitate prisoners and has further marginalised those involved.

As prisons simultaneously punish and rehabilitate, careful reconsiderations of their purpose must be made. Recently, prisons have been associated with the abuse of human rights by their failure to provide adequate care and support.6 Even though education and welfare programs are extremely beneficial in supporting the rehabilitation of prisoners, the loss of dignity and autonomy could neutralise all these efforts. The use of power and force fails to nurture a willingness to change within the affected individual, thus perpetuating struggle and resistance instead of positive change.7

There are four justifications used to support maintaining the current prison system in contemporary society:
• Rehabilitation: proposes that offenders who enter the prison system will be released into society as productive and law-abiding citizens
• Retribution: acts as a moral balance by punishing the offender for their crime(s) against society in exchange for the deprivation of freedom
• Deterrence: provides motivation for the offender and others to keep within the boundaries of the law or face similar punishment
• Incapacitation: protects the wider community from serious offenders by segregating them and disabling them from committing further crimes.

Ideally, prisons would implement safeguards to protect both the incarcerated individual and society, the most famous being the United Nations Standard Minimum Rules for the Treatment of Prisoners.8 Firstly, it states prisons should be rehabilitative, providing incentives for the prisoner to change. Secondly, imprisonment is punishment in itself, not a place for punishment to be imposed. And finally, prisons should exist in a framework of justice and fairness by protecting human rights. However, contemporary prisons are incongruous with all three UN standards of imprisonment – read more about Failures of Imprisonment at www.justiceaction.org.au.

REFERENCES
While the numbers for both sentenced and unsentenced prisoners have continued to rise, the unsentenced population has grown at a faster rate, according to this annual snapshot from the Australian Bureau of Statistics.

- There were 38,845 prisoners in Australian prisons, an increase of 8% (2,711 prisoners) from 30 June 2015.
- The national imprisonment rate was 208 prisoners per 100,000 adult population, a 6% increase from 196 prisoners per 100,000 adult population in 2015.
- Nearly three-quarters of prisoners (69% or 26,649 prisoners) were under sentence, whilst 31% (12,111 prisoners) were unsentenced.
- The most common offences/charges for prisoners were:
  - Acts intended to cause injury (22%),
  - Illicit drug offences (14%), and
  - Sexual assault and Unlawful entry with intent (both 11%).
- Acts intended to cause injury was the most common offence/charge across all states and territories. The proportion of prisoners with this offence/charge ranged from 18% in Victoria and South Australia (1,175 and 534 prisoners, respectively), to nearly half of all prisoners in the Northern Territory (46% or 769 prisoners).
- The only offence category to see a decrease was Robbery/extortion, which went down slightly (3% or 86 prisoners).
- Males accounted for 92% of all prisoners (35,745 prisoners), and females the remaining 8% (3,094 prisoners).

Aboriginal and Torres Strait Islander prisoners accounted for just over a quarter (27% or 10,596 prisoners) of the total Australian prisoner population. The total Aboriginal and Torres Strait Islander population aged 18 years and over in 2016 was approximately 2% of the Australian population aged 18 years and over (based on Australian Demographic Statistics (cat. no. 3101.0) and Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 2001 to 2026 (cat. no. 3238.0)).

- The adult prisoner population increased across all states and territories since 30 June, 2015, with New South Wales experiencing the largest increase in prisoner numbers (832 prisoners or 7%). However, the largest percentage increase was in Western Australia, where the prisoner population rose by 14% (774 prisoners).
- New South Wales had the largest adult prisoner population, comprising one-third (33% or 12,629 prisoners) of the total.
Number of prisoners rises

The number of people in Australian prisons has increased for the fifth consecutive year, according to the latest figures released by the Australian Bureau of Statistics.

There were 38,845 prisoners on the night of 30 June 2016, representing an 8 per cent increase from the same time in 2015, and increases of 10 per cent and 7 per cent from the two previous years. William Milne, ABS Director of the National Centre for Crime and Justice Statistics, said the increase in the Australian prisoner population over the past year was largely attributable to the increase in unsentenced prisoners – those who are confined to custody on remand while awaiting the outcome of their trial.

"While the numbers for both sentenced and unsentenced prisoners have continued to rise, the unsentenced population has grown at a faster rate," said Mr Milne.

"Ten years ago, one in five prisoners was unsentenced, whereas now, the unsentenced population has grown to account for one third of all prisoners."

Over half (55 per cent) of all unsentenced prisoners had an offence of either acts intended to cause injury (29 per cent), illicit drug offences (15 per cent) or unlawful entry with intent (11 per cent). One in four unsentenced prisoners identified as Aboriginal and Torres Strait Islander.

Further annual information, including state and territory data, can be found in ‘Prisoners in Australia’ (cat. no. 4517.0), available for free download from the ABS website: www.abs.gov.au.

FIRST STEPS DOWN THE US PATH? CRIME AND PUNISHMENT IN AUSTRALIA

A surge in imprisonment levels in Australia has accompanied a fall in many violent crimes – but is there a link and when do we reach the point of diminishing returns? Bernard Keane reports in this article first published by Crikey

Harsher prison sentences have meant Australia is jailing more people than at any time in the last two decades – while rates for most violent crimes continue to fall. What’s the connection?

Corrective services data recently released by the Australian Bureau of Statistics shows the number of people in prison on an average day in Australia was over 36,000 in June this year – the highest number since the ABS began collecting imprisonment data in 1998, and the highest imprisonment rate ever as well: 196.5 Australians per 100,000 adult population.

Just four years ago the imprisonment rate was below 170 per 100,000, the level around which it had hovered after a big rise from the late 1990s. In 1998 it was 138, in 2002 it was 144, by 2006 nearly 160.

Imprisonment rates among indigenous people haven’t risen at the same rate, but recent falls have been reversed and the 2015 level of 2,257.3 people per 100,000 is the third-highest of recent years. Indigenous Australians are jailed at more than 10 times the rate of non-indigenous Australians.

While imprisonment rates have gone up, recent crime trends have mostly been down. The ABS’ most recent crime data for the whole of Australia – based on victim reports, independent of police, in the national Crime Victimisation Survey – shows that victimisation rates for physical assault have fallen significantly, from 3.1% of the population in 2008-09 to 2.3% in 2013-14, and threatened assaults have fallen from 3.9% to 2.7%. Recorded crime data from the ABS (i.e. based on police reports) shows 2014 recorded a five-year low in homicide rates and attempted murder rates and numerical lows – that is, not adjusted for population growth – for robbery.

This is backed up by data from New South Wales. The NSW Bureau of Crime Statistics and Research data shows homicide numbers stable over the last decade to 2014 despite rising population; non-domestic violence-related assault has fallen by 25% in numerical terms, and robberies of all kinds have more than halved. Victoria is a little different: robbery has fallen dramatically in the last five years; the homicide rate is stable; and assaults have fallen, but only in the last 12 months. In Queensland, assaults have fallen significantly in the last four years, as have robberies and break-and-enter crimes, while homicide has remained level.

However, reports of sexual assault, domestic violence and drug offences have all increased significantly. The incidence of sexual assault in victim reports (that is, not police reports) has remained steady, according to the ABS; NSW, Victoria and Queensland figures all show a big rise in reports to police of sexual assault, which may suggest higher reporting rates.

In Queensland, the reported incidence of sexual assault and attempted sexual assault has increased every year for the last four years and is now 25% higher than in 2011. The reported incidence of sexual offences, adjusted for population, in Victoria has increased every year for the last five years, and in NSW the reported incidence of sexual assault has steadily risen until the last 12 months.

Domestic violence assaults have also increased in NSW, though not by as much, and they, too, fell slightly in 2014-15. In Victoria, the number of violent crimes flagged as ‘family-related incident’ have more than doubled since 2010-11, including of assaults, sexual assaults and abductions. Domestic violence assaults aren’t broken out for Queensland, but the rate at which domestic violence protection orders are breached has risen over 50%. And the rate of drug offences (adjusted for population) in Victoria has increased nearly 75% in the last five years; the comparable rate has nearly doubled in Queensland; in NSW,
the number of incidents relating to dealing amphetamines has tripled, and cocaine has doubled.

What’s the link between the fall in some crimes and rising prison populations? The traditional assumption, particularly by politicians, is that the more criminals you lock up, the safer the streets are. But what complicates the issue is that there are different reasons why the prison population might be increasing: more offenders might be refused bail (the rise in the imprisonment rate has been among both unsentenced and sentenced prisoners); more might be being arrested, more might be being imprisoned if convicted, or they might be serving longer sentences.

A NSW study, for example, found that between 1994 and 2013, the number of defendants refused bail across nearly all categories of crime rose significantly: less than a quarter of defendants were refused bail for assault-related offences in the mid-1990s but in 2013 nearly half were; sexual assault offences saw a rise from 12% of defendants refused bail to around 30%. And the average length of sentences rose for nearly all types of offence. Sentences for murder rose by 25% in the period; assault-related offences by 75%, firearms offences by 30%. Sexual assault sentences rose by 11% (though in 2013 those convicted of sexual assault were serving less than three years); drug offences recorded only a 9% increase, there were 9% fewer robberies. Local courts, which deal with more minor offences attracting shorter sentences, have also been handing down longer sentences for some offences, like sexual assault.

But not merely had sentence lengths risen, the probability an offender would be jailed at all significantly increased. The study found, for example, that offenders were 25% more likely to be imprisoned for assault, 12% more likely to be jailed for sexual assault, 22% more likely to be jailed for theft.

Victorian data shows sentences increasing in that state; while the proportion of prisoners with sentences of 10 years or more has remained around the same from 2004 to 2014, the proportion of prisoners serving less than a year fell from over a third to just over a quarter, while those serving one to five years has increased from 45% to 50%. The number of those serving between five and 10 years has increased to 14%. There have been complaints for a number of years that harsher sentences are filling Victorian prisons.

The relationship between higher incarceration levels and lower crime is a vexed issue in the United States, where drug laws and anti-violent crime measures caused the US incarceration rate for males to soar from just over 200 per 100,000 population for the first three-quarters of the 20th century to over 500 in the 1980s, over 900 in the 1990s and peaking at around 1,000 just a few years ago, before declining to around 750 in 2013. The primary targets of this surge in incarceration have been Hispanic and African-American males: throughout the 2000s, the imprisonment rate for African-American men was just under 5,000 per 100,000 population, that for Hispanic males, around 1,800.

In the same period, violent crime has dramatically reduced in the United States. Studies suggest that a rise in incarceration does reduce violent crime by locking
up dangerous offenders for longer – some US criminologists suggest there’s a very strong link between longer sentences and lower crime – but diminishing returns set in at some point, after which locking up people for longer has minimal impact on crime and simply wastes taxpayer money (especially given higher incarceration may not be the lowest-cost means of reducing crime anyway). Other factors like economic growth, more heavy-handed policing and more unusual theories like the legalisation of abortion in the 1970s, and the removal of lead from gasoline have all been identified as other possible factors in the dramatic drop in violence in the US.

But one of the few Australian studies to tackle the issue found that it is the likelihood of arrest, and the likelihood of being jailed if convicted, that has the greatest impact on both violent and non-violent crime rates, not sentence length. The 2012 study, carried out by the NSW Bureau of Crime Statistics and Research, concluded that:

“The arrest rate and imprisonment rate [in that study, the number of offenders receiving prison sentences] each have significant negative relationships with both property and violent crime, over both the short and long run. Variations in the average sentence impose no short-run or long-run effects on property crime or violent crime … In terms of long-run (equilibrium) effects, a 1 per cent increase in the arrest rate produces a .135 per cent reduction in property crime and a .207 per cent reduction in violent crime. By comparison, a 1 per cent increase in imprisonment rate produces a .115 per cent reduction in property crime and a .170 per cent reduction in violent crime.”

This appears to be backed by a study by the Australian Institute of Criminology’s Rick Brown earlier this year on the decline in property offences, in which offenders most commonly identified improved security, greater risk of detection through better policing and greater risk of imprisonment as deterrents to property crime.

The question for Australian policymakers – to the extent that rational policymaking is possible in this area (behold the fate of Greg Smith, the NSW Liberal Attorney-General who tried to apply logic and evidence to the NSW criminal justice system) – is whether the point of diminished returns might have been reached with longer sentences, and the focus should be on better policing, and jailing more offenders who would otherwise receive lesser penalties, particularly in areas like sexual assault and domestic violence ...

The State of Imprisonment in Australia: It’s Time to Take Stock

Most Australian states are having to build more prisons to keep up with soaring rates of imprisonment, observes Marie Segrave

This article was first published to introduce the ‘State of Imprisonment’ series by ‘The Conversation’, which provides snapshots of imprisonment trends in each state and territory. The intention is to provide a basis for informed public discussion of imprisonment policies and of the costs and consequences for Australia of rising rates of incarceration.

Australia has reached a decade-high rate of imprisonment. The Australian Bureau of Statistics’ announcement of this last year created little impact or interest.

Across Australia, 33,791 persons were in adult corrective services custody at 30 June 2014. That was a 10% increase from 2013. By the December quarter 2014, the average daily number of prisoners had risen to 34,647.

For both men and women in custody, the most frequent serious offence was an act intended to cause injury (21% for men, 20% for women).

The next most common offences differed according to gender. Men were equally likely to be in custody for a most serious offence of sexual assault, unlawful entry with intent and illicit drug offences (all 12%). For women, the next most likely reasons were illicit drug offences (17%) and offences against justice procedures, government security and operations (11%).

The circumstances that lead to imprisonment and the context of the crime cannot be ascertained from such data. It still raises important questions about the use of imprisonment for non-violent offences.

Indigenous Australians suffer punitive approach

An ongoing issue in Australia, which we have failed to reverse – just as we have failed to close the gap – is the over-representation of Aboriginal and Torres Strait Islander people in our prisons.

Nationally, the rate of imprisonment for ATSI people was 13 times higher than for non-indigenous people at June 30, 2014. This figure covers a diverse situation across the nation. In Western Australia, ATSI men and women are 18 times more times likely than non-indigenous Australians to be imprisoned in WA, whereas in Tasmania the rate is four times higher.

In 2013, Chris Cunneen articulated the concern in The Conversation that:

... too many Indigenous Australians will remain second-class citizens in their own country ... remaining the object of law when it comes to criminalisation and incarceration.

The most recent statistics affirm that Cunneen’s predictions are unfolding with little sign of abating.

Prisons are a poor substitute for mental health care

An emerging concern is the recognition and realisation that mental illness and mental impairment are diagnosed at much higher rates within our imprisoned population than in the wider community.

Data on this issue is less easily accessed nationally. What we do know is that there is a “higher incidence of mental health problems in the Australian prison population than in the general population” and that “almost two in five prison entrants (38%) reported having been told that they have a mental health disorder”.

Prison is fast becoming a significant location for individuals with high mental health needs to be supported and managed. This reflects a national malaise, stemming from the responsibility we must all bear for decisions to remove so many of the support networks that were in place decades ago – and to remove them without any replacement or alternative. The result has been the criminalisation of an increasing number of people.

Public debate ignores need for change

This brief review of current data and trends raises several important questions: why is imprisonment being used,
for what purpose, and to what ends?

This series aims to offer a snapshot of incarceration trends across Australia and to identify imprisonment policies and practices that we need to change.

Each state and territory has different issues of most concern. These may relate to rates of imprisonment of particular marginalised populations, or legislative changes resulting in remand rates skyrocketing and/or parole being virtually unobtainable.

While Australian trends in imprisonment can always be favourably compared to other nations such as the US, it is clear that current trends across the nation have significant short- and long-term consequences. Attracting public attention and engagement with these consequences is challenging in a political, social, and media environment dominated by law-and-order politics.

The ‘State of Imprisonment’ series aims to provide a platform for public discussion via a critical mass of articles that take stock of the situation in each state and territory, and as a nation. Read other articles in the ‘State of Imprisonment’ series here: [https://theconversation.com/au/topics/state-of-imprisonment-15930](https://theconversation.com/au/topics/state-of-imprisonment-15930)

Marie Segrave is Senior Lecturer, Criminology, Monash University.
DAILY LIFE IN PRISON

The following fact sheet is reproduced courtesy of the Queensland Government and relates to prison life in that state, however the descriptions are generally indicative of the experience of the prison population Australia wide.

Entering prison

When you enter prison, you’ll go through 3 steps:

• Admission
• Induction
• Classification.

When you arrive, staff will record your physical description, personal details, and take your property. This includes any jewellery (with the exception of plain wedding rings) or watch you may be wearing; only approved prison jewellery and watches may be worn in prison and these can be purchased while in jail.

You are then:

• Required to undergo a removal of clothing search and given a medical examination
• Allowed to shower
• Issued with prison issue clothes
• Photographed
• Interviewed by a counsellor
• Allowed to make a phone call
• Given an identification card
• Allocated a cell.

You then participate in an induction, where you learn about the prison and its rules and what’s required of you during your time there.

