

Australia's Prison Dilemma

Webinar transcript - 12 November 2021

MICHAEL BRENNAN:

Welcome everybody to the Productivity Commission's webinar on Australia's prison dilemma. My name is Michael Brennan I'm the Chair of the Productivity Commission, and I'll be introducing participants in a moment. I'd like to start by acknowledging the traditional owners of the various lands on which we are gathered today and paying respects to elders past and present. In my case, I'm in Canberra. That's the Ngunnawal and Ngambri people.

This webinar comes hot on the heels of the research report that the commission put out a couple of weeks ago, also entitled Australia's Prison Dilemma, which is a very clever and amusing little pun or inside joke for all economists. Many may have been surprised, intrigued, perhaps bemused that the Productivity Commission was in this space, talking about matters to do with criminal justice. Hopefully, some people were also pleased. We haven't done a great deal of work in the past on criminal justice issues, though we do, as part of our report on government services annually compile statistics on a range of service delivery issues, including information on different aspects of the criminal justice system. When you look at those figures, it's very hard to escape the stark reality that Australia's rate of imprisonment rose pretty significantly starting about 30 years ago.

We wanted to have a look at that issue. Ask some questions about, firstly, what caused that rise in the rate of imprisonment, whether that was ever the result of a single large decision or merely the effect of multiple individual decisions. But also to look at what the costs of that might actually be and potentially what some of the alternatives are. We don't claim that this is simple. We're relatively new to this area, and nor do we claim either in the report or dare I say in this webinar, to have all of the answers. But we were hoping to put a bit of a perspective and some new information on the table.

So this webinar will involve four speakers who can help us get to the bottom of these questions. The first is Stephen King, who is a Commissioner at the Productivity Commission and was one of two, along with Richard Spencer, lead authors on the Prison Dilemma report for us. Secondly, we're going to have Don Weatherburn, who is best known for heading up the New South Wales Bureau of Crime Statistics and Research and is now professor at the University of New South Wales. We also have Helen Coventry, who joins us from Jesuit Social Services, who'll be able to talk to us about not only her experience in general, but also Jesuit Social Services Program, Reintegration Program called 'Reconnect'. And finally, we have Nicholas Cowdery, AO, QC, there might be other letters as well, I'm not sure. Who, as many of you know, was the New South Wales Director of Public Prosecutions between 1994 and 2011.

I'm going to ask that each speaker speak for around 10 to 15 minutes each. I'll introduce Stephen and then others can pass on to one another. We'll then have questions, about half an hour for questions and answers, at the end. So start posing your questions in the question function in real time. And then we'll get to those after about half an hour. I'm instructed to advise you not to use the Twitter function to ask questions. We do that in the chat function. So without further ado, why don't I hand over to Stephen King to kick us off.

STEPHEN KING:

Thank you, Michael. As Michael mentioned, when the Productivity Commission started to look at the criminal justice system, we noticed an odd fact. Over the past 40 years, level of imprisonment in

Australia has steadily risen. Current imprisonment rate is the highest level in a century. As this chart shows, the number of prisoners who 100,000 adults have more than doubled since the mid-1980s. But at the same time, the offender rates have been falling. For example, number of offenders proceeded against by police per 100,000 population fell by 18 percent. Between 2008-09, 2019-20. At the same time, the imprisonment rate rose by 25. 18 percent fall in the offender rate, 25 percent increase in the imprisonment.

Now, while it's difficult to get a longer time series Australia-wide, for offender rates, in this chart, we use the homicide rate to illustrate that this juxtaposition between falling offender rate and rising imprisonment rate is not new. It isn't just an oddity of the last decade. So, how does Australia have fewer criminal offenders but more people in prison? Well, the first part of any answer is to look internationally. Is Australia just some part of some broader international trend? The answer is clearly no. Australia's rate of growth of imprisonment out of line with other developed countries. UN data shows that Australia's growth rate in imprisonment was third highest among OECD countries between 2003 and 2018, exceeded only by Turkey and Colombia. It was well above countries that we consider comparators, Canada, UK, well above the US, over that same period. So clearly what we are seeing in the data is an Australian story.

Is this a trend driven just by one or two states or territory? No. Imprisonment rates differ across the country. Much higher in the Northern Territory than any other jurisdiction. Western Australia also had much higher imprisonment rates than other states, around 50 percent higher than Queensland, New South Wales or South Australia. But all of these jurisdictions have seen rising rate of imprisonment. So increasing rates of imprisonment for Australia wide. So the first aim of the Productivity Commission's report was to try and understand this trend. What are the drivers behind rising imprisonment rates but falling offender rates?

Now, when looking at drivers, we first must consider an obvious but incorrect explanation. Is the increase in imprisonment driving the fall in crime. In other words is prison acting to deter crime? So as imprisonment rates go up offending rates fall, the short answer to this is no. The evidence indicates that this is not what's happening. Don is going to talk about this in greater detail, a bit later on in this webinar.

(AUDIO DROPS)

...Australia, less crime, more people in prison. Let's take a closer look at who is in prison. I just want to talk about a few of the categories here. I know Helen will touch on some others in her talk. In particular, I want to highlight the remand numbers. First, one in three people in prison today was on remand, awaiting trial or awaiting sentencing. Increasing numbers of people on remand account for 64 percent of the growth in imprisonment between 2012 and 2019. Second, let's have a look at the number of people who have been in prison before. 60 percent of people who enter the prison have been in prison before. Recidivism is high in Australia, compared with many other OECD countries. Third, please look at the bottom line of the chart. The majority of prisoners have committed violent crime, but there are a significant group, of relatively low-risk prisoners convicted for crimes such as minor theft, property damage, public order offences, or drug possession, not drug trafficking. These individuals are often sentenced to prison for less than six months, or even less than three months.

Together, these facts suggest two things.

First, the policy may have a direct role to play in our 'less crime, more in prison', stylised fact for Australia. For example, are the number of people... Are the numbers driven by tough on bail laws, so we have more people on remand. Or are they driven by tough on re-offending laws so high recidivism means high numbers in prison. Or is it something else? Second, the numbers show that there are a significant number of people caught on a prison minor crime prison treadmill. These individuals may have untreated alcohol or other drug issues. They may have undiagnosed or untreated mental health or cognitive issues. May have low levels of education, little prospect of employment, or be homeless.

So the Productivity Commission looked at the drivers of our stylised fact using empirical analysis. Now I'm not going to go into the details of the analysis here, but what we found is summarised in this table.

First, if you look at the second column in this table, you'll notice that there's a few red arrows there. That suggests that the composition of crime has had some role in explaining the numbers, the shift towards crimes that are involved with longer prison sentences. However, if you're looking for the red arrows here, the things that really drive our stylised fact. And you're really looking across the last three of the columns on this chart.

Those three are the policy columns. Policies that result in an individual being more likely to be sent to prison for a particular offence, such as mandatory prison sentencing rules, policies that mean that an individual spends longer in prison, such as tough on bail or tough on parole policies. And in general, what our analysis shows is that while the story is complex, the important driver of more people in prison, but lower offending in Australia are what I would call 'tough on crime' policies. Now I know Nick is going to look in more detail at specific criminal justice policies later in this webinar. But the takeaway here is that to a large degree, increasing imprisonment despite falling offender rates in Australia is driven by policy choices.

Now, why does this matter? As a group of economists, the Commission's first port of call is the direct monetary cost to taxpayers. And what we show here is a summary of some of the numbers. And the numbers are large. Prisons are expensive, they cost Australian taxpayers around 5.2 billion in 2019-20. That's around \$330 per prisoner, per day.

