



Australia's prison dilemma

Research paper

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The Productivity Commission

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Publication enquiries:

Media, Publications and Web | phone 03 9653 2244 | email publications@pc.gov.au

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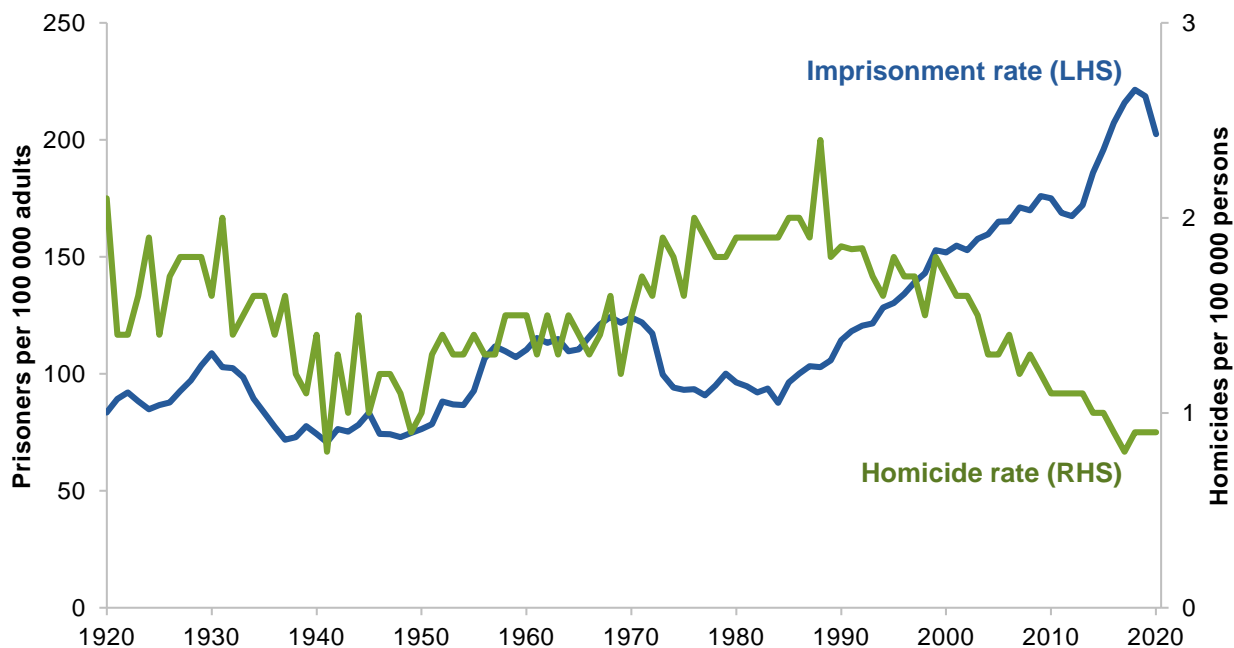
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Executive summary

Australia is locking up a record number of people. Our imprisonment rate has grown steadily since the 1980s and is around its highest level in a century (figure 1). On 30 June 2020, more than 40 000 Australians were in prison. Many more flow through the prison system each year. Over one third of prisoners are on remand, waiting for trial or sentencing. And nearly 60 per cent have been in prison before.

Figure 1 – Imprisonment is at historic highs, crime rates are falling^{a,b,c}



a. The imprisonment rate is the number of prisoners per 100 000 population aged 18 years and over. The homicide rate is the number of homicides per 100 000 persons. **b.** The homicide rate is considered a useful indicator of trends in the incidence of violent crime, as almost all homicides are reported to police and data are available over a long period (Bricknell 2008; Indermaur 1996). **c.** The fall in imprisonment during the COVID-19 pandemic appears to be due to a combination of falling prison receptions — due to a slowdown in court processing during lockdown periods — and an increase in prisoner discharge — due to a deliberate change of policies or practices that resulted in the release of more unsentenced prisoners on bail.

The increase in imprisonment cannot be explained solely by changes in either the amount or type of crime. It is, at least in part, a policy choice.

As a policy, imprisonment serves multiple objectives — deterring crime, removing dangerous individuals from the community, punishing and rehabilitating offenders, and supporting the rule of law. But it is also expensive. This raises a key economic question for policy makers. Is the current policy of increased use of imprisonment producing benefits for Australia that outweigh the costs? And what, if any, are the alternatives?

In this paper — the Productivity Commission’s first venture into research on the criminal justice system — we highlight the information, data and options that policy makers need to answer these questions. The Commission has used an economic approach to help guide policy makers in weighing up the benefits of criminal justice policies against their costs. Even though this is only one perspective, it provides valuable insights into the complex trade-offs facing policy makers.

Why are more people in prison?

Two broad changes are affecting Australia's imprisonment rate.

Changes in the nature and reporting of crime: the level of imprisonment has changed due to changes in the level and mix of crime. There has been an increase in some types of serious crime, such as sexual assault and drug trafficking. But there has also been a decrease in other types of serious crime such as homicide and robbery. There is also evidence of increased reporting of crime, which raises the level of imprisonment. For example, in the past, there appears to have been under-reporting of some serious crimes, such as domestic violence and sexual assault, due to social stigma and cultural norms.

Changes in criminal justice policy: for example, in a number of states and territories, policies have made bail harder to access and remand the default position for a wide range of offences. Also, many jurisdictions have introduced prison-based mandatory sentencing. These policy changes mean that, for a given rate of crime, more people will spend more time in prison.

The evidence in this paper suggests that both of these changes underpin Australia's current high imprisonment rate. However, the story is complex.

In part, the complexity reflects that criminal justice policy is largely a state-based issue. Australia has nine different criminal justice systems and the key drivers of increased imprisonment are different across these jurisdictions.

There is also a lack of reliable data that can be used to determine the importance of each type of change. Data gaps are pervasive at each point in an individual's 'prison journey' — arrest, remand, trial, sentencing, and parole.

Even so, it is clear that increased imprisonment is partly the result of policy choices.

The trade-offs for prison policy

Governments have a range of policy levers that influence the level of imprisonment and the criminal justice system more broadly. Governments make laws and regulations that define what is a criminal offence and set some parameters for sanctions. They also manage and fund the main components of the criminal justice system: law enforcement, courts and corrective services.

Governments face trade-offs when designing prison policy. There are multiple, sometimes conflicting, objectives. Longer prison sentences or widening the range of crimes punishable by imprisonment, for example, might deter crime. It also might meet the community's desire for justice for victims or to show its repugnance for some kinds of crime.

But a longer sentence could be disproportionate to the seriousness of the crime or may severely punish an individual for a one-time mistake. Longer imprisonment may also raise the likelihood of reoffending after release so that imprisonment may sometimes tradeoff short- and long-term safety of the community.

Different policies also have different costs. Prisons are expensive, costing Australian taxpayers more than \$5 billion per year, or more than \$330 per prisoner per day. In contrast, alternative punishments, such as community corrections orders, may have much lower costs. A community corrections order can cost as little as \$30 per prisoner per day, but compared to imprisonment, changes the risks facing the community.

There are also indirect costs. As a deterrent to crime and punishment for crime, imprisonment imposes costs on prisoners, including through lost employment, poor health and family separation. However, some of these costs are likely to fall on prisoners' families and society more generally.

Many of these costs are significant, but hard to measure. And it is people from society's most disadvantaged groups, who are significantly over-represented in prisons, who tend to bear the brunt of these costs. In contrast, alternative punishments, such as diversion from prison, or reduced imprisonment, together with offenders engaging in 'restorative justice' with their victims, can significantly reduce these indirect costs.

Governments need to consider these trade-offs when designing prison policy. To do this, governments need information on the costs and benefits of both imprisonment and its alternatives.

What we do (and don't do) in this paper

Prison policy is contentious. Views diverge widely on how best to balance the various objectives of the criminal justice system — be it keeping the community safe, punishing offenders or giving offenders a second chance through rehabilitation.

While this paper considers some of the complex trade-offs that policy-makers face, it does not reach conclusions about whether the 'right' trade-offs are being made.

Nor does this paper consider the root causes of crime, as important as these are. Similarly, it does not focus on the critical issues around youth justice, or the interaction between Aboriginal and Torres Strait Islander people and the criminal justice system. These issues have been examined in detail in several recent reviews and are the subject of ongoing research.

Rather, this paper focuses on imprisonment, its costs and benefits, and some potential alternatives.

The paper begins with a detailed analysis of the data and trends underpinning Australia's increased rate of imprisonment. The increase in the likelihood of receiving a prison sentence and longer sentences have consistently put upward pressure on imprisonment rates in most jurisdictions. Similarly, an increase in the number of prisoners on remand due to changing bail laws and length of court cases could be an important driver of rising imprisonment rates.

We then apply an economic framework to the underlying objectives and trade-offs in the prison system. This highlights the complex interactions that policy makers must consider when making decisions about criminal justice. At the same time, the paper draws out some of the key evidence gaps that prevent policy makers from making fully informed decisions.

Finally, we look at some alternative approaches to prison, drawing on case studies from Australia and overseas. Some are about diversion programs that can involve alternative courtroom setups and processes (for example, Victoria's Assessment and Referral Court); alternative sanctions to prison for low- to moderate-risk offenders (for example, Operation Checkpoint in the United Kingdom); and restorative justice conferences (for example, the New Zealand model). Some, such as the Australian Capital Territory's extended throughcare model, which provides continued support to prisoners for 12 months after their release, appear to be effective in reducing recidivism. Sometimes outcomes can be improved *in* prison, such as through intensive drug treatment or cognitive behaviour therapy (Washington State case studies).

These case studies aim to highlight alternatives for further investigation. Jurisdictions will need to carefully trial and evaluate any policy initiative to ensure that it works, is scalable and meets community expectations.

Building the evidence base — a critical first step

Empirical evidence is key to a proper assessment of the merits of new approaches in different jurisdictions, as well as to good program design and implementation. The Commission has come across some striking gaps in undertaking this project. As an example, the data do not provide a clear picture of how long people stay on remand. Nor is there a good understanding of reoffending patterns once people leave prison.

Some efforts are underway to fill these gaps. A joint project by the Australian Bureau of Statistics and several Australian Government agencies — the Multi-Agency Data Integration Project — is linking correctional data with other data sources, although data will not be available under this initiative for some time. Some jurisdictions, such as Victoria and Queensland, are also developing linked datasets using administrative data from the criminal justice system.

While there is some compelling Australian-based research, there are few systematic studies with sufficient empirical depth and theoretical ambition to inform large-scale policy reform and evaluation. Systematic studies of criminal justice processes and decision making (covering policing, prosecution, sentencing, correction and parole) in the Australian context are largely missing.

We also need more longitudinal studies of pathways through the criminal justice system and how these affect outcomes for different cohorts. As part of this, there remain important questions about the high rate of incarceration of Aboriginal and Torres Strait Islander people and the fast-increasing female imprisonment rate in several jurisdictions.

There is also an emerging need to look at how new technologies interact with criminal justice: changing the opportunities for criminal behaviour, the ability to detect crime and apprehend criminals, and the range of effective sanctions for criminal behaviour.

While interdisciplinary collaboration is necessary to answer many of these research questions, the economic approach used in this paper provides some valuable insights.

1. About this paper

Australia's criminal justice system imposes a large and growing cost on taxpayers, as well as indirect costs on prisoners, their families and society as a whole. Prisons are expensive, costing Australian taxpayers \$5.2 billion in 2019-20, or more than \$330 per prisoner per day on average (SCRGSP 2021a, tables 8A.1 and 8A.19). More than 40 000 people were in Australia's prisons on 30 June 2020, although many more will flow through the prison system over the course of a year (ABS 2020b). Imprisonment rates — and government expenditure on corrective services — have been rising for several decades in all jurisdictions. Australia's imprisonment rate is above the OECD average. Prisons are already operating at or above design capacity in some states and territories. If current policies and trends continue, new prison capacity will be needed.

A well-functioning criminal justice system helps to keep the community safe, is just and fair, and builds community confidence. Ultimately it is a matter for governments to decide on the balance between these sometimes-conflicting objectives.

However, governments must also consider whether policies deliver desired outcomes at least cost to taxpayers, and to society more broadly. That is the focus of this paper: given the growing direct and indirect costs of prisons, do current policies reduce the harm from crime and provide just and fair punishment at least cost? Are there alternative policies that could reduce costs without compromising community safety, confidence, justice or fairness?

1.1 Australia's criminal justice system

Australia has nine different criminal justice systems

In Australia, there are essentially nine different criminal justice systems (one for each state and territory and the federal system) and eight prison systems (run by states and territories) (Bartels, Fitzgerald and Freiberg 2018). Each criminal justice system has three main components.

- **Law enforcement** — comprising police, prosecutors and specialist law enforcement agencies — responds to reported crimes, investigates, arrests suspected offenders and decides whether to proceed with prosecution. Law enforcement is also responsible for crime prevention programs.
- **Courts** adjudicate, deciding on the guilt or innocence of suspected offenders, and sentence the guilty. They also decide whether bail should be granted to suspected offenders while they await trial or sentencing.
- **Corrective services** administer prisons and supervise offenders who have received community-based sentences or are on parole. Corrective services also provide rehabilitation and reintegration services to offenders to reduce the risk of reoffending.

State and territory governments have primary responsibility for criminal law and administering police, courts and corrective services. State and territory criminal law and sentencing rules define the types of offences that are considered criminal, circumstances in which bail can be granted, types and lengths of sanctions that can be imposed by courts, and practices surrounding parole and release from prison.

Federal criminal law covers areas including terrorism, people smuggling, drug importation, treason, foreign interference, harassment over telephone or internet and fraud offences, and is enforced by the Australian Federal Police and federal courts (*Criminal Code Act 1995* (Cwlth); Daly and Sarre 2017). Prisoners sentenced under federal laws are held in state and territory prisons and comprise 2.6 per cent of all sentenced prisoners in full-time custody. About 79 per cent of federal prisoners are held in either New South Wales or Victoria (ABS 2021b, tables 2 and 10).

Police services represent the largest component of government expenditure in the criminal justice system (figure 1.1). The share of justice services expenditure that goes to corrective services ranges from 24 per cent in Victoria and South Australia to more than 30 per cent in Western Australia and the Northern Territory.

Figure 1.1 – Government expenditure on Australia's criminal justice system^a
Dollars per person^b 2019-20



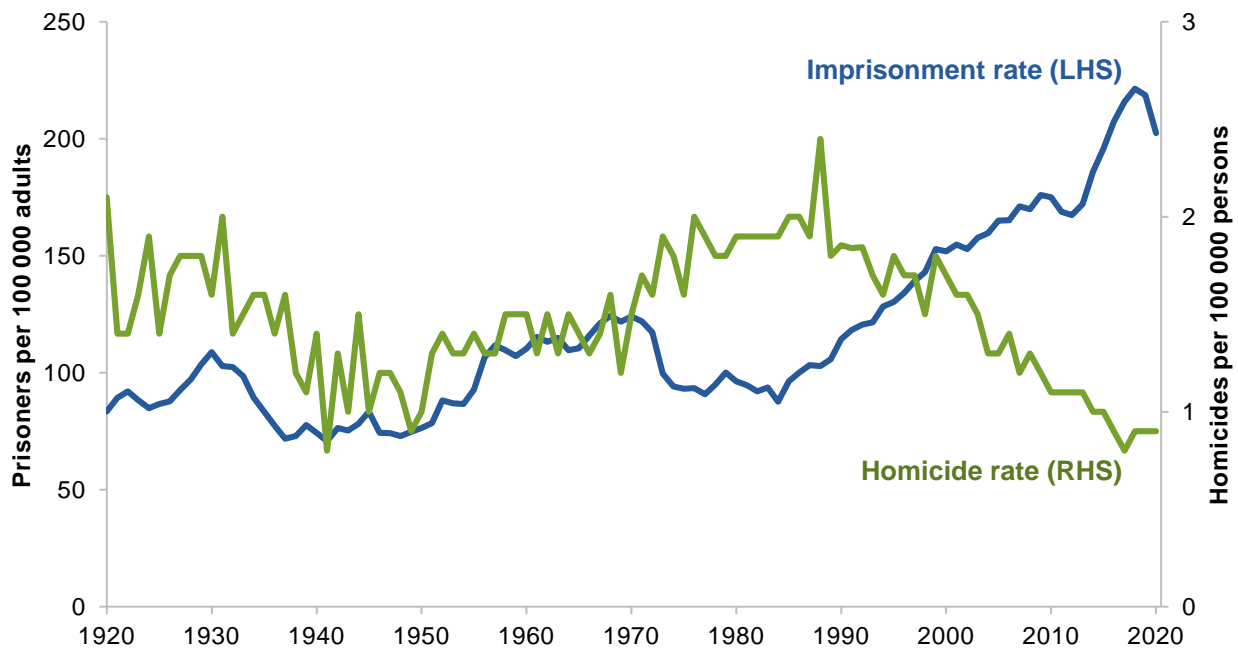
a. Expenditure includes operating expenditure and capital costs, less operating revenue (for example, revenue from prison industries). Excludes payroll tax and prisoner health and transport/escort costs where able to be disaggregated by jurisdictions, and expenditure on youth justice services. Capital costs include user cost of capital (calculated as 8 per cent of the value of government owned assets), land, other assets, debt servicing fees, and depreciation. **b.** Per person in the total population of each jurisdiction.

Source: SCRGSP (2021a), table CA.2.

Imprisonment rates have been rising and crime rates falling

Australia's imprisonment rate — measured as prisoners per 100 000 adults — is at its highest in a century (figure 1.2). The imprisonment rate has more than doubled in Australia since the mid-1980s and at its peak in 2018 was higher than at any point since 1899 (Leigh 2020b). The imprisonment rate rose by 40 per cent between 2000 and 2018, before falling in 2019 and 2020.¹ Similar trends are evident over the past 20 years in all states and territories (chapter 2).

¹ The fall-off in imprisonment during the COVID-19 pandemic appears to be due to a combination of falling prison receptions — due to a slowdown in court processing during lockdown periods — and an increase in prisoner discharge — due to a deliberate change of policy or practices that resulted in the release of more unsentenced prisoners on bail (Payne and Hanley 2020). However it is worth noting that imprisonment rates began slowing in 2019, prior to the onset of the COVID-19 pandemic, for reasons that remain unclear (Tubex 2020).

Figure 1.2 – Imprisonment is at a 100 year high, crime rates are falling^{a,b}

a. Adults are people aged 18 years and over. **b** The homicide rate is considered a useful indicator of trends in the incidence of violent crime, as almost all homicides are reported to police and data are available over a long time period (Bricknell 2008; Indermaur 1996).

Source: ABS (*Prisoners in Australia, 2020*; *Recorded Crime – Victims, 2019-20*); Leigh (2020a, table A.1, 2020b, table A1).

Rising imprisonment rates since 2000 have occurred alongside a fall in many types of recorded crime (Weatherburn and Rahman 2021). Between 2000 and 2019 the number of victims of recorded crime (as a proportion of the population) fell by 59 per cent for homicide and related offences (figure 1.2), 42 per cent for kidnapping, 62 per cent for robbery, 70 per cent for unlawful entry with intent, 69 per cent for motor vehicle theft and 37 per cent for other theft from their 2000 levels (ABS 2010b, 2020c). Victimization rates for some offences have increased over the same period, notably for sexual assault (up 24 per cent) and assault (in some states and territories), and the incidence of drug and firearms offences has also increased (ABS 2010b, 2020c, 2021d).

The overall offender rate (total offenders proceeded against by police per 100 000 population) fell by 18 per cent between 2008-09 and 2019-20, while the imprisonment rate rose by 25 per cent over the same period (ABS 2020b, 2021d).

Reconciling rising imprisonment and falling crime rates

The juxtaposition between rising imprisonment and falling crime rates suggests several possibilities:

- increasing imprisonment caused falling crime rates
- the Australian criminal justice system has become more punitive over time
- changes to the characteristics of offenders and/or the composition of crime have resulted in a higher chance of imprisonment among a shrinking pool of offenders.

It is likely that all three have contributed to the decline in crime rates over the period. However, the evidence suggests that changes to the risk of imprisonment and sentence length may have played a smaller role than other criminal justice policies (particularly policing policies that affect the risk of arrest or conviction) (box 1.1).

Box 1.1 – Rising imprisonment played a minor role in explaining falling crime rates

The concurrent rise in imprisonment and fall in crime rates since 2000 begs the question: did increasing imprisonment cause falling crime rates? The available evidence for Australia suggests that other criminal justice policies — notably policing policy — may have played a bigger role than imprisonment in explaining falling crime rates. Other factors including economic conditions are likely to have had a greater impact on crime rates than criminal justice policies.

Relatively few Australian studies have looked directly at the links between imprisonment and crime rates, due to data limitations and the difficulty of establishing causation (rather than just correlation). Two Australian studies present rigorous evidence on the relationship between crime and imprisonment, both using local government area-level data from New South Wales from 1995-96 to 2007-08.

- Bun et al. (2020) found that the risks of arrest and conviction had much larger effects on crime rates than the risk of imprisonment, and average sentence length had a small and statistically insignificant impact. This is one of few papers to control simultaneously for the risks of arrest, conviction and imprisonment, as well as sentence length. The results suggest that the risk of imprisonment had only a small additional effect on crime rates once the risks of arrest and conviction were taken into account, and sentence length had no significant impact. The authors argued that ‘the lost social standing resulting from a conviction may well outweigh the effects of prison sentence’ (p. 2323).
- Wan et al. (2012) found that both violent and property crime fell in response to an increase in the risk of arrest and the risk of imprisonment given arrest (they did not control for the risk of conviction in their analyses). The risk of arrest had a bigger impact on crime rates than the risk of imprisonment. Sentence length had no significant effect on either type of crime.

Both studies found that economic factors (such as income and unemployment) exerted a much stronger influence on crime rates than criminal justice policies.

These findings are based on data from the same time period and jurisdiction, so may not necessarily hold in other states or territories, or in more recent years. However they are consistent with international evidence that the risk of arrest or conviction has a stronger deterrence effect than sentence length (chapter 3).

Weatherburn and Rahman (2021) drew together evidence from econometric studies (from Australia and overseas), data on trends in policing, court outcomes and imprisonment rates, and evidence on other factors that may have contributed to falling crime rates between 2000 and 2019. They concluded that criminal justice policy — and imprisonment in particular — played a relatively small role in explaining the decline in crime rates over the period, although increases in the number and effectiveness of police may have been quite important. Other factors that seem to matter include improved economic conditions, better vehicle security, a decline in alcohol consumption, falling demand for stolen goods and a reduction in the use of cash.

There is also evidence of increasing punitiveness in Australia's criminal justice system. The ratio of prisoners to offenders proceeded against by the police has increased from 8 per cent in 2009 to 11 per cent in 2020 (ABS 2020a, table 40, 2021b, table 1). This is broadly consistent with policy changes in recent years that have reduced the discretion of police, courts and parole boards on matters of bail, sentencing and parole

(box 1.2). These changes have often been prompted by high-profile cases.² Several authors have argued that there has been an increasing emphasis on risk management and an explicit elevation of community safety and victims' rights as goals of criminal justice policy (Auld and Quilter 2020; Bartels et al. 2018; Freiberg et al. 2018).

While there are some counterexamples, the net effect of most recent policy changes appears to be to increase the likelihood and length of imprisonment, all other things equal.

Box 1.2 – Recent policy changes have contributed to increasing punitiveness in Australia's criminal justice system

Changes to bail policy have made it harder to access bail

Until the mid-1970s, police and courts had discretion to grant bail, with the presumption in favour of bail and the emphasis primarily on ensuring court attendance (Steel 2009). Changes to bail laws in Australia since 2010 have seen a shift in emphasis to mitigating the potential risks of offending while on bail (Auld and Quilter 2020; Bartels et al. 2018). Many recent changes reverse the presumption of bail or create a presumption against bail in particular circumstances. Applicants must instead 'show cause' why bail should be granted.

The most substantial changes to bail laws have taken place in Victoria and New South Wales, but there have been changes in all jurisdictions. The main changes include:

- expanding the range of offences for which show-cause provisions apply, most commonly for terrorism, family and domestic violence, sexual and firearms offences
- applying show-cause provisions to specific types of defendants, including repeat offenders and members of terrorist or criminal organisations
- imposing conditions on bail being granted, such as participating in treatment or rehabilitation programs or surrendering passports or weapons
- requiring police or courts to notify victims of family violence when there is a change to bail conditions in a case that they are involved in
- expanding the use of electronic monitoring during bail (Auld and Quilter 2020; Bartels et al. 2018; Travers et al. 2020b).

