

The Booming Industry continued: Australian Prisons

A 2020 update

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Abstract

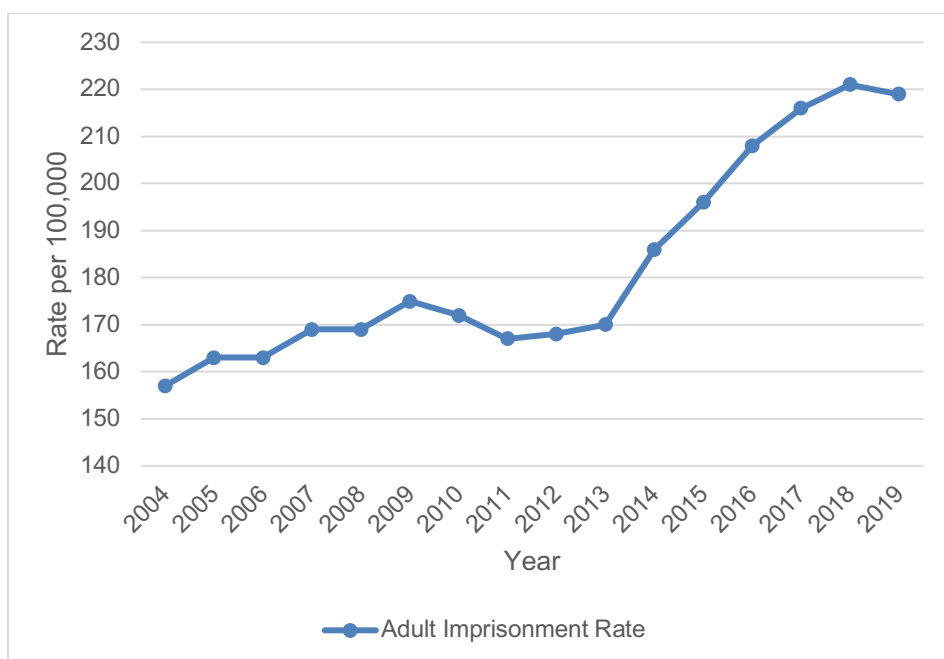
The number and rate of people imprisoned in Australia has, with some exceptions, risen rapidly over the past three decades. The largest rates of increase have been in remand, women, and Indigenous prisoners. The flow prison population over a year in NSW appears to be 1.5 times the census or static population count due to the high numbers of remand and short sentence prisoners; reliable figures are not available for other jurisdictions. There has been a concomitant rise in the rate and number of prisoners being released to the community, noting that remand and short sentence prisoners make up the large majority of releasees. Many thousands of these releasees are back in prison within two years: on the prison conveyor belt cycling in and out. The majority of prisoners are from severely disadvantaged backgrounds, with serious health, mental health and disability concerns. Those with mental and cognitive disability and a history of abuse are grossly over-represented amongst the prison population, as are Indigenous Australians. In formal terms, the prison has a number of purposes: punishment, deterrence, protection and rehabilitation. But the legitimacy and indeed the viability of these purposes for the majority of those in prison and for the wider citizenry in the context of increasing imprisonment in Australia is challenged using social justice and community well-being analyses.

Introduction

Australian prison population

There were 43,028 full time adult prisoners (sentenced and unsentenced) in prisons in Australia on census date 30th June 2019, a rise of less than one per cent over the previous year (Australian Bureau of Statistics, 2019). While this is a relatively small increase over the previous 12 months, if we look at the broader picture of recent prison growth in Australia, we can see that the number of people in prison has increased by 40 per cent over the 7 year period from 2012 to 2019, growing from 30,775 to 43,028 prisoners (Australian Bureau of Statistics, 2019). The most useful method of representing and comparing the number of prisoners over time is the rate per 100,000 of the adult population. Using this representation, the rate was 219 prisoners per 100,000 in 2019 (409 per 100,000 males and 35 per 100,000 females), an increase from 30 June 2004 when it was 157 per 100,000 as shown in Graph 1. In other words, proportionally the prison population has grown much faster than the general population.

Graph 1 Australian Imprisonment Rates 2004-2019



(Australian Bureau of Statistics, 2019)

In New South Wales (NSW) (the most populous of the eight Australian states and territories, and the one with the largest number of prisoners) alone, the adult prisoner population grew by 25 per cent over the seven-year period from June 2012 to June 2019 (Australian Bureau of Statistics, 2019).

These figures though are based on a census, that is, a count made on one day of the year. It does not provide the more dramatic, volatile picture of how many flow in and out of prison over a year with an average of around 1000 people admitted to and released from prisons around Australia every week. The majority of prisoners (sentenced and unsentenced) are incarcerated for under 12 months for lesser offences, therefore the flow through number of prisoners is much higher than the census figure suggests (Australian Bureau of Statistics, 2020; NSW Law Reform Commission, 2013). There is no national accounting of this but in NSW, the flow population over a year is 1.5 times higher than the census numbers (NSW Bureau of Crime Statistics

and Research, 2020). The flow numbers may be higher especially in jurisdictions with even higher short stay remand prisoners and more prisoners on short sentences.