If the rate of (AUDIO DISTORTS) remained steady, rather than rising over the past 20 years, and the accumulated savings in prison costs would be about \$13.5 billion today.

And, if we could just divert one percent of those offenders who are least risk to the community, away from prison and into say, supervised home detention, we could save taxpayers around \$45 million per year.

So, take away at this point is that tough on crime policies matter in Australia. They've had an effect on imprisonment rates. But they're also tough on tax payers. It's leading to quite a costly outcome, just from a fiscal perspective.

Now, imprisonment has got a range of other costs, indirect costs to the prisoner, their family, to society more generally. I know Helen is going to talk about some of these later on in this webinar, so I'm not going to emphasise them here.

Finally however, analysing prison policy is only useful if there are alternatives, at least for low-risk offenders. Those alternatives have to provide appropriate punishment and deterrence. Keep the

community safe. But we want to see if we can reduce the long term cost of imprisonment, particularly to the tax payers. A range of options have been trialled, both here in Australia and overseas. For example, home detention and strict electronic monitoring and supervision has been found to cost around one fifth of imprisonment. It can result in long term improvement to community safety, due to reduced re-offending. For example, Don Weatherburn, together with Professor Jenny Williams from the University of Melbourne, have shown how electronic monitoring can significantly reduce the rate of recidivism.

The home detention with electronic monitoring is an alternative that can lower costs or actually raising the long term community safety. If we link that home detention with programs such as mental health, alcohol and drug treatment. We could potentially increase these gains, as prisoners can re-enter society, ready to hold down employment. And contribute, rather than cost. But also help get some of those low-risk prisoners off that prison-crime-prison treadmill. This is just one of the alternatives. Others, such as ACT Throughcare program, the Victorian Assessment and Referral Court, the use of restorative justice in New Zealand, discussed in our report. Now adopting these alternatives requires both evidence about what works and buy-in from Australian society. The existing evidence, however, is poor.

Many programs were never evaluated.

But we can only move forward when we know what prison alternatives are safe, effective, and acceptable to the community. This means we need more trials of alternatives to prison, more data and proper evaluation of trials, to find out what works. As potential gains, as we've tried to show in the report, can be pretty significant. But we still need the evidence before we can move forward on those alternatives. So thank you and let me pass on to Don.

DON WEATHERBURN:

Thanks very much, Stephen. As Stephen has pointed out so eloquently, there's no question that much of the rise in the imprisonment rate has been driven by public policy. So an obvious question is to what extent has prison made us safer? To what extent has it delivered the benefits which have been paying for. So I'm just going to go reasonably quickly through the evidence on that score. There are three ways in which you might expect prison to reduce crime. The first is specific deterrence, which refers to the fact that an offender in prison may, or imprisoning an offender, may discourage them from committing further offences. General deterrence, which is another pathway, which refers to the fact that if we imprison those who offend, we may discourage others from offending. And lastly, incapacitation, which refers to the drop in crime we get when people are unable to offend, because they're in prison.

Now, before we go much further, I just want to deal quickly with the suggestion that people might think there's no effective prison at all. Well, that's not what we're talking about here. We're talking about what's called the marginal effect of imprisonment. So to illustrate that, I've set up this stylised graph, and on the vertical axis, you've got the crime rate, on the horizontal axis, you've got sanction severity. The absolute effect of prison is what you see at SO, it's the effect on crime of having no sanction at all. And it would be, in my view, substantial. If you go from SO to S1 along the bottom there, you can see the crime rate would go down. I mean, at least in this stylised picture, it would. But the key thing to note is that going from S1 to S2 would not produce any further reduction in crime. So when we talk about the marginal effects of prison, we're talking about the effect of increasing the level of prison beyond its current state. OK.

So what's the evidence show? Well, looking at specific deterrents, there have been two major reviews, both of which look carefully at well-controlled studies. Those that have used RCTs, randomised controlled trials, or matching or instrumental variable methods. The first by Nagin, Cullen and Jonson, in 2009, concluded that there was no evidence that prison reduces re-offending. In fact, the evidence suggests it may have a slight criminogenic effect. The second one in 2015 by Villettaz, Gillieron and Killias, for a Campbell Systematic Review, came to exactly the same conclusion. And if you're wondering what sort of study would generate this kind of evidence, I've thought of giving you an example, one conducted by Green and Winik, they capitalised on the fact that in the District of Columbia in the US, the allocation of judges to cases is random. And what that means is that there are no systematic differences between the case profiles dealt with by different judges. In other words, they are effectively all dealing with similar kinds of cases over the long run. They do, however, differ quite substantially in their willingness to imprison people.

So what Green and Winnik did was compare the re-offending rate among cases or people who have been dealt with by tough judges compared with those who'd been dealt with by lenient judges. And what they found was that there was no difference whatsoever. So it doesn't appear as if systematic or certainly doesn't appear from most studies, is the imprisoning offenders reduces their risk of reoffending.

There are, however, a couple of exceptions that I should mention. One of them by Eric Helland and Alexander Tabarrok back in 2007, they compared offenders with two strikes to offenders who'd had one strike. This is in a three strikes regime but had the second charge bargained down to a non-strikable offence. And when they compared those two groups, they found that those who'd bargained down the second charge were offending at 17 to 20 percent higher rate than those who had the three strikes consequence. They noted though, that even though it was effective in these circumstances, prison was less cost effective than appointing, for example, another 1,000 police officers.

The second exception to the general rule is one developed by Drago and Galbiati in 2012. They capitalised on the fact that in Italy in 2006, the Italian Government gave early release to 221,863 offenders, which is far more than Rex Jackson ever let out of prison. But the condition was that if any of them re-offend within five years, they were required to serve the balance of their sentence back in prison. Now the intriguing thing about this arrangement is that the length of time hanging over you once you're released from prison wasn't in any way related to your characteristics, your prior criminal record, the offence you committed. It was simply related to when you went into prison. If you went in a long time ago, you'd have less to serve than if you went in more recently. And they found that those who had longer to serve on their sentence, if they reoffended, were less likely to re-offend. The catch, though, was that when the period remaining to be served in prison got long enough, there was no further effect. They're the only two exceptions I'm aware of. Most of the literature suggests that specific deterrence with prison simply isn't a viable option for controlling crime.

OK, let's now turn to incapacitation. This was popular, certainly as a study in the 1980s, and the basic strategy is to develop a mathematical model of offending rates and criminal career duration. And the model most commonly used was one developed by Shinnar and Shinnar. And they would estimate, in applying the model, estimate the offending rate of a person in the six months prior to entering custody, estimate the length of time they would spend in their criminal career, and then subtract out any offending that would have occurred when the offender was free but didn't happen, because they were

in custody. And that sort of study typically generated a result that a 10 percent increase in the imprisonment rate would reduce crime by about three percent.

Now, that sounds like a lot, but that study and studies in that vein have been criticised over the years because it's very difficult to get decent measures of offending while people are free. The early studies relied on self-reported offending in the six months prior to entering custody, and it was later found out that that was an exaggeration that most people don't offend anywhere near that rate. In fact, shortly after they do increase their offending to that kind of rate, they're likely to end up in prison. So there haven't been any simulation studies looking at incapacitation for quite a long time.