You are then assessed for your health, education and intervention needs for security classification. This determines centre placement options, as well as access to training, intervention and work programs. Classification and assessment can take up to 3 weeks and once complete you may be moved to another prison better suited to your needs.

Upon reception to a corrective services facility, you will be assessed for a smoking cessation support program.

Accommodation

Almost all cells in Queensland corrective centres are single cells which contain a bed, shower and toilet. You are responsible for keeping your cell clean and tidy.

You may keep in your cell:

• Prison-issued items, such as toiletries, clothing, footwear, bedding and sometimes a television
• Personal items, such as clothing (underwear and socks), writing paper, pen, bible, photographs and a watch
• Extra books and study material, a cassette/CD/radio or other items that have been approved (depending where you are located and your security classification).

Prohibited and restricted items

You are not allowed certain items such as weapons, drugs, ammunition, flammable substances, explosives, grappling hooks, cutting instruments, false identification, passports, mobile phones, modems, scanners, alcohol, tobacco and other smoking related products (including cigarette lighters, matches, papers, filters), tattoo guns, unauthorised keys, or any other item that might endanger others or assist in an escape.

If Queensland Health prescribe medication for you, this medication must be taken whilst you are supervised on a medication parade or in the Health Centre.

From 5 May 2014, smoking is not allowed anywhere on the grounds of a corrective services facility (including carparks, walkways, visits processing etc). Queensland Health may also prescribe certain medications to help with quitting smoking. Nicotine replacement therapy (NRT) is provided in the form of patches and given to suitable prisoners. Inappropriate use of NRT, including collecting, selling, swapping or giving away free NRT, will result in removal from a smoking support program. You may undertake a smoking cessation support program by nominating with your facility’s Health Centre.

Money and buying things in jail

While in jail you can hold a personal prison trust account of up to $1,000. You can use this to buy permitted items. In addition you can hold up to $300 in your telephone account to make personal phone calls.

You can use your prison trust account to buy items from the prisoners’ canteen including food items and certain recreational items (such as art, hobby and educational materials) or to rent a TV set directly from the prison.

With permission, you may also be able to buy certain items not available from the prisoners’ canteen from an approved outside source. This includes underwear, magazines, greeting cards, recorded music, footwear, and electrical goods; although you are not allowed to buy some items such as DVDs, DVD players, or electronic game consoles. You may also have to use money in your prison trust account to pay for items of prison property you intentionally break while in prison, or you may have to make payments to a victim under the criminal injury compensation scheme.

You will be given any remaining money in your trust fund when you are discharged from prison.

Dress regulations

You must wear regulation prison-issued clothes at all times. You will be allowed to wear your own clothing if attending court. Your clothing must be neat and clean.

Daily routine

A prisoner’s day is highly structured, with specific times for musters, head counts, meals (eaten communally unless the prisoner is in a residential unit), activities (such as educational, recreational and hobby programs) and work. Arrangements for weekends and public holidays may differ.
Telephone access

Making calls
You are not allowed access to a mobile phone while in prison; you can, however, make calls through the Prisoner Telephone System (PTS).

To get access to the PTS you need to make a written application to the prison authorities including a list of phone numbers – a prisoner can have up to 10 registered numbers – of people you want to call. These are checked for accuracy and to ensure the person you have listed wants to receive calls from you. You can’t include certain numbers such as those used by the TAB, gaming agencies or telephone chat lines.

PTS calls are limited in duration, are recorded and may be monitored by the prison authorities. You are not allowed to divert to other numbers or take part in conference calls.

Each centre has a community list of numbers (such as Prisoners Legal Service and Legal Aid Queensland) that you can call in addition to your personal phone list.

Receiving phone calls
Prisoners cannot usually receive phone calls. If you think there might be an emergency when your family might need to phone you, discuss this with a staff member.

Internet
In jail, prisoners do not have access to email, social media or the internet.

Personal mail and parcels

Normal mail
There is no limit to the number of letters you may send or receive. All normal mail is searched for contraband but is not censored unless authorised by the person in charge.

Incoming mail (except privileged mail) should contain only letters and approved family photographs. If approved, you may also receive religious reading materials, underware and court clothing through the mail. Any mail considered a threat to security or safety may be seized and the sender may be charged for mailing illegal items.

All outgoing mail (except privileged mail) is placed unsealed in the box provided. You can buy pre-stamped envelopes at the centre using your prison trust account.

Privileged mail
The content of privileged mail can not be opened or read by a corrective services officer, except under certain circumstances e.g. if they suspect the item contains a prohibited item.

Items of privileged mail can only be sent to, or received from, a ‘prescribed person’. This includes mail from the prisoner’s legal representative, the Director of Public Prosecutions, a Community Corrections Board, the court, the Ombudsman or the Minister for Corrective Services.

If a prisoner is sending mail to a prescribed person, the item can be sealed without the presence of a corrective services officer. Unless there is reasonable suspicion the item contains something illegal, it will be processed and sent unopened.

Prison visitors
While in prison it’s important you maintain links with your family and friends, so we encourage you to receive visits from them.

A prisoner is entitled to one non-contact visit per week but if approved a prisoner may have up to 2 hours of contact personal visiting time each week – either 1 2-hour or 2 1-hour visits each week – and perhaps other special visits. This is in addition to visits from your legal representatives or official visitors. However, not everyone can visit; people with a criminal record may not be allowed to visit you.

Visitors must apply and make a booking to visit you, prove who they are and follow prison rules and regulations during the visit.

Access to appropriate health services

The number of forensic patients and mentally ill inmates housed in Australian prisons has steadily increased, without a proportionate increase in mental health resources available. Around one in every five prisoners in Australia suffer from serious mental illness. There is substantial evidence from across Australia that access to adequate mental health care in prisons is manifestly inadequate, that the mentally ill in prison are often ‘managed’ by segregation, and that such confinement – often for very long periods – can seriously exacerbate mental illness and cause significant psychological harm. Following his visit to Australia in 2009, the UN Special Rapporteur on the right to the highest attainable standard of health, Mr Anand Grover, made the following specific recommendations relating to health services in prisons:

- Increase engagement with community health providers by prisons, which would improve continuity of care and facilitate reintegration into the community
- Increase resource allocation for diagnosis, treatment and prevention of mental illnesses within prisons
- Assess and invest in the primary health care sector throughout the prison system, and
- Undertake research regarding Aboriginal and Torres Strait Islander incarceration issues as a matter of urgency.

Similar recommendations were also made by the Committee on Economic, Social and Cultural Rights in 2009, as well as the Committee against Torture in its 2008 Concluding Observations, regarding the insufficient provision of mental health care in prisons and mentally ill inmates being subjected to extensive use of solitary confinement.

Conditions in prisons

Conditions in prison, including transport between prisons and in ‘supermaximum’ prisons, raise serious human rights concerns in Australia. Australian ‘supermaximum’ prisons are currently used to house a range of inmates, including those on remand, terrorist suspects and convicted prisoners. Some of these inmates suffer from mental illness. In 2008, the Committee against Torture expressed concern about these prisons and asked the Australian Government to review conditions in these facilities and report back to the Committee on its progress.

Overcrowding is also a real problem in many Australian prisons. The Committee against Torture also recommended in 2008 that Australia take urgent action to reduce overcrowding. Additionally, reports have emerged from the Northern Territory about the increase in intellectually disabled and mentally ill people who remain incarcerated due to lack of appropriate care facilities.

Imprisonment rates of Aboriginal and Torres Strait Islander peoples

Aboriginal and Torres Strait Islander peoples in Australia are among the most incarcerated people in the world. The national rate of imprisonment of Aboriginal and Torres Strait Islander peoples continues to increase. Incarceration rates of Aboriginal and Torres Strait Islander peoples are at least 11 times higher than the rate for non-indigenous Australians. Aboriginal and Torres Strait Islander children between 10 and 14 years of age are 30 times more likely to be incarcerated than their non-indigenous peers. Aboriginal and Torres Strait Islander women are almost 20 times more likely to be incarcerated than non-ATSI women. (See generally, Australian Bureau of Statistics, Prisoners in Australia 2006 (2006) which reveals that prison numbers across Australia increased by 42% between 1996 and 2006 and that Aboriginal people constitute 24% of the prison population compared with approximately 2% of the general population.) In 2006, the UN Human Rights Committee found that the treatment of an Aboriginal juvenile in a NSW prison amounted to inhumane treatment. The juvenile, Mr Brough, was placed in isolation in an adult prison, exposed to artificial light for long periods and had his blanket and some of his clothes removed.

What the UN Human Rights Council recommended in the Universal Periodic Review

In January 2011 Australia was reviewed by the UN Human Rights Council during the Universal Periodic Review (or UPR) (a process whereby the human rights performance of all UN member states is reviewed by other states). In June 2011 Australia provided its response to the 145 recommendations made by the Human Rights Council.

The Government has accepted over 90 per cent of the recommendations and has committed to incorporating the recommendations it has accepted into the National Human Rights Action Plan.

In relation to prisoners and prison conditions, the Human Rights Council made a number of relevant recommendations. Australia has responded to these recommendations as set out in the following table.
<table>
<thead>
<tr>
<th>RECOMMENDATION</th>
<th>STANCE</th>
<th>EXPLANATION</th>
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</thead>
<tbody>
<tr>
<td>Strengthen legislative protections of the rights of people in detention</td>
<td>Already reflected</td>
<td>Australia accepts the recommendation on the basis it is reflected in existing laws or policies and Australia will continue to take steps to achieve relevant outcomes.</td>
</tr>
<tr>
<td>(recommendation 86.46).</td>
<td></td>
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<tr>
<td>Ratify OPCAT and designate an independent National Preventative</td>
<td>Accepted</td>
<td>The Australian Government is working with states and territories to take the necessary steps towards ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</td>
</tr>
<tr>
<td>Mechanism with access to all detention centres</td>
<td></td>
<td>(recommendations 86.3 and 86.5).</td>
</tr>
<tr>
<td>Enact legislation to ensure the humane treatment of prisoners</td>
<td>Accepted</td>
<td>States and territories are responsible for managing and operating prisons and consider that existing legislation and policies ensure humane treatment of prisoners. States and Territories will continue to deliver corrective services in accordance with standard guidelines which comply with the UN Standard Minimum Rules for the Treatment of Prisoners.</td>
</tr>
<tr>
<td>(recommendation 86.71).</td>
<td></td>
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<tr>
<td>Implement specific steps to combat the factors leading to the</td>
<td>Accepted</td>
<td>The Australian Government will continue to address indigenous incarceration and deaths in custody, including by funding prevention, diversion and rehabilitation programs. States and territories will continue to implement programs aimed at preventing indigenous deaths in custody.</td>
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<tr>
<td>overrepresentation of indigenous persons in places of detention and the</td>
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<td></td>
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<tr>
<td>high level of deaths of indigenous persons in places of detention</td>
<td></td>
<td>(recommendation 86.90 and 86.93).</td>
</tr>
<tr>
<td>Introduce a requirement that all deaths in custody be reviewed and</td>
<td>Accepted</td>
<td>All deaths in custody are independently investigated by state and territory Coroners courts and recommendations are considered by state and territory governments. Australia has a National Deaths in Custody Program to monitor all deaths.</td>
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<tr>
<td>investigated by independent bodies tasked with considering prevention of</td>
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<tr>
<td>deaths and implement the recommendations of Coronial and other</td>
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<tr>
<td>investigations and enquiries</td>
<td></td>
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<tr>
<td>(recommendation 86.91).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Improve harsh conditions of custody</td>
<td>Accepted</td>
<td>Australian Government policy is that people in immigration detention are treated fairly and reasonably and that conditions of detention ensure their inherent dignity. Care is taken to ensure that people in immigration detention are not subjected to harsh conditions, are treated with respect and dignity and are provided with a safe and secure environment.</td>
</tr>
<tr>
<td>(recommendation 86.130).</td>
<td></td>
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</tbody>
</table>
The health of Australia’s prisoners 2015 is the 4th report on the National Prison Health Indicators, which were developed to help monitor the health of prisoners, and to inform and evaluate the planning, delivery and quality of prison health services. It includes data from 1,011 prison entrants, 437 prison discharges, over 9,500 prisoners who visited a prison health clinic and about 9,400 prisoners who took medications.

These data were provided by prisons in all states and territories in Australia except New South Wales, which provided data on prison entrants only. Participation was not complete – 84% of prisons participated, with about 49% of prison entrants and 42% of sentenced discharges in those prisons taking part. Accordingly, the information in this report needs to be interpreted with some caution. AIHW is working with the states and territories to improve the coverage of this collection.

This report includes, for the first time, data on the smoke-free status of prisons, disabilities and long-term health conditions experienced by prisoners, and self-assessed health status.

Mental health issues and risky health behaviours, including tobacco smoking, excessive alcohol consumption and illicit use of drugs, continue to be the main areas of concern. The health of indigenous prisoners (over-represented at 27% of the prison population) is also a continuing concern.

Tobacco smoking
Prisoners in Australia continue to have high smoking rates compared with the general population. Almost three-quarters (74%) of prison entrants were current smokers, with 69% smoking daily.

Prisoners report some improvements to health and health behaviours during incarceration

Australian prisoners experience a range of health issues, including high levels of disability, mental health conditions, smoking, alcohol and illicit drug use, according to a report released by the Australian Institute of Health and Welfare.

The report, *The health of Australia’s prisoners 2015*, shows despite health challenges and higher rates of risky health behaviours, many prisoners reported improvements in their health by the time they are released from prison. “For example, while smoking rates are much higher among prisoners compared with the general population, we have seen some promising results, especially in light of smoking bans, which are being progressively introduced in Australian prisons,” said AIHW spokesperson David Braddock.

The report shows that almost three-quarters (74%) of prisoners were current smokers, with 69% smoking daily. “On release from those prisons that allowed smoking, about three-quarters (74%) of discharges currently smoked, and one-in-six (16%) reported smoking more now than they did on entry to prison,” Mr Braddock said.

On release from prisons with smoking bans, discharges who smoked upon entry to prison were less likely to intend to smoke after release (59%) than those from prisons in which smoking was allowed (73%).

Mental health issues remain a challenge among the Australian prison population, with almost half of prison entrants (49%) reporting having been told by a health professional that they have a mental health disorder, and more than 1 in 4 (27%) reporting currently being on medication for a mental health disorder.

“Of those being released from prison, 41% thought that their mental health had improved since entering prison,” Mr Braddock said.

Just over one-half (51%) of indigenous discharges reported that their mental health was either a lot better (22%) or a little better (29%), compared with a combined 38% for non-indigenous discharges.

A similar pattern was seen for self-reported physical health. Over half (51%) of discharges thought their physical health improved while in prison, with indigenous discharges more likely than non-indigenous discharges to report that their physical health was a lot better since being in prison (37% and 24%, respectively).

For the first time, the report looks at disability among prisoners, showing that almost one-third (30%) of entrants reported a long-term health condition or disability that limited their daily activities and/or affected their participation in education or employment. Among 35-54 year olds, this was more than twice as likely for indigenous entrants as for those in the general community.

The AIHW is a major national agency set up by the Australian Government to provide reliable, regular and relevant information and statistics on Australia’s health and welfare.

to prison reported that they would like to quit.

Smoking bans are in varying stages of implementation in Australian prisons. Almost three-quarters (74%) of prison discharges in prisons allowing smoking currently smoked, with one-in-six (16%) indicating that they smoked more now than they did on entry to prison. Dischargees from prisons with smoking bans were more likely to use quit smoking assistance in prison. Of those who smoked on entry to prison, dischargees from prisons with smoking bans were less likely to intend to smoke after release (59%) than those from prisons in which smoking is allowed (73%).

Disability

Almost one-third (30%) of entrants reported a long-term health condition or disability that limited their daily activities and/or affected their participation in education or employment. Limitations to daily activities were the most common (24%), followed by restrictions in employment (16%) and education (12%). About 2% of prison entrants needed help and/or supervision in the areas of self-care, mobility and/or communication. Entrants aged between 35 and 54 years were more likely to have some form of limitation or restriction than their general community counterparts.

Self-assessed physical and mental health

Prisoners being discharged from prison were more likely than those entering prison to report their mental health as generally good or better (78% compared with 67% respectively) and less likely to report it as poor (4% compared with 8%). A similar pattern was seen in self-reported physical health, with dischargees slightly more likely to report their physical health as generally good or better than entrants (78% compared with 73%).

Mental health issues and risky health behaviours, including tobacco smoking, excessive alcohol consumption and illicit use of drugs, continue to be the main areas of concern. The health of indigenous prisoners (over-represented at 27% of the prison population) is also a continuing concern.


THIS IS WHY YOU SHOULD CARE ABOUT THE HEALTH OF PRISONERS

If we don’t address the failing mental health and untreated addiction of Australia’s inmates, the ‘revolving door’ between prisons and the community will continue, writes healthcare CEO Toby Hall.

At first glance, today’s new report by the Australian Institute of Health and Welfare on the health of Australia’s prisoners paints an encouraging picture.

Across a range of measures – mental illness, smoking, chronic disease – the health of prisoners is improving, sometimes markedly, while on the inside.