Prisoners and disadvantage

All prisoner demographic information confirms that prisoners, as a group, are significantly more disadvantaged than the general population. The 2015 NSW Network Patient Health Survey (2017), for example, found that:

- More than a third (39 per cent) did not complete year 10;
- 60 per cent were under the influence of drugs or alcohol when they committed the offence for which they were in prison;
- Almost two thirds (65 per cent) had experienced or witnessed at least one traumatic event.
- 63 per cent had received a diagnosis for a mental health condition;
- A third were not raised by either of their biological parents;
- 14 per cent were placed in care before the age of 16;
- Approximately 1 in 5 had either or both of their parents incarcerated during their childhood;
- In the six months prior to imprisonment, 15 per cent were either homeless or in temporary accommodation.

Indigenous Australians, women, and Indigenous women in particular, are more likely to experience these disadvantages at a higher rate. These findings have been supported consistently by other analyses (Australian Institute of Health and Welfare, 2019; Cunneen et al., 2013).

More than half (54 per cent) of people leaving prison in Australia expect to be homeless when released (Australian Institute of Health and Welfare, 2019). There is an interdependent relationship between homelessness and the criminal justice system: experiencing homelessness increases the risk of criminal justice system involvement, and experiencing imprisonment increases the risk of homelessness, creating a cyclical link between the two (Payne et al., 2015). Prisoners come from and go back to a relatively small number of disadvantaged suburbs or towns with a high proportion dependent upon social housing due to disability, unemployment, domestic violence and poverty; at least 60 per cent were not employed when arrested and very few gain employment upon release with a majority being dependent upon government benefits (Baldry et al., 2006; Vinson et al., 2015).

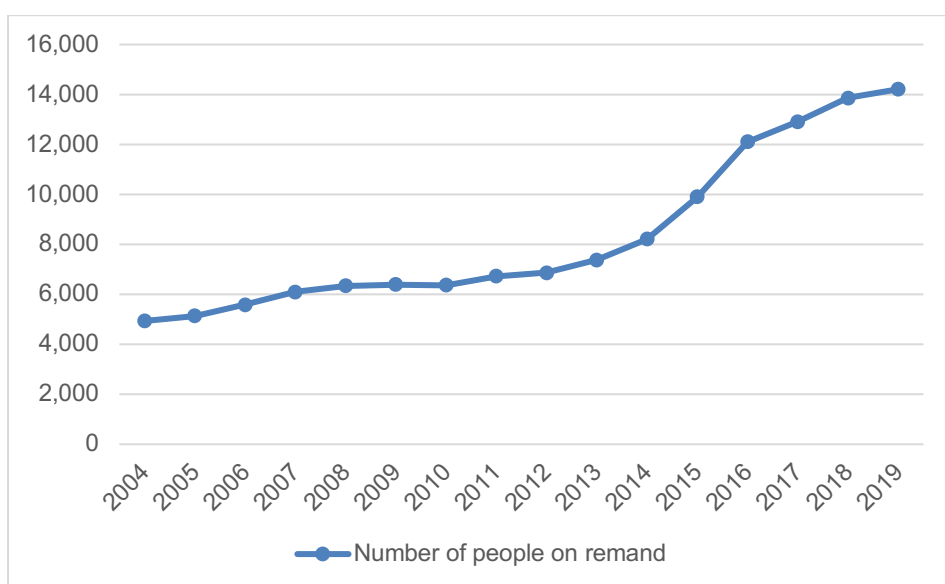
Prisoners' physical health is much worse than the general population. Nation-wide reports on the health of prisoners in Australia has found that more than a third (34 per cent) are at risk of alcohol related harm; have high levels of Hepatitis C (28 per cent of women and 21 per cent of men); and 1 in 3 (30 per cent) have a chronic health condition (Australian Institute of Health and Welfare, 2019.) This is particularly concerning given the vast majority of prisoners are males between 20 and 40 years of age.

While younger people (defined as those under the age of 45) are more likely to be imprisoned, Australia's prison population is ageing. For example, from 2009 to 2019, the number of older prisoners in Australia grew from around 5,300 to 9,600, which is a growth rate of 79 per cent (Australian Institute of Health and Welfare, 2020, p. 4). Older prisoners are more likely to experience a higher rate of chronic health conditions, poor health, and to use many different types of medications, in comparison to younger prisoners (Australian Institute of Health and Welfare, 2020).

Increases in remand prisoners

There has been a dramatic rise in those held in remand, that is, in those who have been charged, not been granted bail, held in prison custody awaiting their court appearance or trial but have not yet been found guilty. Remand prisoners accounted for a third (33 per cent) of the full-time prison population in 2019, an increase of 3 per cent from the previous year. From 2014 to 2019, the number of people on remand in Australia increased by 73 per cent (Australian Bureau of Statistics, 2019). There has been consistent evidence over the past few decades, that up to half of those on remand will not go on to receive a prison sentence because they are found not guilty, are sentenced to a community based order or have been deemed to have served their sentence already, begging the question of why they needed to be on remand in the first place (Galouzis & Corben, 2016, p. 3; NSW Law Reform Commission, 2012a, p. 70).