In their analysis of bail amendments in New South Wales, Victoria and Queensland between 2009 and 2018, Auld and Quilter (2020, p. 648) reported that 52 per cent of amendments had decreased access to bail, 14 per cent increased access to bail and the remainder were administrative changes.

Courts have less discretion on sentencing

Criminal laws in Australia typically set maximum penalties for offences, leaving judges to decide on the type and severity of penalties, taking into account mitigating and aggravating circumstances (such as the background of an offender and previous offending history) (Gray 2017; Roth 2014a). Since the 1990s, Western Australia and the Northern Territory have had mandatory or presumptive sentencing laws for

² Examples include the introduction of mandatory minimum sentences for one-punch attacks, the tightening of bail policies in response to the Bourke Street Mall attack and the Martin Place siege, and parole reforms in response to the rape and murder of Jill Meagher (Auld and Quilter 2020; Bartels et al. 2018; Freiberg et al. 2018; Quilter 2014).

Box 1.2 – Recent policy changes have contributed to increasing punitiveness in Australia's criminal justice system

some offences. Such laws diminish or remove judges' discretion by setting out a minimum or fixed penalty that must be imposed for a particular offence or type of offender (for example, for repeat offenders) (Roth 2014a, p. 2).

Since 2010, the scope of mandatory sentencing laws has been increased in Western Australia and the Northern Territory to cover a broader range of offences (Law Council of Australia 2014; Law Society of Western Australia 2020). In addition, mandatory sentences have been legislated in New South Wales, Queensland, Victoria and by the Commonwealth for a range of offences including so-called one-punch attacks, criminal organisation activity, terrorism and people smuggling (Law Council of Australia 2014; Quilter 2014). New South Wales, Victoria and Tasmania have also abolished or are phasing out the use of suspended sentences (Freiberg 2019, pp. 82–83).

The use of parole is increasingly focused on safety rather than rehabilitation

Parole — conditional release that allows a prisoner to serve some of their sentence in the community — has traditionally been seen as a means of integrating prisoners back into the community and reducing the risk of reoffending (Freiberg et al. 2018). Since 2010, Victoria, Queensland, New South Wales and South Australia have all made changes to parole laws that reduce the discretion of courts and parole boards and emphasise community safety as a paramount consideration when parole is granted, including:

- setting standard or minimum non-parole periods for particular offences
- bypassing parole boards when deciding whether to release specific prisoners or those convicted of particular offences on parole
- placing greater emphasis on victims' rights when making decisions about parole (Freiberg et al. 2018).

Freiberg et al. (2018, p. 214) argued that tighter parole conditions are likely to increase imprisonment rates by increasing parole suspensions, increasing the likelihood of prisoners being held on parole for longer (or not applying for parole), and increasing recidivism by giving prisoners fewer chances to reintegrate into society on supervised parole programs.

Finally, while crime rates may have fallen in aggregate, there has been a change in the composition of crime, with falls in property crime offset by increases in other more serious offences such as assault (including sexual assault) and drug crime. Further, it appears that in New South Wales, while there has been a large reduction in the number of young people committing crime for the first time, there has also been an increase in 'chronic' offenders who committed crime at a higher rate (Payne, Brown and Broadhurst 2018). These factors have increased the average severity of crime, which might result in an increase in the severity of sentences and rising imprisonment.

Rising imprisonment is costly

Rising imprisonment rates have increased the fiscal costs of running the criminal justice system. Real government expenditure on corrective services grew by 40 per cent over the seven years to 2019-20. Between 2011-12 and 2019-20, government expenditure on prisons as a percentage of total government expenditure grew in all jurisdictions except New South Wales (chapter 3).

Prison is an expensive sentencing option, with expenditure per prisoner per day ranging from \$294 to \$559 across Australian jurisdictions in 2019-20. The average daily cost of keeping an offender in prison is about ten times the cost of a place in a community corrections program (chapter 3).

Imprisonment also imposes indirect costs on prisoners, their families and society, including lost employment, poor health and family separation. Of course, punishment for crime is designed to impose costs on those who commit crime, in order to deter criminal behaviour or exact retribution for crime. However, at least some of these indirect costs are likely to be the unintentional result of imprisonment or fall on prisoners’ families or society more broadly. Chapter 3 examines the direct and indirect costs of imprisonment in more detail.

1.2 Trade-offs in the criminal justice system

The objectives of the criminal justice system

Governments can use a range of policy levers to directly influence the criminal justice system. They make laws and regulations that define what is a criminal offence and set some parameters for sanctions (for example, maximum and, increasingly, minimum sentences). They also manage and fund the main components of the criminal justice system: law enforcement, courts and corrective services.

A well-functioning criminal justice system should (figure 1.3; box 1.3):

- keep the community safe by reducing crime through deterrence, incapacitation and rehabilitation
- be just and fair to victims and offenders by punishing offenders based on the crime committed
- build community confidence, ensuring voluntary community participation (such as by reporting crime or acting as witnesses or jurors).

The role that prisons play in meeting the objectives of the criminal justice system through punishment, deterrence, incapacitation and rehabilitation is discussed in more detail in section 3.1.

Figure 1.3 – The objectives of the criminal justice system

Community safety	Justice and fairness	Community confidence
Achieved through deterrence, incapacitation and rehabilitation	Achieved through retribution, restoration and substantive equality	Achieved by helping the community <i>feel</i> safe and fairly treated
Outcome Crime rates are low 	Outcome Punishment fits the crime 	Outcome Community participation 

Box 1.3 – What are the objectives of the criminal justice system?

Making the community safer by reducing the harm from crime is a key objective of Australia's criminal justice systems, and has been highlighted as a central aim of government in several states and territories (for example, New South Wales Government 2021, p. v; Queensland Government 2018a, p. 1). Reducing crime improves community wellbeing by reducing the direct costs of crime and crime avoidance, improving community coherence and ensuring that property rights are enforced (QPC 2019a, p. 7).

Community safety is pursued through the deterrence, incapacitation and rehabilitation functions of the criminal justice system. These sub-objectives are outlined in state and territory sentencing laws. For example, the *Crimes (Sentencing Procedure) Act 1999* (NSW) states that the purposes of sentences imposed by courts include: 'to prevent crime by deterring the offender and other persons from committing similar offences', 'to protect the community from the offender' and 'to promote the rehabilitation of the offender' (s. 3A).^a Recent reforms to sentencing and bail legislation in several states and territories have explicitly highlighted community safety as a priority (Auld and Quilter 2020; Bartels et al. 2018; Freiberg et al. 2018).

Justice and fairness for victims and offenders are also emphasised in sentencing rules and practices. Notions of justice, including retribution and restoration, feature strongly in sentencing legislation. For example, in New South Wales the *Crimes (Sentencing Procedure) Act* includes among the purposes of sentencing: 'to ensure that the offender is adequately punished for the offence', 'to make the offender accountable for his or her actions', 'to denounce the conduct of the offender' and 'to recognise the harm done to the victim of the crime and the community' (s. 3A).^a Fairness is emphasised in sentencing principles in common law, including that the sentence is proportional to the crime, parity (treating like cases alike and different cases differently), imprisonment being a last resort, and imposing the least severe sentence that can be used to achieve the purpose of punishment. Sentencing guidelines also require courts to take into account mitigating and aggravating circumstances in each case (ALRC 2017, pp. 187–188).

Community confidence in the criminal justice system, as well as being desirable in its own right, is also important for the system to function effectively. For instance, the participation of victims and members of the public is vital for policing (to report crime, provide evidence and as witnesses) and court proceedings (as jurors) (Daly and Sarre 2017, p. 7; Indermaur and Roberts 2009). Legitimacy and trust encourage compliance with the law and influence cooperation with the police (Murphy, Mazerolle and Bennet 2014; Tyler and Fagan 2010) and may affect whether crimes are reported in the first place (Carcach 1997; Tyler 2011). That said, the evidence that confidence affects reporting of crimes is mixed for a number of reasons, including attitudes being imperfect predictors of behaviour, poor measures of complex attitudes towards police and the justice system, and variation in the effect of attitudes at national and local levels (Xie and Baumer 2019).

a. Similar purposes are outlined in sentencing legislation in other states and territories.

A balancing act

Often, the objectives of the criminal justice system are aligned. For instance, a sanction that achieves justice for victims will often also deter potential offenders. If a sanction involves time spent in prison, the offender will be incapacitated and prevented from offending again while in custody. Incapacitation also offers the opportunity to rehabilitate the offender, which, if done well, can reduce their risk of reoffending when released.

However, sometimes these objectives come into conflict. For instance, a long prison sentence might meet the community's desire for justice for victims, but be excessively harmful for offenders and their families, and increase the risk of reoffending.³ If this is the case, there can be a conflict between justice for victims and offenders, between justice and community safety, and between community safety in the short term and in the long term.

The objective of community confidence can also come into conflict with other objectives. Community confidence in the criminal justice system relies on the public being well-informed about the system. This is not always the case, particularly for extremely rare but highly visible and harmful criminal acts. Public reactions to such events may create a desire for stronger sanctions or the removal of alternatives to imprisonment. This may reduce the fairness of the system and could reduce community safety in the longer term. For example, if sanctions are already severe, then making sentences harsher *could* have a minimal deterrence effect, be disproportionate to the offence committed (and thereby fail to be just and fair), and hamper the ability of corrective services to rehabilitate offenders, increasing the likelihood of reoffending.

1.3 Scope of the paper

What is in scope?

Public inquiries, reviews and academic research on the criminal justice system in recent years⁴ have highlighted a range of critical issues including:

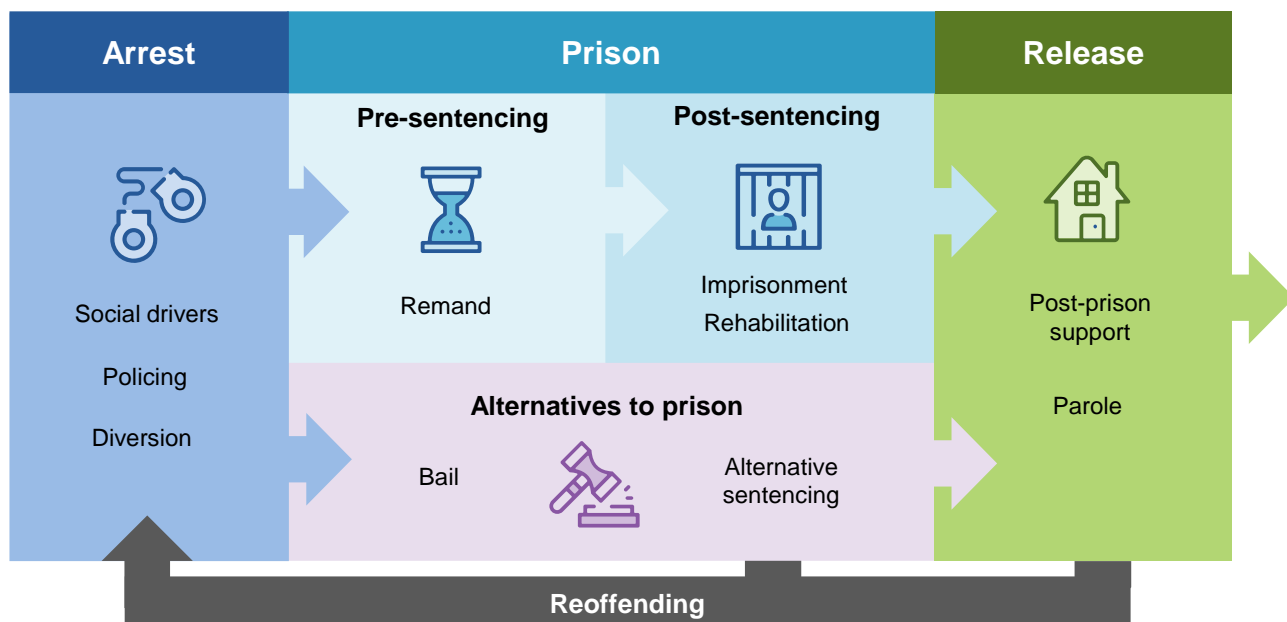
- high and growing imprisonment rates, and associated costs
- the importance of socioeconomic disadvantage in driving offending
- significant overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system
- high rates of mental ill health and drug (including alcohol) dependency among offenders
- rapid growth in the proportion of prisoners who are on remand
- high rates of reoffending and churn within the criminal justice system
- strong links between youth and adult offending.

This paper is the Commission's first step into research on the criminal justice system. As such, the scope is deliberately narrow, focusing on imprisonment and its costs, benefits and alternatives. While the focus is largely on prisons, it is important to consider how decisions made at one point in the criminal justice system affect outcomes at other points (figure 1.4). As such, policing and courts are covered to the extent that trends and policies in these areas affect imprisonment rates and outcomes.

³ Imprisonment may have *criminogenic* effects (that is, increase the chances of reoffending) because of difficulties adjusting to life post-prison, stigma making it difficult for ex-prisoners to find employment or housing, weakened links with families and friends, and exposure to other prisoners that may provide an 'education in crime' and build networks with criminals (Vieraitis, Kovandzic and Marvell 2007).

⁴ For example AIHW (2019a), ALRC (2017), Centre for Policy Development (2020), Clancey et al. (2020), Productivity Commission (2020), QPC (2019a), Senate Legal and Constitutional Affairs References Committee (2013), SCRGSP (2020b, 2021a) and Weatherburn and Rahman (2021).

Figure 1.4 – Many policy decisions affect the likelihood of imprisonment



What is *not* in scope?

The paper does not attempt a systematic examination of the criminal justice system. Similarly, it does not delve into the underlying socioeconomic drivers of crime and imprisonment, as important as these are.

Where possible, the paper presents data on trends for Aboriginal and Torres Strait Islander people, who make up a disproportionately large part of the prison population. However, the paper does not focus in detail on the important, yet complex, issues that are specific to the incarceration of Aboriginal and Torres Strait Islander people. These have been examined in detail in several recent reviews (ALRC 2017; QPC 2019a; Senate Finance and Public Administration and References Committee 2016) and are the subject of ongoing research (for example, Donnelly et al. 2021).

The disproportionately high imprisonment rate of Aboriginal and Torres Strait Islander people is a critical area that has been flagged for action. The *National Agreement on Closing the Gap* aims to reduce the imprisonment rate for Aboriginal and Torres Strait Islander adults by at least 15 per cent by 2031. It specifically highlights the need to better measure and report on access to services in police custody and prison (including community-controlled and culturally appropriate legal, health, rehabilitation and family support services), interactions between Aboriginal and Torres Strait Islander people and police, and to use data linkage to examine long-term outcomes for Aboriginal and Torres Strait Islander offenders (JCOCTG 2020, outcome 10).

Likewise, the paper does not cover issues relating to youth justice, focusing more narrowly on the interactions of adults with the criminal justice system. While there are strong correlations between youth and adult offending, the youth justice system has been the subject of numerous recent reviews and inquiries (Clancey, Wang and Lin (2020) survey themes from recent reviews).

Our approach

The paper uses an economic approach to examine imprisonment and its alternatives. Economics can provide valuable insights into the complex trade-offs facing policy makers in the criminal justice system. However, it is important to recognise that this is only one perspective. The findings from this paper are intended to complement those that use other approaches such as criminological, rights-based or risk analyses.

In general terms, an economic approach assumes that policy makers aim to maximise the welfare of the Australian community — through some combination of community safety, justice, fairness and community confidence — at the lowest cost to taxpayers and to society as a whole. Substantive changes to criminal justice policies or practices should therefore be assessed by weighing their benefits against their costs. When assessing the costs and benefits of a proposed policy (or practice) change, it is important to look at the full range of costs and benefits, as well as consider potential trade-offs between short- and long-term costs and benefits. For example, a policy change could have a positive short-term impact, but negative long-term consequences for costs, effectiveness or both.

Economics also provides insight into how individuals and groups respond to incentives. The ‘economics of crime’ literature that began with Becker (1968) characterised, among other things, the trade-offs that individuals face when considering the payoffs from crime against outside economic options such as employment. This prompts policy makers to consider how a broad range of factors that affect economic opportunities can affect the outcomes of criminal justice policies and programs.

Decision making in the criminal justice system often entails assessing and managing risk. Adopting an economic approach that considers relevant trade-offs can help to put risk into a broader context. For example, when a court decides whether to release an offender on bail, they take into account (among other things) the risk that the offender will fail to attend future court hearings or will reoffend while on bail. A simple solution focused purely on mitigating risk could see all offenders refused bail. However, a broader examination would highlight the trade-offs. It might show that the reduced risk to community safety from such a policy is outweighed by the fiscal cost (of remanding more people) and indirect costs, including reduced confidence in the fairness of the criminal justice system.

Many of the costs and benefits of criminal justice policies and programs are hard to measure. While the direct fiscal costs of policing, courts and corrective services are relatively well measured (SCRGSP 2021a), indirect costs — including lost income, poor health or family disruption — are much harder to quantify. Likewise, measuring the benefits of criminal justice policies and programs (such as reduced crime, a fairer justice system or improved community confidence) is complicated, both because such things are inherently difficult to measure, and because it is difficult to attribute any changes to a specific policy or program.

Nevertheless, economics is a useful framework for examining the costs, benefits and consequences of policy alternatives.

This paper is largely a desktop review. It draws on published data from the Australian Bureau of Statistics, the *Report on Government Services* (SCRGSP 2021a), state and territory justice and corrections departments and the Australian Institute of Health and Welfare, as well as existing literature from Australia and overseas. The research presented in this paper has been limited by the lack of accessible, comparable and high-quality data, particularly a dearth of microdata that could be used to track transitions through the criminal justice system and evaluate outcomes. Chapter 5 highlights areas where further data and research would be valuable to inform ongoing policy making in the criminal justice system.

The Commission also consulted with a range of stakeholders, including academics, officials from state and territory government agencies and experts from the United States, United Kingdom and New Zealand (appendix A). The Commission would like to thank all participants for their time and valuable insights.

A road map

The paper starts by examining trends in imprisonment and the characteristics of the prison population (chapter 2), including the drivers that may have contributed to growth in Australia’s imprisonment rate (appendix B).

It then looks at the costs and benefits of imprisonment (chapter 3) and considers several case studies of policy approaches to criminal justice that have been effective in reducing costs and achieving positive outcomes for individuals and the broader community (chapter 4).

The final chapter (chapter 5) highlights areas that warrant further data and research.

2. Setting the scene: imprisonment in Australia

Key points

- * Most prisoners come from disadvantaged backgrounds. Prisoners have a disproportionately high rate of physical and mental ill health and many have complex needs.
- * While imprisonment rates have increased in all jurisdictions, imprisonment *levels* differ substantially. Imprisonment rates are highest in the Northern Territory and Western Australia. Imprisonment *growth* has been driven by different factors in each jurisdiction.
- * Imprisonment growth has been higher among women in several jurisdictions, particularly since 2010. Nonetheless, men still make up the bulk of the prison population.
- * While the majority of Aboriginal and Torres Strait Islander people do not have any contact with the criminal justice system, Aboriginal and Torres Strait Islander people are vastly overrepresented in Australian prisons — comprising 3 per cent of the Australian population but 29 per cent of prisoners — and have also seen the most growth in imprisonment rates over the past two decades. Imprisonment rates are also increasing for non-Indigenous people across all jurisdictions.
- * More than half of prisoners were charged with violent offences including assault and sexual assault. Even so, about 15 per cent of prisoners were charged with offences which have not caused direct harm to others but exposed others to risk of low- to medium-level harm, or caused harm to self, such as drug-use offences. The composition of offences (by most serious offence) appears to be changing over time. Fewer people are in prison for property offences but more for violent and drug offences.
- * A third of the prison population is on remand, awaiting trial or sentencing. This proportion has almost doubled since 2000. The average time spent on remand has increased to 5.8 months in 2020 from 4.5 months in 2001. Remand creates uncertainty for prisoners, victims and corrective services. Remandees typically have limited access to services available in prison such as rehabilitation programs.
- * The recidivism rate has been rising in most jurisdictions over the past ten years with about 60 per cent of prisoners having prior convictions. This figure is high by international standards.
- * High recidivism rates and large numbers of prisoners on remand or serving short sentences suggest that many prisoners cycle in and out of prison. This is more common among Aboriginal and Torres Strait Islander people.

Australia's imprisonment rate has increased substantially since the mid-1980s (chapter 1). As at 30 June 2020, Australia had 41 060 adults in prison (ABS 2020b), including both those who have been proven guilty and sentenced to time in prison, and those still awaiting their trial or sentencing (remandees).

As context for the remaining chapters in this paper, this chapter looks more closely at the characteristics of the prison population (section 2.1). Following this is an exploration of trends in imprisonment (section 2.2), offence type and sentencing (section 2.3), remand (section 2.4) and recidivism (section 2.5).

2.1 The prison population

The demographic profile of the prison population differs from that of the general population across several dimensions. Most prisoners are male, relatively young, disproportionately Aboriginal and Torres Strait Islander people, and from low socioeconomic backgrounds. The prison population is also generally characterised by poor health, a high level of illicit drug use and alcohol abuse, and high prevalence of mental ill health and experiences of trauma (figure 2.1).

These characteristics highlight the complex needs of the Australian prison population. This, in turn, suggests that sentencing, rehabilitation and throughcare⁵ programs need to be well targeted to be effective and to best use the criminal justice system's resources. Some case studies exemplifying more targeted approaches are explored in chapter 4.

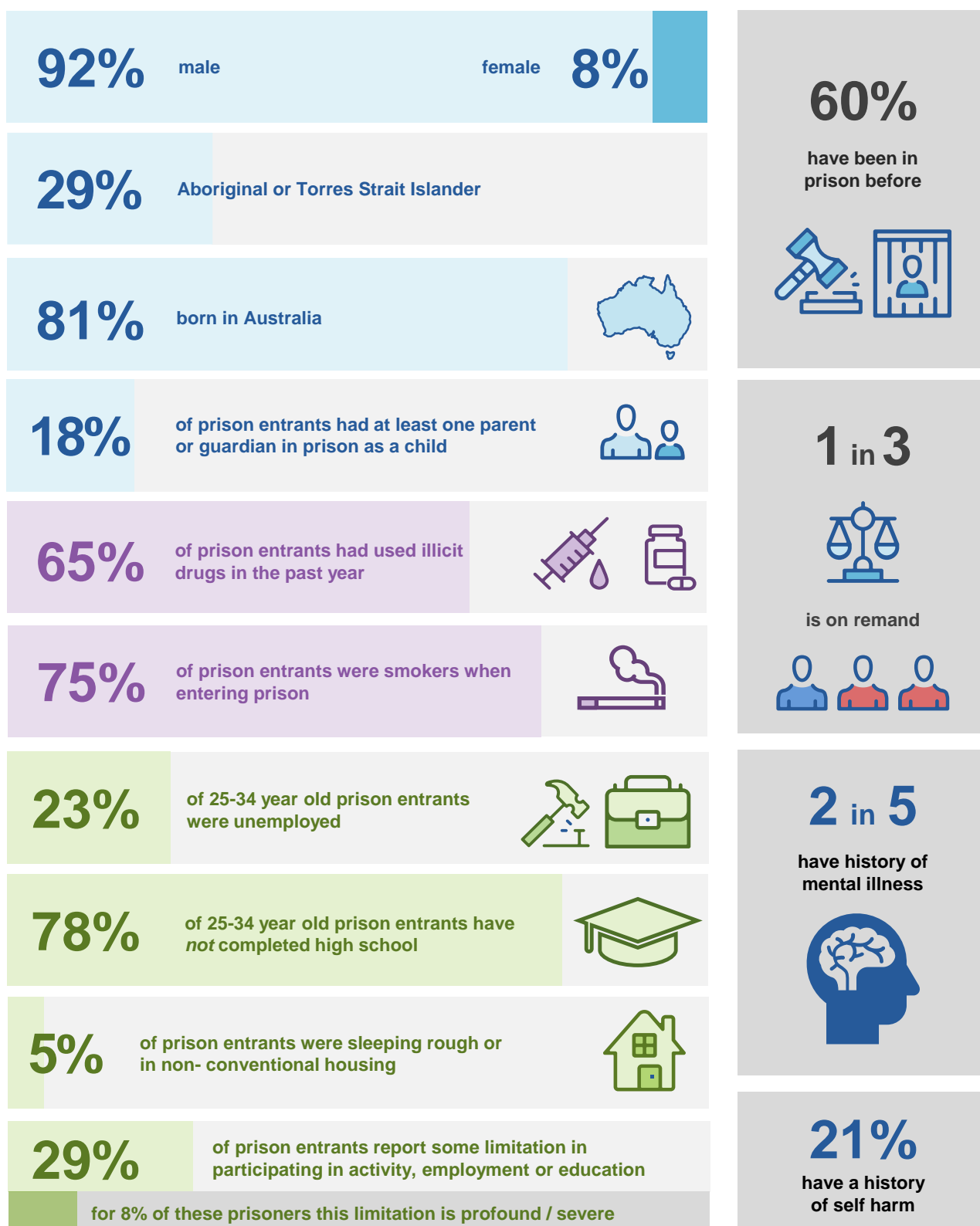
Many prisoners are from disadvantaged backgrounds

The prison population comes from disproportionately disadvantaged backgrounds compared to the general population. Factors such as unemployment, lower educational attainment, intergenerational incarceration, previous imprisonment, substance abuse and mental illness are considered to be risk factors correlated with imprisonment (SCRGSP 2020b). In 2018, 23 per cent of prison entrants aged 25–34 were unemployed compared to 4.8 per cent of the same age group in the general population (measured in the 2016 census). People in prison are also less likely to have completed high school. Of prison entrants aged 25–34, 78 per cent have not completed high school compared to 20.5 per cent of this age group in the general population. Moreover, prisoners are more likely to have experienced homelessness before entering prison: in 2018, 5.3 per cent of prison entrants were sleeping rough or in non-conventional housing compared to 0.035 per cent in the general population (ABS 2017; AIHW 2019a).