So I'll turn now to the issue of general deterrence and incapacitation. But before I do, it's important to understand how economists and others like to measure the effectiveness of prison, and the concept they refer to here and we're going to refer to, is elasticity. The elasticity of crime with respect to prison is the effect on crime of a one percent increase in either the rate, the likelihood, or the length of imprisonment. So an elasticity of minus point five would mean that a one percent increase in the rate of likelihood or length of imprisonment would reduce crime by 0.5 percent. Or to put it in more familiar terms, a 10 percent increase in the imprisonment rate would reduce crime by five percent.

So what does the research actually show on deterrent, general deterrence and incapacitation? Well, the early studies found quite sizeable effects. Marvel and Moody, for example, found evidence that a 10 percent increase in the imprisonment rate would reduce crime by between 1.4 and 2.6 percent, depending upon the type of offence. Levitt also found similarly large effects. Not so for Becsi, and Spelman also found a large effect 10 percent increase in the imprisonment rate would reduce crime by three percent. But later studies have not found this, and the later studies, generally speaking, more effectively with methodological problems than the earlier studies. Lidka, Piehl and Useem, for example, one of the most highly cited studies actually looked at the effect of the elasticity of crime with respect to prison as the imprisonment rate rose, and they found that the elasticity actually shrinks to zero with prison population size and actually turns positive when you get above 3.25 prisoners per 1,000 population. Johnson and Raphael, another highly cited study, also found quite small effects. So in their case, a 10 percent increase in the imprisonment rate would have reduced crime, in their study, by 10 to, sorry, by one to two percent. Of course, the obvious question is what about Australia? Well, as Stephen pointed out, there haven't been anywhere near enough studies of this issue in Australia, but there have been some.

A couple of early studies by Australian economist, Withers, looked at the issue and found quite sizeable effects. An increase of 10% imprisonment would generate a 6.1% drop according to him. In crime. And Bodman and Maultby also found quite sizeable effects. But once again, later studies using better methods have found smaller effects. My colleague Wai-Yin Wan, for example, and her colleagues, found that a 10% increase in the likelihood of going to jail would have reduced property crime by 1.35% and violent crime by 2.9%. But a more recent study conducted by myself, and Bun and (UNKNOWN) and a number of others, found smaller effects again, in our case, we found that a 10% increase in the imprisonment rate in the likelihood of going to jail would reduce crime, property crime by 0.25% and violent crime by 0.27%. Now what's interesting about the Bun study is that they actually tried to look at the full effect of the criminal justices, including changes in the risk of arrest and sentence length.

So what I've done is graph those here to give you a sense of the difference in output, depending on where you put your money for crime control. So along the bottom, you've got the effect of a 10%

increase in the likelihood of arrest. Then in the middle, you've got a 10% increase in the probability of imprisonment, the effect there. And then on the right, you've got the average, the effect of a 10% increase in the average sentence length. And you can see, for the probability of arrest, the effects are quite spectacular. On their estimation, you get a 3.6% reduction in property crime, and in the case of violent crime, you get a 6.9% reduction. By contrast, if you look at the effect of a 10% increase in the likelihood of imprisonment, the effects are very small indeed, hardly worth having. And in the case of an average sentence, it actually went the wrong way. In other words, there was some blank suggestion that it would actually increase crime. I wouldn't put too much store by that though because it wasn't statistically significant.

So let's try to summarise where we're at, in terms of the effect on crime. Lots of people think that the growth in imprisonment has reduced crime, but the evidence doesn't support that. Between 2001 and 2020, the Australian imprisonment rate rose by 32%. The recorded property crime rate over that period fell by 64% and the violent crime rate fell by 32%. Now, if you take Wai-Yin Wan's estimates, less than 6% of the decline in crime in Australia over that period is due to the rise in imprisonment risk. If you take the Bun estimates, which are smaller, less than 1% of the decline came from the rise in imprisonment risk, and the growth in prison sentence length had no effect. So in summary, prison has little, if any, specific deterrent effect. It has a general deterrent and incapacitation effect. That effect at the moment on current estimates is quite small. It has a range of adverse effects I won't go into, but our next speaker Helen will go into at length. The key issue for everybody is whether there are cost-effective alternatives to prison.

Now the Washington State Institute for Public Policy analysis suggests there is. But as other speakers have said, there are hardly any cost-effectiveness studies of Australian correctional programs, except those that have been conducted, for example, by the Bureau of Crime Statistics and Research. And this is something we really need to change if we are ever going to persuade policymakers to reduce their reliance on prison. I'll now hand over to Helen, who will take it up from here.

HELEN COVENTRY:

Good afternoon everyone, my name's Helen Coventry, and I'm with Jesuit Social Services. And in terms of the presentation today, I'm looking at the social cost of imprisonment. I'd like to start by acknowledging the traditional custodians of the lands in which we meet, and pay respects to elders past, present and emerging, and extend that respect to any Aboriginal people we have with us as part of the webinar today. Jesuit Social Services notes, with shame, the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system. The harms of the justice system disproportionately impacts First Nations peoples, whose over-incarceration flows from a history of colonisation, dispossession, systemic racism, intergenerational trauma, and discriminatory laws and practices.

In terms of Jesuit Social Services we've been delivering services for over 40 years. We work where the need is greatest, and we have four key areas in which we deliver programs. They include justice and crime prevention, mental health and wellbeing, community building and settlement services, and education, training, and employment services. Our services span Victoria, New South Wales, and the Northern Territory.

We are a social change organisation. We believe that by working alongside our participants, we have, at capacity, to have significant insight into the support needs and the requirements of our participants, and

that we can effectively influence and change social policy to be more just and create a just society for all.

In terms of the programs that are offered at Jesuit Social Services in the Adult Justice Space, we have three key programs. ReConnect, which is a post-release support program that works with men and women exiting any of the prisons in the state of Victoria, except for one of the private prisons, who plan to live in the North West Metropolitan Region of Melbourne. We work with those who have been sentenced to greater than three months, who are classified as having high transitional needs, and at high risk of offending. We support people in a privileged capacity, so we start working with people six weeks before a confirmed release date. We provide day-of release support, and then we work with people in the community for a minimum of a month, and a maximum of 12 months, and looking to address seven key domains, which include housing, employment, education and training, independent living skills, family-community connectedness, mental health, and alcohol and drug needs.

Our second program is the Maribyrnong Community Residential Facility. This was a pilot program that was established in response to the COVID-19 pandemic, acknowledging that those who were exiting custody and into homelessness were at higher risk of contracting and transmitting COVID-19. The program provides short-term accommodation to men, who would otherwise be homeless, with on-site case management support, a co-located nurse, and a housing and a private rental support access worker. And the program works with men while they're at the facility and assists them to transition out to longer-term alternative accommodation.

The final program in the Adult Justice Space is the African Visitation and Mentoring Program, AVAMP. It works with people from African backgrounds who are involved in the justice system. We match community mentors with people who are currently in custody, to provide support to them while they're in custody and post-release. We also provide information, education to the African community more broadly to support them in their understanding of the justice service... of the justice system.

In terms of the Victorian prison context, we have a number of prisons, 13 men's prisons, a women's prison, and a transitional centre. I think the key piece here is looking at our prison numbers, which were correct at September this year. So of the 6,800 people in custody, 40% of those are on remand and the high rates of Aboriginal incarceration, with over 700 people currently in custody.

In terms of our participant cohort, when we reflect on who we currently work with, there are a number of common characteristics in our participants. Our prison population is made up of individuals who've experienced multiple and complex forms of disadvantage. Through our comprehensive assessments, we see a common trajectory that includes experiences of early childhood trauma, involvement in the state care and protection system, in the youth justice system, and then ultimately, the adult justice system. The 35-year-old male, who's currently in custody charged with theft, possession, and a breach of an IVO, is a three-year-old who experienced social disadvantage, witnessed family violence, entered the state care and protection system, disengaged from education, engaged in substance use, and experienced homelessness.