Graph 2 Unsented prisoners in Australia, June 2004-June 2019



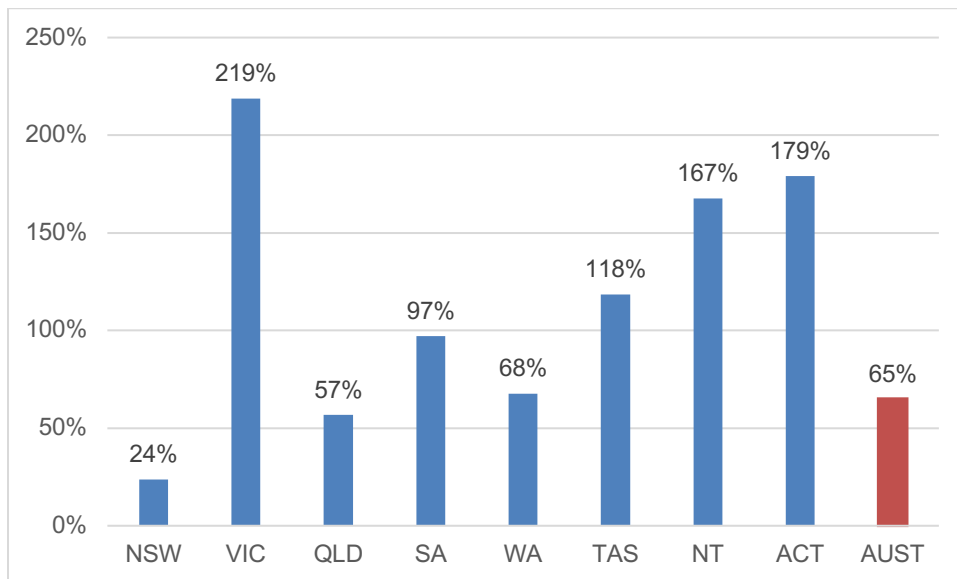
(Australian Bureau of Statistics, 2019)

A period in remand is not a light matter. Persons held on remand are held in full-time custody usually in the equivalent of maximum security and have little access to education or programs due to uncertainty regarding their date of release (Australian Law Reform Commission, 2017; Council of Australian Governments, 2016). They have usually been committed to remand in custody straight from court with little time to arrange for matters such as care of children or to secure their housing and care of pets.

Aboriginal and Torres Strait Islander gross over-representation in prisons

The rapid rise in the Indigenous imprisonment rate is even more dramatic than the general increase. Indigenous Australians represented 28 per cent of the prison population in 2019 (Australian Bureau of Statistics, 2019), up from 25 per cent in 2009 and 19 per cent in 2000 (Australian Bureau of Statistics, 2000). Between 2000 and 2019, the rate of Indigenous Australians in prison increased by more than a third (36 per cent) (Australian Bureau of Statistics, 2019).

Graph 3 Percentage change in the age standardised rate of Indigenous imprisonment, 2000-2019¹

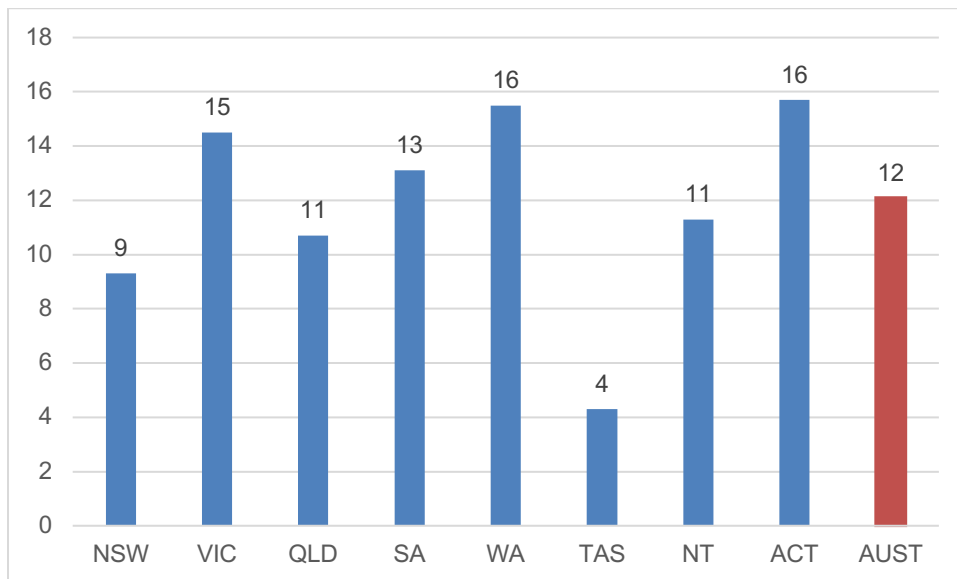


(Australian Bureau of Statistics, 2007, 2019)

The age standardised rate (a method of accounting for the much higher percentage of younger persons in the Indigenous as compared with the non-Indigenous population) of 2,088 per 100,000 adult Indigenous population means that Indigenous Australians are 12 times more likely to be imprisoned than non-Indigenous Australians (Australian Bureau of Statistics, 2019). This over-representation varies significantly across Australia, with Indigenous persons in ACT and WA being 16 times compared with those in Tasmania being 4 times more likely to be imprisoned than non-Indigenous persons in those states as indicated in Graph 4 (Australian Bureau of Statistics, 2019).