Many prisoners have complex health needs. As well as a high prevalence of mental ill health, some prisoners suffer from chronic health conditions and have histories of substance abuse, smoking, and trauma. In New South Wales, in 2015, 65 per cent of prisoners had experienced or witnessed at least one traumatic event and about one third of prisoners reported having previously suffered some kind of head injury (JHFMHN 2020). Having experience of family violence is also a risk factor for future offending. A study of Aboriginal mothers incarcerated in Western Australia found that women who reported using violence were more likely to have experienced it themselves. Of those mothers who reported using violence, 91 per cent had experienced family violence compared to 77 per cent of those mothers who did not report using violence (Wilson et al. 2017).

⁵ Throughcare refers to the process of rehabilitation and reintegration aimed at helping prisoners overcome a range of complex needs and return to society.

Figure 2.1 – The prison population^{a,b}



a. Characteristics of Australian prisoners. **b.** Prison entrants data are taken from the Australian Institute of Health and Welfare’s prisoner survey and do not include New South Wales. Data from New South Wales are broadly consistent with these findings. Most recent data are used and mostly covers the period 2015–20

Source: ABS (*Prisoners in Australia, 2020*); AIHW (2019a); Justice Health and Forensic Mental Health Network (2020).

These complex needs have implications for prison costs — including the indirect costs of imprisonment on families and the broader community — and how prisons can best tailor rehabilitation programs. Chapter 3 explores both the direct and indirect costs of prison in detail.

The prison population is young, but ageing

Australia's prison population is young relative to the general population. In 2019 the median age for adult prisoners was 35.2 (compared to 43.5 for the general population) and the mean was 37.3 (compared to 45.3).

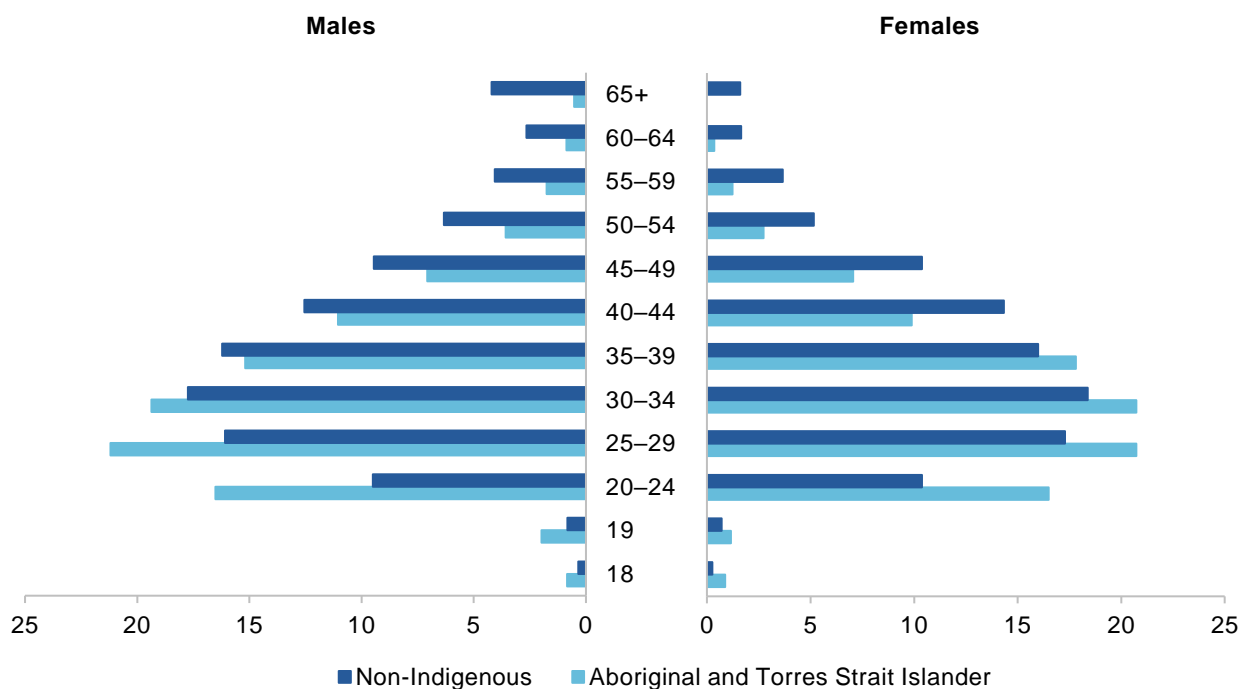
However, Australia's prison population is steadily ageing.

- The mean age of prisoners has increased from 33.8 in 2002 to 37.3 in 2020.
- The median age of prisoners has increased from 32 in 2002 to 35.2 in 2020 (ABS 2020b).

This increase has ramifications for the type and costs of health services that may need to be provided to prisoners over time. In the United States one report suggested that in 2015 prisoners aged 50 and over cost about 8 per cent more to imprison than their younger counterparts (Office of the Inspector General 2020). Older people in prison tend to have higher rates of chronic conditions such as diabetes, heart disease, and liver disease compared to young people in prison (Skarupski et al. 2018).

Most prisoners are aged between 25 and 44, although Aboriginal and Torres Strait Islander prisoners tend to be younger (figure 2.2). This reflects the relative young age of Aboriginal and Torres Strait Islander people compared with the non-Indigenous population, as well as the fact that Aboriginal and Torres Strait Islander prisoners tend to have contact with the criminal justice system at a younger age than non-Indigenous prisoners (QPC 2019b).

Figure 2.2 – The demographic profile of people in prison
Proportion of people in prison by age and Indigenous status, 2020



Source: ABS (*Prisoners in Australia, 2020*).

Mental ill health is more prevalent in prisons

The overrepresentation of mental illness amongst prisoners is well established in Australia and overseas (Fazel and Seewald 2012; Stewart et al. 2020). Two in five Australian prison entrants from jurisdictions participating in the Australian Institute of Health and Welfare's (AIHW) prisoner survey⁶ report having a previous diagnosis of mental illness (figure 2.3) (AIHW 2019a). This is much higher than the estimated prevalence in the general population aged 18 and over (22 per cent), although the data are not directly comparable (PC 2020, p. 1016).⁷ Commonly, prisoners suffer from depression, anxiety, drug abuse and dependence, and post-traumatic stress disorder. Mental ill health may be even more prevalent amongst people on remand (PC 2020, p. 1016).

People in prison are also more likely to suffer from comorbidities than people in the community. For example, people in prison with post-traumatic stress disorder are at higher risk of major depression, agoraphobia, substance abuse or dependence and of being at moderate or high risk of suicide (Fovet et al. 2021). People with these types of comorbidities have a higher risk of reoffending (Stewart et al. 2020).

Prevalence of mental illness is higher among some groups of prisoners. Women in prison are more likely to have a history of mental illness than men — in 2018, 65 per cent of females compared with 35 per cent of males reported a previous diagnosis of mental illness (PC 2020, p. 1016).

There are various estimates of mental ill health prevalence amongst Aboriginal and Torres Strait Islander prisoners. While Aboriginal and Torres Strait Islander prisoners have lower rates of self-reported mental ill health than non-Indigenous prisoners, there is evidence that mental ill health affects 70–90 per cent of imprisoned Aboriginal and Torres Strait Islander people (PC 2020, p. 1017). While it is difficult to tell, this tendency to under-report might explain the relatively low rates of self-reported mental health diagnoses amongst those entering prison in Western Australia and the Northern Territory (figure 2.3).

Moreover, Aboriginal and Torres Strait Islander women in prison have a higher incidence of mental ill health than Aboriginal and Torres Strait Islander men or non-Indigenous women. A study of Aboriginal and Torres Strait Islander people in Queensland prisons found that 51 per cent of Aboriginal and Torres Strait Islander women in the sample, compared with 20 per cent of Aboriginal and Torres Strait Islander men, suffered from anxiety. In the same sample, 29 per cent of women compared with 11 per cent of men suffered from depression and 23 per cent compared with 8 per cent suffered from psychotic disorders (Heffernan et al. 2012). Data from a prisoner cohort born in 1990 found that 44 per cent of non-Indigenous women in prison had mental ill health compared with 52 per cent of Aboriginal and Torres Strait Islander women (Stewart et al. 2020). These differences highlight the importance of considering gender, Indigenous status and other characteristics when considering the needs of people in prisons.

The Commission's inquiry into mental health found that the relationship between offending and mental ill health is not straightforward (PC 2020, p. 1019). Some factors which lead to the overrepresentation of people with mental ill health in prison include deinstitutionalisation from mental health facilities, use of illicit substances, limited capacity of mental health services and social determinants.

⁶ All jurisdictions except for New South Wales participate in the AIHW survey.

⁷ Estimates of prevalence of mental illness among the general population and prison population are not directly comparable because they are obtained from different surveys, which ask different questions to derive prevalence estimates and have different survey samples.

Figure 2.3 – Mental illness is common among prison entrants

Per cent of prison entrants that report having a previous diagnosis of a mental health disorder by jurisdiction, 2018^{a,b}



a. Mental health disorders are inclusive of alcohol and other drug-use disorders. **b.** NSW data from 2019.

Source: AIHW (2019a); JHFMHN (2020).



Finding 2.1

Prisoners are much more likely to be male and Aboriginal and Torres Strait Islander than the general population. Prisoners tend to have lower educational attainment and are more likely to have been homeless and unemployed prior to imprisonment than the general population. Many have been in prison before.

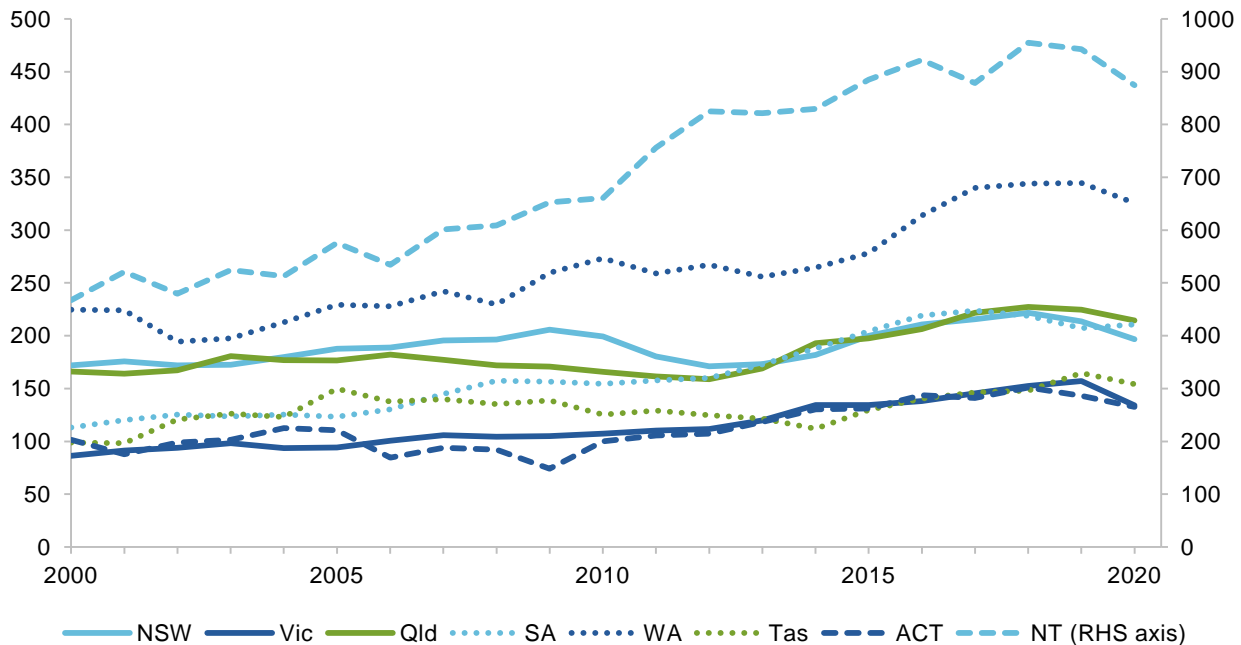
Prisoners have disproportionately high rates of physical and mental ill health. In addition, the prison population is young but ageing despite the notably younger age distribution of Aboriginal and Torres Strait Islander people in prison. This has implications for the type and costs of health services that may need to be provided.

The clustering of disadvantage, overrepresentation of Aboriginal and Torres Strait Islander people and the heterogeneity of the prison population suggests that solutions to recidivism and alternatives to imprisonment need to be tailored to individual needs.

2.2 Imprisonment rates

For every 100 000 people in Australia 202 are imprisoned. Notwithstanding the downward trend in 2019-20, the national imprisonment rate has increased by 35 per cent since 2000 — a trend that is broadly reflected across all states and territories (figure 2.4).

Figure 2.4 – Imprisonment rates increased in all jurisdictions
Prisoners per 100 000 people (adult population)



Source: ABS (*Prisoners in Australia*, 2012 and 2020).

Imprisonment rate *levels* vary across states and territories

Against the rising national trend, there is clear variation in the *levels* of imprisonment across Australian jurisdictions.

The Northern Territory has the highest overall imprisonment rate in Australia (measured on the right hand side axis in figure 2.4) and stands as an outlier compared to other states and territories (ABS 2020b). The Northern Territory's imprisonment rate is higher than that of the United States, which has the highest imprisonment rate of any country in the world (Institute for Crime and Justice Policy Research 2021).

As outlined in chapter 1, Australia has nine criminal justice systems (one for each state and territory and the federal system) and eight prison systems (run by states and territories) (Bartels, Fitzgerald and Freiberg 2018). This gives rise to different approaches in legislation and policies as well as different interpretations of common law. These variations often reflect distinct historical contexts, differing cultures and political discourses.

For example, imprisonment policies in New South Wales have ebbed and flowed substantially as a response to political discourse. Policies have ranged from decriminalisation and sentence shortening in the 1970s to numerous changes to bail legislation between 1992 and 2008. Bail legislation changes preceded a doubling of bail refusal rates between 1995 and 2005 (Tubex et al. 2015).

On the other hand, Western Australia has had a more consistent history of using imprisonment as a response to crime. For example, Western Australia was one of the first jurisdictions to introduce mandatory sentencing practices for non-violent offences in 1992 (Tubex et al. 2015; Tubex, Blagg and Tulich 2018). This policy approach is reflected in the high levels of imprisonment in Western Australia.

Growth in imprisonment rates is driven by different factors in each jurisdiction

Prison is the final point in a complex set of decisions within the criminal justice system. As such, a range of factors can potentially drive increases in the number of people in prison. These include:

- the number of people offending, being brought to court, found guilty and then sentenced
- the average length of sentences
- shifts in the composition of offending towards more serious offences that have a bearing on the number of people sentenced and the length of sentencing.

Disentangling the drivers of rising imprisonment is complicated by data limitations. Nevertheless, the Commission's analysis of the drivers of imprisonment (appendix B) uses two approaches to look at factors that affect the rate at which individuals arrive in prison and the length of prison stays. These factors include the severity of offences, length of sentences, time on remand (which is influenced by court processing times) and policies regarding parole.

The first approach adopts a mathematical model — called 'Little's Law' (Little 1961) — to disentangle and compare the *relative* contribution of each factor to the imprisonment rate. The results are summarised in figure 2.5, with associated caveats noted in box 2.1.

As a complement to Little's Law, the second part of the analysis examines trends in each factor and draws on the literature to identify some of the underlying drivers.

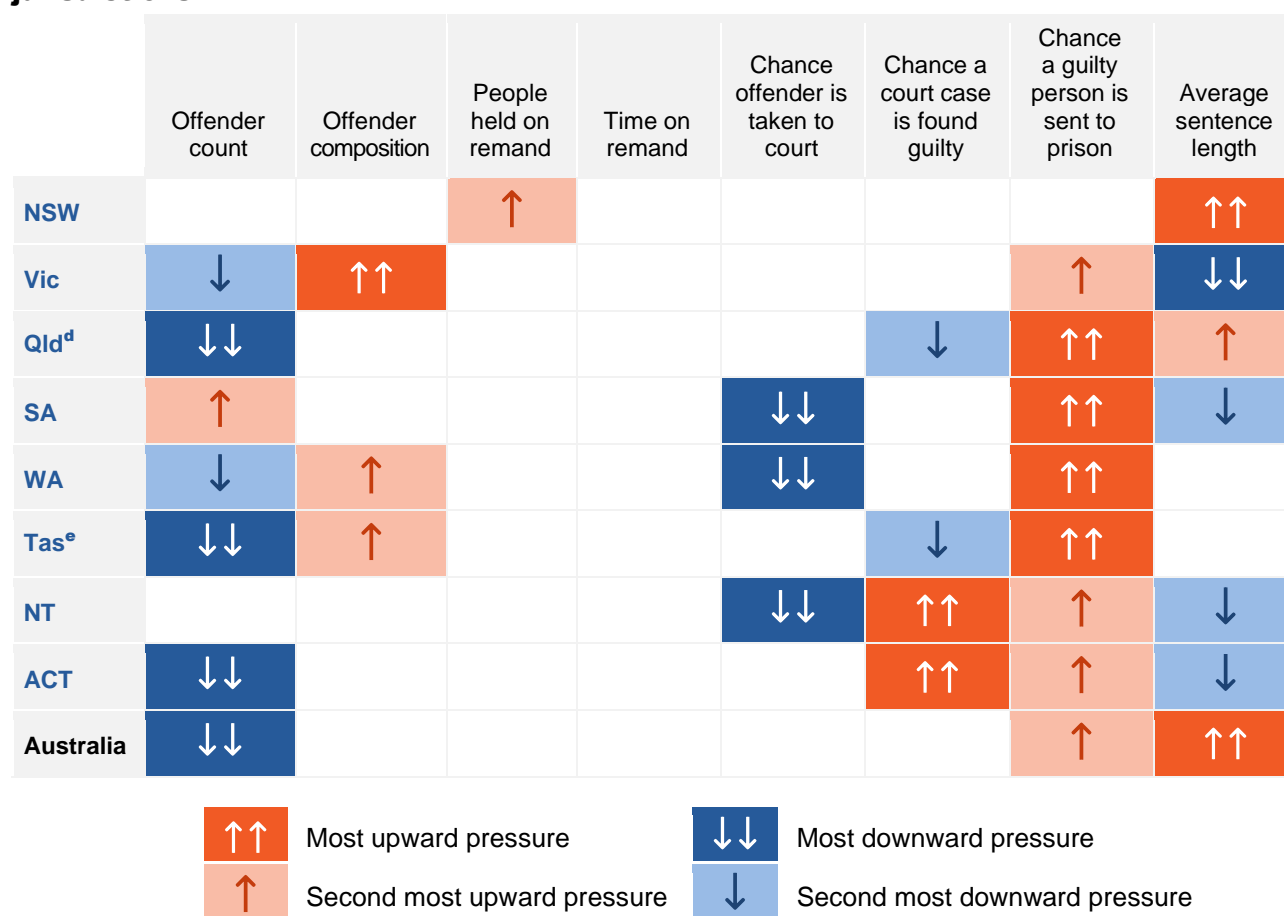
Looking at the results across both approaches, the analysis found that although the relative importance of some drivers varies across jurisdictions, there are some common themes.

- Imprisonment grew in all jurisdictions while offending (as measured by the number of offenders proceeded against by police) mostly fell between 2011-12 to 2018-19. In jurisdictions where offending increased, imprisonment still grew faster than offending.
- Changes in court outcomes and policing policies towards more punitive policy settings are important drivers of increasing imprisonment rates. For example, focussed deterrence strategies that target high-risk and repeat offenders may increase the likelihood that offenders are sent to prison.
- A shift to more serious offending was likely a key driver of higher imprisonment rates in Victoria and Queensland. In Western Australia and Tasmania, a shift to more serious offending likely dampened the effect of falling numbers of offenders proceeded against by police rather than contributing to increased imprisonment rates.
- Growth in the number of people on remand accounted for about two thirds of the growth in imprisonment rates, suggesting bail laws or the duration of court cases could be important drivers of imprisonment. However, available data do not separate out people on remand who are subsequently found not guilty or do not receive a prison sentence at an individualised level. This makes it difficult to assess the extent to which the growth in remand has added to the total number of people in prison or simply shifting some imprisonment from post- to pre-sentencing. Court cases per offender (the chance an offender was taken to court) was relatively stable or decreased in most jurisdictions.
- Overall, the severity of court outcomes has increased to varying degrees:
 - court cases were more likely to end in a guilty verdict in 2018-19 than in 2011-12 in the Northern Territory and the ACT (figure 2.5)
 - people found guilty were more likely to be sentenced to prison in 2018-19 than in 2011-12 in all jurisdictions. The analysis suggests that this was the first or second most important driver of increased

imprisonment in all jurisdictions except New South Wales (figure 2.5). Both police and penal policy likely contributed to this increase

- half of the jurisdictions saw an increase in the average sentence length. This was the most important driver of imprisonment for the national average as well as in New South Wales. It was also an important driver of imprisonment in Tasmania and Queensland (figure 2.5).

Figure 2.5 – The relative importance of factors driving imprisonment differ across jurisdictions^{a,b,c}



a. The analysis holds each factor constant in turn to see how the absence of change in a factor (for example average sentence length) affects imprisonment numbers. Colours and arrows represent how much pressure and in what direction each variable held constant under the scenario put on imprisonment. Orange boxes with upward arrows suggest that in the absence of change in that factor imprisonment might have been lower, meaning the factor placed upward pressure on imprisonment numbers. Similarly, blue boxes with downward arrows suggest that imprisonment might have been higher, meaning the factor placed downward pressure on imprisonment numbers. **b.** See table B.2, appendix B for further information underpinning these measures. For example, people held on remand measures the number of people placed on remand who were *not* subsequently sentenced to imprisonment. **c.** The effect of offender composition does not imply that a compositional change increased imprisonment rates. In some cases a positive compositional effect simply means the compositional change slowed the fall in imprisonment implied by the fall in total offending **d.** For Queensland, offender composition was a close third for most upward pressure (table B.2). **e.** For Tasmania, average sentence length was a close third for most upward pressure (table B.2).

Source: Commission estimates based on ABS (*Criminal Courts* 2012 to 2020 and custom data request; *Prisoners in Australia*, 2020; *Recorded Crime – Offenders*, 2021).

Box 2.1 – Little's Law: some caveats

Data limitations and the simplification of complex decisions that lead to prison can mean that some important components are not perfectly accounted for by Little's Law:

- measures of time on remand are imperfect and are likely to bias downward the estimate of time spent in prison (box B.3, appendix B)
- parole decisions are not observed in the data used
- the underlying factors that drive imprisonment growth are usually not independent from one another and the model is unable to account for this
- the analysis in appendix B does not account for the underlying circumstances of an alleged offender or their characteristics. As such heterogeneity in what drives imprisonment growth in different groups is not apparent in the aggregate data used
- the analysis compares differences in variables between two points in time and treats both points as a steady state. This will tend to under-represent the importance of variables whose path is not evenly changing between those points in time. A dynamic modelling approach would be required to identify transition effects (see, for example, Halloran, Watson and Weatherburn 2017; Johnson and Raphael 2012).