For those of us engaged in correctional health – St Vincent’s Health Australia has been caring for inmates since 1839 – it’s a sign we’re making a difference.

But let’s be clear, to some extent the health of Australia’s inmates improves because the only way is up.

The bulk of offenders enter custody with some of the worst health profiles in the country. Upon entering prison, almost half of Australia’s inmates have a mental illness; one quarter have self-harmed; and one-third are in severe psychological distress.

Against every health indicator – infectious diseases, chronic respiratory and heart conditions, intellectual disabilities, addiction – Australia’s inmates are behind the general population.

And with almost half unemployed before entering jail; one-third having never completed Year 10; and one-quarter homeless, if you needed evidence of the social determinants of health, look no further than Australia’s prison population.

For many, jail is the first time they’ve ever received regular medical attention.

To some degree, their health can’t not improve. But even with the medical care available to them, those improvements often occur in spite of their environment.

Mental health services for inmates – including treatment and withdrawal programs for drug and alcohol addicts – are massively overstretched.

Given the prevalence of severe mental illness, repeated expert inquiries have called on state and territory governments to improve these mental health services but largely to no avail.

Victoria appears to be the only state that is responding, building a 75-bed specialist mental health unit as part of its new Ravenhall Prison scheduled for completion in 2017.

And long waiting lists – for most health needs, not just mental illness – are being exacerbated by unprecedented levels of overcrowding.

There are now around 34,000 prisoners in Australia, the highest number since 2004, having grown by 10 per cent over the past 12 months.

In NSW, prisoner numbers were...
predicted to reach 12,000 by June 2017; in fact, the state reached 12,250 earlier this month (with capacity now standing at 112 per cent).

As prisoner numbers have grown, the ratios of health care staff just haven’t kept up and in some cases have gone backwards.

Overcrowding aggravates problems in an environment already unfavourable to good health.

Stacking vulnerable and unwell people together in confined spaces is a recipe for increased anxiety and depression; it stokes the likelihood of aggression and violence.

The challenges associated with the health of Australia’s prisoners doesn’t end at the front gate.

In Australia, the discharge of prisoners – what’s known in the sector as ‘throughcare’ – is notoriously poorly planned.

That homeless shelters across the country are full to the brim with ex-offenders with no health care plan, no employment and little or no prospects is all the evidence you need of the system’s inadequacies.

Studies show that the mental health of prisoners commonly deteriorates in the year after their release.

Why should we care?

Because failing mental health and untreated addiction among desperate individuals is a recipe for re-offending behaviour.

If we don’t do something about it, the ‘revolving door’ between prisons and the community will continue.

If that wasn’t enough, the looming health challenge for governments and prison authorities is the rapid ageing of Australia’s inmate population.

Across Australia, there has been a 140 per cent increase in the inmate population aged over 65 in the last decade. In NSW, numbers have increased 225 per cent over the same period.

Older prisoners bring their own unique health challenges: diabetes, dementia, disabilities.

Australia’s prisons are just not equipped to manage such a large number of elderly inmates.

Some of Australia’s prisons were built in the 19th and early 20th centuries with narrow doorways and numerous stairs. They’re not designed for elderly people with poor mobility, let alone wheelchairs.

In response, prison authorities must start planning to establish new, secure aged-care facilities outside the mainstream correctional system.

The challenge with tackling these problems – providing better access to services, improving our planning – is, of course, getting the attention of governments for whom the subject is hardly a priority or a vote winner.

But withholding resources on prisoner health is a false economy: the longer illnesses and disease go unmet, the greater the ultimate costs of treatment.

And once out of jail, if we let ex-offenders slip back into addiction and deteriorating mental illness, we all pay the price.

Toby Hall is CEO of St Vincent’s Health Australia.

SHOULD PRISONERS BE ALLOWED TO VOTE?

UGUR NEDIM EXPLORES THE DEBATE OVER LEGAL RESTRICTIONS ON THE VOTING RIGHTS OF PRISONERS IN AUSTRALIA

Should being in prison prevent people from exercising their right to vote? Being locked up as a punishment restricts the liberty of an individual, and it also isolates that person from the community. By extension, this has historically excluded any participation in political life, too.

Australia law does place restrictions on the voting rights of prisoners. Other consequences of doing time are also imposed, for example, being ineligible for jury duty either temporarily or permanently, dependent on the crime (although some may see this as a plus). However in Australia, your right to vote is not automatically cut off as soon as you go behind bars.

In federal elections, prisoners can vote as long as they are serving a sentence of less than three years. Prisoners who are already enrolled to vote will vote in the electorate of their address before they went to prison, not the location of their prison. They can vote by post or using a mobile voting team that visits prisons. Unsentenced prisoners can also vote.

Is it ever appropriate to disenfranchise those who break the law or is the right to vote inalienable even if a person has committed serious crimes?

But for prisoners serving sentences longer than three years, voting rights are withdrawn until they are released from prison, even if they are already enrolled.

Although prohibited from voting, those serving prison sentences over three years in length are not removed from the electoral roll.

But when it comes to state elections the situation is different, and the rules are governed by each individual state. The restrictions on voting vary from state to state.

In NSW, prisoners can vote in state and local council elections if the prison sentence they are serving is less than twelve months.

In Queensland, any prison sentence will disqualify a person from voting in state elections, while in South Australia and the ACT there is no restriction on voting rights for prisoners at all.

Other states vary, restricting voting for those with sentences anywhere between one and five years in length.

However, the issue of disenfranchising prisoners is a controversial one. Some are of the view that those who have rejected the rules of society by committing crimes have disentitled themselves from participation – and thereby lost their ‘right’ to vote.

On the other hand, the United Nations Human Rights Committee (UNHCR) considers it inappropriate to suspend the voting rights of prisoners, arguing that doing so adversely affects their rehabilitation into society after their release.

In 2006, the Commonwealth government passed legislation preventing anyone doing time from voting in federal elections, but this was struck down by the High Court as being unconstitutional. Our Constitution may not guarantee a whole lot of rights, but the right to vote is one that is protected, although this protection is not absolute.

Arbitrary exclusion from voting is not permissible and the mere fact of imprisonment is not enough to separate a person from their voting rights. This is particularly true for short periods of imprisonment, as they may be handed down despite the crime not being particularly serious.

The law disenstiling those with sentences under three years was found to be invalid, but for prisoners with longer sentences, the right to vote is still withheld.

So while the court found that absolute disenitlement to vote amongst prisoners was not acceptable, barring prisoners has not been prohibited altogether – and the rule excluding those with prison sentences of three years or more still remains.

What do you think: is it ever appropriate to disenfranchise those who break the law or is the right to vote inalienable even if a person has committed serious crimes?

Youth detention population in Australia

This summary from an Australian Institute of Health and Welfare bulletin examines the numbers and rates of young people aged 10 and over who were in youth detention in Australia due to their involvement, or alleged involvement, in crime. It focuses on trends over the 4-year period from the June quarter 2012 to the June quarter 2016.

About 900 young people are in detention on an average night

There were 917 young people in youth detention on an average night in the June quarter 2016. Just over half (57%) were unsentenced – that is, they were awaiting the outcome of their court matter or sentencing – and the remainder were serving a sentence.

Most young people (83%) in detention on an average night in the June quarter 2016 were aged 10-17. This equates to 3.3 young people aged 10-17 per 10,000. The other detainees were aged 18 or older.

Detention rates are stable after long-term falls and despite recent rise in numbers

The number of young people in detention on an average night decreased, from a high of 1,069 in the June quarter 2012 to 917 in the June quarter 2016.

The rate of young people aged 10-17 in detention on an average night decreased, from 3.8 per 10,000 to 3.3 per 10,000, over the 4-year period.

Over the most recent year, despite a slight increase in the number of young people (of all ages) in detention on an average night in each quarter (from 877 to 917), the rate of those aged 10-17 in detention remained relatively stable, between 3.1 and 3.4 per 10,000.

Unsentenced and sentenced detention rates have decreased

The rate of young people in unsentenced detention fell slightly over the 4-year period, from 2.4 young people aged 10-17 per 10,000 on an average night in the June quarter 2012, to 2.1 per 10,000 in the June quarter 2016. The rate was lowest in the December quarter 2014 (1.7 per 10,000).

In sentenced detention, the rate was 1.2 young people aged 10-17 per 10,000 on an average night in the June quarter 2016 – a decrease from 1.4 per 10,000 in the June quarter 4 years earlier. The rate was highest in the September quarter 2012 (1.5 per 10,000).

Over half of those in detention are Aboriginal or Torres Strait Islander

Over half (55%) of all young people in detention on an average night in the June quarter 2016 were Aboriginal or Torres Strait Islander. In the June quarter 2016, indigenous young people aged 10-17 were 26 times as likely as non-indigenous young people to be in detention; however the level of over-representation fluctuated between 23 times and 28 times over the 4-year period.

Trends vary across the states and territories

There were different trends in the youth detention population across the states and territories. Over the 4-year period, the rate of young people aged 10-17 in detention increased in Victoria and Queensland, showed no clear trend in South Australia and the Northern Territory, and decreased in the remaining states and territories.
ABUSE IN YOUTH DETENTION IS NOT RESTRICTED TO THE NORTHERN TERRITORY

In light of the shocking abuse of young inmates at the Don Dale Youth Detention Centre, Chris Cunneen briefly examines the state of youth detention nationally.

The controversy over the appalling treatment of young people in the Don Dale detention centre and the announcement of a royal commission into juvenile detention in the Northern Territory raises some important questions about how we arrived at this point.

On the face of it, Australia has a relatively comprehensive complaints-based system for children and young people in detention. All states and territories have various investigation, review and reporting procedures in place.

Inspection, monitoring and complaint bodies include the children's commissioners and guardians (federal and all states and territories), Ombudsman (all states and territories), Official Visitor Schemes (New South Wales, Victoria and Queensland); and the Office of the Inspector of Custodial Services (Western Australia and NSW). Many of these organisations conduct both announced and unannounced inspections of places of juvenile detention.

Since 2010 we have seen numerous reports from these monitoring bodies detailing complaints similar to the problems identified at Don Dale.

In 2010, the Victorian Ombudsman investigated allegations of serious staff misconduct at the Parkville Youth Justice Precinct, including staff inciting fights between detainees, assaulting and restraining detainees with excessive force, and supplying contraband including tobacco, marijuana and lighters.

The Ombudsman reported that the centre was overcrowded, and many of its design features were unsuitable for a custodial environment for young people and posed a number of health and safety concerns.

These included:
- Hanging points and opportunities for self-harm
- Blind spots in common areas
- Roof access points
- Excessive graffiti
- Mouldy and unhygienic conditions, and
- A high prevalence of communicable infections among detainees.

Some 36% of the staff did not have a Working with Children Check on file. The Ombudsman determined the facility was inappropriate for custodial purposes and was in clear breach of the UN Rules for the Protection of Juveniles Deprived of their Liberty, and a number of domestic safeguards.

Prior to its closure in 2015, the Kariong Juvenile Justice Centre in NSW was the subject of widespread criticism following a number of incidents relating to the treatment and control of detainees. A 2011 NSW Ombudsman report identified problems with the centre’s rehabilitation programs. The report also highlighted a lack of case management by detention centre staff, particularly for young people with mental health issues, and criticised the length of time detainees were kept in isolation.

In 2012 the Queensland children’s commissioner released a report into the use of force in detention centres. The report followed an investigation into six instances where young people sustained significant injuries, including fractures of the wrist, arm fractures, and a dislocated shoulder. The commissioner found that the:

... incidents highlight the potential problems with the force techniques approved for use on young people in youth detention centres.

In January 2016, it was reported that an 11-year-old indigenous boy detained at the Brisbane Youth Detention Centre was allegedly assaulted by youth officers, leaving him with two black eyes and a broken cheekbone.

In WA, the Inspector of Custodial Services raised concerns over the high number of strip-searches, inadequate visiting and under-resourced educational facilities, weak case management, and severely stretched mental health services at the Banksia Hill Detention Centre.

These reports raise important concerns about the ability of our current monitoring system to tackle institutional and systemic problems that occur to varying degrees in all states and territories. These include abuse and the use of excessive force.

At a broader level, these systemic problems negatively...
affect Australia’s compliance with children’s rights. One important step forward would be for Australia to ratify the Optional Protocol of the Convention Against Torture (OPCAT). Ratifying OPCAT would provide a system of regular inspections to places of juvenile (and adult) detention by the UN and through the establishment of a National Preventative Mechanism (NPM).

The NPM would also monitor other places of detention including mental health facilities and immigration detention centres. Australia signed the OPCAT in 2009, but is yet to ratify the protocol. There already exists considerable support for Australia’s ratification of OPCAT. In 2014, 64 organisations signed a statement to the attorney-general endorsing Australia’s ratification of the protocol (Note: the government has subsequently pledged to ratify OPCAT, see box left).

We are left wondering why our regulatory systems have failed, not only in the NT but throughout Australia.

So, given all of this, what difference will a royal commission make? It may well assist in uncovering the truth behind the mistreatment of young people in NT detention and sheeting home some responsibility. But we are left wondering why our regulatory systems have failed, not only in the NT but throughout Australia.

There are good arguments for expanding the royal commission to include juvenile detention nationally, and also for specifically considering the dramatic over-representation of indigenous children in detention. These need to be balanced against what we already know about both these systemic problems, their solutions, and the likelihood that an expanded royal commission could take years to complete, further delaying any action.

Editor’s note: All 27 recommendations of the Victorian Ombudsman’s 2010 report have been implemented, and all staff in Victorian youth justice precincts must have a Working With Children Check.

Chris Cunneen is Professor of Criminology, UNSW Australia.
**Data gaps mean indigenous incarceration rates may be even worse than we thought**

*Four Corners* has refocused national attention on indigenous incarceration rates, but there are several problems with prison data collections, observes Thalia Anthony.

Prime Minister Malcolm Turnbull has called for a Royal Commission into abuse of youths in the Northern Territory corrections system after the ABC’s *Four Corners* program aired footage of children being hooded, shackled and teargassed at a Darwin juvenile detention centre. Cape York Institute senior policy adviser Shireen Morris told Q&A that the incarceration rate of indigenous people has doubled since the Royal Commission into Aboriginal Deaths in Custody 25 years ago.

That statement is true but gaps in the data suggest the problem may be even worse than the official statistics suggests.

Official data show the rate has doubled in the last 25 years

Australian Bureau of Statistics data show the indigenous incarceration rate in 1991 was 14.4%. In 2015, it was 27.4%. In the March 2016 quarter, it was 28%.

For every 100,000 indigenous people, 2,253 are in prison (up from 1,232 in 1991). For every 100,000 non-indigenous people, 146 are in prison (up from 102 in 1991). This makes an indigenous adult 15.4 times more likely to be in prison than a non-indigenous person.

But the real rate may be worse

There are a number of limitations with prison data collections. First, official prison measurements are point-in-time: they reflect the number of prisoners on a certain day (generally 30 June) in any given year.

Indigenous people are more likely to receive shorter sentences, and more likely to cycle in and out of prison. So it is likely that the over-representation of indigenous people in prisons over the course of the year is greater than the official statistics suggest.

They do not represent the through-flow of prisoners across a year. Indigenous people are more likely to receive shorter sentences, and more likely to cycle in and out of prison. So it is likely that the over-representation of indigenous people in prisons over the course of the year is greater than the official statistics suggest.

Research by Professor Stuart Kinner, a Griffith University expert on criminal justice, found that the annual ‘flow’ of indigenous people through Australian prisons significantly exceeds the daily number.

Before the Royal Commission into Aboriginal Deaths in Custody handed down its report in 1991, there were few statistics on numbers of indigenous women in custody. We now have a more nuanced understanding of the prison demographic. The Royal Commission also made a special point about the inadequate information in relation to juvenile prisoners at the time.

Among prisoners, indigenous children and indigenous women are currently the most over-represented compared to their non-indigenous counterparts. However, we are unable to compare changes across all demographics.

A blanket understanding of increases in prison rates
Among prisoners, indigenous children and indigenous women are currently the most over-represented compared to their non-indigenous counterparts.

And although data collection on police custody has improved, the information on detention in police custody and police vehicles remains more scarce than that for prisons. Generally when people refer to the “incarceration rate” they mean the number of people in prisons.

Finally, there is limited public information on the proportion of indigenous young people in detention centres who are in state care or have previously been subjected to state child removal policies. We are aware that the rates are high, but the nexus between child protection interventions and the criminal justice system requires further analysis. Similar shortcomings in information on the number of indigenous people with a mental impairment or disability in juvenile detention exist.

Having a more accurate picture of the scale of indigenous incarceration and its features will better equip us to find solutions. Statistics don’t necessarily solve problems, but there is an adage: what gets measured gets done.

Thalia Anthony is Associate Professor in Law, University of Technology Sydney.