Across the trajectory, we see that there are many points of intervention or investment into strategies to combat social and educational disadvantage, would have prevented entry into the justice system. When we consider the women that we work with, we see similar characteristics coupled with experiences of sexual violence, abuse, and family violence. For our Aboriginal and Torres Strait Islander participants,

these experiences are overlaid with the impacts of colonisation, dispossession, intergenerational trauma, and a lived experience of discrimination and racism. Our participant cohort has disproportionately higher rates of physical and mental ill health, and cognitive impairments, compared to the wider community. We note that 6% of Victorian postcodes account for 50% of our prison admissions.

In terms of the barriers and challenges experienced by our participants, there are a number of structural barriers, the two key structural barriers that stand out most are housing, and then financial barriers. In terms of housing, we're in a housing crisis. There are limited appropriate, safe, affordable housing options for people. The reality for a significant proportion of participants who exit custody is that they will enter emergency accommodation, which in most instances, is hotel accommodation. They will be supported to apply for community and social housing, however the waiting list for those services is quite long, so many will access private rooming houses. This type of accommodation is expensive and generally of quite a poor standard.

Being in a community, being in a privately run rooming house is considered a stepping stone into community and social housing. We note that the lack of appropriate housing significantly impacts an individual's capacity to address their underlying support needs and impacts their capacity to reintegrate into the community. As mentioned before, we operate the MCRF program, which provides appropriate housing, and holistic support to individuals. That provides people with an opportunity to address the underlying causes of their offending. That particular program has had a number of successes in terms of supporting them to secure employment and obtain private rental. In terms of financial barriers, the current rates of our welfare payments are woefully inadequate. JobSeeker recipients are forced to live below the poverty line. This does not allow people to live a dignified life.

Those who were previously on the Disability Support Pensions and have served more than two years, are released on JobSeeker. They are required to reapply for the Disability Support Pension, where you've worked with a number of participants in this situation who've been diagnosed with cognitive disabilities, are unable to live independently in the community, and require supported residential accommodation, who have not been able to access this because they have not been able to afford it due to being on JobSeeker payments. We have supported those individuals by assisting them to reapply for the Disability Support Pension, by (AUDIO DISTORTS) contributing to the cost of their rent and subsidising their rent up until the point in time where they can be reinstated on the Disability Support Pension.

In terms of the personal barriers that our participants face and when we consider the impacts of incarceration on our participants, the two things that stand out the most are the diminished sense of self-worth and the effects of institutionalisation. And I believe some of our participants are able to describe that best. When speaking to one of our participants about his sense of self-worth, he said to us, "Think about the worst thing that you've ever done. Think about the thing that makes you feel sick to your stomach, that keeps you up at night, that keeps playing on a loop in your head. recognise the feeling? That's how I feel every day when I talk to people knowing that they're going to judge me because I've been in prison." For another participant when he was describing his first two weeks out of custody, he spoke about living in a caravan at the back of his dad's property and that now every day at about 4:30, he'd go back into the caravan and stay there for the night. It wasn't until his dad knocked on the door and told him he didn't need to do that anymore. That he realised he was following the routine

that he had in custody. Another one of our participants described setting up his bathroom as his bedroom, because it was the smallest room in the house, and that's where he felt safest.

We at Jesuit Social Services strongly believe that prison should be a last resort. We work with people every day that experience a range of challenges when they transition from the community. And we note the serious impact that their imprisonment has, not only at the time, but also in terms of their ability to move forward with their lives. We strongly believe that where possible, people should be supported to address the underlying problems which led to their offending behaviour when they are in the community. We believe that alternative pathways, including diversion programs, could deliver better outcomes for offenders, victims, and the community more broadly. An example of such a program is our Youth Justice Conferencing Program, which enables a dialogue between young people who've offended, the victims, and the wider community. It aims to divert young people from further offending. It brings together those involved or affected by the offences to discuss how the young person can make amends for the harm that they've done. In the process, it helps a young person see the impacts of their actions on their victims, and it supports young people to restore relationships with those that they've harmed. It's a problem-solving approach to offending that's based on the principles of restorative justice, which balance the needs of the offenders, victims and the community.

Sorry, might have technical difficulties. And finally, in order to have an effective justice system, we believe there needs to be investment into early intervention strategies to combat social and educational disadvantage to prevent entry into the justice system in the first place, as well as investment into place-based interventions that address locational disadvantage, the development of flexible diversion options along with justice continuum. We know that children who have had contact with the justice system are more likely to have further contact throughout their lives. So, raising the age of criminal responsibility from 10 to 14, will keep primary school-age children in the playground, and out of prison. This would be a positive step forward in improving outcomes for everyone.

The leaders from Jesuit Social Services have previously completed a just solutions tour in parts of Europe, the US, and New Zealand, to explore what an effective justice system looks like. What we have found is an emphasis on relationship, rehabilitation, and reintegration, being at the core of effective justice systems. The importance of attracting and retaining skilled and qualified staff, is also imperative to the overall effectiveness of the justice system. For example, in Norway, prison officers are required to have a minimum of two years paid study. Additionally, their youth justice facilities, half of the staff there are social workers. That focus on qualified, well-skilled staff has assisted in a way in having extremely low incarceration rates, and recidivism rates, in comparison to Australia. Additionally, and finally, we need to genuinely and respectfully incorporate the voices of those with the lived experience of our justice system, in conversations with regards to development of any programs across the service sector. And now I'll hand over to Nick. Thank you.

NICHOLAS COWDERY:

Thanks very much, Helen. Good afternoon ladies and gentlemen, I regret to say that you won't be able to see me speaking this afternoon despite the best efforts of the technical people, but maybe from your point of view, that's a good thing. But in any event, I add my thanks and congratulations to the Productivity Commission for this very valuable report, as you've heard, something new in their territory, and I think they've done it very well indeed. And I thank them for this webinar, which important matters are being discussed, as you've heard already. First, let me say on a personal note, I've been involved in criminal justice in one capacity or another...

(AUDIO DROPS)

...justice process is a fairly poor educator and reformer of persons who have offended, or who are at risk of offending. Those functions belong elsewhere and I'll come back to that towards the end of my contribution this afternoon. The criminal justice system, of course, does serve other purposes that our governance system relies upon. Is our way of seeking to do justice to the whole community when harm has been done in an unlawful way? And as the Productivity Commission report makes clear, the criminal justice system, and processes, must seek to make our community safe, must be fair and just in their operation, must have the confidence of the community, and must do all of this at the least cost. And those are guiding principles I think that we can take to heart when we're assessing the outcomes of the criminal justice system and processes.

The Productivity Commission report is another of many reports that convey similar messages. I'm not throwing it down for that, but there is a good deal of material available that supports the conclusions that have been drawn. And we now need to be looking at alternatives to imprisonment. The catchline of the Justice Reform Initiative, of which I am a director, is 'jailing is failing', and so it is. And if you're interested, you'll see a great deal of supporting information on the JRI website.

I've been asked to speak this afternoon about the contribution of the criminal law to the mess in which we personally find ourselves, and the contributions it can make to improving the situation. And I can do that in a fairly summary way. I'd be touching on some of the things that have already been said by previous speakers, but I'll skip through these points as expeditiously as I can.

First, the criminal law's contributions to increasing imprisonment, and I'm picking up here on some of the things that Stephen has already said.