Finding 2.2

While the key drivers of imprisonment differ between jurisdictions, more punitive policy measures such as increases in the likelihood of receiving a prison sentence and longer sentences, were important drivers of growing imprisonment rates across most jurisdictions between 2011-12 and 2018-19.

Similarly, an increase in the number of prisoners on remand due to changing bail laws and length of court cases appears to be an important driver of rising imprisonment rates.

A compositional shift to more serious offences cannot be ruled out as an underlying driver, but is only likely to be important in some jurisdictions.

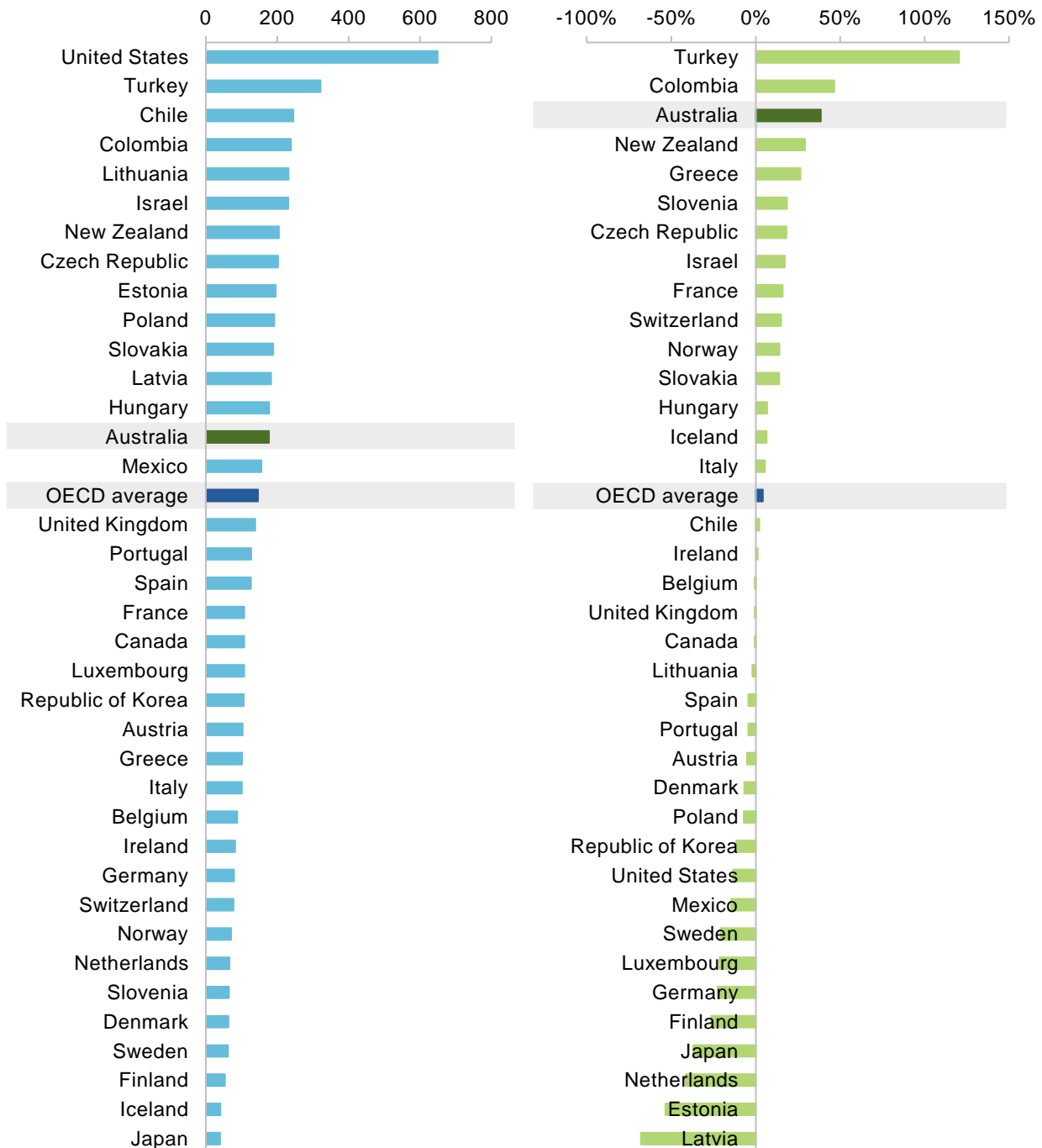
Australia's imprisonment growth is third highest in the OECD

While Australia's imprisonment rate is just above the OECD average (figure 2.6, panel a), imprisonment *growth* in Australia is high by international standards (figure 2.6, panel b). The rate of increase in Australia's imprisonment rates between 2003 and 2018 was among the fastest in the OECD at 39 per cent. Only Turkey (120 per cent) and Colombia (46 per cent) experienced faster growth in imprisonment between. By contrast, the imprisonment rate grew by 29 per cent in New Zealand, and fell by 1 per cent in Canada and the United Kingdom, and by 14 per cent in the United States over a similar period.

Figure 2.6 – Australia’s imprisonment rate has grown faster than most OECD countries

a. Imprisonment rate per 100 000 people, in 2018

b. Imprisonment rate growth between 2003–2018



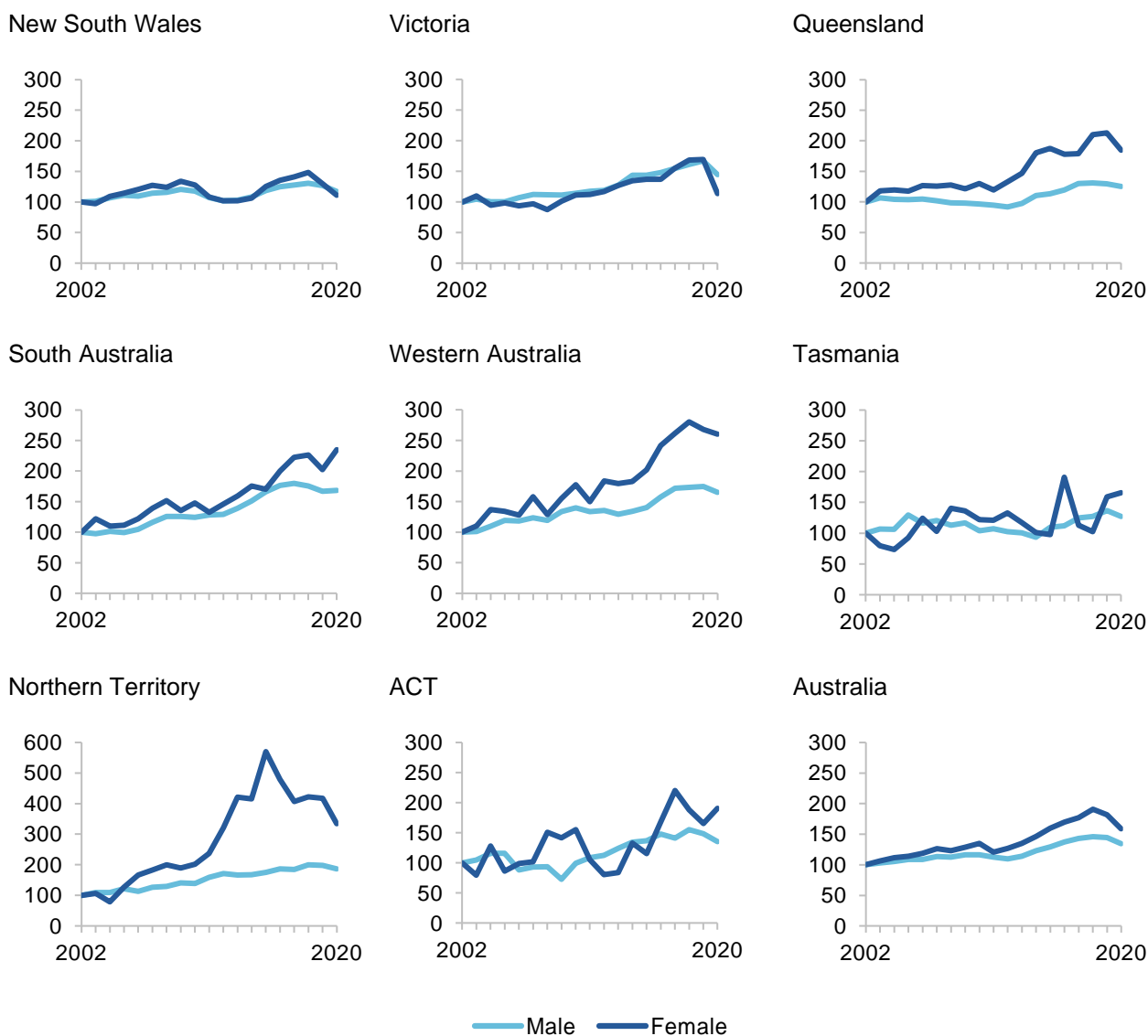
a. Imprisonment rates for Australia differ here from figure 1.2 because they are based on the total population, rather than the adult population which is limited to those aged 18 and above. b. 2003–2017 for Canada; 2004–2018 for Luxembourg and Belgium; 2005–2018 for Austria. c. Data for United Kingdom are for England and Wales.

Source: United Nations Office on Drugs and Crime (2019).

Imprisonment rates are growing faster for some groups

Another feature of Australia's imprisonment trends is that imprisonment rates are increasing faster for some demographic groups. While women comprise only 7.7 per cent of the national prison population, female imprisonment rates have increased faster than male imprisonment rates nationally and in several jurisdictions (figure 2.7). This faster growth in female imprisonment has been common across Western countries including New Zealand, the United Kingdom and the United States.

Figure 2.7 – Female imprisonment rates are increasing
Indexed imprisonment rates by jurisdiction and sex, 2002 to 2020^a



a. Indexed to 2002.

Source: ABS (*Prisoners in Australia, 2012 and 2020*).

There is some evidence from New South Wales that much of this increase has been driven by more women presenting to courts as repeat offenders. In 2011, 18 per cent of women appearing before courts had one or more prior court appearances. By 2017, this number had increased to 46 per cent. This could reflect

women's changing criminal behaviour or changes to policing practices. There is little evidence that women are committing more serious crimes or spending longer in prison (Ooi 2018). That said, the growth may be driven by different factors in different jurisdictions.

Additionally, Aboriginal and Torres Strait Islander people are vastly overrepresented in the Australian prison system. Aboriginal and Torres Strait Islander people comprised 3.3 per cent of the national population but 29 per cent of the prison population in 2020. In the Northern Territory, Aboriginal and Torres Strait Islander people make up 84 per cent of the prison population but only 30 per cent of the total population. Aboriginal and Torres Strait Islander people's overrepresentation is a central and persistent issue for Australia's criminal justice system, and some of the underlying reasons are explored in box 2.2.

Box 2.2 – Why are imprisonment rates so high for Aboriginal and Torres Strait Islander people?

Aboriginal and Torres Strait Islander people comprise about 3 per cent of the Australian population and yet account for 29 per cent of the prison population (ABS 2020b). While the majority of Aboriginal and Torres Strait Islander people have never committed a criminal offence, the overrepresentation of Aboriginal and Torres Strait Islander people in prison remains a central and persistent issue for Australia's criminal justice system. The rate of imprisonment for Aboriginal and Torres Strait Islander people is 13.3 times the non-Indigenous imprisonment rate.

Explanations for the relatively high imprisonment rate of Aboriginal and Torres Strait Islander people are well documented in various landmark reports, inquiries and reviews including the Royal Commission into Aboriginal Deaths in Custody (1991) and Australian Law Reform Commission (2017). The research points to a range of risk factors for offending — including low socioeconomic status, child maltreatment, unemployment, poor education, cognitive impairment, poor mental health, exposure to violence and family dysfunction, homelessness, and substance misuse — that are more prevalent among Aboriginal and Torres Strait Islander people (SCRGSP 2020b; Shepherd et al. 2020). The higher prevalence of risk factors among Aboriginal and Torres Strait Islander people stems in part from experiences of dispossession, forced removal, intergenerational trauma and racism (ALRC 2017; SCRGSP 2020b).

Structural and systemic factors could also work to the detriment of Aboriginal and Torres Strait Islander people because of the particular circumstances and disadvantage they are more likely to experience. For example, mandatory sentencing for particular offences (including property crime) has been cited as disproportionately affecting Aboriginal and Torres Strait Islander people (ALRC 2017). Socioeconomic disadvantage, community and cultural obligations can make it difficult for some Aboriginal and Torres Strait Islander people to meet strict bail and parole conditions (NATSILS 2017).

Many Aboriginal and Torres Strait Islander people report discrimination, racism and lack of cultural capability in the criminal justice system (Aboriginal Legal Service (NSW/ACT) 2017; ALRC 2017; Cunningham and Paradies 2013). For example, there is evidence of racialised policing practices such that Aboriginal and Torres Strait Islander people are more likely to be arrested, less likely to be cautioned and more likely to be referred to court than non-Indigenous people (ALRC 2017, chapter 14; Cunneen 2020; SCRGSP 2020b). After controlling for other factors that affect sentencing, Thorburn and Weatherburn (2018) estimated that Indigenous status increases the likelihood of receiving a prison sentence by about 1.2 percentage points.

Nationally, the rate of imprisonment for Aboriginal and Torres Strait Islander people is 13.3 times the non-Indigenous imprisonment rate, even adjusting for the relative youth of the Aboriginal and Torres Strait Islander population (table 2.1).

Table 2.1 – Aboriginal and Torres Strait Islander people have very high imprisonment rates
Age standardised^a imprisonment rate per 100 000 adult population,^b 2020

	NSW	Vic	Qld	SA	WA	Tas	NT	ACT	Aus
Aboriginal and Torres Strait Islander people	1 778	1 753	1 897	2 422	3 464	727	2 270	1 891	2 081
Non-Indigenous people	160	125	157	188	217	154	198	100	156
Ratio^c	11.1	14.0	12.1	12.9	16.0	4.7	11.5	18.9	13.3

a. Age standardised imprisonment rates adjust crude rates for age differences in underlying populations. **b.** Population aged 18 years and over. **c.** Ratio of the imprisonment rate for Aboriginal and Torres Strait Islander people to the imprisonment rate for non-Indigenous people.

Source: ABS (*Prisoners in Australia, 2020*).

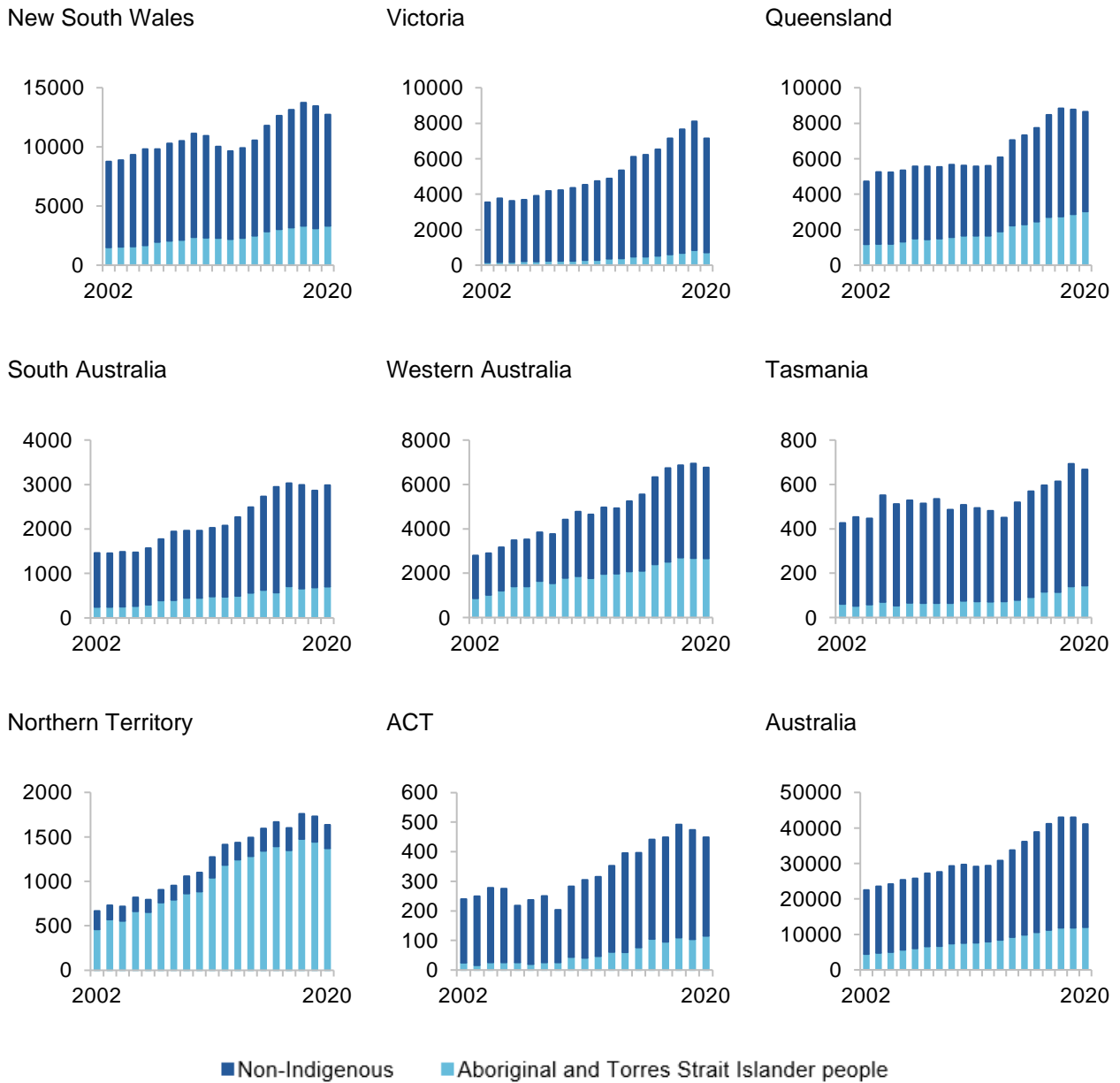
Moreover, the imprisonment rate for Aboriginal and Torres Strait Islander people has increased by 35 per cent since 2006, compared with an increase of 14 per cent for the non-Indigenous population. However, the national trend masks significant variation across jurisdictions and within the Aboriginal and Torres Strait Islander population. The growth of imprisonment rates for Aboriginal and Torres Strait Islander people was fastest in the ACT (149 per cent growth between 2006 and 2020), Victoria (126 per cent), Tasmania (87 per cent) and South Australia (61 per cent) (ABS 2020b).

Aboriginal and Torres Strait Islander women have experienced the fastest growth in imprisonment rates. Aboriginal and Torres Strait Islander women's imprisonment rates have increased by 115 per cent between 2000 and 2020 compared with an increase of 65 per cent for Aboriginal and Torres Strait Islander men. (ABS 2020b; SCRGSP 2020b). The underlying structural, relational and personal circumstances of Aboriginal and Torres Strait Islander women put them at greater risk of imprisonment (SCRGSP 2020b).

While Aboriginal and Torres Strait Islander overrepresentation in prisons is a central issue facing Australia's criminal justice system, it is not the only source of high imprisonment rates. Western Australia, for example, has a non-Indigenous imprisonment rate higher than the overall national average (Tubex, Blagg and Tulich 2018, p. 217). Growth in imprisonment of non-Indigenous people is also clearly contributing to overall imprisonment growth across all jurisdictions, perhaps with the exception of the Northern Territory (figure 2.8).

Figure 2.8 – Growing numbers of Aboriginal and Torres Strait Islander and non-Indigenous prisoners

Number of prisoners by jurisdiction and Indigenous status, 2002 to 2020



Source: ABS (*Prisoners in Australia 2012 and 2020*).



Finding 2.3

While Australia's imprisonment rate was just above the OECD average in 2018, between 2003 and 2018 its growth was third fastest among OECD countries.

Imprisonment rates have increased steadily over the past two decades in all Australian jurisdictions from different base levels. This growth has been more pronounced for women and Aboriginal and Torres Strait Islander people.

2.3 Offences and sentences

In parallel with the increasing imprisonment rate, the composition of offences that people in prison have been charged with as well as the patterns of sentencing have evolved over the past decade.

This section uses data on the most serious offence that prisoners are charged with during a particular year (box 2.3). As such, the section does not present a complete picture of *crime* as the data do not include non-reported crime or reported crime that does not involve time in prison. The data also do not capture the instances of multiple offences being committed by an individual prisoner within a year. For these reasons, caution is needed in interpreting the results.

More than half of prisoners are charged with violent crimes

In 2020, more than half (58 per cent) of the people in prison (either on remand or sentenced) were charged with violent crimes (box 2.3) (ABS 2020b). Nonetheless, a notable proportion of prisoners (15 per cent or 4085 prisoners) were charged with offences which have not caused harm but exposed others to risk of low- to- medium direct or indirect harm, or which cause harm to self; such as drug use offences.⁸ Prisoners may be charged with multiple offences per year which may increase the probability of imprisonment even though individual offences were relatively minor.

In 2020, the most common offences prisoners were charged with were acts intended to cause injury (including assault) (23 per cent), followed by illicit drug offences (15 per cent), and sexual assault and related offences (14 per cent) (figure 2.9). There was an increase in the proportion of the prison population charged with one of these three offences over the period 2010–20 (figure 2.9).

At the same time, there has been a decline in the proportion of prisoners charged with crimes such as theft, fraud and traffic regulatory offences. Overall, there was a 6 per cent increase in the proportion of prisoners charged with violent crimes as their most serious offence between 2010 and 2020 and an 8 per cent decrease in non-violent charges over the same period. This shift in offending composition does not appear to have driven imprisonment growth (appendix B).

⁸ This estimate was calculated for the 2020 prison population based on the Queensland Productivity Commission's methodology which uses the harm principle to categorise ANZSOC classification by whether an offence has a risk of causing direct harm to others, indirect harm to others, or harm to self (QPC 2019b, chap. 12).

These changes in the composition of offending broadly reflect trends in reported crime rates (chapter 1). Weatherburn and Rahman (2021) outline some likely explanations for falling property crime rates, including better vehicle security, falling demand for stolen goods, the rise of the cashless, population ageing, and changes to policing and imprisonment policy.

Due to the data limitations noted above, the observed trends in non-violent offences could reflect a decline in these offences being reported as the most serious offence, rather than a decline in the overall incidence of these offences. On the other hand, the increase in violent offences — in particular sexual assault and related offences — could reflect, a greater willingness on the part of victims to come forward and report these crimes.

Box 2.3 – Classification of offences

Data on offences which prisoners are charged with or convicted of are collected based on the most serious offence that an individual is charged with during that year. This means that an individual who has committed multiple crimes is recorded with their most serious crime (or alleged crime). This is important to note before interpreting some of the figures in this section. Claims that growth in serious offences outweighs that of less serious ones — particularly crimes which often occur in conjunction with other crimes — should be taken with caution.

The National Offence Index (NOI) orders offence divisions in the Australian and New Zealand Standard Offence Classification (ANZSOC) by their level of severity and determines what is the most serious offence.