Key indigenous imprisonment statistics:

- Make up 27% national prison population
- Only make up about 3% of overall population
- Rate has doubled from 14% at time of royal commission
- Indigenous people are 13 times more likely to go to prison than non-indigenous
- Between 2000 and 2010 the indigenous imprisonment rate increased by 51.5% while the non-indigenous rate increased by 3.1%
- In the Northern Territory 85% of prisoners are indigenous.


HOW ‘TOUGH ON CRIME’ POLITICS FLOUTS DEATH-IN-CUSTODY RECOMMENDATIONS

A HARSH CRIMINAL JUSTICE SYSTEM – IN PARTICULAR, MORE PRISONS AND PEOPLE BEHIND BARS – HAS APPARENTLY BECOME A HALLMARK OF GOOD GOVERNMENT, QUESTIONS CHRIS CUNNEEN

Whatever might be said about its successes and failures, it’s clear that 25 years after the Royal Commission into Aboriginal Deaths in Custody tabled its final report, Australia has become much less compassionate, more punitive and more ready to blame individuals for their alleged failings.

Nowhere is this more clear than in our desire for punishment. A harsh criminal justice system – in particular, more prisons and people behind bars – has apparently become a hallmark of good government.

This wasn’t always the case. But it just so happened that the royal commission handed down its findings at a time when the politics of law and order was rapidly changing.

Reform to intolerance
The 1970s through to the late 1980s was a period of criminal justice reform. Decriminalisation of certain types of summary offences, such as public drunkenness and prostitution; a commitment to reducing prison numbers through the introduction of community service orders and other non-custodial sentencing options; the development of mental health services for offenders; specific programs for women prisoners; and improved conditions for prisoners more generally: these were key parts of the political agenda.

Imprisonment rates in Australia are not the result of increased levels of crime, since increases in imprisonment rates have continued while crime rates have levelled or fallen in many categories of crime from 2000. Similar patterns are seen internationally.

But, by the late 1980s and early 1990s, changing political conditions were no longer conducive to effective reform of the criminal justice system. By the 1990s, state and territory governments no longer spoke of reducing prison numbers, but rather of the need to lock more people away.

This move toward ‘law and order’ responses manifested in:
• Increased police powers, particularly in relation to public order
• ‘Zero tolerance’-style laws that increased the use of arrest or detention for minor offences
• Mandatory prison sentences for various offences (particularly in the Northern Territory and Western Australia)
• Controls over judicial discretion through the introduction of mandatory minimum terms of imprisonment
• A growing use of remand and
restrictions on bail eligibility
• Longer terms of imprisonment for a range of offences, most recently New South Wales’ so-called ‘one-punch laws’
• More people sentenced to prison than non-custodial options, and
• Changes to parole and post-release surveillance, which have made parole more difficult to obtain and easier to revoke.

There was both a judicial and political perception of the need for ‘tougher’ penalties, often based on political expedience and media-fuelled public alarm over particular crimes.

While these administrative, legal and technical changes contributed to increasing prison numbers, they also reflected a less tolerant and more punitive approach to crime and punishment.

Put bluntly, the last 25 years have seen a spectacle of punishment most graphically illustrated in climbing imprisonment rates. And these changes were directly in opposition to the fundamental findings of the royal commission, which advocated a reduction in indigenous imprisonment rates.

Self-fulfilling practices
The Australian prison estate now costs well over A$7 billion a year to operate. And building a prison can cost between $500 million and $1 billion, depending on its location, security level and size.

Such is the financial cost of our commitment to a system that’s widely ineffective in reducing re-offending, and significantly contributes to the further marginalisation of those who are incarcerated.

These increases in imprisonment in Australia have been paralleled in other countries such as the United Kingdom, the United States, New Zealand and, more recently, Canada. It is arguably their embrace of the neo-liberal agenda that has led these countries down the path of a harsher approach to crime and punishment.

In contrast, European jurisdictions that have more social democratic and corporatist forms of government have sustained more moderate criminal justice policies and have relied less on exclusionary and punitive approaches to punishment.

But states that experienced a decline in principles and policies reflecting the welfare state and embraced neoliberal notions had a realignment of values and approaches that emphasised ‘deeds over needs’. Their focus shifted from rehabilitative goals to an emphasis on deterrence and retribution. Individual responsibility and accountability increasingly became the core of the way justice systems responded to offenders.

Privatisation of institutions and services; widening social and economic inequality; and new or renewed insecurities around fear of crime, terrorism, ‘illegal’ immigrants and racial, religious and ethnic minorities have all impacted the way the criminal justice systems operate. Completing the cycle, these changes, in turn, fuelled social demands for authoritarian law-and-order strategies.

Human warehouses
In understanding the use of imprisonment, one of the most important points to grasp is that a rising imprisonment rate is not directly or simply related to an increase in crime.

The use of prison is a function of government choices; it reflects government policy and legislation, as well as judicial decision-making. Imprisonment rates in Australia are not the result of increased levels of crime, since increases in imprisonment rates have continued while crime rates have levelled or fallen in many categories of crime from 2000. Similar patterns are seen internationally.

The growth of the law-and-order agenda has also resulted in far weaker ideological differentiation between major political parties on criminal justice policy. The most politically expedient response to crime is the promotion and implementation of the ‘toughest’ approach.

While conservative political parties may have traditionally appeared to be ‘tougher’ on crime and punishment, many Australian states and territories, such as New South Wales and the Northern Territory, have sustained and large increases in imprisonment rates under Labor governments.

In the process, prisons have become human warehouses for marginalised peoples, and most particularly indigenous people.
How can we mitigate the crime that is female over-imprisonment?

Women who commit the same crime as men should in most cases receive lighter penalties, argues Mirko Bagaric

When it comes to committing crimes, humans have two distinct forms. Overwhelmingly, men perform most criminal acts. And, with only a hint of exaggeration, women never commit the most heinous offences.

As such, it is an egregious public policy disfigurement that all Australian jurisdictions have expansive and expensive prisons that are purpose-built for imprisoning the portion of the community that nearly none of us fear. Worse still is that female incarceration numbers are at record highs and increasing.

Numbers don’t lie
Women constitute approximately 8% of all Australian prisoners. However, the total number of women prisoners has grown considerably over the past decade.

In 2005 there were 1,734 women prisoners, which amounted to 6.8% of all prisoners. In June 2015, the total number of prisoners in Australia was 35,949 – of whom 2,825 were women. This amounts to 7.6% of the total prison population.

As women are less responsible for criminal law offences, they are inevitably imprisoned less than men. But the level of female under-representation in overall imprisonment rates is not nearly enough. It should be somewhere between 0% and 1% of the total prison population.

Women comprise one-fifth of all defendants who appear in Australian criminal courts. When it comes to the more serious forms of crime, female involvement drops considerably. Women comprise slightly less than 13% of defendants in the higher courts.

Women are even less represented in relation to the most serious offences. They commit virtually no sexual offences. Women constitute 15% of all defendants whose most serious crime is homicide or a related offence. However, the number of women charged with such offences is low given that only 955 such offences are reported annually.

When women do kill it is usually different to male killing. Women often kill against a backdrop of victimisation and hopelessness, not because they are angry or revengeful.

The offence types that women commit a reasonable portion of are fraud (35%), theft (34%) and traffic and vehicle regulatory offences (24%).

The most recent figures relating to offence types for which people are imprisoned show that 9% of women were in prison for homicide and related offences. The majority of women (more than 60%) were in jail for non-violent and non-sexual offences.

The most common offences for which women are imprisoned are unlawful entry (10%), theft (8%), fraud and deception offences (8%),
drug offences (17%) and offences against justice procedures (11%). By contrast, the majority of men are in prison for acts of violence or sexual offences.

There is also a fundamental distinction in the manner in which male and female prisoners are categorised in Australia. One-third of male prisoners are classified as minimum security; more than 70% of female prisoners have this classification.

**Implications for policy**
The undeniable difference between men and women when it comes to committing crime should be reflected in a fundamentally different approach to the sentencing of women. Not only should women generally receive more lenient penalties than men because they are normally more law-abiding, but women who commit the same crime as men should in most cases receive lighter penalties.

This should be so for three reasons:

- Women re-offend less frequently than men – and by a considerable margin.
- The impact of imprisonment on women is generally more damaging than on men. Women who are imprisoned for a long time can have their right to procreate effectively negated. For men, the same sanction is typically merely a suspension of this right. Women also suffer more while they are imprisoned. They are more likely to have mental health issues and be victims of sexual abuse.
- Women perform a greater portion of the nurturing and benevolent acts in society than men do. Removing them from society often has a devastating impact on their children, relatives and other dependants. This disruption should be minimised.

It is only an utterly perverse and misguided sense of equality that would suggest that female offenders should be treated the same as males.

The default position is that no woman should be sentenced to imprisonment. There are some incorrigibly bad women in the community who commit acts that seriously damage others. And yes, they require harsh treatment. But this justifies Australia having one female jail – not a dozen.

The number of women who should be subjected to the harshest sentencing option is so rare that it is verging on lunacy to establish and maintain extensive and expensive pitiable institutions in every jurisdiction to deal with them.

Other solutions for serious female offenders should be developed, such as 24/7 CCTV and electronic monitoring, combined with other strict deprivations – like the inability to work or own property.

Effectively eliminating the threat of imprisonment from the female psyche will not encourage them to commit more crime. Empirical data establishes that there is no link between severe penalties and low crime. The only policing and sentencing approach that reduces crime is increasing the perception in people's minds that if they commit a crime they will be caught.

Implementing changes to the sentencing system that will benefit women does not necessarily prejudice men. The opposite is the case. The reforms will prompt a reassessment of all sentencing principles so far as non-violent and non-sexual offenders are concerned.

This will logically result in less severe sanctions for men who commit crimes of this nature. It is the only tenable approach to dealing with Australia’s prison overcrowding crisis.

Mirko Bagaric is Dean and Head of School of Law, Deakin University.

The number of women who should be subjected to the harshest sentencing option is so rare that it is verging on lunacy to establish and maintain extensive and expensive pitiable institutions in every jurisdiction to deal with them.

I was interviewed on radio after conducting a literature review on services to the aged in prison in Australia and overseas. The mild shock jock host asked, “Why should we care about old prisoners? They are there for good reason. Why be soft on them?” I could understand his listeners might not want to ‘waste’ any compassion on aged sex offenders or murderers serving life in prison.

But what kind of society do we want to live in?

I made the point that an important indication of a humane society is how we treat our vulnerable. It is hard to think of anyone more vulnerable than an aged person in jail. Even he agreed.

A growing problem

The aged are the fastest growing segment of the prison population. Some contributing factors are mandatory minimum sentences, longer sentences for serious crimes and the reluctance to release some offenders back into society.

But how do we define being old? Generally this is defined as 50 years or older (45 years for indigenous). The reason is obvious if you think about the way most prisoners abuse alcohol and/or drugs, smoke, have poor diets and do not seek medical treatment. The result is bodies older than their years and an early onset of frailty, dementia and chronic conditions.

Older prisoners are diverse, including first-time offenders, aged recidivists, those serving long or life sentences, and those incarcerated for short periods late in life.

It’s not easy to know where to start when trying to solve this problem. The aged in prison face many challenges, including the unsuitability of facilities for aged prisoners. Many prisons were built in the 19th century with younger offenders in mind. Problems include wheelchair accessibility to outdoor courtyards (often their only chance to be outside) and being disallowed walking sticks or frames because they might be considered weapons.

Other issues include who should change sheets for incontinent prisoners, and problems with frailty and mobility. One very serious issue for aged prisoners is the pervasive anxiety and fear they feel for their safety. This is accentuated if they are disgraced prisoners such as convicted child sex offenders.

The issues continue with medical and mental health needs (naturally both are more prevalent inside). There is a need for age appropriate activities, when almost all programs target young offenders, such as education programs and exercise programs that target a higher level of fitness. In some prisons there is gym equipment but older prisoners may be given lower priority for access or pushed off.

There is also the potential for victimisation. This is especially the case with sex offenders, who tend to be older when convicted and are among the most stigmatised in our society. There have been reports of prisoners expecting payment to provide basic assistance to aged offenders.

The aged are the fastest growing segment of the prison population. Some contributing factors are mandatory minimum sentences, longer sentences for serious crimes and the reluctance to release some offenders back into society.

What needs to be done

The picture isn’t completely bleak. The NSW justice report in 2015 talked about prisoners who had responsibility for common areas, called ‘sweepers’, generously supporting older prisoners.

In our review we identified examples of good practice. Modifications were made for the aged at Silverwater Women’s Correctional Centre including ramps and wider corridors. The Kevin Waller Unit at Long Bay is an example of an integrated aged care unit. There is the Marlborough Unit at Port Philip Prison for intellectual disability. There are also specialists who assist the incarcerated including optometry, podiatry, psychology, forensic psychiatry and geriatric physicians – but generally demand outstrips supply of services.

There are encouraging signs from international services. In the United Kingdom there are examples of specialised units in prisons. In the USA and Germany there are moves towards ‘nursing homes behind bars’ and palliative care. The True Grit program in Northern Nevada is a structured living program for the aged with healthy activities.

Overall there is a need for more research to inform policy. However, we experienced considerable difficulties in getting ethical approval to conduct research with the incarcerated. There is an urgent need to resource research, initiate pilot programs, evaluate and change practice in line with evidence-based research. However, the real barrier is: who cares? Arguably we don’t.

Bruce Stevens is Wicking Chair of Ageing and Practical Theology, Charles Sturt University.

The Conversation

CALL TO ADDRESS CORRUPTION IN THE PRISON SYSTEM

Not enough is being done about entrenched corruption in prisons – a problem that needs addressing to improve the chances of prisoner rehabilitation in detention, new research from Flinders University has found.

Prisons and governments should address corruption – including drug trafficking, attacks on prisoners, and other practices which support the prison black economy – to return the focus back to helping prisoners to reform, says Professor Andrew Goldsmith, from Flinders Centre for Crime Policy and Research.

“Without trust and accountability in the system, correctional services cannot perform their important duty of helping offenders to rehabilitate and re-enter society with much lower chances of re-offending,” says the Strategic Professor of Criminology at Flinders Law School.

Professor Goldsmith says the political incentive to change correctional systems has not matched public concerns about rising crime rates.

“If we are worried about rising crime rates, we need to focus more on the negative effects of sending people to prison and in particular on tackling the conditions in our prisons that undermine prospects for rehabilitation and reintegration,” he says.

Professor Goldsmith, Professor Mark Halsey from Flinders University, and former Flinders researcher and now Deakin University criminology lecturer Dr Andrew Groves have compiled the Tackling Correctional Corruption book (Palgrave Macmillan) as part of a new, international series on crime prevention and security management.

The research was based on data from prison systems in the UK, US and Australia, including from the Western Australian Corruption and Crime Commission.

Rather than just tackling prison corruption alone, the authors call for a broader approach to “correctional integrity”.

“The scale of criminality and misconduct that can go on in prison has an effect not just the good order of the prison and the rights of prisoners but on the prospects for successful reintegration of ex-prisoners into society.”

Suggestions for rebuilding trust in the corrections system, and providing more support for prisoner reform, include:

- Greater acknowledgement of the forms and causes of corruption inside prisons
- More access to drug and alcohol treatment for prisoners
- Greater availability of training and education programs for prisoners
- Clearer training and monitoring of prison staff around relationships with prisoners, their families and associates
- Stronger whistleblower protections for staff who want to report work-related corruption or other misconduct
- Use of random searches of staff arriving at, during, and leaving work
- More thorough pre-employment screening of applicants for prison jobs.

PRIVATE PRISON OPERATORS STILL HIDE FROM SCRUTINY, DESPITE REFORM

Concern about the level of transparency in the prison sector remains, according to Jane Andrew, Max Barker and Philip Roberts

The recent final report of Economic Regulation Authority (ERA) into the efficiency and performance of Western Australian prisons confirms ongoing concerns about transparency in the prison sector, with a legal wall still protecting private prisons from operational scrutiny.

The ERA's proposed reforms are intended to make custodial services more accountable, more transparent and more comparable. For public prisons this would involve the introduction of benchmarking, service level agreements, annual reviews and improvements in external reporting. For private prisons this would involve new reporting requirements around a set of sector level benchmarks, but beyond this, there is little that will change.

The recommendations appear to reflect the widely held view that Western Australia’s private prisons are already more transparent than their public sector counterparts. As a consequence, many of the recommendations are designed to bring the public sector into line with the expectations already imposed on the private sector.

In the words of the ERA:

Private prisons are performing to high standards because they are held to clear and robust standards of accountability and transparency.

However, a legal wall protects private prisons from operational scrutiny. The operating costs and internal efficiencies within the WA’s private prisons remain off limits to the public. This includes information about the way private providers spend taxpayer money.

If the proposed reforms are implemented, and participation of private providers increases, this opaqueness around the provision of custodial services may actually intensify. This presents a serious impediment to the public accountability aspirations of the ERA’s final report.

Not only could this information support a proper comparison between prisons, it may also help the public sector understand and learn from the operations of their private sector counterparts.