First, sentencing laws, which of course, the courts must apply, have resulted in more sentences of imprisonment and for longer periods. And those moves, and restrictions on sentencing discretion that have been imposed, such as standard non-parole periods, guideline sentencing judgments, and particularly, mandatory minimum sentences, have seen the proportion of convicted adult offenders in Australia, who are sentenced to imprisonment, rises from 5.5% in 2007 to 2008, to 11% in 2019 and '20. So that's a steady rise to a doubling of the proportion of adults convicted, sentenced to imprisonment, over the last 12 years. Fairly irrefutable evidence I would have thought, of the impact of sentencing laws, and sentencing practices. I must say, Don, thank you very much for the graphs you sent me.

The next point, one third of the prisoners were on remand, unsentenced, bail refused. Their lives have been disrupted and the lives of those associated with them. In some cases, that detention is justified. But in New South Wales, 9% of those people will not be convicted, and 25% will not be sentenced to custody or will receive a sentence less than they have already served on remand. That is the direct result of the mess the parliament has made of the bail act.

Next point, 35% of sentenced prisoners are serving sentences of six months or less. 70% of those are for non-violent offences. Now, short sentences are of no use to anyone, and they cost us a great deal. It takes weeks or sometimes months for prisoners to be classified and allocated to the institutions at which they're going to serve their sentences. But the programs in prison that can be applied, the therapeutic programs, educational programs, drug and alcohol programs, sex offender programs, all

those programs for prisoners require a minimum of six months. So you do the maths. That means that 35% of prisoners are just warehoused in an environment that can only do them harm.

The next point to make is that there are custodial sentences imposed for offences that don't require them. One prominent example is drug use and possession - I'm not talking about drug dealing or trafficking - drug use and possession. The law can change that. The law has created it. It can change it. The next point to make there is the restrictions on parole, how serving to prolong the periods of time the prisoners spend in custody. Again, a tweaking of the law has created that situation. And the final one I want to mention is not really a criminal law contribution, but it's a compounding factor of those criminal law contributions. And that is recidivism.

Stephen has already mentioned this, but 46%... In some surveys, it's a slightly higher figure than that. But 46% at least of released prisoners are back in corrections custody and control within two years. And as Stephen has said, 60% of prisoners coming into prison have been there before. It doesn't seem to say much for rehabilitation and reform as a sentencing objective. So, the second part of my presentation, how can the criminal law contribute to reducing imprisonment? Well, there are things that are being done to said to reduce imprisonment.

Helen has just given very clear description of the Jesuit programs, and I recommend that you read the case studies in chapter four of the report. There are some good ideas there, and they're working, although further evaluation needs to be conducted. Specifically, I think sentences of six months or less need to be abolished and replaced with community corrections programs, with measures being put in place to avoid bracket creep by careless magistrates, those who insist on imposing sentences of six-and-a-half or seven months. But they're ways around that. Some steps were taken towards community corrections in New South Wales in 2018, and credit goes to the government for that, but much more can be done.

We do have some limited diversionary programs in place in the local court and the Children's Court. But again, more needs to be done to deal with offenders alongside the criminal justice process. And it can be done safely in the community. It calls for resources to be effective, and the resources need to be directed that way. More resources also, of course, need to be put into rehabilitation in prison and upon release, when released prisoners are particularly vulnerable to re-offending and ending up back inside. And the drug laws need to be reformed.

A good starting place would be the 109 recommendations from the Ice inquiry, which recorded in February of last year, upon which five as probably the best recommendations were summarily dismissed by the government. But there are still 104 that haven't been addressed at all. And we're getting up to the second anniversary of the report. But all that really is just using law reform to tinker at the edges. The real way to intercede, to prevent, or abate criminal offending in the first place, and to reduce the candidates for prison is to work harder on the criminogenic factors in society. The consequences of which are clearly described in the report.

And I'm talking of addressing the forces that create prisoners who have these characteristics. They are younger, uneducated, unemployed, homeless, using drugs and alcohol, having mental health issues. And with female offenders, offenders who themselves have been victims of crime, which has contributed to their later offending. Those are the health and social features of society which I think we must give

much more attention to, to try to head off this passage of people into prison. And that's where the justice reinvestment is required. It's another idea whose day has come.

We have some limited justice reinvestment programs in place, particularly the Maranguka project in Bourke and the other programs of Just Reinvest NSW which are producing terrific results. And governments need to take those on board and duplicate them across the whole jurisdiction for the benefit of the community generally. You've heard this before this afternoon, those are the policy choices to be made by government. Thank you very much. (BACKGROUND NOISE)

MICHAEL BRENNAN:

Thank you very much, Nick, and thank you very much to all of our speakers, and the questions are coming through now. So I'm going to start with a question that's arisen both from Jessica Williams and Bob Phelps, which goes to the issue of family violence and violence against women, or other family or sexual related violence even against men. What role has that played in increased rates of incarceration and, for that matter, in offending rates? I thought I might start with Don. Do you want to have a go at answering that?

DON WEATHERBURN:

Sure, it's played quite a significant role. In fact, the rising public concern about domestic violence has led to tougher sentences. Also, you'll see the same thing in relation to child sex assault. That's part of the reason, although not the whole reason, why when Stephen spoke about the compositional effect, the change in the profile of cases coming before the courts has played some role in increasing the imprisonment rate or the percentage of people going to prison, but it hasn't been the sole factor. There's been an increase in the percentage of convicted offenders getting a prison sentence in a whole range of offence areas. So it's part of the contribution, but not...so not by any means the main contribution.

MICHAEL BRENNAN:

Thanks, Don. Stephen, did you have anything to add to that?

STEPHEN KING:

Yeah, very much (AUDIO DISTORTS) along the lines of Don. There's clearly been an increase in the reporting of sexual assault, domestic violence, and so on. In terms of the total amount of crime, it is a fairly small percentage.

MICHAEL BRENNAN:

I'll come to a question - thanks, Stephen - that has been posed in relation to Helen as to whether there has been an evaluation of the Reconnect Program, and anything that you can tell us about the evidence that's been collected or whether it's indeed too early to know.

HELEN COVENTRY:

So essentially, there was an evaluation done a little while ago through Corrections Victoria looking at some of the outcomes of the program. The model has changed over a period of time and there really does need to be further evaluation of the program. I didn't mention earlier that Jesuit Social Services is one of three providers of the Reconnect Program. It is a state-wide service. We provide it in the North West Metro region, and there were two other agencies that provide it across the rest of the state. But absolutely, take your point that evaluation of the service delivery model needs to occur.

MICHAEL BRENNAN:

The supplementary question, which I might throw both to Don and to Nick, is where if anywhere is the evidence base strong in respect of sentencing policies or criminal justice policy in Australia, such that it could be used as a basis to change policy?

DON WEATHERBURN:

Well, for example, as I mentioned, the Washington State Institute for Public Policy did a systematic review of what you could do to reduce the US prison population, or I should say, the prison population in the Washington state.

And there were a whole range of programs they found to be effective. Most of them tackle the underlying causes of crime that Nick mentioned, so mental health problems or substance abuse problems. Many of them are directed at young people. But if you're looking for a summary of those that work, the Washington State Institute's a very good place to start.

The other alternative is to go on to the Campbell Collaboration website. The Campbell Collaboration website has a whole range of systematic reviews of programs designed to reduce re-offending or reduce crime. I won't go through the full list of them now, but there's an abundance of effective programs that are genuine alternatives to custody.

MICHAEL BRENNAN:

Nicholas, did you have anything to add to that?