¹ In Graph 3 we have used Australian Bureau of Statistics (2007, 2019) *Prisoners in Australia* reported data on age-standardised Indigenous imprisonment rates. It is our understanding that the data used here differs from that presented in Weatherburn and Ramsey (2016, p. 1) even after accounting for the difference in time period.

Graph 4 Ratio of Indigenous to Non-Indigenous Age Standardised Imprisonment Rate, States and Territories 2019



(Australian Bureau of Statistics, 2019)

Aboriginal and Torres Strait Islander prisoners are also overrepresented in the Australian remand population by a factor of over 11 (Australian Law Reform Commission, 2017, p. 103). Around 40 per cent of those on remand do not go on to receive a custodial sentence (Weatherburn & Ramsey, 2016).

Clearly no matter whether to a very high or lesser degree, Aboriginal and Torres Strait Islander Australians are grossly over-represented in Australian prisons.

Alongside gross overrepresentation in prison, Aboriginal and Torres Strait Islander people are 10 times more likely to die in custody (police and prison custody) than non-Indigenous Australians (Evershed et al., 2020). Since the 1991 Royal Commission into Aboriginal Deaths in Custody there have been 439 known deaths of Aboriginal and Torres Strait Islander people in police or corrective services custody (Glynn-McDonald, 2020) and a notable lack of accountability for these deaths (Whittaker, 2020).

Growing numbers of women in prison

The third group of prisoners that is growing rapidly, is women. Although they are still a very small proportion of the prison population at 8 per cent this represents a significant growth over the past decade. From 2009 to 2019, the rate of women’s imprisonment rose from 25 to 35 per 100,000 of adult women over the same period. However, in a welcome turn, the number of female prisoners actually decreased by 4 per cent (131 prisoners) from 3,625 at June 30 2018, to 3,494 prisoners at 30 June 2019 (Australian Bureau of Statistics, 2019). By contrast, there were 39,538 male prisoners in Australian prisons, an increase of less than one per cent (195 prisoners) from 39,343 prisoners at 30 June 2018 (Australian Bureau of Statistics, 2019).

In comparison to men, women spend significantly shorter periods in custody, are more likely to be unsentenced (i.e. on remand) and most often do not pose a danger to society but are there for non-violent offences (Australian Bureau of Statistics, 2019; NSW Bureau of Crime Statistics and Research, 2020). In NSW, for example, almost all (96 per cent) women in prison are serving sentences of under two years, and

more than half (58 per cent) are serving sentences of under 6 months (NSW Bureau of Crime Statistics and Research, 2018). In Victoria, 90 per cent of women are entering prison unsentenced (on remand), with the most common reason being due to breach of an order (Walker et al., 2019). Just under two-thirds (62 per cent) of those who are unsentenced go on to receive a sentence of imprisonment, which means that almost 40 per cent of women in prison who are unsentenced are released (Walker et al., 2019). This raises serious questions around the reasons for having such high numbers of unsentenced women in prison in the first place. Women in prison are more likely to have complex support needs, and tend to cycle in and out of prison with high levels of recidivism and breaching of community sanctions, such as parole (Baldry, 2010). They are also more likely than men to have a history of a mental health condition (65 per cent compared with 36 per cent) (Australian Institute of Health and Welfare, 2019).

Much of the growth of women's imprisonment over recent years appears to be made up of Indigenous women, women on remand and in particular Indigenous women on remand. For example, from 2011 to 2017 the number of Aboriginal and Torres Strait Islander women on remand in NSW increased by 119 per cent – the largest increase of any prisoner cohort in the state (Ooi, 2018).

Reports have found women's prisons are becoming increasingly overcrowded. The Queensland Ombudsman (2016) reported that two prisoners sometimes share a cell designed for one at the Brisbane Women's Correctional Centre, which means one prisoner sleeps on the floor with their head close to an exposed toilet and shower. Overcrowding raises concerns around privacy, dignity and hygiene, and also affects the delivery of health services and education and therapeutic programs. According to available data from the Productivity Commission, the rate of prison occupancy is high, reaching 133 per cent in Western Australia, 114 in the Northern Territory, 112 per cent in the Australian Capital Territory, 108 per cent in Queensland and 95 per cent in Tasmania during 2018-2019². It is therefore not surprising that concerns have emerged also around overcrowding at men's prisons in other states and territories (Mackay, 2015).

We note at the time of writing (July 2020) that the COVID-19 pandemic has disrupted Australian criminal justice systems significantly since March, especially in the two largest jurisdictions, NSW and Victoria, with courts not sitting, comparatively low numbers being remanded in custody and a focus on keeping the Corona virus out of criminal justice institutions. We discuss this more fully towards the end of this paper.

This very brief overview of the Australian prisoner population and its growth provides a context for an analysis of this growth and a discussion of particular aspects of the penal estate.