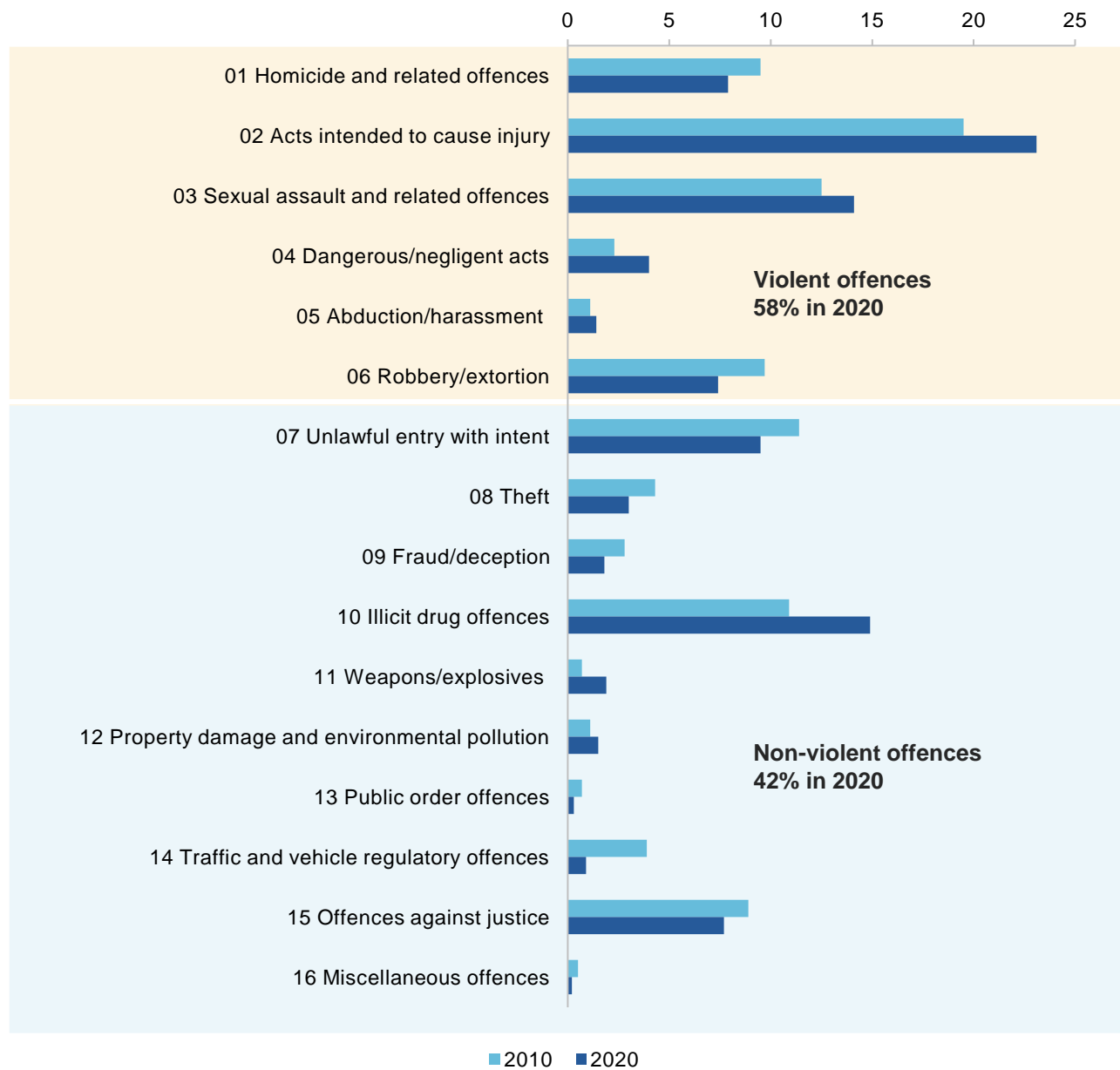
ANZSOC is used by the Australian Bureau of Statistics (ABS) in its justice statistics including the yearly prisoner statistics, *Prisoners in Australia*. The main purpose of the ANZSOC is to create a standardised framework and characterisation of criminal activity. This helps bridge differences in definitions of offences across Australian states and territories allowing for more comparability of data. There are 16 divisions in the ANZSOC classification. These are not necessarily ordered by their NOI level of severity, but rather by whether or not offences were violent, intentional, had a specific victim, involved property acquisition or compromised the safety of others. Overall, the divisions attempt to align with jurisdictional variation in legal definitions and codes in order to create a single, comparable classification.

In this paper, divisions 01 to 06 have been designated as ‘violent’ crimes. These divisions involve offences committed against another person and include attempts and conspiracies but do not include acts committed against organisations, the state or the community. These also generally involve high harm or risk of harm to others.

Source: ABS (2011).

Figure 2.9 – The composition of offences is evolving

Per cent of prisoners by offence type in 2010 and 2020



Source: ABS (*Prisoners in Australia, 2020*).

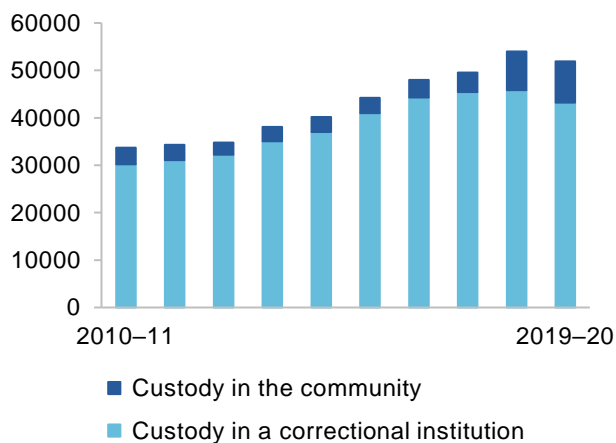
Custodial sentences do not always mean prison

Not all custodial sentences result in imprisonment. Custody in a correctional institution or imprisonment accounted for 68 per cent of custodial sentences handed down in 2019-20 (figure 2.10, panel a). Non-prison custodial sentences include custody in the community and suspended sentences (ABS 2020a). Suspended sentences have been phased out in several jurisdictions, including Victoria and New South Wales (Freiberg 2019).

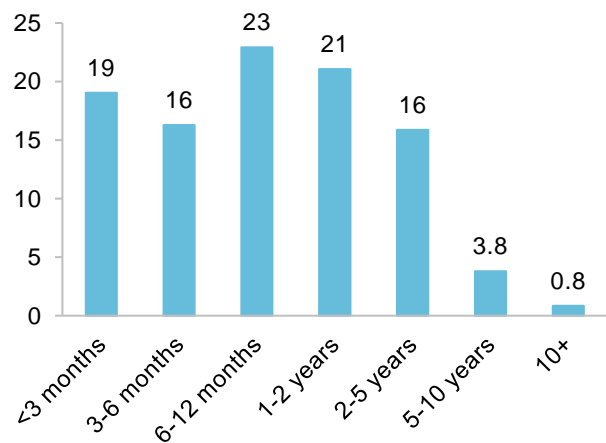
When given more sentencing options, judges have greater discretion to hand down sentences that better suit the offence and the characteristics and needs of the offender, while still providing an appropriate level of punishment. The relative costs of community-based custody and imprisonment are explored in chapter 3.

Figure 2.10 – Sentence type and length

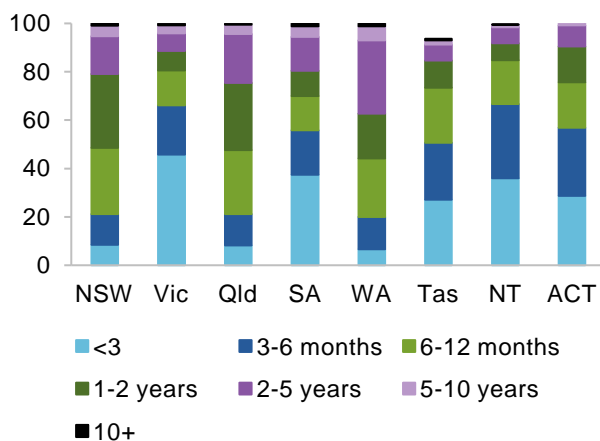
(a) Number of guilty finalisations given custodial orders



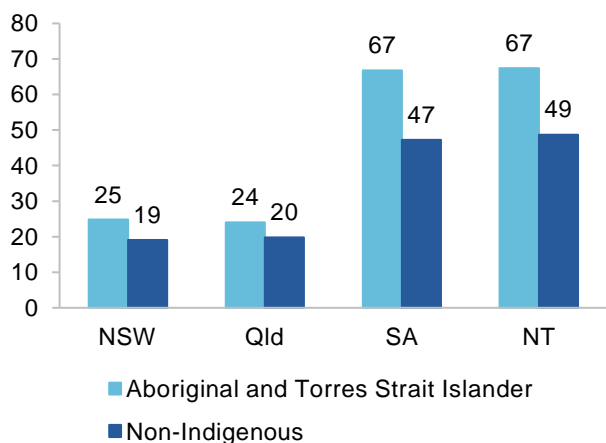
(b) Per cent of finalised defendants by sentence length in Australia, 2019-20



(c) Per cent of finalised defendants by sentence length and jurisdiction, 2019-20



(d) Per cent of sentences of less than 6 months by Indigenous status, 2019-20



Source: ABS (*Criminal Courts, Australia, 2020*).

Sentence lengths are mostly short but increasing over time

The vast majority of people sentenced to prison will re-join the wider community at some point. Over a third (35 per cent) of convicted prisoners received a short prison sentence (defined in this paper as less than six months) in 2019-20 (ABS 2020a) (figure 2.10, panel b). There is variation across jurisdictions with some having a much higher proportion of prisoners with short sentences (figure 2.10, panels b and c).

Nevertheless, sentence lengths appear to be increasing over time. The median sentence length has increased by 46 per cent since 2011-12, from six months in 2011-12 to 8.8 months of imprisonment in 2019-20 (ABS 2020a). The mean sentence length has increased by 20 per cent since 2011-12, from 13 months in 2011-12 to 15.6 months in 2019-20 (ABS 2020a).

This trend could reflect several factors. The shift towards more violent crimes could account for some of the increase in sentence length, assuming that more violent offences receive longer prison sentences on average. Alternatively, people coming through the prison system could be receiving longer sentences because they are being convicted of multiple offences or are repeat offenders — trends that would not be captured by the data on offences as currently reported. Sentence length could also be increasing due to policy changes such as the imposition of minimum and maximum sentence lengths. Sentence length has contributed to the overall growth in imprisonment (box 2.1; appendix B).

In 2020 more Aboriginal and Torres Strait Islander prisoners received short sentences relative to non-Indigenous prisoners (figure 2.10, panel d). National Aboriginal and Torres Strait Islander Legal Service (NATSILS 2017, p. 14) noted some specific concerns regarding shorter sentences for Aboriginal and Torres Strait Islander people:

... short sentences are particularly problematic, as they disconnect individuals from their communities and support networks, and often mean that an important contributor is removed from the community, thereby harming the entire community. Further, prison can mirror past trauma and abuse (and inter-generational trauma), and reinforce themes of powerlessness, lack of control, and vulnerability.

More generally, the majority of prisoners (70 per cent) serving short sentences are in prison for non-violent offences, such as theft and drug offences. These offences often have their root causes in poverty, drug addiction, homelessness and poor mental health. Short prison sentences for these types of offences disrupt family ties, housing, employment and treatment programs but are likely to offer little in terms of deterrence and rehabilitation.



Finding 2.4

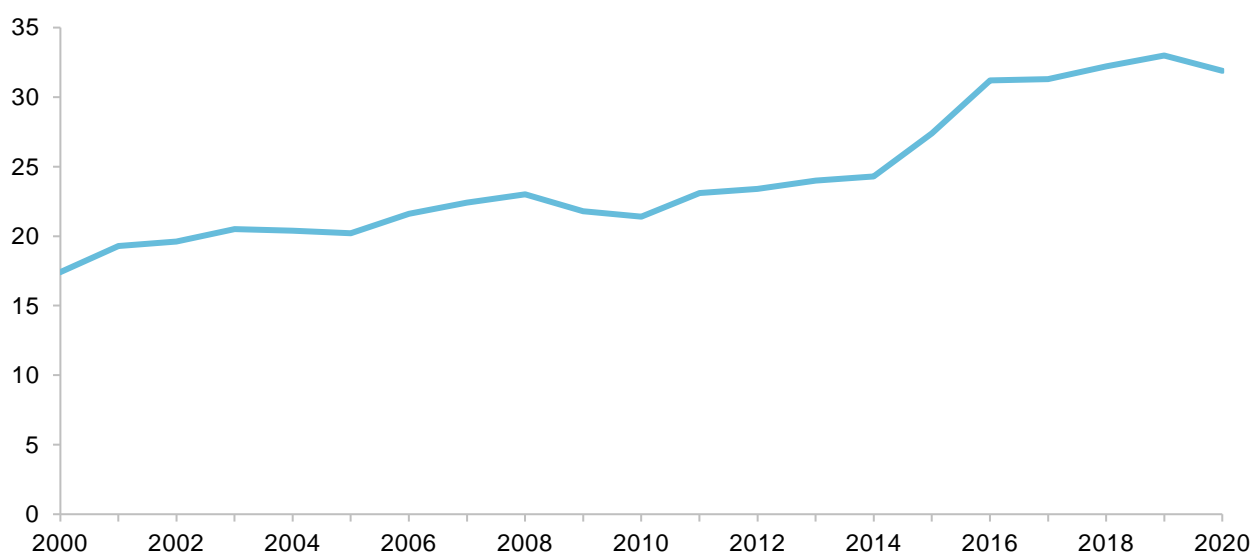
There has been a shift towards prisoners charged with violent offences as their most serious offence within a 12-month period. More than half of people in prison have been charged with crimes which are considered violent (such as acts intended to cause injury and sexual assault). Nonetheless, 15 per cent of prisoners are charged with offences which have not caused harm but exposed others to risk of low- to medium-level direct or indirect harm, or which cause harm to self (such as drug use offences).

While average sentence lengths appear to be increasing over time, over a third of sentenced prisoners receive short sentences of less than six months, mostly for non-violent offences.

2.4 Remand

A third of Australia's prison population is on remand; awaiting trial or sentencing. The share of the remand population has nearly doubled in the past two decades (figure 2.11). While on remand, prisoners awaiting their trial are in a state of flux. The uncertainty associated with this for prisoners, victims and corrective services limits access to available services such as education and training and rehabilitation programmes (ALRC 2017, pp. 287–89). Remanding people in custody means that governments face the fiscal costs of imprisonment itself (chapter 3). Additionally, remandees face indirect costs similar to those associated with short sentences but remand can have a particularly adverse impact on mental health. A study looking at New South Wales and South Australia found that 50 per cent of prisoners who committed suicide were on remand at the time (Willis et al. 2016).

Figure 2.11 – The proportion of prisoners on remand has increased
Per cent of prison population who are unsentenced



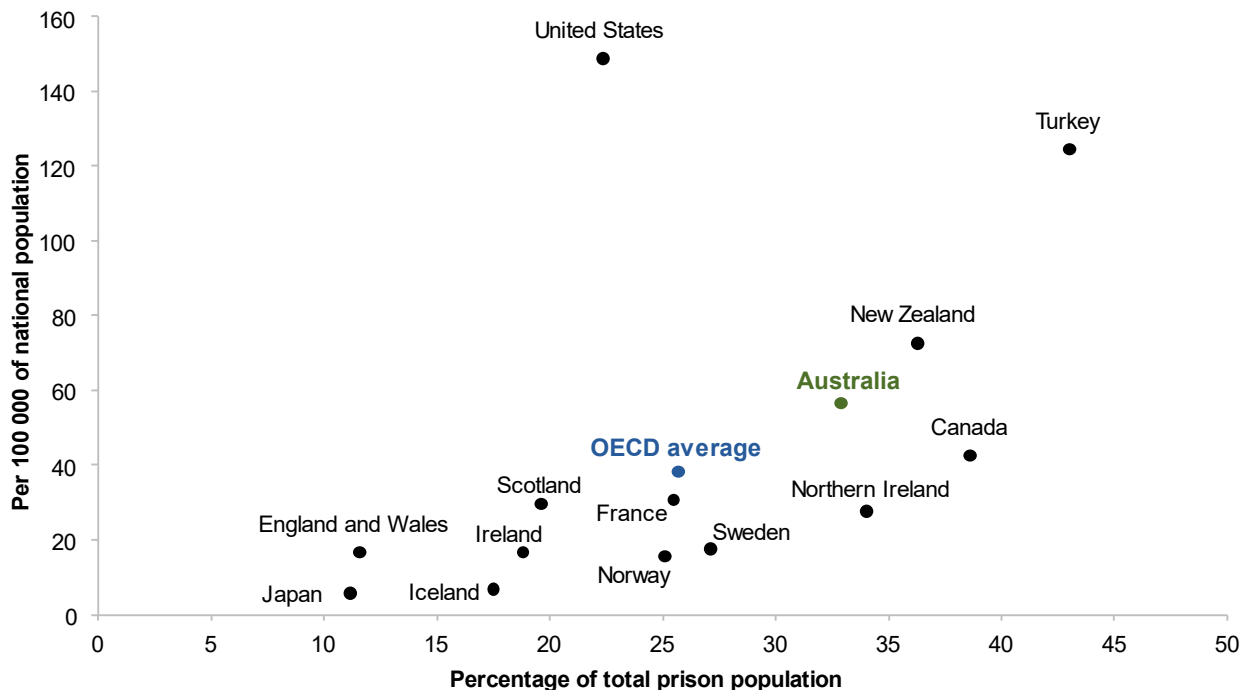
Source: ABS (*Prisoners in Australia, 2020*).

Australia ranks relatively high among OECD countries on two commonly-used measures of remand (figure 2.12). The average proportion of remandees in OECD countries is 26 per cent of the prison population, six percentage points lower than Australia's (32 per cent). Moreover, in 2020 Australia had 57 people held on remand per 100 000 in the general population compared to an OECD average of 37 per 100 000.

A high rate of remand is consistent with a high proportion of violent crimes, for which bail is more likely to be denied. However, the nature of a crime is not the only consideration in granting bail. Factors such as the likelihood of attending a hearing, prior offending and characteristics of the accused are also taken into consideration (Bartels et al. 2018; Travers et al. 2020b). By ensuring that defendants attend trial, that witnesses are protected, and that further offences are not committed, remand is an important element of the legal and policy framework surrounding community safety.

People on remand are most likely to be charged with acts intended to cause injury (34 per cent of remandees) or illicit drug offences (16 per cent) (ABS 2020b). Both of these offences have seen large increases over the past two decades (figure 2.9). Of people on remand in 2020, 9.5 per cent were charged with offences which have not caused harm but exposed others to risk of low- to medium-level direct or indirect harm, or which cause harm to self; such as drug use offences.

Figure 2.12 – Australia's rates of remand are above the OECD average
Remandees as a proportion of the population and prison population, 2016



Source: Institute for Crime and Justice Policy Research (*World Prison Brief, 2021*).

Consistent with the overrepresentation of Aboriginal and Torres Strait Islander people in the total prison population, Aboriginal and Torres Strait Islander people are increasingly overrepresented in the remand population, accounting for 31 per cent of remandees in 2020, up from 23 per cent in 2006 (ABS 2020b).

While there is variation across jurisdictions, a larger proportion of Aboriginal and Torres Strait Islander prisoners are on remand than non-Indigenous prisoners in all jurisdictions except for the Northern Territory. In the Northern Territory, 29 per cent of Aboriginal and Torres Strait Islander prisoners were on remand compared to 31 per cent of the non-Indigenous prisoners in 2020 (ABS 2020b). The largest gaps in the proportion of Aboriginal and Torres Strait Islander prisoners versus non-Indigenous prisoners on remand were reported in South Australia (53 per cent compared with 38 per cent), and Victoria (43 per cent compared with 34 per cent). New South Wales (34 per cent compared with 32 per cent) and Tasmania (32 per cent compared with 29 per cent) reported the smallest gaps in remand rates (ABS 2020b).

The average time spent on remand increased slightly from 4.5 months to 5.8 months between 2001 and 2020. In 2020, the longest average times on remand were experienced in Queensland (6.5 months), Western Australia (6.3 months) and New South Wales (6.1 months). Victoria (5.7 months) was near the national average, while the Northern Territory (3.3 months), the ACT (3.7 months) and Tasmania (3.8 months) had the lowest average times on remand (ABS 2021a).

There is some evidence to suggest that jurisdictions appear to be taking longer to process individual cases. The length of time between case initialisation and finalisation has increased, which may affect the length of time that individuals spend on remand before their case is heard in court. This is especially true in higher courts for which case duration has increased by two months (appendix B).

The growth in the remand population is striking and the literature suggests that changes to bail legislation have played a role in increasing the remand population (Bartels et al. 2018; Brown 2013; Fitzgerald 2000; King,

Bamford and Sarre 2005). That said, other factors such as increases in bail breaches and increases in the length of court proceedings can also influence the remand population (Weatherburn and Fitzgerald 2015).

However, there is also some evidence to suggest that remand is increasingly common as a judicial response. A recent study of the use of pre-trial detention across ten international jurisdictions (including New South Wales) suggested an over-reliance on remand had arisen both from systemic issues, such as under-resourced prosecution services, inadequate legal aid funding and a lack of alternatives, as well as from judicial culture and practice (Heard and Fair 2019).

Remand and imprisonment growth

Notwithstanding the clear growth in remand and the effects of remand on prisoners, corrective services and victims, the extent to which growing remand has contributed to overall growth in the prison population is difficult to identify (appendix B).

If all remandees eventually receive prison sentences that are at least as long as the time spent on remand then the growth in remand is simply a shift in the timing of sentencing with no net impact on total prisoner numbers. However, if instead either:

- some remandees are found not guilty; or
- some remandees are found guilty but receive sentences that are shorter than the time spent on remand,
- then growth in remand contributes positively to an overall increase in prisoner numbers.

While the vast majority (approximately 91%) of remandees are found guilty, a small number of remandees are either found not guilty or have their case dismissed. This has likely resulted in a small increase in prisoner numbers. For example, in New South Wales in 2019, 8.7 per cent of remandees were either found not guilty (2.4 per cent) or had their case dismissed (6.3 per cent). The proportion found not guilty was higher for Aboriginal and Torres Strait Islander people on remand. Aboriginal and Torres Strait Islander male remandees were 1.3 times more likely to be found not guilty than non-Indigenous male remandees, while Aboriginal and Torres Strait Islander female remandees were 3.8 times more likely to be found not guilty than non-Indigenous female remandees (Commission calculations based on unpublished data from New South Wales Bureau of Crime Statistics and Research (BOCSAR)). As these alleged offenders received no sentence their time on remand is additional to prison numbers.

Furthermore, among remandees who received sentences, many do not receive custodial sentences or are discharged with 'time served'. For example, in New South Wales, an average of 25 per cent of guilty verdicts between 2011 and 2019 did not result in custodial sentencing (Commission calculations based on unpublished data from BOCSAR). In South Australia over the period 2015-16 to 2019-20, on average, 60 per cent of prisoners that were discharged had only been on remand.⁹ Of those, 56 per cent had been released on bail and 29 per cent were given either time served or had their charges withdrawn (South Australian Department for Correctional Services, pers. comm., 25 August 2021). This raises the possibility that many remandees had periods in prison that exceeded the sentence they would have received had court processes been quicker.

⁹ The South Australian Department for Correctional Services data on discharges do not represent unique individuals. On average there were about two imprisonment episodes per individual over the period (South Australian Department for Correctional Services, pers. comm., 25 August 2021).

The Commission's analysis into the relative importance of the drivers of imprisonment suggests that remand was only a relatively important driver of prison population growth in New South Wales. The growth in remand in other jurisdictions was comparatively less important than other factors (appendix B).



Finding 2.5

The proportion of prisoners on remand has nearly doubled since 2000 to account for a third of Australia's prison population. The average time spent on remand has also increased from 4.5 months in 2001 to 5.8 months in 2020.

Both statistics likely reflect a combination of systemic resourcing constraints, largely relating to courts, as well as a judicial response to wider contextual factors such as reduced judicial discretion over bail decisions.

Remand creates uncertainty for prisoners, victims and corrective services. To the extent that there are barriers to accessing alternatives to remand, these need to be considered.

While the contribution of remand to imprisonment numbers is difficult to identify precisely, growth in remand will contribute to growth in the prison population when some remandees are found not guilty or have their case withdrawn or dismissed. This is the situation in New South Wales where a notable proportion of remandees (about 9 per cent in 2019) were found not guilty or had their case withdrawn or dismissed.

2.5 Recidivism

Rehabilitation of offenders and their reintegration into society is one of the key objectives of imprisonment. Success in reducing recidivism by breaking patterns of reoffending contributes positively to community safety and reduces the costs of crime, including the costs borne by individuals, families and the community.

Recidivism can be measured in different ways (box 2.4). Both measures commonly used in Australia show that the rate of recidivism has grown over the past decade.

- The proportion of prisoners with a prior sentence increased from 55 per cent in 2010 to 59 per cent in 2020.
- The proportion of prisoners who returned to prison within two years of release increased from just under 40 per cent in 2011-12 to 46 per cent in 2019-20.

A higher rate of return to prison (recidivism) leads to a larger prison population. Recidivism rates are determined by many factors such as the quality of rehabilitation and post-prison support, the higher likelihood of prison sentences for repeat offending, and the degree to which a prison sentence leads a person to commit subsequent crime. In New South Wales, evidence shows that reoffending increases the likelihood of a prison sentence, and thereby places upward pressure on prisoner numbers (Weatherburn 2020). While comparable national data are not available, there is still indicative evidence that reoffending patterns may be playing a role Australia-wide. The number of people in prison who had a prior spell of imprisonment grew by about 54 per cent, whereas the number of people with no prior spell only grew by about 35 per cent (ABS 2020b).