NICHOLAS COWDERY:

I couldn't possibly top Don on that issue. (LAUGHS). No, there are programs that have been shown to work. One of the objections that our politicians raised when sensible suggestions are being put forward for consideration is that there's no evidence. There's no evidence that they work. We had this with the drug testing ideas for pop concerts and music festivals, and that sort of thing.

When it was proposed that we do in New South Wales what they're doing in the ACT and giving people the opportunity to have their drugs tested before terrible harm comes their way. The government response here was, Oh, there's no evidence it works. Well, I'm sorry, but there is. There's a lot of evidence it works in the ACT and in about half dozen countries around the world where these programs have been in operation, have been studiously assessed and reported upon for years. The evidence is there. We need somehow to get our politicians to look beyond the jurisdictional borders.

MICHAEL BRENNAN:

Staying with the geographic theme, the question from Robert Tickner, who has seen these issues from a variety of standpoints and brings a wealth of experience on these matters, to both Helen and Stephen. So I'll start with Helen, given your observation that a disproportionate number of offenders are coming from a small number of postcodes, typically disadvantaged postcodes around the country, wouldn't it make sense for there to be a more concerted and coordinated investment in those communities and to address some of the underlying issues that have been highlighted in multiple reports? I'll go to you Helen, and then Stephen, if you've got a perspective on that.

HELEN COVENTRY:

Absolutely. Jesuit social services would absolutely agree that there needs to be investment into place based programs and initiatives, looking at the needs of specific areas, of the communities of those

areas, and having the voices of those communities linked in so that the interventions, that are being developed, are actually effective. There's no point in taking an intervention from one area and placing it somewhere else entirely if the communities in those areas aren't the same. We need to look specifically at those areas of disadvantage and see what's required in that space, and advocate and work closely with those communities to develop better programs that meet their needs.

STEPHEN KING:

Yeah, and if I can just follow up. Our work explicitly didn't look at the socioeconomic drivers for crime. That's not to underplay their importance. They're critically important, but our report did focus on that (UNKNOWN) that they were concerned about. This juxtaposition of more people in prison, but less offending. The numbers just by themselves suggest that if we wish to get gains for the Australian community, then we both...we have to do two things.

We have to focus in on those over-represented communities, the particular postcodes, in erst the questions one person referred to. Again, just horrifying over-representation of Indigenous Australians in our prison system. 3% of our population makes up 30% of the people in prison. If we don't start addressing those issues, then clearly we're not going to make head way. It also comes down to the applicability and the success of alternatives.

Helen ran through the sort of support programs that Jesuit Social Services offers. We look at case studies such as that ACT throughcare in our report, which again provides support for individuals as they're leaving prison. To get that sort of savings that we're talking about, that \$45 million, if we can get the least risk, 1%, give them an alternative to prison. That's just not an alternative of saying, well, home detention with electronic monitoring.

It's got to be with the programs built around that those particular individuals need, so that if you've got alcohol and drug issues, if you've got mental health issues, if you've got cognitive impairment issues, if they need help gaining employment, we've got to have those. Simply saying, well, don't have jail, do supervised home detention by itself is clearly not going to go all the way to get those gains that we think are there.

MICHAEL BRENNAN:

We have a number of questions relating to private prisons and the role that they may have played in relation either to sentencing or policy for prisoners once they're in the corrections system. I won't go to you, Stephen, because it's not something that we explicitly looked at in our report, but I might go to the other three, starting with you, Helen. Do you have a perspective on private prisons and whether there is something in play here in relation to that?

HELEN COVENTRY:

There is always a challenge when what should be a public system is privatised. In the Victorian context, we currently have three private prisons. Jesuit Social Services does work closely with all three of them. But we would have a philosophical view that private prisons are not appropriate in this space.

MICHAEL BRENNAN:

Don or Nicholas, do have a view on that?

NICHOLAS COWDERY:

Well, I agree with Helen. This prison, I think, falls into that category of government services that should

be run by the government. They're simply not appropriate for the profit model of commerce. And the risk is to the treatment and welfare of the prisoners if the prisons are being run to bring profits to the shareholders. I'm totally against private prisons.

DON WEATHERBURN:

Yeah, I must say I find it a bit disconcerting to even suggest that you would privatise the business of punishment by the state, but setting that aside, I'm not aware of any evidence that private prisons produce better outcomes than public prisons. And at least in the US, there have been some pretty scandalous developments in the context of private prisons. So, I mean, I think if people are looking to that as a solution, they are looking in the wrong place. We really need to look at, as Nick has said and as other speakers have said, we really need to look at a more rational and more effective way of managing crime than ever-increasing prison populations.

MICHAEL BRENNAN:

We got another question that goes to the role of policing, the police numbers or police practices playing a role, and I'll throw in one for provocation: What would be the implications of an Australian derivative of the United States movement around defunding the police? But more to the point, what role are police numbers playing? Don, you pointed out the risk of being apprehended is probably playing some role in reducing crime, but it does seem equally true that police numbers can also lead to increased incarceration in an indirect sense. I'll start with you, Don. Do you have a view about policing policy?

DON WEATHERBURN:

Well, you've just stepped into a big debate in the literature. Some say appointing extra police wouldn't result in more people being arrested because there'd be less offending, but setting that aside, the reality is that the way police behave - never mind the number - has a huge effect on what goes into the criminal justice system. Years ago, for example, we had what's now known as the trifecta, with police going around mainly arresting Aboriginal people for resist arrest, offensive behaviour, resist arrest, assault police, and lots of people were ending up in jail for that sort of offence.

At the moment, you've got a huge increase in the number of people being arrested for intimidation, stalking, and the police have had, at least in New South Wales and maybe other states as well, a deliberate policy of targeting people on conditional release, looking for an opportunity to catch them, breaching the conditions of their conditional release, so they can take them back to court and persuade the court thereby to lock them up. So, yes, policing can make a big contribution and make things worse. But good policing can also make a contribution and make things better. Everything depends on what the police actually do.

MICHAEL BRENNAN:

Helen, did you have a view?

HELEN COVENTRY:

I would have to agree with Don's statement, everything depends on what the police actually do. We've had experiences through one of the previous programs that we've run, which was the Enabling Justice Program, which brought together people with lived experience of the justice system and cognitive impairment in terms of an acquired brain injury, and some of the stories and experiences of those individuals and what they described to us was very concerning in terms of their experience with the police being picked up, being targeted, etc.

On the other hand, in the context of the family violence base, some of the specialist family violence police officers that we've worked with have had sensational outcomes with us and have worked really closely and really well with us. So it absolutely depends on the culture of your police, what they're doing, what they're trying to achieve, and if it lines up with the work that we're actually doing.

MICHAEL BRENNAN:

Nicholas, do you have a view on policing?

NICHOLAS COWDERY:

Yes, thank you. I agree with Don, which is probably not surprising because he's usually right. (DON LAUGHS) But it's not so much the numbers of police, it's the way in which they are deployed and used. Of course, the numbers have to be at a certain level to be effective. But putting that to one side, it's the way in which they're deployed and the instructions that they're given when they go out on duty. So it depends very much on the policies that are formed from the top of the police force, which in the current police force come directly from the government - the police force simply implements government policy without giving it a second thought - and it depends also on the discretion exercised by police.