Recidivism

One stated purpose of prison is to rehabilitate by both providing the prisoner with an incentive never to return to prison and with programs that assist in changing behaviour and lifestyle to assist that to happen; every Corrective Service in Australia has reducing recidivism as an aim. The crudest measure of the success of this venture is the rate of recidivism. For the purposes of this paper, return to prison, excluding re-arrest and being given a community order, will be used as the indicator of recidivism. Most Australian agencies use return to prison within two years of release as a common measure. This rate sits at 46 per cent (Productivity Commission, 2020). So, almost half of those released will be re-imprisoned within two years. But when we look at the percentage of people in prison who have ever experienced prior imprisonment, over half the

² Data for New South Wales, Victoria and South Australia was not reported.

prisoners in all states and territories have been in prison before (Australian Bureau of Statistics, 2019). Again, this is variable, depending upon the jurisdiction. For example, the Australian Capital Territory has the highest known prior imprisonment rate at 77 per cent of its census prisoners, followed by the Northern Territory at 73 per cent (Australian Bureau of Statistics, 2019). This must be understood in the context of the explanation given earlier of the flow, as opposed to the census population in prison. A higher percentage of the flow through population has been in prison before as compared with the census population that is skewed by those in prison on long sentences for serious crimes, like murder, and who are not on the whole recidivists. So, if recidivism were to be measured for the flow through population it would be higher than it appears using the census population.

Indigenous people are more likely than non-Indigenous people to have experienced multiple periods of incarceration. Almost half (43 per cent) of Indigenous people in prison in Australia have been in prison at least 5 times before, compared with a quarter (25 per cent) of non-Indigenous prisoners (Australian Institute of Health and Welfare, 2019).

So, prison does not appear to reform nor deter the majority of those who have been there before.

Prison: the new therapeutic community?

Politicians and society, in the 'Western world' at least, have been trying to use prison as a solution to multi-layered and complicated social disadvantages. This is not a new phenomenon. But it has re-intensified in Australia over the past three decades with the rapid increase in the growth of imprisonment of those with mental, cognitive and multiple disabilities, homeless and Indigenous persons.

Mental health disorders

Prisoners have much higher rates of mental health concerns than the general community. National and State reports from the Human Rights and Equal Opportunity Commission (1993) report (the Burdekin report) onwards have drawn attention to the growing social inequity of the increasing numbers of people with mental disorders caught in criminal justice systems (Australian Human Rights Commission, 2014; Australian Institute of Health and Welfare, 2015, 2019; NSW Law Reform Commission, 2012b).

Custody health surveys have consistently found high rates of mental health disorders amongst prison populations (T. Butler & Allnutt, 2003). The 2015 NSW custody health survey found almost half (49.2 per cent) reported receiving psychiatric care prior to their imprisonment (Justice Health & Forensic Mental Health Network, 2017). The Australian Institute of Health and Welfare (2019) reported that 2 in 5 prison entrants (40 per cent) in 2018 reported ever being diagnosed with a mental health disorder.

These findings are supported in international studies (Fazel et al., 2016; Fazel & Danesh, 2002; Fazel & Seewald, 2012; Prins, 2014) as well as other Australian studies (T. Butler et al., 2007, 2011; Heffernan et al., 2012). In NSW, the Australians with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System Project (<http://www.mhdcd.unsw.edu.au>) found that people with mental health disorders and cognitive disabilities:

- experience low rates of court diversion and higher rates of contact with youth justice systems;
- face higher rates of convictions with higher rates of low-level offences;
- are likely to have experienced earlier and more frequent contact with police;

- experience higher rates of imprisonment (particularly remand) from an earlier age, with shorter and more frequent prison episodes and higher continuing lifelong episodes within the criminal justice system;
- have poorer physical as well as mental health, and higher rates of alcohol and other drug use problems than those without these diagnoses;
- have experienced very poor school education and low disability service recognition and support; and
- those with complex support needs (both mental health and cognitive disability with other disadvantages) have higher levels of ongoing life-long criminal justice involvement than those with single or no diagnosis (Baldry, 2011).

Alongside high rates of mental health disorder, people in prison are also disproportionately likely to self-harm. In fact, suicide is the leading cause of death in prisons across the globe (A. Butler et al., 2018). In one Australian study on self-harm and suicidal behaviour amongst prisoners in the ACT, nearly half (48 per cent) reported suicidal ideation with 31 per cent attempting suicide at some point in their lifetime (A. Butler et al., 2018).

The continuum from youth detention to adult prison in which significant numbers of young people in custody progress to adult prison, is also seen in the exceptionally high rates of potential mental health disorders amongst that population of young people. The NSW Young People in Custody Health Survey found that 83 per cent of young people in custody have a psychological disorder. This included 59 per cent having symptoms consistent with a behavioural disorder and 58 per cent with substance use disorder. 63 per cent of children in youth detention met the criteria for two or more psychological disorders. In addition to this, 68 per cent were found to have experienced abuse and for 28 per cent this was categorised as 'severe' (Justice Health & Forensic Mental Health Network & Juvenile Justice NSW, 2017).