Box 2.4 – Measures of recidivism in Australia

There are several ways that recidivism is measured in Australia. Although the concept is simple, comparing statistics on recidivism is made difficult by differences in the way it is measured — including the period over which it is measured, whether it is determined by reoffending or reimprisonment, whether it includes community orders or their equivalents and the definition of the group being assessed (such as all offenders or a sub group). The level of measured recidivism is also influenced by overall approaches to imprisonment more generally compared to other remedies, and the likelihood of being apprehended and convicted.

The Australian Bureau of Statistics (ABS) provides data on prisoners held in Australian jails on 30 June in each reference year (ABS 2020b). As part of this reporting, data are provided on the number of prisoners who have been imprisoned before. For example, in 2020, 24 413 prisoners of a total prison population of 41 060 had been imprisoned before. This measure includes all prior convictions for an prisoner, no matter when they occurred.

The *Report on Government Services* (SCRGSP 2020a) provided three other measures of the rate of reoffending.

- The proportion of people aged 10 years or over who were proceeded against more than once by police during the year.
- The proportion of adults released from prison after serving a sentence who returned to corrective services (either prison or community corrections) with a new correctional sanction within two years.
- The proportion of adults discharged from community corrections orders who returned to corrective services (either prison or community corrections) with a new correctional sanction within two years.

The first of these measures provides useful information about the workload on police and the court system from short term reoffending. The second measures recidivism among released prisoners. The third deals with recidivism for those on community corrections orders rather than prison sentences.

While the different ways of measuring recidivism make international comparisons challenging, studies that have attempted to compare like-with-like suggest that Australia is at the higher end of the spectrum for both *reconviction* and *reimprisonment* of released prisoners (Yukhnenko, Srihdar and Fazel 2020). The range reported for reconviction internationally was 20 to 63 per cent, with Australia at 53 per cent. For reimprisonment the range internationally was 14 to 45 per cent, with Australia at 45 per cent (table 2.2).¹⁰ Recidivism rates are high nationally but there are some differences across jurisdictions. Recidivism rates are highest in the ACT (78 per cent), the Northern Territory (74 per cent), and Queensland (69 per cent), compared with the national rate of 59 per cent (ABS 2020b).

¹⁰ These comparisons should be treated as a rough guide only. Differences in the administration of justice and the measurement criteria affect the data. For example, a detailed examination of Norwegian data from 2005 (Nygaard Andersen and Skaardhamar 2014, p. 18) demonstrated that different calculations can yield recidivism rates ranging from 29 per cent to 53 per cent, depending on whether: the sample of prisoners is based on arrest, conviction or prison release; the point at which recidivism is measured (rearrest, reconviction or reimprisonment) and the period measured (ranging from 1 to 4 years). Nevertheless, Norway's rate of recidivism remains lower than most countries when comparable statistics are used.

Table 2.2 – Australia has relatively high recidivism rates
Illustrative selection of countries in 2020, per cent

	Rate of reconviction two years after release	Rate of reimprisonment two years after release
Norway	20	
Israel		28
Austria	26	
Canada (Ontario)	35	
Finland	36	
USA (Oregon)	36	14
USA (23 States)		32
France	40	
Netherlands	46	
Australia	53	45
Canada (Quebec)	55	43
USA (federal)		60
New Zealand	61	43
Sweden	61	
Denmark	63	

Source: Yukhnenko, Srihdar and Fazel (2020).

Different offences are associated with different rates of recidivism. For example, property offences are often recurring whereas violent offences, such as homicide and sexual assault, often have low levels of reoffending (Payne 2007).

Overall, increasing recidivism reflects an increased likelihood of reoffending in most offence categories. At the same time, the changing composition of offences in the prison population has put some downward pressure on the recidivism rate. Fewer people are being imprisoned for offences which historically have had high rates of reoffending (for example, traffic offences, burglary, theft and robbery). Further, offences for which recidivism has been historically less likely (for example, acts intended to cause injury, drug offences, weapons offences and property damage) make up increasing shares of the prison population (Commission analysis based on ABS (2020b) data).

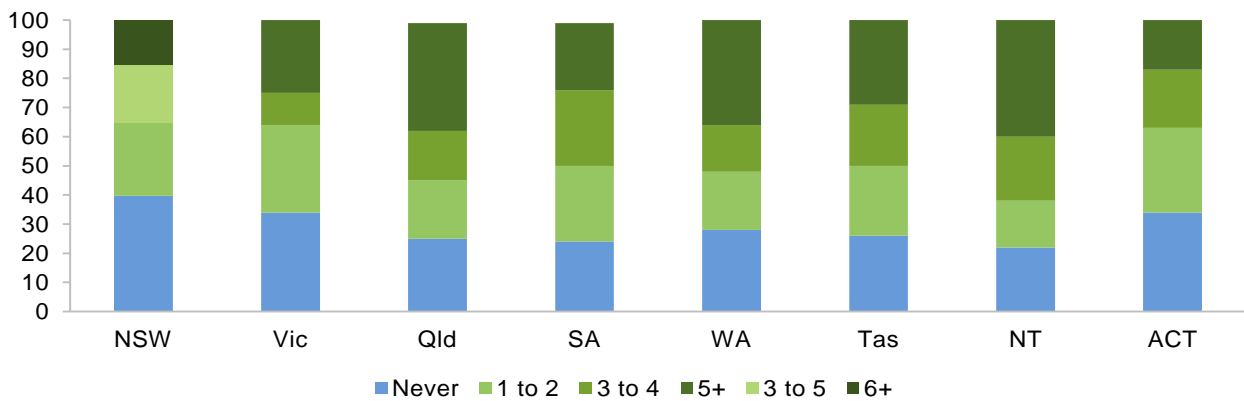
Offending is chronic for many prisoners. While 23 per cent of prison entrants have been in adult detention once or twice before, 32 per cent of prison entrants had previously been in prison five or more times (figure 2.13, panel a). High-risk (rapid) recidivism is associated with frequent and short sentences (Fitzgerald, Cherney and Heybroek 2016).

Recidivism accounts for a significant proportion of the fiscal costs of imprisonment (chapter 3). Moreover, imprisonment for repeat offending can entrench pathways of disadvantage by exacerbating the risk factors that lead to offending (Centre for Policy Development 2020). For example, 62 per cent of prison discharges had no paid work lined up to start within two weeks of leaving prison (AIHW 2019a). About 36 per cent either

did not know whether they had a valid Medicare card or did not have one on the first day of release (AIHW 2019a). A similarly large proportion (44 per cent) expected to stay in short term or emergency accommodation (AIHW 2019a). Throughcare and reintegration efforts have been recognised as important in reducing reoffending (Tubex 2021).

Figure 2.13 – A more granular picture of repeat offending^a
2018

(a) Prison entrants by number of times previously in adult detention, per cent



(b) Per cent of prisoners with a prior record by Indigenous status



a. AIHW includes responses for all jurisdictions except for New South Wales.

Source: AIHW (2019a); Justice Health and Forensic Mental Health Network (2015).

Recidivism rates are higher for Aboriginal and Torres Strait Islander prisoners than for non-Indigenous prisoners (figure 2.13, panel b). This may be explained in part by Aboriginal and Torres Strait Islander prisoners entering the criminal justice system at a younger age, on average, and having greater exposure to risk factors (before, during and after prison) that increase the likelihood of reoffending relative to non-Indigenous prisoners (SCRGSP 2020b, chapter 11). The high rates of imprisonment, recidivism and shorter sentence length of Aboriginal and Torres Strait Islander people further suggest that Aboriginal and Torres Strait Islander prisoners have, on average, shorter but more frequent prison stays.



Finding 2.6

Australia has a high level of recidivism when compared internationally.

Almost 60 per cent of prisoners have a prior prison sentence, and this rate is even higher for Aboriginal and Torres Strait Islander prisoners.

High recidivism rates, combined with a large proportion of prisoners on remand or serving short sentences, suggest that many prisoners cycle in and out of prison, following a 'churn' pathway through the criminal justice system. This is likely to be more common among Aboriginal and Torres Strait Islander prisoners.

2.6 Putting it all together

Many of the trends described above underscore the challenges that corrective services face in striving to meet the broad objectives of the criminal justice system. Further, increasing imprisonment rates, the overrepresentation of Aboriginal and Torres Strait Islander people combined with the high proportion of people in prison with complex needs and the high rates of churn and recidivism point to a cycle of incarceration that can be costly to address. While imprisonment growth is driven by different factors in each jurisdiction there is a common move towards more punitive policy approaches seen in increasing sentence lengths and a higher likelihood of receiving a prison sentence. In these settings, crime-control policy ought to be asking the question of whether there are alternative approaches to prison that are more cost-effective and yet deliver similar or better outcomes.



Finding 2.7

The fiscal implications of high and increasing imprisonment and recidivism rates, combined with the growing overrepresentation of Aboriginal and Torres Strait Islander people as well as people from disadvantaged backgrounds with complex needs, are concerning facts of the prison system.

These trends highlight the potential gains from finding alternative approaches that are more cost-effective without compromising the crime-control and other benefits of the criminal justice system.

3. Prison: an economic perspective

Key points

- * **Prison benefits the community by providing justice and punishment for crime. It is important that community attitudes to criminal behaviour are reflected in sentencing to meet community expectations of safety and maintain public confidence in the criminal justice system.**
- * **Prison reduces crime by removing high-risk individuals from the community and by deterring some individuals from committing crime in the first place.**
- * **The fiscal costs of prison are growing, both as a component of the overall criminal justice system and as proportions of most state and territory governments' budgets.**
 - Nationally, in 2019-20, state and territory governments spent \$5.2 billion on prisons, representing about 1.6 per cent of total government expenditure.
 - Recidivism accounts for more than half of these costs.
- * **Costs per prisoner over time do not exhibit any clear trend within jurisdictions, though there are differences in levels across jurisdictions.**
 - Total cost per prisoner per day ranged between \$294 and \$559 in 2019-20.
 - Many factors underlie these cost differences including staffing requirements and program delivery.
- * **Alternatives to prison can lower fiscal costs significantly. Community corrections orders tend to have less deterrence and incapacitation effects than prison, but they can achieve better rehabilitation outcomes, particularly where the risks of harm to the community are low.**
 - A 1 per cent shift in the number of people from prison to community corrections would save taxpayers approximately \$45 million per year nationwide.
- * **In addition to fiscal costs, prison can have indirect costs in terms of lost employment and productivity. Even individuals who were employed before imprisonment may face additional hurdles when re-entering the job market. Prison employment and training programs can improve post-release outcomes.**
- * **In some cases, imprisonment of a parent or carer can provide a degree of protection to children and other family members. However, it can also result in enduring adverse effects to families and future generations.**
- * **Even though the experience of being in prison can increase the likelihood of reoffending, it is also an opportunity to rehabilitate individuals. The prison environment itself, programs undertaken while in prison, and access to basic needs such as housing and health care are important influences that can work to reduce reoffending.**

The rule of law is fundamental to a well-functioning society. It underpins governance, social cohesion, and the market economy — and in doing so, sustains Australia's quality of life. It includes the expectation of a safe, secure, and just environment afforded by an effective criminal justice system that allows individuals to pursue their daily lives free of concern for their wellbeing.

Notwithstanding its sociological and economic drivers, crime is often seen by the community as a failure of government to deliver on one of its core responsibilities. While reducing crime to zero is a goal beyond the reach of any government, systemic criminal activity or high-profile instances of harm often lead to calls for a tougher stance on crime, and more enforcement and punishment.

Imprisoning those found guilty of crimes is one way to help meet community expectations surrounding safety and security. In addition to its role in punishing individuals for committing harmful acts, prison works to reduce crime through deterring would-be criminals, incapacitating habitual offenders or individuals that present as a high risk to the community, and serving to rehabilitate individuals so that they are less likely to reoffend upon release.

But imprisonment also comes with costs, only some of which are easy to define and measure. The direct fiscal costs of imprisonment are relatively straightforward to measure. The costs of prison sentences in terms of individual prisoner outcomes, and the impact on their families and the community, are important but difficult to pin down precisely.

The decision to imprison an individual is a complex process. Imprisonment involves a trade-off between the benefits of maintaining community safety, delivering just and fair punishment, and ensuring community confidence in the criminal justice system (chapter 1). Each imprisonment sentence must also balance the purposes of punishment, deterrence, incapacitation, and rehabilitation effects, as well as taking into account the fiscal and social costs of prison to individuals, families and the broader community.

In practice, prisons cater to a significant degree of heterogeneity in both the types of crime and the individuals convicted of offences. In the Australian context, trends in remand, imprisonment, and recidivism, the overrepresentation of Aboriginal and Torres Strait Islander people and people from disadvantaged backgrounds, and the prevalence of short sentences are all part of the risk management and decision-making process (chapter 2). To the extent that similar or better outcomes can be achieved at lower cost through alternative approaches, it is important for criminal justice policy to give these alternatives due consideration. Chapter 4 explores a number of specific alternatives to prison through a case study approach.

This chapter looks at imprisonment through an economic lens from a community-wide perspective. It opens by outlining why we have prisons (section 3.1), and then looks at the costs of imprisonment, including fiscal costs (section 3.2) and indirect costs (section 3.3).

3.1 The role of prison

Prison has two core functions. The primary function of a prison is to carry out the custodial orders imposed by courts on convicted criminals. However, prisons also hold some charged individuals in remand for a (sometimes significant) period before they can appear in court to have their case heard. People on remand represent a growing segment of the total prisoner population (section 2.3). An alleged offender can be remanded for a number of reasons, including the seriousness of the offence, the risk of reoffending, to ensure the defendant will appear in court, and to assist in the care and protection of the defendant and victim (King, Bamford and Sarre 2005; South Australian Department of Correctional Services 2020).

A sentence of imprisonment is at the severe end of the scale of possible penalties that are available to courts and is generally treated as the sentence of last resort in Australian jurisdictions. Other legislated penalties typically include fines, probations, and community service orders. The majority of sentences each year fall into the first category of fines.

In deciding to impose a sentence of imprisonment over alternative sanctions, judges and magistrates consider whether the purposes of the penalty are appropriate for the crime. Across Australian jurisdictions, the various legislative sentencing Acts set out the purposes of a prison sentence to include punishment, as well as to reduce crime through deterrence, incapacitation, and rehabilitation. There are trade-offs between each of these components (chapter 1). Sentencing decisions consider the degree to which each purpose contributes to the overall sanction so that the interpretation and application of the law strikes the right balance for offences.¹¹

Punishment

A key purpose of prison is to ensure that the offender is adequately punished for the offence committed (chapter 1). Punishment in this context is based on the principle that justice is served when an offender gets a socially appropriate sanction. It follows that a prison sentence is one means by which the criminal justice system aims to achieve a measure of retribution on behalf of victims and the community (Materni 2013, p. 226).

Community perception of the effectiveness of sentencing policy and sentencing decisions in delivering just punishment is an important consideration for the criminal justice system. Public confidence in the system, and therefore its effective operation, depends on whether community attitudes to criminal behaviour are adequately reflected in the sentencing decisions made by magistrates and judges (Bartels, Fitzgerald and Freiberg 2018; Roth 2014b).

Notwithstanding the community's desire that crime be punished, it is difficult to place a monetary measure on the value of justice or retribution from punishment for specific instances of offence. Part of the difficulty lies in the heterogeneity of offence types, individual offender and victim characteristics, and other extenuating circumstances. More importantly, magistrates and judges weigh the retributive value of punishment alongside consideration of the other purposes of prison, such as deterrence, incapacitation and rehabilitation (Materni 2013, p. 289).

Deterrence

The deterrence effect of prison reduces crime by discouraging would-be criminals from committing harmful acts through the threat of imprisonment (Chalfin and McCrary 2017, p. 6; Shavell 2015). The criminal justice system deters crime in several ways. For some people, conviction without a prison sentence can deter crime because convictions carry with them social opprobrium, suspicion, and lost job opportunities. For others, imprisonment has the additional feature of restricted freedom, while living in an unpleasant environment. There is evidence that the deterrence associated with conviction is actually higher than from incarceration (Bun et al. 2020), which may influence the type of desirable corrective action to a crime.

The threat of a sanction deters people from committing crimes in the first place (general deterrence), or the experience of a previous sanction might deter previous offenders from committing further crimes (specific deterrence). In theory, the level of deterrence from a prison sentence is a function of the probability of arrest

¹¹ Sentencing principles and individual-specific factors also form part of the decision, relating to things like the maximum and minimum penalties for the criminal charge, the nature and seriousness of the offence, culpability, mitigating and aggravating factors, and time already spent in custody on remand.

or conviction conditional on arrest; and the type or length of sentence applied to a conviction. In practice, there are difficulties with making precise estimates of the deterrence effect of imprisonment (box 3.1).

Box 3.1 – Estimating the crime-reducing effect of imprisonment is difficult

Ideally, researchers would like to obtain an empirical estimate of the responsiveness (or elasticity) of crime reduction with respect to prison from the available data. That is, an estimate of 'what percentage reduction in crime can be isolated and attributed to a percentage increase in sentences?' Unfortunately, producing this estimate is complicated by the feedback effect of prison on crime rates, leading to an issue plaguing empirical research on criminal justice known as simultaneity bias.

Simultaneity bias arises because to be sure that the estimate of crime reduction results purely from a sentencing policy change, all possible factors capable of influencing crime or prison sentences need to be held constant or controlled for. However, sentencing policy changes typically happen in response to some other change in the criminal justice environment, and the researcher is unable to control for all interactions.

For example, if changes in sentencing policy come about because policy makers have responded to increases in crime, then the data may show both an increase in sentence length and an increase (or less of a reduction) in crime rates. This would lead to the conclusion that harsher sentencing policy increases crime.

Researchers have to use sophisticated techniques to control for the feedback effects of sentencing policy on crime to account for simultaneity bias, though many studies have not been careful in this regard leading to biased estimates of the deterrence effect of prison.

In addition to simultaneity bias, empirical research on criminal justice must be carefully designed to account for a number of other common problems that arise in crime data. These include: issues that bias estimates due to aggregating-up individual observations that may mask variability in the data; measurement errors related to self-reporting of survey data; and dealing with the effects of omitted variable bias, where one or more relevant variables are not included in the analysis — usually because data on that variable are not available.

Source: Bun et al. (2020); Chalfin and McCrary (2017).

These difficulties notwithstanding, a few themes stand out from the international literature seeking to estimate the effect of crime deterrence (Chalfin and McCrary 2017; Schnepel 2016).

- The probability of arrest or conviction consistently provides a meaningful level of general deterrence, with a stronger effect for violent crime than for property crime.
- There is evidence of a deterrence effect from 'sentence enhancements' for existing offenders, such as 'three strikes' laws, whereby habitual offenders receive progressively more severe sanctions, culminating in a prison sentence. On the other hand, there is limited evidence that simply lengthening the prison sentence for a given crime increases the deterrence effect, with the marginal effect of an extra year in prison generally found to be diminishing for longer sentences.
- There is also some evidence that, after controlling for prisoner characteristics, imprisonment, harsher prison conditions and longer sentences may increase the likelihood or severity of recidivism.

Recent Australian-based studies have produced findings in line with these patterns. Statistical research using panel data from local government areas in New South Wales found statistically significant short- and

long-run effects on rates of property and violent crime from both the arrest and imprisonment per arrest rate, but not from the average length of sentence (Wan et al. 2012).¹² A similar approach found only a small effect from the imprisonment per conviction rate and none from the average sentence length (Bun et al. 2020). Another study looking at specific deterrence from prison sentences also found no evidence that prison deters offenders convicted of burglary or non-aggravated assault after employing matching and statistical controls for the issues raised in box 3.1 (Weatherburn 2010). That study — which compared matched burglary and non-aggravated assault offenders who received custodial and non-custodial sentences — also found that for non-aggravated assault, the custodial group was slightly more likely to reoffend within the next two years following their release.

Incapacitation

Incapacitation has the effect of taking offenders out of circulation and thus directly prevents crime as a result of imprisonment (Chalfin and McCrary 2017, p. 12; Shavell 2015). The underlying assumption is that those individuals, if not for being incarcerated, would be more likely to continue to offend than the general populace. Any measure of the incapacitation effect of prison will therefore depend on the ability to predict the counterfactual scenario — how much crime would have been committed by an incarcerated individual if not for being in prison (see box 3.2 for measures of the benefits of avoided crime).

The literature has consistently found that incapacitation through incarceration leads to significant reductions in crime. The estimated effect of incapacitation from changes in sentencing policy ranges widely between 2.8 to 15 crimes per year of incarceration depending on the type of crime and the cohort of offenders (Chalfin and McCrary 2017; Johnson and Raphael 2012; Levitt 1996; Owens 2009). More specifically, the incapacitation literature identifies two key themes:

- *collective versus selective incapacitation*: there is a distinction between a collective incapacitation effect (where there is an increase in sentence severity for all offenders of a particular offence) and a selective incapacitation effect (where individual offenders are identified as posing a risk of reoffending and selected for a targeted increase in sentence severity based on that prediction) (Ritchie and Ritchie 2012, p. 2)
- *the distribution of offence rates matter*: this distribution of offences is often highly skewed with a few offenders posing the greatest risk of reoffending. A policy of incarcerating the most frequent offenders could prevent a significant fraction of crimes through incapacitation. An older US-based study (Spelman 1994) captured this idea, finding that incarcerating 10 per cent of the most frequent offenders could prevent between 40 and 80 per cent of personal crimes and 35 to 65 per cent of property crimes.

Imprisonment has also been found to have an important incapacitation effect on prisoners in empirical studies within Australian contexts. Morgan (2018, pp. 19–25) estimated the benefit of incapacitation at more than \$3000 per prisoner per year, derived by attributing the actual crimes committed by a cohort of offenders in community correction orders to a statistically-matched cohort who were imprisoned.¹³ Weatherburn, Hua and Moffatt (2006, p. 6) showed that imprisonment prevents a large number of burglaries per year in New

¹² Wan et al. (2012, p. 14) estimated arrest and imprisonment elasticities of -0.103 and -0.087 in the short run and -0.135 and -0.115 in the long run for property crimes. For violent crime, arrest and imprisonment elasticities were -0.187 and -0.107 in the short run and -0.297 and -0.17 in the long run.

¹³ Morgan's (2018) valuation is likely to be a conservative estimate, as the approach matched individuals that were equally as likely to get a prison or community corrections sentence which potentially selected lower-order crimes with lower costs.

South Wales through incapacitation, although a significant additional increase in imprisonment of burglars would be required for a further 10 per cent reduction in burglaries.¹⁴

Box 3.2 – Measures of the benefits of prison

The benefits of prison are typically measured as the expected dollar value of harm prevented when an additional offender is sentenced to prison. This depends on three factors.

- **The average dollar value of harm from specific offences.** For example, estimates of harm vary from about \$3 million for homicide, \$65 000 for assault resulting in hospitalisation, \$2500 for burglary and \$7300 for vehicle theft (QPC 2019, chap. 7; Smith et al. 2014).

However, the empirical basis for assessing avoided harm is often weak, with a range of caveats documented in the literature.

- **The number of crimes reduced if an additional person is sentenced to prison.** Estimates of these elasticities for different offences range between -0.7 and -0.1 (Chalfin and McCrary 2017, p. 26). These estimated elasticities are negative, meaning that higher levels of imprisonment tend to reduce crime.^a

This reduction depends on both the deterrence of would-be criminals, and on the incapacitation (and subsequent rehabilitation) of imprisoned offenders who might have otherwise committed further acts of crime. Disentangling the deterrence and incapacitation effects of imprisonment is challenging both at a conceptual and empirical level (Chalfin and McCrary 2017, p. 12).

- **The value from punishing the additional offender.** Estimates of the value that the community places on justice and retribution from imprisonment, as well as the public perception of safety, are intangible and/or difficult to measure, but are likely to be high for some types of crime. For example, the value of punishing an offender convicted of sexual violence is likely to be considerably higher than for a property theft.

a. This range comes from a survey of the literature (Chalfin and McCrary 2017). In many of the studies surveyed, the statistical methodology is to individually regress violent and property crime on prisoner population plus other control variables, but each have different ways of controlling for simultaneity bias (box 3.1). Sentence length in those papers was not an explanatory variable.

Rehabilitation

Rehabilitation is a legislated purpose underpinning sentencing in all Australian jurisdictions (chapter 1). Whereas general deterrence and incapacitation effects seek to reduce crime, rehabilitation seeks to reduce the likelihood that an individual commits future crime. Its aim is to prevent a reversion to crime by altering an individual's behaviour while they are in prison, and its success is measured by the rate of recidivism.

There are several characteristics of imprisonment that can influence the prospects for rehabilitation, both positively and negatively.