Unfortunately, commercial-in-confidence remains a standard practice in Australia and it means that private

If we are serious about prison transparency, private operators need to tell us more about how they execute their dual goals of profit maximisation and public service delivery.
operators are able to avoid disclosing the amount of profit they make from government contracts. Some might suggest that this is unimportant, and that savings to the taxpayer are the only relevant concern. However, when it comes to prisons, cost savings can have fairly serious consequences.

Both here in Australia and overseas, efforts by private contractors to reduce staff numbers and associated costs has led to a number of scandals. For instance, it has been reported that in an attempt to cut costs by foreign giant Serco reduced staff training, leaving prison officers at risk of assault and injury at Mt Eden, in New Zealand.

At home, it has been claimed that similar reductions in staffing levels at Victoria’s Fulham prison by another foreign conglomerate, GEO, led to riots as scant officer numbers were unable to control inmates. There are obvious problems with a loss of control in any prison, but in these cases the public has no means to interrogate the consequences of private providers resource allocation.

Commercial-in-confidence agreements not only benefit private operators they can also protect state governments from detailed public scrutiny. In NSW at least, this lack of scrutiny has meant that the payment of performance linked fees has been profoundly confusing and inconsistent.

For instance, GEO was still awarded their performance bonus despite failing to meet performance targets for NSW’s Junee Prison in 2006. The justification given by Commissioner Ron Woodham was that performance linked fees were designed to encourage performance rather than be ‘punitive’.

This contrasts with the decision to reduce Parklea’s (NSW) performance linked fee in 2011 due to poor performance.

Similarly, in Victoria, commercial-in-confidence agreements have meant that the public has no idea whether their taxes have been used to pay a performance linked fee in any given year. Indeed, it is possible that private operators may have received these fees despite significant mismanagement, like the riots at Fulham Prison.

The ability of the public to hold both public and private operators accountable requires that there is enough information in the public domain to enable the public to scrutinise and interrogate their operations. To do that meaningfully, neither provider should be able to function behind a veil.

That being said, if we were to agree that there are issues of security or commerce that warrant privacy, then this privacy shouldn’t function to privilege the protection of private sector interests.

At the end of the day, privately-run prisons are still funded by the taxpayer. Knowing how these operators spend public money is in the public interest. If we are serious about prison transparency, private operators need to tell us more about how they execute their dual goals of profit maximisation and public service delivery.

Associate Professor Jane Andrew, Dr Max Baker, and Dr Philip Roberts, from the University of Sydney Business School are currently collaborating on a nationwide study of prison privatisation.

Jane Andrew is Associate Professor, University of Sydney Business School.
Max Baker is Lecturer, University of Sydney.
Philip Roberts is Research Assistant, University of Sydney.

The argument for prisons privatisation

Conventional arguments for privatisation of prisons generally canvas the same issues. These characterise privatisation as a response to increasing inmate populations and exploding costs, claiming the potential for private involvement in public services to generate ‘sustainable value’ by bringing public and private interests closer together, and generating the capacity to innovate by identifying and pursuing new opportunities for service provision, which may, in turn, generate positive sectoral spill-over effects.

Despite this, there is an obvious and basic conflict between the interests of society in ultimately minimising the number of people confined in prisons, and the financial interests of private prison operators in maximising the number of prisons, prisoners, and sentence lengths.

Additionally, there is no international measure of prison performance against which private prisons can be effectively adjudged. This is compounded by the fact that a number of private corporations – such as Serco, G4S and GEO – enjoy a monopoly over private prison management in countries including Australia, USA, The UK, New Zealand, South Africa and Israel.

CHAPTER 2
Alternatives to imprisonment

WHAT ARE PRISONS FOR? ANSWERING THAT IS THE STARTING POINT FOR REFORM

Unless most prisoners are given a realistic prospect of rehabilitation, how much good can prison really do? Kathryn Snow and Lynn Gillam investigate

Is the purpose of incarceration to punish wrongdoing, or to protect society from dangerous individuals? Is it to make an example of criminals to deter others, or to reform those who stray beyond the bounds of acceptable behaviour? There are arguments for each of these approaches to incarceration, and they often stand in conflict with one another.

Currently, sentencing policy in Australia reflects an apparently arbitrary mixture of all four approaches. The result is that incarceration is often ineffective and even counter-productive.

Until we decide what prisons are for, we cannot formulate coherent public policy that prevents the arbitrary or unfair use of incarceration against vulnerable people. Australia’s use of incarceration is often determined by inscrutable factors beyond the apparent threat that individuals pose to others.

The expected benefits of incarcerating young indigenous men from remote communities for unpaid driving fines is unclear. So is the purpose of incarcerating people for non-violent crimes related to drug dependence. But the financial and personal costs are massive.

Prison is failing as a deterrent
Evidence clearly shows that incarceration does not act as a strong deterrent, since most people – particularly young people – do not make rational, cost-benefit analyses before engaging in illegal behaviour. Recidivism rates in Australia and the US clearly indicate that prisons are not ‘rehabilitating’ most offenders.

Do we gain anything simply from seeing punishment inflicted on those who have behaved unacceptably?

Prisons do keep people off the streets while they are incarcerated, but the average sentence is quite short, so the incapacitation effect is limited. We also know that many people resume illegal and risky behaviour shortly after they return home.

Recently released prisoners experience extremely high rates of fatal drug overdoses and other unnatural deaths during their first few weeks in the community. Far from ‘rehabilitating’ them, by reducing their tolerance to opiates without effectively treating their drug dependence, incarceration puts the lives of drug-dependent prisoners at risk.

This clear harm to prisoners should be outweighed by a benefit to broader society. But in the case of people incarcerated for non-violent drug-related crimes, the net benefit seems unclear.

Punishment alone is poor policy
Do we gain anything simply from seeing punishment inflicted on those who have behaved unacceptably? It seems obvious from the public reaction to high-profile violent crimes that some have a strong desire to see retribution visited on those who harm others.

In handing down a severe sentence, a judge, on behalf of society, condemns the behaviour of the offender. The length of the sentence is taken by many people to indicate the level of condemnation. As such, elements of the public and the media often decry ‘short’ sentences for violent crimes as an indication that the legal system does not take these crimes seriously.

However, beyond a desire for retribution, what is there to recommend a long sentence over a short one? A 25-year-old man who is incarcerated until he is 30 has experienced a catastrophic blow. Beyond the loss of his liberty, his relationships with his friends and loved ones are likely to change dramatically and may be destroyed altogether. His chances of finding stable housing and fulfilling work after he is released are poor.

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The characterisation of short sentences as somehow trivial dramatically underestimates the profound impact that even brief periods of incarceration can have on people’s lives. Incarceration is an intrinsically harsh punishment. Why then do we mete it out so readily?

**Time to reform practices with medieval origins**

Punitive practices in English-speaking countries have their roots in the medieval period. Initially, incarceration was not a punishment in itself but simply a way of detaining people until corporal punishment was delivered.

This strongly retributive approach to criminal sanctions came about at a time when its impact on crime could not be measured. It was believed that harsh punishments were inherently just and that delivering them in public would have a strong deterrent effect. The torturous methods of execution for which the medieval period is known serve as a vivid reminder of the barbarity of that system.

The tide turned on this approach in the 18th century. Sentences of corporal punishment began to be commuted to forced labour, sometimes combined with transportation to Australia. This was the birth of incarceration as we now know it, as a punishment in itself.

Since then, the focus has shifted to rehabilitation. However, a strong punitive element remains in our current system.

**Incarceration is an intrinsically harsh punishment. Why then do we mete it out so readily?**

English-style law is subject to a constant process of ad-hoc additions and subtractions, but this process is not guided by a coherent underlying philosophy. After centuries of revision and augmentation, far from a consistent system with a clear rationale for when, how, why and against whom incarceration should be used, we have been left with a monster designed by committee.

There are clearly people who present so great a danger to others that something must be done. The public rightly expects to be protected from those who have committed acts of terrible violence and who demonstrate no remorse or desire to change. It may very well be that prison is the only place for such people.

However, such people do not comprise the majority of the prison population. We use incarceration against many people who do not pose any serious threat to others. We also have no reason to believe that people with drug-dependence problems or those who cannot afford to pay fines will be ‘reformed’ by spending time in prison.

It seems unlikely that the retention of punitive elements in a system that ostensibly seeks to rehabilitate and reform is improving outcomes. Centuries after corporal punishment was phased out in the West and the modern prison was born, we are yet to seriously confront this persistent, base element of our approach to criminal justice.

If the punitive approach to incarceration is harming a great many people without making the rest of us safer, perhaps it’s time we left it behind.

This article is part of the ‘Beyond Prison’ series, which examines better ways to reduce re-offending, following the recent ‘State of Imprisonment’ series.

**Kathryn Snow** is Researcher in Epidemiology, University of Melbourne.

**Lynn Gillam** is Academic Director/Clinical Ethicist, Children’s Bioethics Centre at the Royal Children’s Hospital, and Associate Professor in Health Ethics at the Centre for Health and Society, University of Melbourne.

What should punishment achieve in our criminal justice system?

In considering the various aims of punishment, Emily Meller questions the reasoning and differing goals for the use of punishment in our justice system. What is the point of criminal punishment at all?

The rate of imprisonment in Australia is at an all-time high, doubling in the last 25 years alone. It’s the harshest form of punishment in our judicial system – and it’s expensive, with some estimates stating it costs $100,000 to incarcerate a person for a year. So perhaps it’s a good time to ask – what is the point of criminal punishment at all?

Broadly speaking, the aim of criminal punishment is to reduce crime rates. That’s fairly obvious. But what is surprising is that there is no single aim for punishment in our criminal justice system – and very little consensus on what that aim ‘should’ be.

Broadly speaking, the aim of criminal punishment is to reduce crime rates. That’s fairly obvious. But what is surprising is that there is no single aim for punishment in our criminal justice system – and very little consensus on what that aim ‘should’ be.

It is often the subject of much debate. After all, as it was found in the 1989 case of Hoare v R, the punishment should be proportionate with the crime.

Often, this ‘fit’ is based on the level of ‘wrongness’ of a crime – murder is accepted to be a far worse crime than exceeding the speed limit on a clear road, for example. Therefore, one is punished with imprisonment, and the other often addressed with a fine. But there are far more grey areas, and this adds a lot of complexity to the debate. One thing is obvious: there are different goals for different types of punishment.

The three main aims of punishment are generally (1) retribution, (2) deterrence and (3) reformation. Each has a role to play in the criminal justice system.

Retribution
Retribution is the idea that if a person does something wrong, they should be punished – even if that punishment would serve no apparently useful purpose.

It is also argued that retribution prevents citizens from taking the law into their own hands, by inflicting punishment within an organised system rather than through blood feuds of vigilantism.

Of course, the biggest problem with purely retributive punishment is that it depends on drawing a clear line between ‘right’ and ‘wrong’, and this line is often blurred.

Deterrence
This argument is largely accepted as a valid aim of punishment criminal justice. Simply, that by punishing someone it will prevent future crimes from occurring – both by stopping the individual who was punished, and stopping others from copying their crime for fear of punishment.
The great 18th century legal philosopher, Jeremy Bentham, is largely responsible for expounding this theory. Basically, people try to achieve pleasure and avoid pain – so setting up a punishment that is painful (by removing freedom, or costing money, for example) will ensure people won’t risk the ‘pain’ of punishment for the ‘pleasure’ of committing a criminal act.

The three main aims of punishment are generally (1) retribution, (2) deterrence and (3) reformation. Each has a role to play in the criminal justice system.

But there are huge problems with this theory, the most important being that it almost completely abandons the idea of ‘right’ and ‘wrong’. If Parliament, for example, decided they wanted to stop a crime, they simply need to impose a punishment that is more severe than the benefit the criminal gets.

This ignores factors such as socio-economic status, desperation or mental illness, all of which are highly relevant to criminal behaviours.

For example, it would take a very harsh punishment to deter a starving person from stealing a slice of bread. By contrast, it wouldn’t take much to deter a rich person from committing fraud to get more money.

But, under the theory of deterrence, the punishment for the former would be much harsher than the latter. Does that seem just?

Of course, deterrence is still a useful idea for certain punishments. Speeding fines, for example, are almost purely deterrent. But they prove to be an effective mechanism because the punishment of a hefty fine is generally seen as proportionate to the crime of breaking the speed limit.

Deterrence also has a very important role in maintaining law and order generally – if you know the punishment is harsh in advance, it will impact your decision to commit the crime.

If nothing else, at least it provides a framework for most citizens to judge whether or not committing a crime is ‘worth’ it, and in an ideal world the answer will always be ‘no’.

Reformation

Also known as ‘rehabilitation’, this kind of punishment has a different aim to the others. Rather than purely reducing crime, it views criminal behaviour as a social disease, one that individuals can be cured of.

The biggest problem, of course, is that the reasons for criminal behaviour are often highly complex and unpredictable. Equally, the risk of re-offending is very difficult to predict.

Should there only be one aim when it comes to criminal punishment?

Clearly, this is complex. One of the most controversial areas currently being debated in relation to this question is around drug offences.

As Christine Wheeler QC told the ABC:

“Deterrence works for people like you and me, who think about consequences and would not commit the offences anyway. It doesn’t work for drug addicts, it doesn’t work for alcoholics, it doesn’t work for people who are mentally ill.”

So when thinking about what the aims of punishment ‘should’ be, it is probably best to stick to the basic idea that the punishment should fit the crime.

This means understanding that imprisonment and deterrence is not the only – or the best – solution in all cases. It’s certainly not the cheapest.
Reducing imprisonment rates in Australia

**IT ISN’T SIMPLY A MATTER OF FATE, IT’S A MATTER OF POLICY**

Policymakers need to move on from the ‘tough on crime’ mantra and look for answers beyond a prison cell, writes Hilde Tubex

If you live in Australia’s Northern Territory there is a good chance that you, or someone you know, is in (or will at some point be in) prison. The NT has Australia’s highest rate of imprisonment, locking up 885 in every 100,000 adult people; not far off one in every 100. But the NT is not alone; in every state and territory of Australia prison populations are increasing, due to an increasingly punitive attitude towards criminal behaviour, mainly driven by policymakers.

So is there any hope for reducing imprisonment rates? Evidence from around the world says yes, and that decreasing rates isn’t simply a matter of fate, but a matter of policy.

Trends in prison populations became a topic of (comparative) criminological research in the 1980s, when most industrialised countries started to experience an increase of their prison population. As a result, academics started to investigate what was driving this trend, which they saw as an expression of a growing punitiveness.

Increasing imprisonment rates didn’t only catch the attention of academics; it also put crime and justice on the political agenda. Politicians realised that criminal behaviour had become a growing concern of society, and the political discourse became more punitive; promising harsher sentences to prevent further offending.

This trend coincided with a growing neo-liberal political orientation, in which society became more individualised, with limited state intervention and greater personal responsibility. Politicians cut down on welfare provisions, which created a growing gap between those who did well on the free market and those who didn’t, who subsequently became more marginalised.

Offending behaviour was increasingly looked upon as an individual responsibility, and one which society had no further accountability for than to punish. This ‘law and order’ approach proved to be electorally successful, and was adopted during the eighties and nineties by both left and right wing politicians. It is, however, in majoritarian two-party systems that this development is most outspoken, while coalition governments are more moderate.

Furthermore, these majoritarian systems seem to be more vulnerable to the impact of media reporting and subsequent perceptions of public opinion. In two-party systems where ‘the winner takes it all’, in contrast with proportional representation, it becomes crucial to win the votes of the majority, and crime and justice are popular topics to secure votes. The media has an important role to play in informing and shaping public opinion. However, in the commercial press the general public is often presented as being punitive, and politicians claim to respond to what the public wants. This is regardless of the fact that more nuanced investigation shows that a well-informed public is open to less punitive responses to crime. Finally, there is the important impact of the judiciary, which also feels accountable to public expectations, or is forced to do so by government interventions, curtailing their discretionary power.

Another important aspect to highlight is that punitiveness impacts most on vulnerable minorities, as demonstrated in the high indigenous over-representation in Australian prison populations. Indigenous people account for 27 per cent of the national imprisonment rate, while they only form about 2.5 per cent of the general population. This
over-representation is most pronounced in the Northern Territory and Western Australia, where indigenous people are respectively 14 and 17 times more likely to be in prison than non-indigenous people.

Looking at these drivers from an Australian perspective, it’s clear that Australia as a country shares a lot of the characteristics that are associated with a more punitive approach, resulting in high prison populations. However, as Australia consists of eight independent jurisdictions, imprisonment rates vary considerably between states and territories: between the high rates of the Northern Territory to more moderate rates, such as 134 in 100,000 in Victoria and 130 in 100,000 in Tasmania.

These differences can be explained by historical and cultural differences between jurisdictions and the prevailing penal culture. This local culture – even in times of growing globalisation – also explains international differences in imprisonment rates, such as the consistently low imprisonment rates in the Scandinavian countries due to a traditionally more social penal policy in which crime is seen as a social problem that needs to be addressed by the society in providing rehabilitation.