Cognitive disability

Internationally and in Australia the level of cognitive functioning amongst prisoners is much lower than in the general population. The disabilities range from intellectual disability (with a formal assessment before the age of 18 of under 70 IQ plus low social adaptive functioning) to foetal alcohol spectrum disorder, acquired brain injury resulting in poor cognitive capacity and borderline intellectual disability (between 70 and 80 IQ). In fact, one study in the United Kingdom (UK) revealed the extent of poor cognitive functioning of the prison population with 45 per cent of a sample of prisoners in a major British prison having borderline or full intellectual disability (Hayes et al., 2007). Other studies from the UK have similarly found high levels of neurodevelopmental disorders in male prisoner populations (McCarthy et al., 2016). Notably, international research confirms that people in prison have complex needs, that is, cognitive impairment and cooccurring mental health disorders (McCarthy et al., 2019).

A NSW study revealed the extreme disadvantages suffered by prisoners with intellectual disability and the over-representation of Aboriginal and Torres Strait Islander Australians amongst those in contact with the criminal justice system (Baldry et al., 2015). Another study found that 10 per cent of young male prisoners had an IQ composite of 69 or below, indicating intellectual disability (Herrington, 2009). In NSW the high representation of people with an intellectual disability in the criminal justice system has been well recognised over recent decades (Australian Law Reform Commission, 2017; Baldry et al., 2015; Mental Health Commission of NSW, 2017; NSW Law Reform Commission, 2012b; NSW Legislative Council, 2001; Simpson et al., 2001). In a survey of young people in youth justice in NSW, 17 per cent had cognitive functioning scores consistent with intellectual disability, compared with less than 3 per cent of the general population (Australian Bureau of Statistics, 2014); and 39 per cent had cognitive functioning scores consistent with

borderline intellectual disability (Justice Health & Forensic Mental Health Network & Juvenile Justice NSW, 2017). In addition to this, 51 per cent had severe difficulties in core language skills, and 79 per cent had severe difficulties in reading and comprehension (NSW Health and NSW Justice 2016).

The NSW Sentencing Council (2004) outlined the serious consequences of imprisonment for people with cognitive disabilities:

- Entrenchment within a culture of criminality due to the tendency of those with intellectual disabilities to want to be accepted by their peer group.
- Readjustment problems post-release as people with intellectual disabilities inherently have impaired adaptive skills.
- Vulnerability to being assaulted and mistreated in the mainstream prison environment.

There is a high rate of complex support needs (dual and multiple diagnoses) amongst those with cognitive disability with a high number having a mental health disorder and drug or alcohol use problem as well (Baldry et al., 2013; Bhandari et al., 2015). This group of people's disability related behavior is frequently criminalised, often when they are young, leading to their management by criminal justice agencies rather than disability, social and health service support (Baldry, 2014).

Prison as a care institution

Prison does not rehabilitate offenders with these disabilities because it is not and cannot be, a therapeutic community; it cannot serve both punishment and therapeutic purposes because they are antithetical and prison's primary focus is security not therapy. This does not mean prisons cannot provide therapeutic programs and services, they should, but prisons are not fundamentally therapeutic spaces. Prison by its very nature, excludes normal society, promotes prison living skills and actively erodes community living skills, the very skills the de-institutionalisation movement aimed to restore to those with mental health disorders. Most of these persons need long-term social and health assistance and support, which are not achievable whilst cycling in and out of prison.

The argument that at least persons with these disorders and disabilities are being cared for in prison and receiving health care that they do not receive in the community is spurious. Of course, people in prison should receive good health and social care but imprisoning a person is an extremely serious step because it has so many negative implications. Even if prison services provide the best programs and health care possible, going to prison and having a criminal record disadvantages the already disadvantaged. It makes a person a target for re-arrest and re-imprisonment; it disrupts social connections and locks people into serial institutionalisation, does not guarantee good or appropriate treatment and often any treatment started is not continued in the community upon release; it makes homelessness more likely, re-criminalises and creates connections with criminal culture, ensures the learning of prison culture to survive and often leads to self-harm and depression (Baldry et al., 2006; Stern, 2006; Willis et al., 2016).

Indigenous Australians

The unconscionably high rate of Indigenous Australians in prison has been argued to be associated with higher serious offending levels especially related to violence and alcohol abuse (for example see Weatherburn et al., 2003) rather than bias in the criminal justice system. Others such as Cunneen (2006; see also Cunneen et al., 2013), whilst not resiling from the recognition of high offending rates, argue that also the range of Aboriginal Australians' experiences of removal, dispossession, exclusion from education and

employment, as well as institutional discrimination must be considered as having a part in Indigenous offending rates and over-representation in prison. Blagg (2008) and others (Baldry et al., 2015) argue for Indigenous Australians to have greater ownership and control over criminal justice processes to overcome the continuing colonising effects of current criminal justice approaches.

Costs

Prison is an expensive business with the taxpayer footing the total bill. Both the financial and social costs of locking up more people are, not surprisingly, increasing. Expenditure on prisons alone in Australia in 2018-2019 was \$3.79 billion (Productivity Commission, 2020). All jurisdictions are building more prisons or expanding current prisons to accommodate the growing numbers. In NSW, for example, the government has responded to booming prison numbers by doubling-up and tripling-up the number of beds in prison cells, reopening previously closed prisons and moving prisoners between prisons (Audit Office of NSW, 2019) and in 2016, the NSW Government announced it would spend a further \$3.8 billion dollars on the expansion of the prison estate in NSW, in order to increase current prison capacity by 7,000 beds (NSW Government, 2019). NSW opened a mega-prison, The Clarence Correctional Centre imprisoning 1,700 prisoners, in Grafton, on 25th July 2020. The prison is operated by a private company Serco, and cost \$700M; the annual running costs have not been made public.