¹⁴ More specifically, the study showed that to get a 10 per cent reduction in the current burglary rate via imprisonment the number of burglars sentenced to prison in New South Wales would have to be increased by at least 34 per cent (Weatherburn, Hua and Moffatt 2006, p. 6).

- The day-to-day environment of the prison, the types of work which prisoners are able to engage with to develop skills and good practices, as well as the availability and quality of specific behavioural programs, training and education (QPC 2019a, p. 339).
- The benefits associated with being in a stable social environment (for example, away from homelessness) or from removing destabilising influences (for example, substance misuse, and negative influences from peers) (Davis, Bahr and Ward 2013).
- On the other hand, exposure to anti-social inmates and learning criminal behaviour may undermine rehabilitation efforts and increase the likelihood of recidivism (a criminogenic effect) (Abrams 2011; Mueller-Smith 2015).

The Queensland Productivity Commission (2019a) detailed the key elements of *effective throughcare* — the process of rehabilitation and reintegration aimed at helping inmates overcome a range of often complex needs and return to society. Throughcare was first introduced in South Australia in the late 1990s and versions of this system now operate in all states and territories (Baldry 2007).

Assessment of the risk profile and needs of incoming prisoners appears to be a widely-used approach to target rehabilitation efforts across most Australian jurisdictions. For example, Queensland Corrective Services use a Risk of Reoffending assessment based on a number of indicators including age, education level, employment status, number of current offences and number of convictions in the past ten years (Queensland Government 2018b). The measure is a strong predictor of reoffending and is used to help target rehabilitation programs.¹⁵

However, mixed objectives of the different parts of the prison system can easily undermine the objectives of throughcare (Baldry 2007). The goal of rehabilitation can be lost amongst the needs of prison security and punishment, particularly in facilities under pressure from high numbers of prisoners.

The experience of being in prison can also influence an individual's behaviour upon release, and if rehabilitation is effective then it can reduce the likelihood of reoffending. The indirect costs associated with post-release behaviour are discussed in section 3.3.

The benefits from imprisonment are difficult to measure precisely. However, the techniques outlined in box 3.2 can provide an indication of the benefits from avoiding some types of crime. Combined with some estimates of cost (the subject of section 3.2), it is possible to generate some illustrative net benefits of prison by type of crime. Box 3.3 outlines a simple methodology that can be used to estimate some of the benefits and costs.

¹⁵ Algorithmic approaches to decision making, such as the Queensland's Risk of Reoffending program, are sometimes criticised for having an inbuilt bias against particular groups (Doleac and Stevenson 2016; Picard et al. 2019). However, the criticism is levelled at algorithms that are used to determine bail, sentencing, and parole settings. Algorithmic profiling that ensures an individual receives culturally appropriate throughcare is less likely to attract criticism on group-bias grounds.

Box 3.3 – Cost and benefit measures of an additional prison sentence

Some of the costs and benefits of an additional prison sentence for specific offence types can be estimated by combining measures of the costs of crime with estimates of the crime-reducing effects of prison, average sentence lengths by crime type and prison costs (QPC 2019a, chap. 7). While subject to a range of caveats (discussed below), the estimates produced provide indicative values and provide some partial information about the order of magnitude of the value of prison, and a relative sense of the welfare change by offence type.

The value of the savings from avoided crime is calculated by multiplying the cost per incident for each offence by the number of avoided crimes due to the prison sentence. The fiscal cost of prison for crime is produced by multiplying the average prison cost by the average sentence length (QPC 2019a, chap. 7).

The table below outlines these measures for two crime types.

Some indicative costs and benefits of avoided crimes in Australia

	Per incident cost ^a	Number of crimes avoided ^b	Savings from avoided crime ^c	Fiscal cost of prison sentence ^d
Acts intended to cause injury	\$3 063	5.4 to 37.5	\$16 540 to \$114 863	\$128 013
Robbery/extortion	\$4 299	0.9 to 6.2	\$3 869 to \$26 654	\$315 497

a. Based on Smith et al.'s (2014) estimates and inflating to 2020 prices. Costs of specific crimes may vary widely from this estimated average. **b.** The number of crimes avoided is estimated as the number of offenders divided by the prison population multiplied by the assumed elasticity of avoided crime (-0.1 to -0.7). **c.** The savings from avoided crime is the number of crimes avoided multiplied by the cost of crime. **d.** The fiscal cost of a prison sentence is based on the daily prison cost in 2019-20 (\$331.39) multiplied by the mean sentence length for that crime.

Source: Smith et al. (2014); ABS (*Prisoners in Australia, 2020; Recorded Crime – Offenders, 2019-20; Criminal Courts – Australia, 2019-20*).

Many of the parameters that are required to measure cost savings from crimes prevented have not been credibly estimated. Consequently, estimates are either incomplete or rely heavily on untested assumptions (Mueller-Smith 2015).

Caveats to the calculation of costs and benefits

Per incident cost — is based on a 'bottom up' approach which includes medical costs, lost output, and intangible losses (Chalfin 2016; Smith et al. 2014). Intangible losses (fear, pain, suffering, and lost quality of life) are likely to underestimate emotional harms (QPC 2019a, chap. 7). Importantly, 'top down' approaches, like contingent valuation based on surveys, report considerably higher estimates of intangible losses (Chalfin 2016).

Number of crimes avoided — is a function of the number of actual crimes per offence, the prison population for each offence type, and the elasticity of crime with respect to prison population. Each is subject to measurement issues which affect the accuracy and precision of the estimate.

Fiscal cost of prison — average cost is used to compute fiscal costs of prison. Ideally, the marginal cost of a prison sentence would be used, which is the increase in total costs that arise because of the need to accommodate the additional prisoner. In the presence of fixed costs, marginal costs are generally lower than average costs, but when prisons are at capacity marginal costs may be higher than average costs (Henrichson and Galgano 2013).

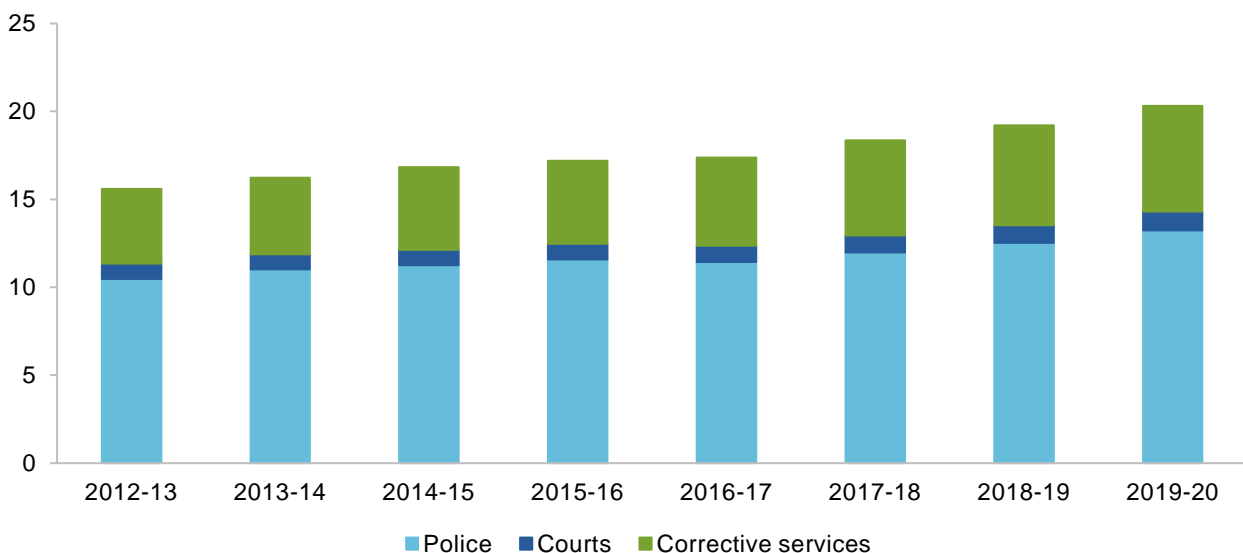
Source: Chalfin (2016); Henrichson and Galgano (2013); Mueller-Smith (2015); QPC (2019a).

3.2 Fiscal costs of prison

Criminal justice system spending is increasing

Spending by Australian governments on the criminal justice system, including police, courts, and corrective services were about \$20 billion in 2019-20. Outlays have increased since 2012-13 by about 30 per cent in real terms (figure 3.1). Across all jurisdictions, real expenditure on corrective services grew by an average annual rate of 5.1 per cent between 2012-13 to 2019-20, matched by growth in police and courts at 5.1 and 5.4 per cent respectively (Commission estimates based on Steering Committee for the Review of Government Service Provision's (SCRGSP 2020a) *Report on Government Services* data).

Figure 3.1 – Corrective services is part of an increasing criminal justice system spend
Expenditure, \$ billions, 2012-13 to 2019-20, 2019-20 dollars^a



a. Expenditure includes operating expenditure and capital costs, less operating revenue (for example, revenue from prison industries). Excludes payroll tax and prisoner health and transport/escort costs where able to be disaggregated by jurisdictions, and expenditure on youth justice services. Capital costs include user cost of capital (calculated as 8 per cent of the value of government owned assets), land, other assets, debt servicing fees, and depreciation.

Source: SCRGSP (2021a) (drawn from 2013 to 2021).

Expenditure on corrective services is about 30 per cent of the total criminal justice system cost. These services include the management of offenders and prisoners through the provision of both custodial and non-custodial services. This includes the provision of safe, secure, and humane custodial environments, management of community corrections orders, and delivery of a range of programs including the diagnosis and treatment of the physical and mental health of prisoners.¹⁶

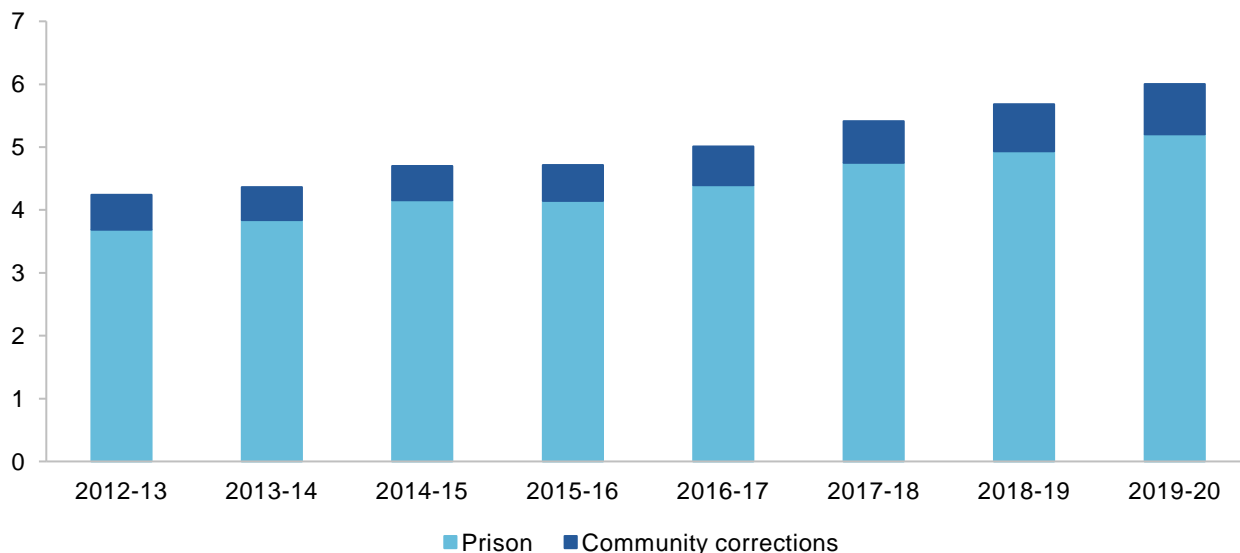
¹⁶ Correctional services programs vary across jurisdictions but can generally be categorised as programs: targeted to the underlying causes of offending; that attempt to improve the chances of successful reintegration into the community; and that encourage offenders to take forward law-abiding behaviours on release. The level of spending on programs is not a separate item in aggregated datasets, so it is difficult to discern an overall budget spend for programs in each jurisdiction.

The cost of prison and community corrections services have both increased ...

The increase in real spending on corrective services — of 40 per cent over the seven years to 2019-20 (figure 3.2) — appears to correspond to increased prisoner numbers. Real spending on prison services grew by an average annual rate of 5.1 per cent, in line with prisoner number growth at about 5.3 per cent over the same period. On the other hand, community corrections expenditure grew by 5.4 per cent, slower than the growth of people in community-based corrections at 6.2 per cent (Commission estimates based on SCRGSP (2021a)).

While spending on both prisons and community corrections have increased since 2012-13, the proportion of the corrective service spending is predominantly on prisons, and has consistently comprised 87 to 88 per cent of total corrective service spending (Commission estimates based on SCRGSP (2021a)). Expenditure on the prison services component of corrective services was about \$5.2 billion in 2019-20.

Figure 3.2 – Spending on corrective services has increased
Expenditure, \$ billions, 2012-13 to 2019-20, 2019-20 dollars^a

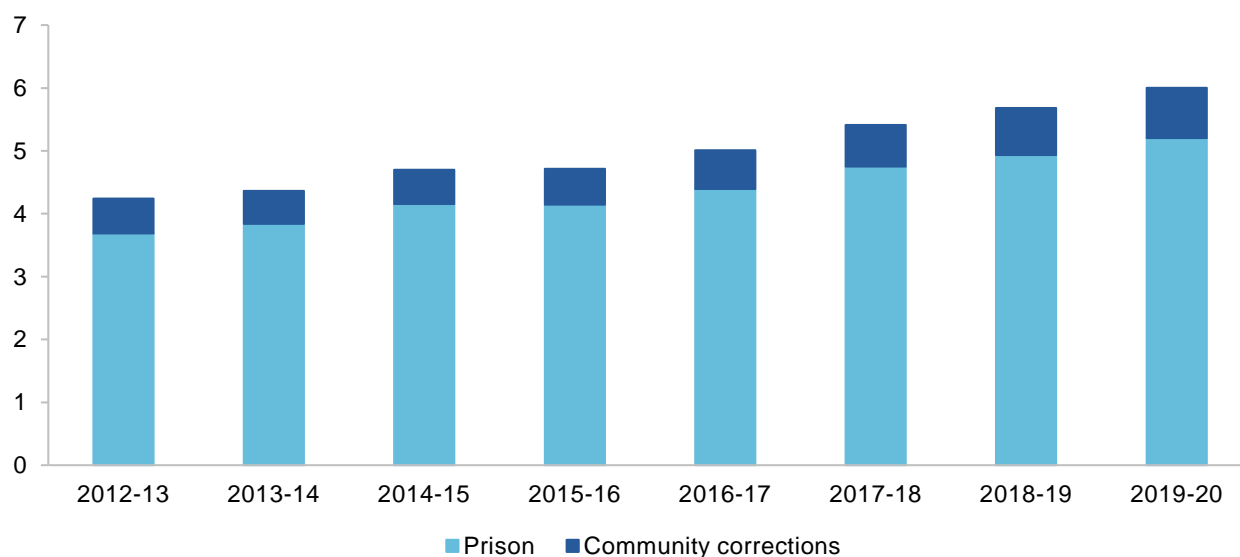


a. Expenditure includes operating expenditure and capital costs, less operating revenue (for example, revenue from prison industries). Excludes payroll tax and prisoner health and transport/escort costs where able to be disaggregated by jurisdictions, and expenditure on youth justice services. Capital costs include user cost of capital (calculated as 8 per cent of the value of government owned assets), land, other assets, debt servicing fees, and depreciation.

Source: SCRGSP (2021a) (drawn from 2013 to 2021).

The SCRGSP's *Report on Government Services* data on prison expenditure do not include some expenditure items. Expenditure on corrective services-related transport and prison escort services, and health services by jurisdictions are reported separately from the total corrective services expenditures. This is done to improve the comparability of data across jurisdictions (SCRGSP 2021a). However, both components represent large items in some cases; in New South Wales, Victoria, Tasmania and the Northern Territory corrective services-related health spending are about 10 per cent of the aggregate prison spend (figure 3.3).

Figure 3.3 – Health spending is up to 10 per cent of total prison spending
Health services, Transport & prison escort services, per cent of total expenditure, 2019-20^{a,b,c}



a. These items are subject to significant variation in whether, and the extent to which, they are included within the corrective services budget. **b.** Transport and escort services spending is not available for Tasmania and Northern Territory; health services spending is not available for ACT. Some jurisdictions are unable to disaggregate costs from operating cost. **c.** Total expenditure includes operating and capital expenditure plus health services and transport and prison escort services.

Source: SCRGSP (2021a), table 8A.1.

... and the share of prison costs in budgets has increased in several jurisdictions

In 2019-20, prison costs as a share of state and territory governments' budgets were highest in Western Australia and the Northern Territory (table 3.1).¹⁷

Moreover — with New South Wales as an exception — the fiscal costs of prison have generally increased as a proportion of state and territory budgets over the past decade (table 3.1). This change has been more pronounced in the Northern Territory (where prison costs as a proportion of that Territory's budget has increased from 2.2 per cent to 3.2 per cent over that time).

These jurisdictional trends are also broadly reflected in differences in average annual growth in real prison costs, with Victoria (7.3 per cent), the Northern Territory (7.0 per cent) and South Australia (4.5 per cent) sitting above the national average annual growth rate of 4.5 per cent (table 3.1).

¹⁷ Note that the prison cost shares do not include the health and transport costs discussed earlier.

Table 3.1 – Fiscal cost of prison: a small but growing proportion of state and territory budgets**Expenditure on prison as a proportion of each state and territory budget**

Jurisdiction	Prison costs as a proportion of budget in 2010-11 ^a (%)	Prison costs as a proportion of budget in 2019-20 (%)	Growth in level of real prison costs ^b (%)
New South Wales	1.7	1.6	2.0
Victoria	1.2	1.6	7.3
Queensland	1.3	1.6	4.0
South Australia	1.2	1.6	4.5
Western Australia	2.2	2.5	3.9
Tasmania	1.4	1.4	2.0
Northern Territory	2.2	3.2	7.0
ACT	1.2	1.4	5.5
Total	1.5	1.7	4.2

a. Percentages expressed as ratio of total prison expenditure to Government Financial Services. b. Average annual growth in the real level of prison cost from 2011-12 to 2019-20.

Source: SCRGSP (2021a); ABS (*Government Financial Statistics, Australia*, December 2020).

The prison pathway is costly

Having been charged by police and remanded into custody, corrective services expenditure associated with an individual begins accumulating rapidly with a raft of items. This includes provision of accommodation, supervision by staff, as well as technical services such as risk assessment, program delivery, health services and transportation of offenders.¹⁸

In 2019-20 the total cost per prisoner per day ranged between \$294 and \$559 across Australian jurisdictions (table 3.2). In real terms, costs per prisoner have remained relatively constant within most jurisdictions, but there are differences in levels across jurisdictions (table 3.2 and figure 3.4).

Differences in costs may arise due to differences in:

- the type, scope, and quality of programs available to prisoners and offenders
- staffing levels and the composition of workforce required across different facilities
- the number, type, and location of facilities being used.

The range of factors that determine the cost level in each jurisdiction makes it difficult to draw inferences about the relative efficiency of different prison systems.

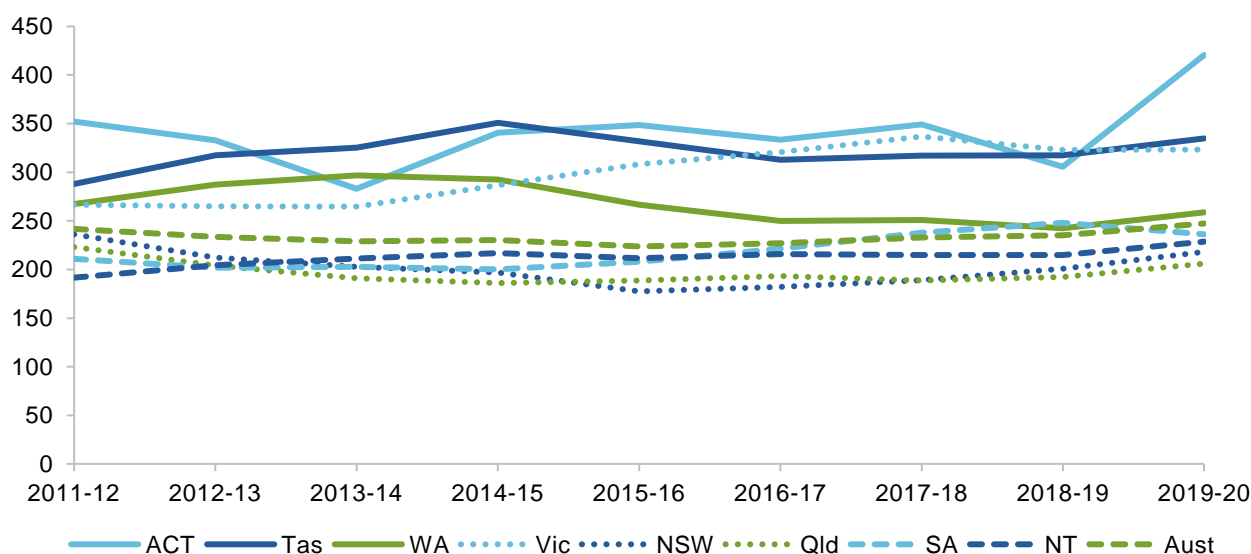
¹⁸ The cost per individual in the system may decrease over time if, for example, there are fixed costs incurred when a new prisoner enters a facility, or because a prisoner's prior experience or knowledge of prison enables smoother staff interaction. However, the detailed individual data that would be required to make such an assessment is not available.

Table 3.2 – Expenditure per prisoner varies widely^{a,b}**Expenditure per prisoner per day and per year, 2019-20**

	NSW	Vic	Qld	SA	WA	Tas	NT	ACT
Net operating expenditure (\$ per prisoner per day)	218	323	206	236	259	335	229	421
Capital costs (\$ per prisoner per day)	76	97	98	76	64	53	110	139
Total expenditure (\$ per prisoner per day)	294	421	304	313	322	387	338	559
Total expenditure (\$'000 per prisoner per year)	107	154	111	114	118	141	124	204

a. Net operating expenditure excludes operating revenue (for example, revenue from prison industries), payroll tax and prisoner health and transport/escort costs where able to be disaggregated by jurisdictions. **b.** Capital costs include user cost of capital (calculated as 8 per cent of the value of government owned assets), land, other assets, debt servicing fees, and depreciation.

Source: SCRGSP (2021a), table 8A.19.

Figure 3.4 – Daily prison costs vary across jurisdictions**Expenditure, \$ per prisoner per day, 2019-20 dollars^a**

a. Expenditure includes operating expenditure and capital costs, less operating revenue (for example, revenue from prison industries), but excludes payroll tax and prisoner health and transport/escort costs where able to be disaggregated by jurisdictions. Capital costs include user cost of capital (calculated as 8 per cent of the value of government owned assets), land, other assets, debt servicing fees, and depreciation.

Source: SCRGSP (2021a) (drawn from 2013 to 2021).

Daily average costs are not necessarily a good measure of performance across jurisdictions (SCRGSP 2021a). For example, a lower cost per prisoner over time may be due to an increase in prisoner population without a corresponding change in program expenditure. On the other hand, a higher cost per prisoner over time may be the result of increased program expenditure to reduce reoffending with no change in prisoner numbers.

Further, daily average costs do not capture any variation within the period covered. It is likely that the changing prisoner numbers led to a variety of challenges for each jurisdiction to overcome that would have implications for how budgets were spent. For example, the case study below highlights some of the major issues that arose in New South Wales due to rapid growth in prisoner population from 2012–2018 (box 3.4).

Box 3.4 – Managing growth in New South Wales prisoner population

Between 2012 and 2018, the New South Wales prison population grew from 9602 to 13 630 inmates, an increase of about 40 per cent, with further growth expected to occur. A 2019 audit of the New South Wales Corrective Services Division's management of the growing prisoner population highlighted a range of issues that have broad applicability across jurisdictions. The report provided an overview of the New South Wales Government's response in the short, medium, and long term.

Short-run responses to growing prison population included:

- increasing temporary high-risk beds in cells and reopening and converting existing facilities
- designing and delivering a rapid-build prison with dormitory-style accommodation.

Medium-run responses (undertaken in 2016) included:

- forming a dedicated unit inside New South Wales Department of Justice to liaise with the Correctional Services Division to integrate decision-making into government processes
- implementing a \$3.8 billion budget measure — the Prison Bed Capacity Program — to expand bed numbers at existing prisons, expand existing facilities, and build a new dormitory-style prison.