However, there are also signs that in other countries, which used to be examples of a punitive approach, the times might be changing. For the first time since the start of the increasing prison population, imprisonment rates are going down in most states of the US, and the tide also reversed in the Netherlands, with significantly decreasing imprisonment rates. More modest decreases are being measured in other European countries, such as Belgium, France and Germany, which means that there might be a case for ‘penal optimism’. While the analysis of this reversed trend is still subject to further investigation, what it does demonstrate is that increasing prison populations are not a matter of fate, but of policy.

So, how can we curb the trend of growing prison populations in Australia? A first step is to inform the public and the media about crime and justice and give them a true picture: that crime rates are actually going down, contrary to the general belief; that prison outcomes are counterproductive and that community-based sanctions have better results; and that sentences are not as lenient as people tend to think they are.

Second, to stop the political ‘law and order’ auction through greater use of evidence-based investigation of what causes crime and how this can best be addressed, particularly for vulnerable groups that are overrepresented in the criminal justice system.

Finally, we need to restore confidence in the judiciary when it comes to sentencing, to limit parliamentary interventions such as minimum mandatory sentences and bail restrictions, and to leave it to the judges to judge, taking into account individual circumstances.

The last few decades may have been about policymakers showing they are ‘tough on crime’, but there is hope for a less punitive future; one where answers lie beyond a prison cell.

Dr Hilde Tubex is an ARC Future Fellow at the University of Western Australia, Faculty of Law.

Sometimes you don’t need hindsight to identify broken social and legal policy. Such is the case with Australia’s slide into following the US lead and becoming a nation of captives. A little known, but alarming, fact is that imprisonment numbers in Australia – both the number of offenders incarcerated and the growth in numbers – are now at record highs, and by a considerable margin.

Incarceration rates have fluctuated considerably since federation. At the turn of the 20th century, the imprisonment rate per 100,000 (adult) population was relatively high: 126 persons per 100,000 adults. This dropped to 52 per 100,000 by 1925. Following a period of moderate fluctuation, in the last two decades the prison population has more than doubled: an unprecedented occurrence in Australian history.

The number of prisoners broke through the 30,000 mark for the first time on June 30 2013, at which point the rate of imprisonment was 170 prisoners per 100,000 adults. The current imprisonment rate is 186 per 100,000 people.

In contrast to most other developed countries, this rate is palpably high. The rate in Canada is 118 per 100,000. The incarceration rate in Australia is nearly three times higher than in Scandinavian countries.

Standing apart from these trends is the world’s greatest incarcerator, the United States, which imprisons more than 700 people per 100,000 – an increase of more than 400% in three decades.

While the Australian incarceration rate is low compared to the US rate, we are highly inefficient at locking up prisoners. It costs every state and territory at least A$80,000 to house each prisoner for a year, compared to around A$30,000 in the US. Hence per capita our spending on prisons is significant in relative and absolute terms.

White-collar criminals, drug traffickers and social security cheats irritate us and inconvenience our lives, but they should only go to jail in the rarest of circumstances. The pains of imprisonment are normally a disproportionate response to their crimes.

And it is to the US where we should now be looking to ascertain the fall-out from an unabated tough (and dumb) on crime policy. The extensive use of imprisonment in the US has finally reached a tipping point. The community can no longer readily absorb the cost of a US$60 billion annual prisons budget.

Radical measures are being implemented to reduce prison numbers. The most recent is effectively opening the prison gates to release thousands of sentenced offenders.
In April 2014, the US Sentencing Commission voted to reduce the sentencing guideline level for most federal offences of drug trafficking. These changes will apply retroactively, meaning that more than 46,000 prisoners are eligible to have their cases reviewed for a penalty reduction. On average, penalties are likely to be reduced by two years and one month, resulting in savings of approximately 80,000 prison bed years.

**Imprisonment isn’t working**

Increasing prison numbers might be tolerable if this achieved a positive community outcome. However, the evidence is to the contrary (the author analyses the Australian data in a forthcoming article for the *Australian Bar Review*, entitled ‘Jail Up, Crime Down Does Not Justify Australia Becoming an Incarceration Nation’). It does not reduce the rate of serious crime, discourage potential offenders or reduce re-offending rates.

In many cases, imprisonment is just the wanton infliction of gratuitous punishment by an unthinking legislature and a reflexive judiciary.

Sentencing is the area of law where there remains the biggest gap between what science tells us can be achieved through a social institution (criminal punishment) and what we actually do. We will continue to have a runaway incarceration rate until governments and courts start making evidenced-based policy and sentencing determinations. This would mean imprisonment is essentially reserved for the offenders we have reason to fear or who have inflicted serious suffering on others, not those that we simply dislike.

The start and endpoint to the solution is to confine jails (almost exclusively) to those we have reason to be scared of: sexual and violent offenders.

It is repugnant that more than 40% of prisoners in Australian prisons are serving sentences for non-violent or non-sexual offences. White-collar criminals, drug traffickers and social security cheats irritate us and inconvenience our lives, but they should only go to jail in the rarest of circumstances. The pains of imprisonment are normally a disproportionate response to their crimes.

**Time to reverse the trend to excessive punishment**

There is also a powerful normative basis for limiting prison numbers. Imprisoning offenders for a moment longer than is necessary to achieve a demonstrated (attainable) objective of sentencing constitutes a violation of one of the most universally held moral norms: the prohibition against punishing the innocent. The violation of this norm is so prevalent in Australia that it is in fact in our prisons where the greatest number of human rights infractions occur.

And this is one problem that is not the total fault of populist politicians. Our courts have considerably contributed to the crisis by unilaterally increasing sentencing tariffs for drug and white-collar offenders over the past decade. This is supposedly in order to deter other offenders.

The strategy has been a brilliant failure. To appreciate the extent of this debacle you don’t need to look out of your window to see that illicit drugs are increasingly available on every street corner. You merely need to ask criminologists, who are overwhelmingly convinced about the failure of general deterrence theory.

Australian governments need to develop a strategy to reduce incarceration numbers to about 100 per 100,000 (consistent with historical trends). Without a systematic overview, the unprecedented increase in incarceration levels has the potential to contribute to a fiscal crisis and an ongoing human rights tragedy, devoid of a principled solution – as we are witnessing in the United States.

The start and endpoint to the solution is to confine jails (almost exclusively) to those we have reason to be scared of: sexual and violent offenders.

**Mirko Bagaric** is Dean and Head of School of Law, Deakin University.
HOW TO REDUCE INDIGENOUS IMPRISONMENT RATES

Addressing the underlying causes of crime is the best way to prevent Indigenous Australians being put behind bars, according to a leading human rights advocate. Felicity Nelson reports

There is the clearest of evidence that people who come into the prison system are people who experience multiple and complex forms of social and economic disadvantage,” said Ben Schokman, director of international advocacy at the Human Rights Law Centre (HRLC).

“They are people who have lower education levels, low employment rates, inadequate housing – people with disability or experiencing mental illness,” Mr Schokman said.

“So it is no accident that Aboriginal and Torres Strait Islander peoples, who are disadvantaged on every single social and economic indicator, are also so significantly over-represented in the criminal justice system.”

Mr Schokman spoke to Lawyers Weekly ahead of an event, ‘Breaking the cycle of Aboriginal over-imprisonment’, to be hosted at King & Wood Mallesons’ Melbourne office on 18 May. This event is part of the National Justice Coalition’s Change the Record campaign, launched last week, which aims to reduce the numbers of Aboriginal and Torres Strait Islander peoples within Australian prison populations.

Aboriginal and Torres Strait Islander people represent only 3 per cent of the total population, yet more than 28 per cent of Australia’s prison population. Indigenous men are twice as likely to be in prison than in university, while indigenous women are 34 times more likely to be hospitalised as a result of domestic violence than their non-indigenous counterparts.

“It is clear that current approaches to addressing these problems are just not working,” Mr Schokman said.

Build communities not prisons

At $100,000 per person per year, prison sentences are an expensive way to punish individuals and, at the same time, provide little in the way of rehabilitation and support that could help address the root causes of violent and unlawful behaviour.

“Prison is actually a very blunt and extremely costly response to reduce crime, which takes place after the damage is done,” Mr Schokman said. “There needs to be much more done to prevent crime in the first place. Such measures will not only be much more effective, but will also save millions of dollars wasted on correctional spending.”

To take just two examples, people who end up in the child protection program or are victims of domestic violence are significantly more likely to come into contact with the criminal justice system later in life, he said.

The countries that are most successful in reducing crime recognise that getting tangled up in the criminal justice system represents...
a failure of society rather than a personal failing, he added.

“[People in prison] are people for whom the education system did not work, the health system has not been appropriate and so prisons are seen as places where much more holistic and personalised support can be provided.”

In step with this line of thought, the first policy position in the Change the Record plan is to recognise that “every dollar spent on prisons is one less dollar available to invest in … education, health, disability, housing, employment and other programs”.

**Localise the problem**

Mr Schokman argues that the best way to solve a community problem such as crime is to ask communities themselves.

“Government responses must focus on … empowering communities to take ownership and control over identifying solutions,” he said.

Pilot programs around Australia are putting this into action. For instance, a program aimed at involving the community is under way in Bourke, which had the highest rate of assault, break-ins and car thefts in NSW in 2013.

There are also successful initiatives that can help individuals during their interactions with the criminal justice system. The Koori Courts in Victoria, for example, take a much more therapeutic approach to crime and allow the participation of the Aboriginal (Koori) community in the court process.

**The countries that are most successful in reducing crime recognise that getting tangled up in the criminal justice system represents a failure of society rather than a personal failing.**

Of course, the simplest way of reducing the number of indigenous people in prison is to reconsider prison as a sentencing option for minor crimes.

“In many instances, sending a person to prison is unnecessary and can contribute to further involvement in the criminal justice system,” the Change the Record policy states.

“We need to rethink the costly practice of keeping people behind bars and consider more effective community options.”

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Footage aired last week of children being abused in a Northern Territory prison sent shockwaves around the nation. These images forced us to grapple with the problem as if it were breaking news, despite the fact that so many people knew so much about it for so long.

Nevertheless, a royal commission is being established, and although many would like to see a wider scope, accountability for abuses of this nature must be the ultimate result.

But there is a much broader question to be asked about the use of incarceration in circumstances such as these. When we know that prison entrenches harm, as well as crime, it is hard to imagine how the deprivation of liberty in its current form – let alone the unmitigated deprivation within the walls of Don Dale – could really correct or rehabilitate anyone.

There is a reason why international law demands that incarceration or detention be an option of absolute last resort where children are concerned. When a significant proportion of all offenders come into custody profoundly disadvantaged – and traumatised – in some way, imprisoning them only compounds these effects.

Without doubt, there are hardened offenders for whom there seem no other options but incarceration. This applies to a small minority and means that more work has to be done around providing effective supervision and support in the community once prisoners are released.

Notably, very few – if any – of the most-hardened offenders are women or children. In fact, incarceration is a policy designed mainly around men, with women and children the collateral damage in a centuries-old battle to contain the impacts of poverty, maintain the authority of some men and punish the infractions of others.
This is not an essentialist or patronising statement. The reality is that, with few exceptions, women’s offending differs from men’s. Low-level drug offences, property crimes and theft are the primary offences committed by women. Most are categorised as minimum security and are sentenced to short custodial periods that leave them ineligible for the limited rehabilitation services available.

Nevertheless, while in prison they may be exposed to strip searches and other intrusive surveillance and restriction. In Victoria until just over a decade ago, this potentially included shackling women while they gave birth, as apparently male decision-makers considered labouring women a flight risk.

Meanwhile, we know that the majority of incarcerated women are victims of some kind of gendered violence. This in turn contributes to their offending, either through its association with mental illness, homelessness and other forms of disadvantage or through the foisting of debt or culpability on them by their abusers.

Then our sympathy evaporates and we send them to an environment that entrenches others’ control over their bodies. The only advantage is that it sometimes offers a brief period of respite from the people who have hurt them outside.

In other words, we are spending vast amounts of money on incarcerating women and young people who, for the most part, need more protection from the community than the community needs from them.

Also, the prevalence of women’s prior victimisation raises the question of whether would we need a women’s prison – or juvenile detention – at all were it not for men’s use of gendered violence?

Posing this question is not about demonising men. Incarceration is not a smart response for most of the people in our prisons – male, female, or transgender. A significant proportion of all prisoners are from backgrounds of intergenerational poverty and low educational attainment, are living with mental illness or an acquired brain injury.

Given the vast majority of violent offenders – from whom the community rightly wants protection – are men, and we know the criminogenic effects of prison – not only on those in custody, but on the children left behind – the use of this as a mainstream policy response seems even more bizarre.

The community rarely questions the use of incarceration as a response to crime. But this is an opportunity to ask ourselves what the purpose of a corrections system really is. Is it to punish? Detain? Rehabilitate? Shelve intractable problems?

Or should it function as a positive intervention which protects the vulnerable from further harm?

Incarceration may have been a useful policy for those in privileged positions down the ages who were keen to secure the authority of the state. For the most part, however, it’s become a stone around our necks – unfit for purpose for the majority of those it houses, and definitely unfit for the women and children we’re increasingly locking away.

Rob Hulls is Director, Centre for Innovative Justice, RMIT University. Elena Campbell is Manager, Policy and Research, Centre for Innovative Justice, RMIT University.

We need to support efforts to create a true system of rehabilitation, asserts psychologist and academic, Andrew Day

Although criminal justice agencies in Australia have, in recent years, adopted an increasingly ‘get tough’ approach, responses to crime that rely on punishment alone have failed to make our communities safer. Instead, they have produced an expanding prison system. This has the potential to do more harm than good and places considerable strain on government budgets.

Increasing prison sentences does little to deter criminal behaviour. Longer sentences are associated with higher rates of re-offending. When prisoners return to their communities, as the vast majority inevitably do, the problems multiply.

Exposing the limitations of punishment

In this context, it becomes important to think carefully about public policy responses that aim to punish and deter offenders. Psychologists have been studying punishment under well-controlled laboratory conditions with both animals and humans for nearly 100 years. Its effectiveness in promoting short-term behavioural change, or even in suppressing negative behaviour, depends on rather specific conditions being in place.

For punishment to work it has to be predictable. Punishment also has to be applied at maximum intensity to work, or else tolerance and temporary effects result. Yet applying very intense levels of punishment for many offences goes against our sense of justice and fairness.

Increasing prison sentences does little to deter criminal behaviour. Longer sentences are associated with higher rates of re-offending. When prisoners return to their communities, as the vast majority inevitably do, the problems multiply.

The threat of punishment, no matter how severe, will not deter anyone who believes they can get away with it. It will also not deter those who are too overcome by emotion or disordered thinking to care about the consequences of their behaviour.

Punishment also has to be immediate. Delayed punishment provides opportunities for other behaviours to be reinforced. In reality, it often takes months – if not years – for someone to be apprehended, appear in court and be sentenced.

Working towards more effective rehabilitation

Many of the conditions required for punishment to be effective will not exist in any justice system. It follows that policies and programmes that focus on rehabilitating offenders will have a greater chance of success in preventing crime and improving community safety.

The origins of offender rehabilitation in Australia can be traced back to the early penal colonies and, in particular, to the work of Alexander Maconochie, a prison governor on Norfolk Island in 1840. Maconochie introduced the idea of indeterminate rather than fixed sentences, implemented a system of rehabilitation in which good behaviour counted towards prisoners’ early release, and advocated a system of aftercare and community resettlement.

Maconochie’s ideas built on those of the great social reformers of 18th-century Britain, notably Quakers such as John Howard and Elizabeth Fry. They were among the first to try to change prisons from what they called “institutions of deep despair and cruel punishment” to places that were more humane and had the potential to reform prisoners’ lives.

These days, though, offender rehabilitation is often thought about in terms of psychological treatment. We can chart the rise of current programmes according to the broad traditions of psychodynamic psychotherapy, behaviour modification and behaviour therapy and, more recently, the cognitive-behavioural and cognitive approaches that characterise contemporary practice.

The earliest therapeutic work in the psychoanalytic tradition
saw delinquent behaviour as the product of a failure in psychological development. It was thought this could be addressed through gaining insight into the causes of offending. A wide range of group and milieu therapies were developed for use with offenders, including group counselling and psychodrama.

In the 1980s, more behavioural methods – such as token economies, contingency management programmes and 'time out' – replaced psychotherapy.

There are good grounds to develop standardised incentive models in Australia’s prisons. Community-style therapeutic programmes for prisoners with substance use problems in Victoria, NSW and the ACT represent substantial advances in practice.

These programmes take advantage of the significant therapeutic opportunities that arise by looking closely at prisoners’ social functioning and day-to-day interactions. They actively encourage offenders to assume responsibility not only for their own behaviour, but for that of others.