Now, the interesting thing about the police force is that the lower down in the police force you go, the greater the degree of discretion the officer has. And there have been a number of academic studies on all of this. So what it means is the constable on the beat has much more discretion to act in a socially productive way than more senior officers higher up in the hierarchy, who are bound much more strictly by procedures and by rules and by policies that come to them from above. So I think part of the problem is that the junior police officers are too scared to exercise their discretion in a sensible and productive way because they're too busy carrying out the orders and the directions that they're being given. They need to be given a bit of tutoring on police discretion.

STEPHEN KING:

If I can just jump in, a slightly different perspectives. Obviously, policing and decisions made by police about the, for example, to target offences by people who are on bail or on parole matter. But one of the findings from our mental health inquiry and a lot of people that are in prison have a history of mental illness. The problem there tended to be support for the police. So it's sort of fits the juxtaposition that Helen noted between the individual police officers wanting to do the right thing, but an aggregate level, it sometimes seems like the right thing isn't able to be achieved. And a lot of that, at least in the mental health space, comes down to support for the individual officers who are called out to incidents.

(BACKGROUND NOISE)

It's very difficult to tell the difference between someone, say, on ice or someone who is having a psychotic incident. And the police officers, if they're not appropriately supported, either in their teams with health professionals or through the dispatch, they can find themselves actually out of their depth and end up having a situation escalate, with an individual potentially ending up in prison as a result, where more support for the police could have avoided that situation or led to a better outcome for the police and for the individuals themselves.

MICHAEL BRENNAN:

Thanks, Stephen. I'll come to a couple of questions that go more to what goes on within the prison, starting with a point made by Stephen Crabb picking up on, Helen, your observation about Norway,

where prison officers were required to receive a couple of years of mandatory training, what would you see as a useful equivalent in Australia? What could we do to provide some additional training to prison officers to help them engage with prisoners but also maintain their own well-being in a difficult job?

HELEN COVENTRY:

I think one of the keys is trauma informed practice, so an understanding of the experiences of the individuals that are coming into custody from the trauma perspective and understanding that some of the behaviours that are being displayed are a direct result because of that trauma and that experience. And I think if you're going to look at one thing that you're going to do with your current prison staffing population, that would be the place to start: understanding the experience of the individuals that have come into custody from that trauma informed lens.

MICHAEL BRENNAN:

Staying with you, Helen, a couple of other questions that have arisen about what services are or should be available within prison to ensure that we're providing prisoners with adequate mental health and other health support, and noting, and I'll get all panellists to comment on this, but again, Stephen Crabb made the observation, whatever the reservations about private prisons, there are some examples of incentives being created to try and reduce recidivism that do appear to have some success. So I'll start with you, Helen, and go to the others.

HELEN COVENTRY:

I think one of the challenges which we need to be attentive to is our remand population. So if you're on remand, you're not actually completing any of the rehabilitative programs that are currently available in custody. So that's a big proportion of our prison population that's not necessarily going through the more intensive programs. There are some remand programs in terms of your experience of custody, and planning for your release, and attempting to link you in with services once you exit custody, but there's a real difference between your remand and sentenced population. In terms of the programs available to your sentenced population, again, it's about access.

There's often wait times for particular programs, and depending on the length of your sentence, whether you actually get to complete that program, and there's also a fair bit of movement or there can be some movement across our physical prison locations, so you might start something somewhere, but not necessarily get an opportunity to finish it because you've been moved. So those are some of the challenges that exist.

There are a range of programs that do happen in custody, including your 24-hour, 44-hour alcohol and drugs programs, links to mental health services and the like. And there's also some work, particularly in the women's prison, around people who have experienced sexual assault, etc, and linking them into services in that way. And additionally, you have your post-release support programs that operate like Reconnect. So there are programs that do exist. It's more about access to those programs, being able to complete the programs, and the length of time people are actually in custody that have that opportunity to complete those programs.

And in terms of private prisons, I think, like any model, there is opportunities and some initiatives that have been developed within the prisons that are of benefit, it's more about the idea that you're making money out of people being in jail, and that is a concern.

MICHAEL BRENNAN:

Don, is this something that you've done a bit of work on?

DON WEATHERBURN:

No, I haven't. I'd love to do some work on this. I mean, maybe my visceral reaction to the idea of a private prison quite wrong. I mean, maybe what we should be doing is seeing how they go. It would be very interesting to do the evaluation. The problem, of course, is that people are by no means randomly allocated to prisons, so there are big challenges in trying to separate out the effects of who's in the prison from the effects of what the prison might actually do to reduce the risk of further offending. But surely, someone's done this work. It's just not an area that I've done any work in myself.

MICHAEL BRENNAN:

To do justice to Stephen's question, he does preface it by saying he dislikes privatisation of corrective services, but also queries, is there a role for these sorts of incentives even in the public system - you'd have to query perhaps whether the public provider is going to be incentivised to quite the same extent, as a private provider - but is there a role for financial incentives to do with recidivism?

DON WEATHERBURN:

Well, I understand that in New South Wales, they recently did run a randomised controlled trial in which they contracted out rehabilitation to private providers, and they were paid for outcomes, not just paid to provide a service, and it didn't work out. They were no more effective in reducing recidivism than the state runs. But I don't think you should give up after one study.

I'm open to the idea that people outside of prison may be better at delivering rehabilitation programs than those who are inside. But, I mean, I certainly wouldn't support just simply spending money for the sake of it. We really need to evaluate these options both in and out of prison to see which of them work. At the moment, we've got very little we can use to persuade government to reduce their reliance on prison.

MICHAEL BRENNAN:

Nicholas, did you have a perspective on this?

NICHOLAS COWDERY:

Not really, thanks, Michael. Nothing to add to what's already been said.

MICHAEL BRENNAN:

On a related topic, Andrew Baxter raises the question as to whether or not certain offences are really better regarded as a health rather than a justice issue. And it's not a distinction that we've made particularly explicit. Does that make sense and would it have some financial saving associated with it? I might start with you, Stephen.

STEPHEN KING:

Yeah, so, again, let me draw on our mental health report from last year. One of the things we found in talking with numerous groups about mental health in Australia, and the de-institutionalisation that we had in the '70s and '80s, a common point put to us was that we de-institutionalise people's mental health in the '70s and '80s and we re-institutionalise them - the only difference was we called the new institution 'prison'. The numbers suggest that there are significant numbers of people in prison who

have health issues, who would probably be better off... Well, from their perspective they'd almost certainly be better off receiving appropriate treatment in community.

Prison is a very poor place to receive mental health treatment. It's very expensive for the taxpayers. It's very expensive for the individuals. If we will, for example, have more step up, step down facility, if we're able to have more all those assistance services to first responders, if we were able to have alternatives to emergency departments that were designed for individuals who have mental health issues, all of those things, as we showed in the mental health report, and were reflected also in the prison report, lead to better health outcomes, and they also lead to better fiscal outcomes from the taxpayer and the government perspectives. But it does mean, in some ways, a bit of a change of mindset for the way that we approach people who have mental illness in Australian society.

MICHAEL BRENNAN:

Helen, did you have a perspective?

HELEN COVENTRY:

I absolutely agree. I believe our prison system is the net that captures everyone that falls through all of our other systems, in the gaps in those systems. So if you look at our alcohol and other drug system and particularly mental health and those with cognitive disabilities, intellectual disabilities, those are the people that are making up the vast majority of our prison population, and investment in services that allowed people to... (AUDIO FADES) ..absolutely.

MICHAEL BRENNAN:

In the time remaining, I just want to touch on a couple of other themes that have cropped up. One question that comes from one of our audience participants with lived experience of prison is the extent to which pre-sentence reports by, for example, specialist psychologists, probation...parole people are taken into account?