The costs of building prisons are high but higher still are the recurrent costs of maintaining and running them (NSW Legislative Council, 2001; Productivity Commission, 2020). The total average cost (including capital and recurrent costs) per prisoner per day in Australia in 2018-2019 was \$310 (Productivity Commission, 2020). This varied across states and territories and was the highest in the Australian Capital Territory (\$415 per prisoner per day) and in Victoria (\$413 per prisoner per day) (Productivity Commission, 2020).

The social costs of prison are immense. Prisoners lose housing and jobs (if they had any), become more indebted and lose social capacity during imprisonment. Upon release they are usually worse off than when they were incarcerated with around a half being homeless and the rest being in unstable or unsuitable housing and over 75 per cent being unemployed (Baldry et al., 2006). The financial and social costs affect those with complex support needs, Indigenous Australians and women to a greater degree than others. For example, some Aboriginal families and communities and particular highly disadvantage suburbs are decimated by incarceration and do not have the financial or social resilience to support those returning from prison, thus continuing the imprisonment cycle. Post-release life is made even more difficult by ex-prisoners being discriminated against in employment and the rental market (Baldry et al., 2018; NSW Legislative Council, 2001; Walsh, 2004). Prisoners with a history of mental health disorder face additional challenges on release from custody; with studies showing they experience poorer outcomes (Cutcher et al., 2014).

Families of prisoners

Like those in prison themselves, families of prisoners often face a range of economic, social and emotional disadvantages associated with the incarceration of their loved ones (Besemer and Dennison, 2018; Brown et al., 2016; Clear, 2007; Comfort et al., 2016; Smith et al., 2007; Visher and Travis, 2011; Wolff and Draine, 2004). Quilty et al (2004) taking NSW as an example, estimated large numbers of children, some 60,000, suffer the imprisonment of a parent at some time in their childhood. Taking into consideration the enormous expansion of the prison system over the past decade, the number of children across Australia today would be significantly higher. Children of women prisoners' experience loss of their mother and are often placed in out of home care or in the informal care of extended family and children of prisoners in general experience disrupted schooling and greater poverty and are more open to abuse and the likelihood of themselves ending

up in prison. Other family members are affected with partners and parents of prisoners experiencing upheaval, loss of income, difficulties of visiting and stigma (Cunningham, 2001; Dennison et al., 2005)

Large numbers of people in prison experienced parental incarceration as children leading to placements in out of home care. In NSW, for example, 19 per cent of adults in prison experienced parental incarceration during their childhood (Justice Health & Forensic Mental Health Network, 2017, p. 25), and 14 per cent of people in prison in NSW were placed in care before they were 16 years of age (Justice Health & Forensic Mental Health Network, 2017, p. 24). Almost 1 in 5 (18 per cent) of people in prison have reported that one or more parents or carers had been in prison when they were a child. This was higher for Indigenous people (31 per cent) than non-Indigenous (11 per cent) (Australian Institute of Health and Welfare, 2019).

Privatisation of prisons

Since 1990, a number of prisons across Australian states and territories have been run by private, multinational, profit-driven companies. Currently, five companies control eight of Australia's 98 prisons and are responsible for almost one fifth of the Australian prison capacity (Bushnell, 2019). There is some evidence that private prisons operate more cheaply than public prisons, however the fees that governments pay to private companies are unknown in seven of the eight prisons (Bushnell, 2019) and some researchers have disputed arguments that private prisons save taxpayers money (Andrew et al., 2016).

Until recently, private prisons operated in each of the five mainland states. In 2019, the Queensland government announced that control of the states two private prisons would be handed back to the government following an inquiry which documented high levels of prison overcrowding, increasing numbers of staff assaults, as well as staff misconduct and corruption (Crime and Corruption Commission Qld, 2018). The inquiry concluded that:

This marketised approach, where prisons are operated by private, profit-driven organisations, disconnects the state from direct responsibility for the delivery of privately operated prisons. This model creates challenges for the state in ensuring prisoners detained in privately operated facilities are treated humanely and have appropriate access to programs and services (Crime and Corruption Commission Qld, 2018, p. 10).

Serious concerns relating to overcrowding, violence and corruption have also been raised in relation to private prisons in other Australian jurisdictions (Ilanbey, 2020; Potaka, 2018; Willacy & Blucher, 2018).

Prison is criminogenic

A significant number of people on parole are rearrested or are breached for parole violations and returned to prison but given that there are such large numbers of prisoners with disorders and disabilities, it is not surprising that many cannot manage to meet parole requirements (Council of Australian Governments, 2016; Henshaw et al., 2019).