However, rehabilitation today is almost always associated with cognitive-behavioural therapy. This targets a relatively narrow range of crime-producing (or criminogenic) needs, including pro-criminal attitudes – those thoughts, values and sentiments that support criminal conduct. Programmes also dedicate a lot of time to trying to change personality traits, such as low self-control, hostility, pleasure – or thrill-seeking and lack of empathy.

Not everyone can be successfully treated. Substantial evidence now exists, though, to suggest that this type of approach does produce socially significant reductions in re-offending.

**Essential steps in making corrections policy work**

The challenges lie in ensuring that the right programmes are delivered to the right people at the right time.

First, it is important that low-risk offenders have minimal contact with higher-risk offenders. Extended contact is only likely to increase their risk of recidivism. This has implications for prisoner case management, prison design and for the courts.

Courts have the power to divert low-risk offenders from prison and thus minimise contact with more entrenched offenders. Related to this is the need to develop effective systems of community-based rehabilitation, leaving prisons for the most dangerous and highest-risk offenders.

Second, concerted efforts are required to develop innovative programmes for those who identify with Aborigional or Torres Strait Islander cultural backgrounds. They are grossly over-represented across all levels of the criminal justice system.

Third, staff need to be properly selected, trained, supervised and resourced to deliver the highest-quality rehabilitation services to the most complex and challenging people.

Finally, it is important to demonstrate that programmes actually make offenders better, not worse. The types of evaluation that are needed to attribute positive change to programme completion are complex, require large numbers of participants and cross-jurisdictional collaboration. A national approach to programme evaluation is sorely needed.

This is not to suggest that criminal behaviour shouldn’t be punished – only that we should not rely on punishment by itself to change behaviour. We need to create a true system of rehabilitation that can enhance the corrective impact of punishment-based approaches.

It also doesn’t mean that punishment never works. It may work reasonably well with some people – perhaps those who are future-oriented, have good self-monitoring and regulation skills, and who can make the connection between their behaviour and negative consequences months later.

Unfortunately, many people in prison simply aren’t like this. The challenge, then, is two-fold: to find ways to make punishment more effective and to tackle the causes of offending through high-quality rehabilitation.

Correctional services often get little credit for their efforts. They are widely criticised when things go wrong. However, their efforts to rehabilitate offenders are not only sensible, but also cost-efficient and practical.

We need to support efforts to create a true system of rehabilitation. Such a system will be comprehensive, coherent and internally consistent in applying evidence-based practice at all levels.

This article is based on the author’s keynote presentation to the 2015 APS College of Forensic Psychologists Conference in Sydney.

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**THE CONVERSATION**

Justice Reinvestment: investing in communities not prisons

Research shows that smart investment which tackles the causes of crime can be cost-effective. Justice reinvestment is a new approach that redirects money spent on prisons to community-based initiatives which aim to address the underlying causes of crime. It promises to cut crime and save money.

Harsher sentencing, not crime, is driving prisoner numbers up and costing billions
Over the past decade, Victoria’s prison population has increased dramatically, rising 68% from 2004 to 2014.1 Adjusted for population growth, this represents an increase in the rate of imprisonment of 43.6% in just over ten years.2 In general, it seems harsher sentencing, driven by sentencing law changes and by changing judicial practice, is the main driver of prison growth.3 In Victoria, bail and parole changes have also played a role.

Prison is a blunt, harmful and extremely expensive way to try to control crime. There are better and more effective ways of cutting crime.

Justice reinvestment: cutting crime and saving money
Justice reinvestment redirects money spent on prisons to community-based initiatives which aim to address the underlying causes of crime. In the United States, justice reinvestment is being used to better manage prison spending and redirect some of the savings to community programs that reduce re-offending and the demand to build more prisons.4

Research indicates that tackling disadvantage, increasing income equality and providing stable housing and employment opportunities can reduce crime.5 The money that would have been spent on housing medium to low security prisoners is instead invested in supporting programs and services in local communities which aim to address systemic disadvantage.6

How justice reinvestment works
Implementing justice reinvestment involves identifying disadvantaged communities to determine where funds can be most effectively allocated.10 An Australian study showed that in Victoria, 25% of prisoners came from just two per cent of postcodes.11 Entrenched disadvantage is concentrated in a small number of rural centres and urban hubs.12 There is a significant correlation between key elements of disadvantage such as low-income families, incomplete schooling and offending.13

Reinvesting prison spending on communities allows a broad range of programs from health care, housing, education or job training to be strategically implemented in these identified areas to maximise the potential to reduce crime and re-offending.14

Justice reinvestment could work in Victoria
In response to rising prisoner numbers and serious prison overcrowding, from 2010-2014, the Victorian Government invested more than $1 billion to upgrade and increase the capacity of Victoria’s prison system.7 As harsher sentencing sends more people to prison for longer, the Government is building new prisons to accommodate them and pay more operating expenses to maintain them. Prison operating costs have increased by 44% in just two years with the cost of running Victoria’s prison system set to top $1 billion a year excluding construction costs.8 It costs around $98,000 a year to house each prisoner and an estimated $500,000 per prison bed in construction cost.9 So if we can divert 1,000 people away from prison, this will generate around $598 million in savings. These funds could then be reinvested in programs and services that address the causes of crime.

How justice reinvestment saves money
Justice reinvestment provides a viable option as prison expansion costs become unsustainable. By helping to identify the local communities on which to focus, it also promotes the most efficient spending on community development.

By addressing the systemic socio-economic factors contributing to crime, justice reinvestment can provide substantial savings.15 For example, after successfully implementing a justice reinvestment program, the US state of Kansas saved $80.2 million over 5 years while Texas achieved a saving of $210.5 million in 2008-2009. Both states halted the growth of their prison populations by undertaking policies including funding for substance abuse programs and halfway houses for those on parole and increasing access to education opportunities in prisons.16 They also expanded specialist courts such as drug courts to ensure more effective sentencing by addressing the causes of offending.17

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Justice reinvestment is being embraced in the US and the UK

In the United States, justice reinvestment is being used in 17 states to better manage prison spending and redirect some of the savings to community programs that reduce re-offending and the demand to build more prisons. In eight states where justice reinvestment policies have been in place for more than a year, reduced prison populations are expected to result in savings ranging from $7.7 million over 5 years to $875 million over 11 years with total projected savings set to total about $4.6 billion. 24 Kansas has seen a 7.5% reduction in their prison population, and decreases in both parole revocation and revocation by 48% and 35% respectively. 19

During the same period of justice reinvestment and prison population reduction, violent crime rates have dropped by 13% in Kansas and 4% in Texas.20 While further long-term analysis is required to understand the reasons for the drops in crime rates, these figures appear to indicate that justice reinvestment can save money and reduce crime. Similarly, the Justice Committee of the United Kingdom House of Commons has recognised the benefits of justice reinvestment for providing more responsive programs to local needs for services, and in restructuring the organisation and funding of the criminal justice system to reflect the correlation between social exclusion and offending.21 Justice reinvestment pilots have been implemented in six local UK areas, with the final evaluation reports recently published.22 Justice reinvestment is a new approach that redirects money spent on prisons to community-based initiatives which aim to address the underlying causes of crime. It promises to cut crime and save money.

Justice reinvestment in Australia

Four parliamentary committee reports have recommended state governments consider or trial justice reinvestment programs.23 Similarly organisations like the Australian Human Rights Commission have recognised the potential of justice reinvestment to reduce over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system given it can target high recidivism rates and patterns of intergenerational offending through its community-based approach.24

A justice reinvestment approach is now being tried in two towns in New South Wales: Cowra and Bourke.25

Smart Justice Solutions

• Greater investment in programs that tackle the causes of crime like justice reinvestment rather than greater investment in prisons.
• Research, evaluation and pilot programs to determine the viability and impact of justice reinvestment in Victoria.

NOTES

2. Above n 1. Year average figures used except for 2014 where June

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WE NEED TO RAISE THE BAR OF OUR CRIMINAL JUSTICE SYSTEM

Public safety should be the first and last goal of criminal justice, contends Andrew Bushnell from the Institute of Public Affairs

The recent Four Corners exposé of mistreatment of young people in juvenile detention in the Northern Territory shocked all Australians. The Prime Minister has correctly called a Royal Commission into the abuse.

Although the terms of reference for the review are quite narrow, Australia should take this incident as an opportunity to reconsider our approach to criminal justice more generally. Because the kids who suffer in abusive detention centres will have a tough time staying off the path to a life of crime, where they will join a growing number of their countrymen, and from which there is currently little chance of escaping given the way our criminal justice system operates.

We have a rapidly growing prison population. There are now more than 36,000 people in Australian prisons, up from less than 9,000 just 40 years ago. At 196 per 100,000 adults, Australia’s incarceration rate is at its highest level since just after Federation. So while Gillian Triggs is exaggerating when she says Australia has a “culture of detention”, there is a kernel of truth to her claim. We are using incarceration more and more.

And this approach does not come cheap. On average, an adult prisoner costs taxpayers $100,000 per year. Total nationwide expenditure on corrective services is now more than $2.6 billion annually.

Perhaps this expenditure could be justified if our criminal justice system was getting outstanding results. Unfortunately though, there is reason to believe that the growing use of incarceration is not preventing crime from rising. It is also not stopping people from becoming career criminals. 59 per cent of adult prisoners have been incarcerated before. So not only is incarceration expensive, we are losing even more money in the long run by creating conditions that increase the chances of recidivism.

Public safety is the first and last goal of criminal justice. However, as the Four Corners report reveals, being a hawk on public safety should mean taking criminal justice reform seriously. Does anyone seriously think that these kids are more likely to become productive members of society after suffering this kind of abuse? As long as we intend to release those we place in prison or detention back into society, we need to care about what condition they will be in when they get out.

So we should consider whether everyone who is being locked up actually needs to be, and also what happens to offenders once they leave prison.

In 2013, the Senate held an inquiry into the value of Australia adopting a justice reinvestment model. Justice reinvestment is the idea that imprisoning fewer people saves money, which can be redirected to other programs aimed at reducing crime.

The inquiry went nowhere, largely because the scope of the proposed reinvestment was too wide. Many people seem to think that justice reinvestment should mean investing in community programs with only a tangential link to criminal justice, on the premise that crime is a result of social conditions rather than individual choice. This ideological understanding of crime will never form the basis of sound, much less popular, criminal justice reform.

Instead, justice reinvestment should mean strengthening probation, parole, and re-entry services, and the police. It should mean improving criminal justice, not abolishing it. The premise must be that individuals are responsible for their own choices, and the goal should be to facilitate and incentivise gainful employment. This is how we limit recidivism and protect our communities.

Even though Aboriginal Australians are over-represented at all levels of the criminal justice system, it would be a mistake to focus reform efforts solely on this fact. Reforms should concentrate on the incarceration of non-violent offenders – those guilty of property offences, drug offences, and regulatory offences. This focus is consistent with community safety and equality before the law, and will also benefit many Aboriginal Australians.

It is worth noting too that a justice reinvestment approach that strengthens the frontline of the criminal justice system is the model that best applies to the small, regional communities in which many Aboriginal Australians live.

The social and economic costs of Australia’s approach to incarceration are growing, and yet crime and recidivism are not dropping. There is therefore a prima facie case for reform that demands investigation. Put bluntly, the status quo is making us less safe, wasting our money, and destroying lives. This is a nationwide issue, calling for leadership at all levels of government. Criminal justice reform is a real opportunity to do some good for any politician with the courage to take it on.

Andrew Bushnell is a Research Fellow, Institute of Public Affairs.
Rethinking justice: vulnerability report

This executive summary from the second ‘Vulnerability Report’ by Australian Red Cross focuses on Australia’s current criminal justice systems. It highlights the inhumane effects of growing adult imprisonment rates and the failure of current approaches to reduce crime, target government expenditure effectively and produce safer communities.

Growing adult imprisonment rates and costs: inhumane, inefficient and ineffective

Prisons are a necessary part of society. People who break the law deserve appropriate punishment, including appropriate custodial sentences. However, the aim of any prison system must be also to prevent people from re-offending. Where we have people captive we should use this time to maximise the return on the cost to society. But Australia has not used its expenditure on prisons as an investment in the future, only as a cost of the past. We have over-invested in prisons with current expenditure of $3.4 billion which is failing to deliver effective justice, social or economic outcomes.

Rethink and reinvest: from prisons to prevention and diversion

With the prison population doubling in the last 20 years, and the occupancy rate of Australian prisons at 104.4%, something needs to change. Australian Red Cross calls on Australian governments to change our justice systems. More effective expenditure could deliver safer, more cohesive communities, support more productive lives for people involved in the criminal justice system and save governments millions of dollars.

Australian Red Cross believes that prisons should focus on people involved in serious crime and who pose a high risk to the community. Evidence shows that many people going into prison come from highly disadvantaged communities and often have multiple and complex problems that are not addressed in prison. These people leave prison having not received adequate treatment or support and with little ability to successfully re-enter society – hence the cycle of crime continues for them and their communities.

Australia has not used its expenditure on prisons as an investment in the future, only as a cost of the past.

This unproductive expenditure on prisons should be invested in programs that both reduce crime and prevent people entering the criminal justice system. More effective support needs to also be provided for people to reintegrate into the community after their release. This redirection of spending from prisons to early intervention and support programs is being adopted overseas under the banner of ‘justice reinvestment’ – and there are some early trials being conducted in Australia.

Doing justice better: through justice reinvestment

The analysis of justice reinvestment both in Australia and overseas suggests this approach is more effective than the current approaches to justice. Justice reinvestment invests in people and communities to provide support, treatment and services that address
Issues in Prisons

the underlying issues confronting people who commit less serious offences. These issues include homelessness, mental health, deep social exclusion, and poor education and employment histories. Evidence suggests that it is more efficient and effective to address the causes and thus reduce the need for (and greater cost of) incarceration.

Across Australia, researchers have identified those communities where social exclusion and disadvantage are driving crime and other social issues. Australian Red Cross believes there are great opportunities to work with community leaders to address the specific causes of crime. Early indications from trials in Australia suggest that adopting a local justice reinvestment approach will pay bigger long-term dividends than a ‘tough on crime’ approach.

**RECOMMENDATIONS**

1. That all governments in Australia rethink and change their approaches to justice to achieve lower crime rates, lower incarceration rates, reduced prison costs and stronger, safer communities.

2. That all governments in Australia introduce a justice reinvestment approach and jointly support its implementation through the Law, Crime and Community Safety Council of the Council of Australian Governments.

3. That all governments in Australia establish, fund and evaluate justice reinvestment trials across Australia in specific geographic communities with high rates of crime to determine how justice reinvestment can be applied in Australian contexts.

4. That state and territory governments adopt the justice reform proposals outlined in this report to:
   - Prevent crime and recidivism
   - Increase non-custodial sentencing
   - Improve parole and reintegration to the community.

5. That, as a first step, all governments in Australia commit to:
   - A 10% reduction in adult imprisonment rates over the next five years
   - A Closing the Gap justice target to reduce the unacceptably high adult imprisonment rates of Aboriginal and Torres Strait Islander peoples by 50% over the next five years.

**Closing the Gap on Aboriginal and Torres Strait Islander incarceration rates**

Aboriginal and Torres Strait Islander peoples and communities are particularly impacted by our criminal justice system, with Aboriginal and Torres Strait Islander peoples being incarcerated at rates 13 times greater than non-indigenous people. There has been an extraordinary recent growth in prisoner numbers among Aboriginal and Torres Strait Islander peoples with an 88% growth in indigenous prisoners since 2004. The Closing the Gap Strategy should have a focus on Aboriginal and Torres Strait Islander incarceration and justice issues and should incorporate targets for reducing rates of adult imprisonment for Aboriginal and Torres Strait Islander peoples.

**Save on prisons and reinvest in crime reduction**

Australian Red Cross has estimated that over a five-year period substantial funds could be freed up from expenditure on prisons and redirected to expenditure targeted on reducing crime.

- If the rate of incarceration was simply held at current levels through justice reinvestment and other justice reforms, then savings of almost $1.1 billion would be generated over five years in correctional costs alone.
- If the rate of incarceration was reduced by 2% per annum, then savings of almost $2.3 billion could be realised over five years. Part of these savings could be invested in the social support and health services that would, over time, address the underlying causes of crime.

Sustainable decreases in incarceration rates are possible. This has been done in Tasmania, as well as in a number of jurisdictions overseas.

This is not about being soft on crime. The public debate needs to change from being ‘harder’ or ‘softer’ to rethinking what are the most effective responses to crime and applying the available resources to them. Evidence suggests that relatively minimal decreases in the number of people in prisons can be used to fund the community programs and other justice reforms that are likely to have a substantial impact on reducing crime.

The report recommends that governments set targets for reduced incarceration rates and a Closing the Gap justice target for Aboriginal and Torres Strait Islander peoples. Adoption of these targets would allow communities to hold governments to account for taking action on these important reforms.

Australian Red Cross recognises that this is not just governments’ business. It requires a whole of community response and will only be achieved through working together. Red Cross stands ready to play its part in building a safer, more humane and socially cohesive society.