So I might start with Nicholas on that. And also the observation that the same individual made that on leaving prison was the comment made by prison officers was you'll be back, and that that's a common thing that's expressed to people, as they are leaving prison, does that ring true and is that reflective of a particular cynicism about the prospects people have, once back in the community? I'm going to start with Nicholas.

NICHOLAS COWDERY:

Well, that comment that you just ended with, both of your comments are correct. It's a better than 50%, accurate observation to make. And that is likely to give rise to cynicism in the maker of the observation. So we've got to change the underlying facts to change the behaviour of people in that sort of situation. But the... I've now forgotten what the first part of your question was, I'm sorry. (LAUGHS)

MICHAEL BRENNAN:

Sorry, it was about pre-sentence reports.

NICHOLAS COWDERY:

Oh, pre-sentence reports, yes. Well, there are some very highly competent people involved in the preparation of pre-sentence reports, and they really do make a stringent effort to get it right - well, very often working under timed deadlines to produce them. They are very often unable to access all relevant information that they might like to be able to access to prepare the reports but they do go to a lot of

effort to try to give the sentencing court a full and accurate picture to enable the court to make some kind of assessment of what disposition is going to be best for that person.

I mean, I'm old enough to have practised at a time when we didn't have those or if we did, we had them in only the rarest of circumstances. Now they're much more common. And I think they help to improve the overall quality of the judgements made on sentences that are then delivered. But they're not perfect, of course. A sentencing court is trying to assess past conduct in context. It's also trying to predict the future to an extent and determine a course that's going to best regulate that future. And that's a very difficult matter of judgement for any magistrate or judge.

MICHAEL BRENNAN:

Thanks, Nicholas. I'm going to bundle together a couple of things and ask each of you to make a kind of a final statement, if you like, by way of answering these questions or anything else that you wanted to throw in. One of the key things out of the Productivity Commission report that's evident is the extent to which the increased incarceration rates are partly or largely driven by increased numbers of people on remand.

Some jurisdictions now appear to have very high proportions of their overall prison populations on remand, and it does, to me, beg the question is, do we need to be thinking about prison in a different way if...in larger measures it's actually a remand system, at least in addition to a system for sentence prisoners? There's a supplementary, and I'll ask each columnist, each panellist, sorry, to just comment on it. We've had a number of comments just noting that there is a kind of law and order rhetoric does often loom large in the community - whether you have a particular perspective on that. So, why don't I start with Don and then we'll go to the others, and that will finish us up.

DON WEATHERBURN:

Well, most people know what I think about the law and order frenzy. It's not the major cause, one of the major causes of the predicament we find ourselves in at the moment. No party is willing to get out of line for fear that they're going to be criticised by the government or criticised by the opposition for going soft on crime. I would have thought that after 20 years of falling crime rates, we might be able to move beyond that, and I think the current New South Wales attorney-general is trying to get beyond that, and I think other politicians are, but we've got a long way to go.

The only other comment I'd make is that we ought not to focus too much on what's going on - what's going wrong, if you like, inside the justice system - the real failings of what's going on outside it. You come out of prison, it's hard to find accommodation, it's hard to find treatment for mental illness or drug problems. It's the sort of thing that increases the rate of return to prison and which could be sorted out, I would have thought, at least to some extent, if we made a more serious attempt in the community to reduce the risk of further offending.

MICHAEL BRENNAN:

Helen.

HELEN COVENTRY:

I'd have to agree with Don's comments, absolutely, and looking at what we can do at that early intervention stage as well in terms of preventing people from entering custody in the first place. In terms of policy and changing government directives and ideas and the tough on crime overarching

system that we have at the moment, I think we actually need to do some community based work and some community development work.

When you spend time with individuals and actually explain to them who's in our prison system, what's going on for them, and the realities of it, you get a very changed perspective. When we're talking about keeping young people out of prison, which is a lot of the work that Jesuit Social Services has been doing, we've been having conversations with members of the community where we are able to change ideas and perspectives, and I think if we can do that at that community and ground level, then we've got an opportunity to also create some change at that social policy level.

MICHAEL BRENNAN:

Thanks Helen. And Stephen King, obviously, you're not going to make anything approaching a political statement, but what's your view on remand?

STEPHEN KING:

(LAUGHS) The relationship between remand and the prison population is complex. The remand numbers have gone up, but of course, to the degree that an individual who is on remand being get sentenced to a period of imprisonment, including time served it can partially shift from pre-sentencing to post-sentencing. That being said, remand is not the same as being in prison. So, for example, access to programs is quite different if you are on remand versus if you have been sentenced to a prison term. And obviously, not all people who were on remand are found guilty, not all people who were on remand then receive a prison sentence. So clearly remand whilst a complex interactor, it is a significant factor. The other thing that I'd like to mention is some of the alternatives.

So we've mentioned the importance of trying to avoid imprisonment where it is not going to lead to the sort of benefits society is seeking. The Victorian Assessment and Referral Court, which we have as one of our case studies in the report, is a good example where people with mental health can come before that particular court and can then engage in a program over a 12 month period with the health system to try and stabilise and improve their mental health. That program is then hopefully completed before the individual is sentenced, and the judge can take into account, the fact that they have been participating in that program, in the sentencing decision.

Now, that's been shown to be very effective at helping to reduce both the number of people going to prison but also the reoffending rate. So we need to think of these alternatives, but we need to think about it in a much more systematic way. And until we really get the alternatives, get the data on the alternatives, and work out what works, I don't think we're going to be able to move the conversation beyond what sometimes can be a pretty much a kickback to an individual incident. Because the community don't see the alternatives out there to prison, and so it's really a matter of making sure that the evidence is there so the community can see that there are alternatives that work and keep the community safe.

MICHAEL BRENNAN:

And Nicholas Cowdery, we'll give you the last word. Any thoughts on remand, law and order, campaigns or anything else that's arisen today?

NICHOLAS COWDERY:

Very kind of you, and I won't take too long because I see the time. The problem with the remand

population is that there are a lot of people in custody, on remand who do not need to be there, but they are there because the law is framed in such a way that the magistrates and the judges have no alternative but to send them there. And that's where the correction can be made to change the law, to go back to... to adapt the Bail Act in a way suggested by the New South Wales Law Reform Commission back in 2012, which was fairly promptly ignored by the government. But there are options there, there's experience there, there are models that can be applied, and that sort of reform needs to happen.

So far as law and order is concerned, at the time of the state election in 1995, I was a very new director of Public Prosecutions, and the Law and Order election was up and running at a pace you wouldn't believe. So, I saw it as my job to go around, throwing buckets of water over both sides and try to bring some sense into the whole thing. But unfortunately, it all happened again in 1999. Some lessons are slow to be learnt, but in recent times, as Don says, I think there has been a moderation of that. It started at the time when Greg Smith was the Attorney General, and it's surely rocked along, along a bit of a bumpy road since then but the present Attorney General in New South Wales is not of the law and order 'string 'em up' type of Attorney General. But you know, that's just one person, and he's limited in what he can do.

And there is no doubt that generated fear of crime has been a very strong contributing factor to these sorts of legal moves that have been taken, that I spoke about, which has contributed to our problem.

MICHAEL BRENNAN:

Thank you, Nicholas. I want to thank each of our panellists, Stephen, Helen, Don and Nicholas, and all of our participants today. Apologies for running slowly over. I just got a bit carried away. But thank you very much, and you can find our report on our website, 'Australia's Prison Dilemma'. Thank you.

DON WEATHERBURN:

Thank you.