Having a higher chance of returning to prison applies to remandees, not just those who have been on sentence. Large numbers on remand are released without having to serve further time in prison because they are found not guilty, given a community order or it is deemed that their time on remand (usually a period of weeks or a month) equals their sentence (NSW Law Reform Commission, 2012a). For example, the NSW Law Reform Commission reported that of the 10,342 people who were held on remand during 2010 in NSW, 5,218 or 55 per cent were released as 'unconvicted' or were not subject to a further custodial sentence (NSW

Law Reform Commission, 2012a, p. 51). A later study by Corrective Services found the proportion of people in prison on remand who were later released was 47 per cent (Galouzis & Corben, 2016).

This hardly represents the dangerous 'criminal profile' politicians argue tighter bail laws are meant to corral on remand. In the current policy and legislative climate of building more prisons to manage risk and therefore to deal with difficult social problems and an era of reduced systemic support for those with such needs, more people with little capacity to negotiate the criminal justice system will be imprisoned and the more persons imprisoned, the more will re-offend and return to prison; so prison itself is criminogenic, that is it causes crime (Haney, 2006; Weatherburn, 2010; Weiman, 2007).

COVID-19 and Australian prisons

COVID-19 has created specific challenges and risks for people in prison across Australia. A considerable portion of the prison population are vulnerable health wise, with many experiencing chronic health conditions including asthma and diabetes. The potential for COVID-19 to be passed on in prison is very high due to poor sanitation and the challenges of physical distancing within prison environments which are characterised by small, contained spaces (Anthony, 2020). This is particularly the case given that most Australian prisons are overcrowded and operating at over 100 per cent of their design capacity (Productivity Commission, 2020). An outbreak would have a disproportionate effect on those who are overrepresented within prisons, including Aboriginal and Torres Strait Islander people, people disadvantaged by poverty, and those with disabilities (Human Rights Law Centre, 2020).

Prisons across Australia have introduced measures to reduce the likelihood of an COVID-19 outbreak. From March all personal visits and some court appearances and legal visits were suspended Australia-wide and replaced via AVL (Victoria Corrections, Prisons and Parole, 2020). There have also been reports of increases in prison lockdowns and people being placed in isolation (Farhart, 2020).

In efforts to prevent outbreaks of COVID-19 within prisons, a number of countries have released prisoners (Pakes, 2020). Urgent measures have been introduced in most Australian states and territories. NSW was the first jurisdiction to introduce emergency legislation, passing the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* in March. The Act allowed the government to prematurely conditionally release prisoners on parole to attempt to COVID-19 spreading in prisons. The legislation is concerned with prioritising those who are concerned vulnerable and those who pose a low risk to the community. They may be considered for conditional release because of their health, vulnerability, age, length of time remaining before the expiry of their sentence or non-parole period, or consideration of 'any other matter'. There are also a number of serious offences which are excluded including murder, serious sexual offences, terrorism, and whether the person is serving a sentence of life imprisonment, is considered a 'serious offender' or is in custody for a Commonwealth offence. In deciding whether or not to release someone from prison on parole, the Commissioner must also consider the risk to community safety, the impact on victims, the availability of accommodation, or 'any other matter' considered relevant.

Analysis by Cunneen (2020) found that the NSW amendments are not being used to any appreciable extent to release more people on parole. Three days before the legislation was introduced, the NSW prison population stood at 14,028. By 3 May, the prison population had dropped by 1,317 (or 9.4 per cent) to 12,711. While the amendment was introduced to release on parole people serving sentences, the majority of the reduction was in the remand population (Cunneen, 2020). Reductions in the sentenced population were also affected by a change in the number of sentenced prisoners coming into prison as a result of changes to court processes (Cunneen, 2020). On 5 July, the NSW prison population stood at 12,825. This increase from the

May prison population is comprised of 111 more sentenced prisoners and 248 more people on remand (Corrective Services NSW, 2020), so it appears numbers are slowly climbing again. We note also that most crime (except possibly for DV) decreased over this period but also that for much of this time people were in lock down with much less opportunity to commit crime (Freeman, 2020; Kim & Leung, 2020).

Conclusion

When the current use of prison is subjected to a critical social justice analysis, as has been done in this article, a number of things become clear.

- Increasing numbers of people with poor educational backgrounds, mental and cognitive disabilities, very low financial capacity and who are Indigenous Australians find themselves imprisoned, and when released have even less capacity to negotiate their way around society successfully and are quickly returned to prison are evidence of criminalisation of socially disadvantaged persons and systemic failures of social and human services and of increasing inequity.
- There is an imperative to reduce the number and rate of imprisonment of Aboriginal and Torres Strait Islander Australians. This could be done by implementing key recommendations of the 1991 Royal Commission into Aboriginal Deaths in Custody (Johnstone, 1991), in particular those that recommend social and economic equity be implemented with and for Aboriginal and Torres Strait Islander people and communities, and the more recent Australian Law Reform Commission (2017) *Pathways to Justice* report which sets out a framework of reform.
- Australian society is diminished by the increasing use of prison to address multi-layered social disadvantage and difficulties.

A fairer and safer society with lower rates of offending is likely to be achieved not by criminalising greater numbers of persons with less social capacity but rather by improving society's capacity to support members who are most vulnerable to structurally inequitable outcomes, via early educational, family, social and health support and reducing socio-economic inequity in the community.

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