WORKSHEETS AND ACTIVITIES

The Exploring Issues section comprises a range of ready-to-use worksheets featuring activities which relate to facts and views raised in this book.

The exercises presented in these worksheets are suitable for use by students at middle secondary school level and beyond. Some of the activities may be explored either individually or as a group.

As the information in this book is compiled from a number of different sources, readers are prompted to consider the origin of the text and to critically evaluate the questions presented.

Is the information cited from a primary or secondary source? Are you being presented with facts or opinions?

Is there any evidence of a particular bias or agenda? What are your own views after having explored the issues?

CONTENTS

BRAINSTORM 52
WRITTEN ACTIVITIES 53
DISCUSSION ACTIVITIES 54
MULTIPLE CHOICE 55
Brainstorm, individually or as a group, to find out what you know about prison issues.

1. What is imprisonment, and what is its intended purpose?

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2. Describe the major health issues for prisoners in Australia. (Include examples)

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3. What does the term ‘rehabilitation’ mean in relation to prisoners? (Include examples)

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Complete the following activities on a separate sheet of paper if more space is required.

“In federal elections, prisoners can vote as long as they are serving a sentence of less than three years.”

In his article *Should prisoners be allowed to vote?*, Ugur Nedim poses the question: “Is it ever appropriate to disenfranchise those who break the law or is the right to vote inalienable even if a person has committed serious crimes?”. Write a few paragraphs addressing whether or not you believe prisoners should be allowed to vote, and include reasons for your answer.

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Write a few paragraphs briefly outlining the historical evolution of the criminal punishment system in Australia, as it moved from corporal punishment practices through to modern approaches in rehabilitation.

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Complete the following activities on a separate sheet of paper if more space is required.

“With the prison population doubling in the last 20 years, and the occupancy rate of Australian prisons at 104.4%, something needs to change.”

Australian Red Cross, Vulnerability Report 2016.

Consider the above statement and form into groups of two or more people. Discuss possible alternatives to the current system of crime punishment in Australia. Include examples as well as your reasons for putting forward these alternatives. Discuss your ideas with other groups in the class.

“Broadly speaking, the aim of criminal punishment is to reduce crime rates. That’s fairly obvious. But what is surprising is that there is no single aim for punishment in our criminal justice system – and very little consensus on what that aim ‘should’ be.”

Meller, E, What should punishment achieve in our criminal justice system?

Consider the above statement and form into groups of two or more people. Discuss your thoughts on what the aims and goals of criminal punishment should be. In your answer explain the methods with which you believe these aims and goals could be achieved. Discuss your ideas with other groups in the class.
Complete the following multiple choice questionnaire by circling or matching your preferred responses. The answers are at the end of the following page.

1. What is the name of the circular prison devised by Jeremy Bentham to enable a guard to watch all prisoners at all times?
   a. Prison arena  
   b. Rotunda  
   c. Panopticon  
   d. Pentagon  
   e. Condominium  
   f. Compound

2. Prisoners in Australia can vote in federal elections if they are serving a sentence of less than how many years?
   a. 1 year  
   b. 2 years  
   c. 3 years  
   d. 5 years  
   e. 8 years  
   f. 10 years

3. Which of the following are four of the most common offences for which women are imprisoned? (select all that apply)
   a. Unlawful entry  
   b. Theft  
   c. Sexual offences  
   d. Fraud  
   e. Drug offences  
   f. Murder  
   g. Assault

4. Approximately what percentage of female prisoners in Australia are classified as ‘minimum security’?
   a. 10%  
   b. 20%  
   c. 33%  
   d. 50%  
   e. 66%  
   f. 70%  
   g. 90%

5. As of 2016, which Australian state/territory had the highest rate of imprisonment?
   a. Australian Capital Territory  
   b. New South Wales  
   c. Northern Territory  
   d. Queensland  
   e. South Australia  
   f. Tasmania  
   g. Victoria  
   h. Western Australia
6. Respond to the following statements by circling either ‘True’ or ‘False’:

a. In 18th century England, hanging was the most severe penalty and was used widely.  
   True / False

b. Initially, incarceration was not a punishment in itself but simply a way of detaining people until corporal punishment was delivered.  
   True / False

c. The incarceration rate in Australia is nearly three times less than in Scandinavian countries.  
   True / False

d. In Australia, an indigenous adult is approximately 15.4 times more likely to be in prison than a non-indigenous person.  
   True / False

e. Approximately 1 in every 5 prisoners in Australia suffer from serious mental illness.  
   True / False

f. In Australian prisons, all prisoners have access to the internet.  
   True / False

g. It costs approximately $100,000 a year to keep a person in prison.  
   True / False
The use of imprisonment is a fairly recent development. In the eighteenth century in England, hanging was the most severe penalty and it was applied widely. You could be hanged for many offences, including murder, violence, theft or property over a certain value, housebreaking, arson and removing parts of Westminster Bridge (Justice Action, What is prison about?). (p.1)

Eighteenth-century thinkers saw crime as doctors saw illness. It was contagious, so those suffering from it had to be separated one from another and it could be cured by treatment (ibid). (p.1)

For both men and women in custody, the most frequent serious offence was an act intended to cause injury (21% for men, 20% for women) (Segrave, M, The state of imprisonment in Australia: it’s time to take stock). (p.8)

A prisoner’s day is highly structured, with specific times for musters, head counts, meals (eaten communally unless the prisoner is in a residential unit), activities (such as educational, recreational and hobby programs) and work (Queensland Government, Daily life in prison). (pp. 10–11)

Around 1 in every 5 prisoners in Australia suffer from serious mental illness (Human Law Rights Centre, Prisoners and prison conditions). (p.12)

Incarceration rates of Aboriginal and Torres Strait Islander peoples are at least 11 times higher than the rate for non-Indigenous Australians (ibid). (p.12)

Upon entering prison, almost half of Australia’s inmates have a mental illness; one quarter have self-harmed; and one-third are in severe psychological distress (Hall, T, This is why you should care about the health of prisoners). (p.16)

Across Australia, there has been a 140% increase in the inmate population aged over 65 in the last decade (ibid). (p.17)

In federal elections, prisoners can vote as long as they are serving a sentence of less than three years (Nedim, U, Should prisoners be allowed to vote?). (p.18)

There were 917 young people in youth detention on an average night in the June quarter 2016. Just over half (57%) were unsentenced and the remainder were serving a sentence (AIHW, Youth detention population in Australia). (p.19)

The indigenous incarceration rate in 1991 was 14.4%. In the March 2016 quarter, it was 28% (Anthony, T, Data gaps mean indigenous incarceration rates may be even worse than we thought). (p.22)

The Australian prison estate now costs well over A$3 billion a year to operate. And building a prison can cost between $500 million and $1 billion, depending on its location, security level and size (Cunneen, C, How ‘tough on crime’ politics flouts death-in-custody recommendations). (p.25)

Imprisonment rates in Australia are not the result of increased levels of crime, since increases in imprisonment rates have continued while crime rates have levelled or fallen in many categories of crime from 2000. Similar patterns are seen internationally (ibid). (p.25)

Women constitute approximately 8% of all Australian prisoners. However, the total number of women prisoners has grown considerably over the past decade (Bagaric, M, How can we mitigate the crime that is female over-imprisonment?). (p.26)

One-third of male prisoners are classified as minimum security; more than 70% of female prisoners have this classification (ibid). (p.27)

Evidence clearly shows that incarceration does not act as a strong deterrent, since most people – particularly young people – do not make rational, cost-benefit analyses before engaging in illegal behaviour. Recidivism rates in Australia and the US clearly indicate that prisons are not ‘rehabilitating’ most offenders (Snow, K and Gillam, L, What are prisons for? Answering that is the starting point for reform). (p.32)

The Northern Territory has Australia’s highest rate of imprisonment, locking up 885 in every 100,000 adult people; not far off one in every 100 (Tubex, H, Reducing imprisonment rates in Australia). (p.36)

The number of prisoners broke through the 30,000 mark for the first time on June 30 2013, at which point the rate of imprisonment was 170 prisoners per 100,000 adults. The current imprisonment rate is 186 per 100,000 people (Bagaric, M, Prisons policy is turning Australia into the second nation of captives). (p.38)

The incarceration rate in Australia is nearly three times higher than in Scandinavian countries (ibid). (p.38)

More than 40% of prisoners in Australian prisons are serving sentences for non-violent or non-sexual offences (ibid). (p.39)

At $100,000 per person per year, prison sentences are an expensive way to punish individuals and, at the same time, provide little in the way of rehabilitation and support that could help address the root causes of violent and unlawful behaviour (Nelson, F, How to reduce indigenous imprisonment rates). (p.40)

A study showed that in Victoria, 25% of prisoners came from just 2% of postcodes. Entrenched disadvantage is concentrated in a small number of rural centres and urban hubs. There is a significant correlation between key elements of disadvantage such as low-income families, incomplete schooling and offending (Smart Justice, Justice reinvestment: investing in communities not prisons). (p.46)

59% of adult prisoners have been incarcerated before (Bushnell, A, We need to raise the bar of our criminal justice system). (p.48)
GLOSSARY

Adult prisoners
People aged 18 and over who are held in custody; except in Queensland where an adult prisoner is a person aged 17 years and over. Includes sentenced prisoners and prisoners held in custody awaiting trial or sentencing. Note that juvenile offenders, persons in psychiatric custody, police cell detainees, those in periodic detention, asylum seekers or Australians held in overseas prisons are not included.

Bail
Mail is a pre-sentencing option where a person is released into the community for a prescribed period before they appear in court for trial or for sentencing.

Crime
An action or omission that constitutes an offence that may be prosecuted by the state and is punishable by law. What is classified as a crime is supposed to reflect the values of society and to reinforce those values.

Criminal justice
The criminal justice system consists of the state/territory and Australian Government institutions, agencies, departments and personnel responsible for dealing with the justice aspects of crime, victims of crime, persons accused or convicted of committing a crime, and related issues and processes.

Deterrence
The prevention of future criminal activities by persuading either the individual offender or potential offenders that punishment outweighs the benefits of the crime.

Diversion
Method of dealing with offenders (usually juvenile offenders) without taking court proceedings.

Justice reinvestment
An approach where money spent on prisons is redirected into community-based projects to address the underlying causes of crime.

Juvenile detention centre
A place where young people (under 18 years of age) are detained pre-sentence or after sentencing.

Imprisonment rate
Imprisonment rates are expressed as the number of persons in prison per 100,000 adult population. Imprisonment rates enable comparison of prisoner populations across states and territories.

Incapacitation
Sentences based on incapacitation assume that offenders would be likely to commit other crimes if they are not imprisoned. The aim of incapacitation is to protect the public by imprisoning an offender so that he or she is not at liberty to commit further offences in the community.

Offence
An offence is an act considered prima facie (before investigation) to be in breach of the criminal law.

Prisoner
A person held in custody.

Punishment
The infliction or imposition of a penalty as retribution for an offence. A penalty or sanction given for any crime or offence. Four fundamental justifications for punishment include: retribution, deterrence, rehabilitation, and incapacitation. Of the four justifications, only retribution is part of the definition of punishment and none of the other justifications are guaranteed outcomes.

Recidivism
The act of repeated or habitual participation in crime.

Rehabilitation
Based on the idea that an offender’s behaviour can be changed by using sentencing as an opportunity to address the particular social, psychological, psychiatric or other factors that influenced the offender to commit the crime. Examples of rehabilitation-based sentencing include drug or alcohol programs, anger management programs, and deferred sentencing to give the offender a chance to obtain employment or show improved behaviour.

Remand
When a person is waiting for the outcome of a court hearing and is placed in custody.

Retribution
The idea that an offender should suffer a punishment that corresponds with his or her culpability, taking into account the seriousness of the offender’s wrongdoing and own circumstances.

Sentenced
The legal status of a person who has received a custodial or community-based order from a court for a conviction for an offence.
INDEX

A
Aboriginal and Torres Strait Islanders
3, 8, 12, 14, 19, 22-23, 24-25, 28, 40-41, 45, 50
imprisonment rates 5, 6, 8, 12, 20, 22-23, 25, 40-41, 50
reducing 25, 40-41, 50
men 25, 32, 40
over-representation 2, 8, 13, 14, 19, 21, 22-23, 36-37, 40, 45, 47, 48
youth 12, 19, 20-21, 22-23, 32
women 12, 22, 40
Aboriginal Deaths in Custody, Royal Commission into 22, 24-25
addiction 16-17, 35
alcohol use 10, 14, 16, 28, 29, 35

C
crime 1-2, 5-7, 8, 18, 19, 24-25, 26-27, 32-33, 34-35, 36-37, 40-41, 42-43, 44-45, 46, 48, 49-50
causes of 40, 46-47, 50
committing 18, 26-27, 35
punishing 1-2, 34-35, 44-45
rates 34, 37, 39, 47
reducing 34, 35, 39, 40-41, 46-47, 48, 49-50
serious 1, 18, 26, 28, 39, 49
violent 5-7, 32, 47
criminal behaviour 35, 36, 45
criminal justice
reform 24-25, 48
system 34-35, 37, 41, 48, 49

D
detention
youth 19, 20-21, 23, 43
abuse in centres 20-21, 22, 42, 48
Northern Territory 20-21, 22, 36, 37, 48
deterrence 2, 25, 34-35, 39
disability 14, 15, 17, 23, 28, 40, 41
domestic violence 5, 7, 40
Don Dale Youth Detention Centre 20-21, 42-43 see also detention, youth
drug use 14, 29, 32, 33

H
health services 12, 14, 50
human rights 2, 12-13, 21, 39
recommendations, United Nations 12-13

I
imprisonment see also incarceration
alternatives to 32-50
impact of 2, 27
in Australia 1-31
rates 3-4, 5-7, 8-9, 12, 23, 25, 26-27, 34, 36-37, 38, 40-41
increasing 5-7, 8-9, 25, 36, 46, 49
reducing 25, 36-37, 40-41, 50
use of 1, 8-9, 25, 38
incarceration 1-2, 8-9, 12, 14, 32-33, 34, 42-43, 48, 50 see also imprisonment
history of 1-2, 33
rates 12, 22-23, 38-39, 48, 50
increasing 6-7, 8-9, 26, 35, 39, 48
reducing 39, 50
use of 32-33, 42, 43, 48
indigenous peoples see Aboriginal and Torres Strait Islanders

J
justice reinvestment 46-47, 48, 49-50

M
mental health 8, 14, 15, 17, 20, 23, 27, 28, 35, 40, 43, 50
care 8, 12
services 16, 24

O
offences 1, 3-4, 5-7, 24, 26-27, 44, 50
common 3, 8, 26-27
drug 3-4, 5-6, 8, 27, 35, 39, 43, 48
non-violent 8, 39, 48
property 7, 48
serious 8, 26
sexual 5, 6, 26-27, 28, 39

P
prison 1-2, 3-4, 5, 6, 8-9, 10-11, 12-13, 14-15, 16-17, 18, 22-23, 24-25, 26-27, 28, 29, 30-31, 32-33, 36-37, 38-39, 40-41, 42-43, 44-45, 46-47, 48, 49-50
conditions 12-13, 29
daily life in 10-11
history of 1-2
numbers 12, 23, 24, 25, 38-39, 46, 50
policy 8-9, 26-27, 28, 32-33, 36-37, 38-39, 40, 42-43
population 8, 9, 12, 14, 16, 23, 26, 28, 33, 36-37, 38, 40, 46-47, 48
increasing 6, 12, 37, 39, 46, 48, 49, 50
private 30-31
sentences 3-4, 5, 6, 7, 18, 24-25, 28, 32, 33, 40-41, 44
mandatory 24, 28, 37
system 1-2, 12, 29, 40, 44, 49
what is 1-2, 32-33
prisoners 1-2, 3-4, 6, 10-11, 12-13, 14-15, 16-17, 18, 22-23, 26-27, 29, 32, 38-39, 42-43, 44-45, 46, 48
characteristics 3-4
health of 14-15, 16-17
indigenous see Aboriginal and Torres Strait Islanders
numbers 3-4, 8, 16-17, 22, 38, 46, 50
older 17, 28
population see prison, population
rights of 18, 29
voting 18
women 3, 24, 26-27, 43
punishment 2, 5-7, 18, 24-25, 32-33, 34-35, 39, 44-45, 49
types of 34-35

R
recidivism 32, 45, 47, 48 see also re-offending
reformation 34, 35 see also rehabilitation
rehabilitation 2, 18, 29, 33, 35, 37, 40, 42, 44-45
services 43, 45
system of 44-45
reintegration 2, 12, 29, 49
re-offending 17, 27, 29, 35, 39, 44, 46-47, 49 see also recidivism
reducing 25, 39, 45, 46-47
retribution 2, 25, 32, 34

S
sexual assault 3, 5, 6, 7, 8
smoking 10, 14-15, 16, 28
substance use 45 see also alcohol use, drug use

T
torture 20-21
Optional Protocol to the Convention Against Torture (OPCAT) 13, 21

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60
Issues in Prisons

Issues in Society | Volume 423