Long-run responses (planned for next 20 years) included:

- the New South Wales Department of Justice developing a long-term strategic framework titled 'Corrective Services Infrastructure Strategy' to guide planned actions and investment direction for prison infrastructure to meet projected inmate population over 20 years.

Source: Audit Office of New South Wales (2019).

The New South Wales experience is also applicable to other jurisdictions that have seen similar trends in their prison populations. The need to accommodate a greater level of prisoners in institutions has seen increases in transportation between facilities, over-crowding, lower-quality delivery of business-as-usual programs affecting longer-term pathway inmates, a need for new programs to deal with shorter-term pathway inmates' needs, as well as dealing with emerging issues created by housing more inmates. An important fiscal cost pressure to single out is staffing, as it accounts for up to 80 per cent of operating costs for prison budgets and represents the main short-term cost pressure in response to changing demands on prison services (AONSW 2019).

Community-based orders are a lower cost but imperfect substitute ...

The closest alternative to a prison sentence is a community corrections sanction, which involves an offender continuing to live in the community under the supervision of community corrections officers. These may involve different levels of supervision or include an order to undertake community work or attend specific programs. Community corrections are an imperfect substitute for prison because they differ in terms of the purposes of punishment, deterrence and incapacitation, and rehabilitation. They have been found to be a

more effective alternative to prison sentences for lower-order property crime rather than for violent crimes. For example, in the United Kingdom, a 1 per cent increase in the conviction rate for community sentences was found to reduce the crime rate by 0.2 per cent, compared to a 0.15 per cent reduction through prison sentences (Abramovaite et al. 2019, pp. 806–809).¹⁹

While supervision in the community is a form of punishment for those convicted of crimes, in general, community-based orders do not have the same degree of deprivation of liberty as prison, and may not meet the community's expectation for retribution, particularly for serious crimes (Drake 2018). Community-based orders range from the more punitive intensive corrections orders, through to lighter-touch community service orders. Intensive corrections orders are typically used for offenders at significant risk of reoffending and include an intensive regime of community supervision and conditions, with the aim of rehabilitating the offender. Under a community service order, the court may direct the offender to perform community service work for a specified number of hours, but otherwise allow for freedom to move in the community (Gelb et al. 2019).²⁰ In addition to providing a non-custodial sentencing alternative, community corrections also serve as a post-custodial mechanism for reintegrating prisoners into the community (Gelb et al. 2019).

... and are less restrictive on each offenders' capacity to reoffend ...

Community-based orders do not have the same deterrence and incapacitation effects as prison in general, though as with punishment, there are differences in the types of order as well as the types of crime under consideration (Abramovaite et al. 2019; Nagin 2013). The degree of supervision as well as the number of conditions are key parameters of community corrections affecting both the degree of rehabilitation and the likelihood that people in community corrections complete the order without breach of conditions (Vera Institute of Justice 2013).

Approximately 70 per cent of community corrections orders are typically completed on an annual basis at the national level (SCRGSP 2021a). Community orders are considered incomplete if an offender is found in breach of the order requirements or further offences are committed. Up to one third of all breaches involve the offender committing at least one imprisonable offence while serving their community corrections order (Fisher and Stewart 2017; Gelb, Stobbs and Hogg 2019; Morgan 2018, pp. 26–27). But there is also evidence that stronger supervision of community corrections orders can reduce the rate of offending (Drake 2018; Morgan 2018, p. 21).

... but may perform better in terms of rehabilitation than prison

Community-based orders appear to perform better than prison in terms of rehabilitation, with evidence of relatively higher rates of reoffending for incarceration (Gelb, Fisher and Hudson 2013; Weatherburn 2010, pp. 6–9). More specifically, there is evidence that intensive corrections orders are more effective at reducing reoffending than short terms of imprisonment, especially among offenders classified as high risk of reoffending (Gelb, Stobbs and Hogg 2019). Supervised community corrections sanctions (with conditions) appear to produce better rehabilitation outcomes than unsupervised community sanctions, notwithstanding differences among cohorts of offenders.

¹⁹ The same study found that a 1 per cent increase in the conviction rate for community sentences led to a 0.1 per cent reduction in robbery, but failed to find statistically significant effects for sex offences or violence against persons (Abramovaite et al. 2019, pp. 806–809).

²⁰ Other community corrections sanctions include probation, supervised good behaviour bonds and post prison orders (such as parole, release on license) (SCRGSP 2021a).

Community-based orders are significantly less costly than prison

There are considerably more people placed on community corrections across Australia than in prison, with about 83 000 people in community-based corrections nationally in 2019-20 compared with a prison population of about 41 000 (chapter 2).

The average daily prison cost is approximately \$330 per person while the corresponding cost for community corrections is less than \$30. The ratio of daily costs for prison relative to community corrections is approximately 10:1 on average, with variation across jurisdictions (figure 3.5). Changing sentencing so that there is a 1 per cent decrease in the number of people in prison, with the relevant offenders moved to community corrections orders, would save taxpayers approximately \$45 million per year nationwide.

The higher cost of prison relative to community service is driven by infrastructure (prison facilities) and supervisory requirements. On the other hand, community corrections appear to be much less capital intensive and more dependent on staff requirements. Differences in the cost of community services across jurisdictions stem largely from the offender-to-staff ratio (figure 3.6). Jurisdictions with relatively higher offender-to-staff ratios, such as New South Wales and Queensland, tend to have lower costs per offender.

Figure 3.5 – System costs are structurally different across jurisdictions

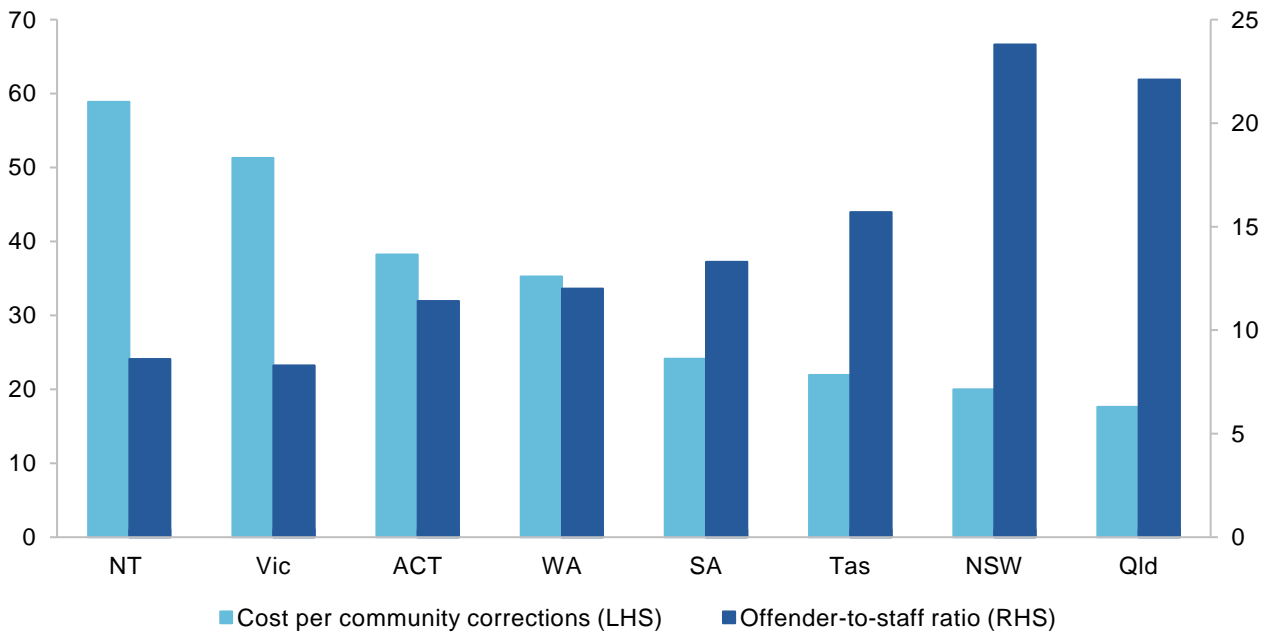
Daily average expenditure — prisons versus community corrections, per person, 2019-20^a



a. Expenditure includes operating expenditure and capital costs, less operating revenue (for example, revenue from prison industries). Excludes payroll tax and prisoner health and transport/escort costs where able to be disaggregated by jurisdictions. Capital costs include user cost of capital (calculated as 8 per cent of the value of government owned assets), land, other assets, debt servicing fees, and depreciation.

Source: SCRGSP (2021a).

Figure 3.6 – Community corrections costs are lower with higher offender-to-staff ratios
Community corrections daily cost (\$) and offender-to-staff ratio



Source: SCRGSP (2021a), tables 8A.7 and 8A.19.

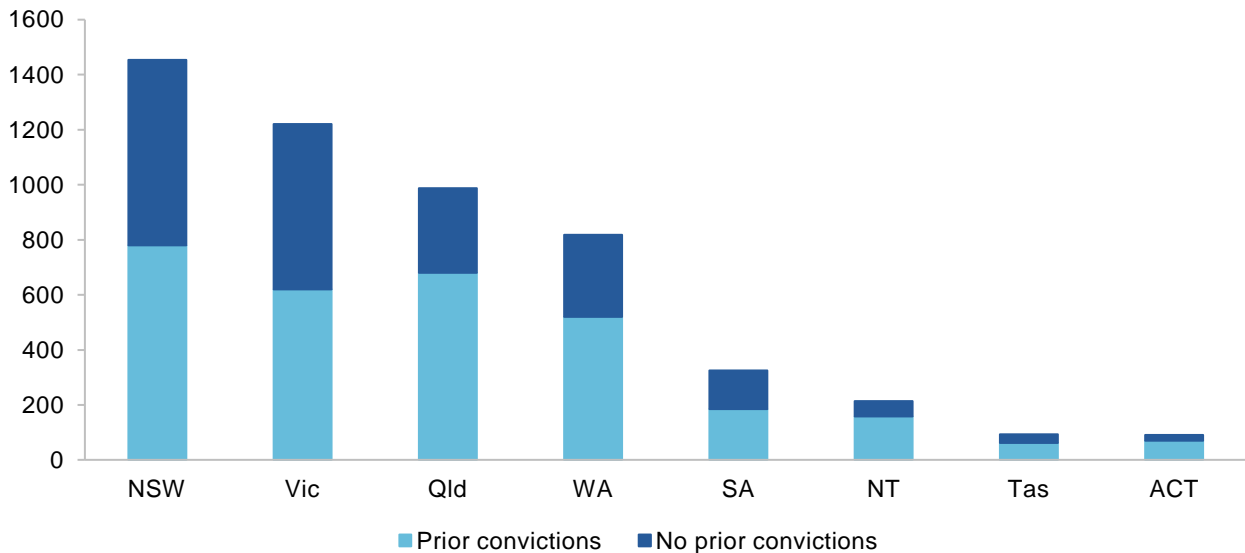
The fiscal cost of recidivism

A significant proportion of the costs of prison can be attributed to prisoners with prior convictions (figure 3.7). A simple approximation to the annual fiscal cost of imprisonment attributable to recidivism is about \$3.1 billion nationally, which accounts for between half and three quarters of the operating costs across jurisdictions.²¹

Attributing a cost to the prison turnover from recidivism is complicated by the many possible pathways that individual prisoners may take over the course of their lives. For instance, Morgan (2018) documented the complex pathways that a sample of prisoners and offenders in community corrections took over a five year period, with many individuals in the sample moving in and out of and between prison and community detention.

²¹ The simple approximation is computed by estimating how much of the annual correctional services budget for prisons would be spent on prisoners with prior sentences based on annual average costs per prisoner (SCRGSP 2021a) and the percentage of prisoners with prior convictions (ABS 2020b).

Figure 3.7 – Recidivism — a major contributor to the costs of prisons
Expenditure, \$ millions, 2019-20^a



a. Columns show expenditure on prison apportioned by the percentage of prisoner population with prior offence and no prior offence derived from the Australian Bureau of Statistics prior imprisonment status data.

Source: ABS (*Prisoners in Australia, 2020* table 14); SCRGSP (2021a), table 8A.1.



Finding 3.1

The fiscal cost of prison, both as a component of the overall criminal justice system and as a proportion of state and territory governments' budgets, is growing. Prisoners with prior convictions account for the bulk of prison costs across most jurisdictions.

Costs per prisoner differ across jurisdictions reflecting a range of factors including staffing requirements as well as program delivery.



Finding 3.2

The higher relative cost of prison to community corrections suggests that there is potential for major cost savings *if* there are alternatives that still meet the objectives of the criminal justice system.

Community corrections provide a lower cost but imperfect substitute for prison — while their effectiveness relative to prison in terms of deterrence and incapacitation appears to be lower, they tend to perform better in terms of rehabilitation.

3.3 The indirect costs of imprisonment

While the fiscal costs of imprisonment are relatively straightforward to calculate, there are other costs of imprisonment that are typically difficult to monetise with any degree of precision, but which nonetheless can be material. While some of these costs are imposed intentionally on prisoners to deter criminal behaviour or exact retribution for crime, others are unintentional or fall on prisoners' families or society more broadly. At a conceptual level, Becker (1968) described indirect costs as the discounted sum of the earnings foregone while incarcerated, and the value on the restrictions in consumption and freedom.

Many subsequent studies that have attempted to estimate the magnitude of these indirect costs are mired in statistical and data challenges around causality. At issue is the ability to attribute just the incremental costs borne by an individual, their family, and, ultimately, the broader community, specifically to the incarceration of that individual. While many studies look at these costs, a lot of them are associative in nature rather than causal.

In many cases, individuals enter prison from a position of social disadvantage (chapter 2). Many have poor family or community connections. Individuals are likely to be unemployed, have limited education, or perhaps have a pre-existing mental or physical health condition (Morgan 2018). Any indirect costs that are attributable to prison would need to be measured over and above the baseline implied by these existing factors. That said, some of the collateral consequences of imprisonment on individuals may reinforce the pre-conditions that often get people into prison in the first place.

These indirect costs can be categorised to include the impact of prison on:

- offender outcomes, such as employment, education or health
- the wellbeing of affected children and families
- post-release behaviour.

There are alternatives to prison that may perform better in terms of offender outcomes, preserve family and community networks, or improve post-release behaviour at lower fiscal cost. However, alternatives are also likely to entail a different balance of community expectations of safety, fairness, and confidence in the criminal justice system for different risk categories of offenders. These issues are pointed out below where relevant, and explored further in chapter 4 in the context of case studies of alternative approaches.

Prison experience affects a range of offenders' outcomes

Prison is generally associated with poorer employment and education outcomes

Research has consistently found that crime and recidivism outcomes are associated with lower educational attainment and employment (Giles and Le 2009). The question here is: does the experience of being in prison make this worse?

A range of studies (mainly US-based) report a significant negative effect of prison on post-release employment and earnings (Bushway 2004; Finlay 2009; Raphael 2007).

However, only a few of these studies are based on evidence which has discerned the direction of causation. For example, there is causal evidence that pre-trial detention (that is, remand) decreases formal sector employment (Dobbie, Goldin and Yang 2018). Similarly, a study that explicitly calculated the social costs of imprisonment found that each additional year of incarceration in Texas reduced post-release employment by 3.6 per cent. Further, for felony defendants with otherwise stable prior earnings who were incarcerated for one or more years, re-employment declined by at least 24 per cent in the five years after being released. These employment effects translated into social costs ranging from \$56 000 to \$67 000 for a one-year prison sentence (Mueller-Smith 2015).

The adverse impact on future job opportunities reflects both a depreciation of skills and the stigma attached to having a criminal record — both of which raise the costs of re-entering the labour market (Executive Office of the President of the United States 2016; Leigh 2020b).

As an offsetting factor, individuals who were likely to have been unemployed or out of the labour force prior to being incarcerated may gain access to employment programs inside prison, which could enhance their job prospects. Many prisoners undertake education, training and/or work in conjunction with more specific rehabilitation programs. About 80 per cent of eligible Australian prisoners are employed while incarcerated, and more than 30 per cent undertake some type of formal education and training, with 20 per cent undertaking accredited vocational education and training (SCRGSP 2021a).

Alternatives to prison tend to have lower disruption to employment and education

Offenders who are diverted from prison and given a non-custodial sanction, such as a community corrections order, have the opportunity to retain their employment — although it may be disrupted due to the conviction (Morgan 2018; Vera Institute of Justice 2013). That said, many offenders do not have a job to start with. A Victorian study into the relative costs and benefits of prison compared to community corrections found that in a matched cohort of about 800 offenders, only a quarter of individuals were employed at the time of entering prison (Morgan 2018, p. 28).

Alternatives to prison where evidence suggests less of a disruptive impact on employment and education include a range of diversion programs and alternative sentencing courts — particularly those with a restorative justice element. In both cases, the programs potentially create benefits from improved employment and education outcomes for low-risk offenders without compromising community safety, fairness, and confidence. Chapter 4 outlines several relevant case studies, including diversionary programs, alternative sentencing courts targeted to Aboriginal and Torres Strait Islander people, and restorative justice in New Zealand.

The mental health of prisoners is much poorer than the general population

The state of an individual's health has an important impact on prisoner outcomes. It is well-documented internationally that prisoner populations are disproportionately made up of individuals with a high burden of disease (National Research Council 2014).

In Australia, the differences in prisoners' health from the general population is most notable for mental health. For instance, an Australian Institute of Health and Welfare (AIHW) survey of prisoners indicated a mental ill-health prevalence of about 40 per cent compared to 22 per cent in the general population (AIHW 2019a).

This burden of disease can be pre-existing, but can also develop or be exacerbated in custodial settings. In relation to mental illness in particular, there is some evidence to suggest that, for the most part, common psychiatric disorders tend to predate incarceration (Schnittker, Massoglia and Uggen 2012). However, those authors also found that incarceration was related to subsequent depressive and bipolar disorders.

Suicide is a leading cause of deaths in prison, and is strongly related to mental ill-health as well as history of child abuse, alcohol and other drug disorders, all of which are more prevalent in the prison population than in the general population (AIHW 2019a; Butler et al. 2006; Stewart et al. 2020). People in prison are ten times as likely as the general Australian population to report a history of suicide attempts and suicidal ideation (Butler et al. 2018). And the rate of suicide has been measured to be between five times higher in men, and twelve times higher in women incarcerated in Australian prisons compared to the general population (Kariminia et al. 2007).

While it is difficult to attribute a cost to the loss of life and the impacts on families and communities, these studies demonstrate the prevalence of suicide is a priority issue for all governments in improving prisoner outcomes. The importance of this issue is a priority under the National Agreement on Closing the Gap — a significant and sustained reduction in suicide of Aboriginal and Torres Strait Islander people to zero (JCOCTG 2020, target 14).

Treatment of mental health and drug issues can be effective in prison

For some people, interaction with the justice system might be the first time that a health professional has assessed their mental health, even though it is not necessarily the ideal environment for treatment (AIHW 2019a; National Research Council 2014). Drug and mental health treatment, and other cognitive behavioural interventions delivered in the community are typically more effective than those offered in prison (Vera Institute of Justice 2013).

Notwithstanding, there are a range of interventions that serve as strong examples of how mental health and substance abuse issues can be dealt with in prison (chapter 4). These include inpatient or intensive outpatient drug treatments, and cognitive behaviour therapy for lower-risk prisoners.

Imprisonment can affect families in different ways

Incarceration of a parent may harm children and their development, potentially transmitting the current cost of incarceration to families, future generations, and the broader community in which they live. The dynamics underlying these effects are complex, making the impact of imprisonment on families difficult to quantify. The experience of trauma and intergenerational effects from parental incarceration facing Aboriginal and Torres Strait Islander people in particular highlights some of these complex issues (box 3.5).

Incarceration of a parent can have negative and positive effects on children. The negative side includes the psychological strain from the separation experience, learnt harmful behaviours that are passed down from parent to children, or a reduction in household income with subsequent adverse effects on human capital investment (Murray and Farrington 2008).

On the other hand, incarceration of a parent can lead to a positive outcome for children in terms of incapacitation, but also through changed behaviour of the non-incarcerated parent, a deterrence effect on children through a higher salience of the prison experience, and a post-release benefit from rehabilitation of the parent while in prison (Norris, Pecenco and Weaver forthcoming).

Some alternatives can have better rehabilitation outcomes for lower-risk offenders

There is evidence that sentences that do not involve time in prison can lead to better rehabilitation outcomes by letting offenders remain with their families and maintain connections with the community (Vera Institute of Justice 2013). A US-based study on community-based electronic monitoring of lower-risk offenders has estimated significant reductions in reoffending, partly due to the promotion of attachment to work and family (Williams and Weatherburn 2020).

Examples of community-based alternatives to prison that build on the benefits of maintaining family and community connections are explored in chapter 4.

Box 3.5 – Intergenerational effects of parent or carer incarceration on children

High rates of imprisonment for Aboriginal and Torres Strait Islander people, as described in chapter 2, have significant and detrimental effects on Aboriginal and Torres Strait Islander children and families. Aboriginal and Torres Strait Islander children with a parent or carer in prison are likely to have faced a range of adversities before imprisonment occurred.

However, imprisonment often compounds other adversities, exacerbating the severity and chronicity of trauma and deprivation. Imprisonment of a parent or carer of Aboriginal and Torres Strait Islander children has been found to be associated with the children having poor physical, social, emotional, communicative, and cognitive developmental outcomes.

For many Aboriginal and Torres Strait Islander people, the trauma of parent or carer imprisonment can be felt across multiple generations and kinship networks. Disrupted social and cultural bonds, and the removal of key people in the lives of children through incarceration create greater social, cultural and economic costs in Indigenous families within communities with high incarceration rates (Roettger, Lockwood and Dennison nd).

There are a number of programs that aim to address trauma and intergenerational effects of incarceration on Aboriginal and Torres Strait Islander children. However, there is little formal evidence of the effectiveness of the programs. Notwithstanding, three general themes can be distilled from the studies and reports that do exist.

1. *Prioritise the principle of self-determination* — experience suggests that policies and programs that are responsive to Indigenous families holistically are more effective. Indigenous services can better support parents, carers and children to tackle complex traumas caused by imprisonment through the provision of culturally-safe services. Ensuring cultural safety is also important for non-Indigenous service delivery.
2. *Minimise trauma from separation* — correctional services can support families by providing opportunities to maintain or re-establish bonds when a parent or carer is incarcerated to reduce the negative impacts of separation on children. Programs should aim to overcome the barriers for maintaining family connections with parents or carers who are incarcerated. Significant barriers include travel times to prison, costs of visits, and the cost of phone calls. There is also evidence that Aboriginal and Torres Strait Islander parents actively discouraged their children from visiting while in custody to reduce the experience of emotional disruption and the intimidating prison environment.
3. *Wrap-around services* — there is a growing body of evidence supporting the use of trauma-informed wrap-around services for high-risk families. A wide range of services have been identified as high priority for parents or carers post-release, including assistance with stable housing, relationship issues, trauma, and childcare. Wrap around services are delivered through a case manager that liaises with the different professional service providers, and aims to deliver a highly individualised approach to address specific needs.

Source: Roettger, Lockwood and Dennison (nd).

The experience of prison can affect people's post-release behaviour

Being in prison can influence how people behave upon release, including their likelihood of reoffending. A person who has been released from prison will often face the same factors that led to their offence in the first

place, with the addition of any changes that have occurred during their period in prison. Exposure to a peer network of offenders in prison might allow individuals to gather knowledge of how to commit crimes, increasing the likelihood of reoffending on release (Abrams 2011). Post-release behaviour may also be affected by the loss of employment and family links while incarcerated, as well as the stigma of being an ex-prisoner (Siwach 2018; Tissera 2019).

On the other hand, it is possible that a prison sentence may improve post-release behaviour and outcomes, especially in circumstances where rehabilitation is emphasised (Arbour, Lacroix and Marchand 2021; Bhuller et al. 2021; Tobon 2020). There is evidence that use of risk and need assessment tools to identify and target criminogenic factors, and assign rehabilitation programs accordingly, can significantly reduce reoffending. Results like this critically depend on the effectiveness of targeting, so that only individuals with a higher likelihood of benefiting from a rehabilitation program are selected (Arbour, Lacroix and Marchand 2021).

Access to stable housing has been shown to have an important influence on post-release behaviour. Homelessness has been consistently recognised as an important factor in whether an individual first comes into contact with the police, and there is evidence that access to stable housing affects whether an individual reoffends after being released (Baldry et al. 2006).

In Australia, homelessness among people detained in prison is pervasive. An Australian study into the relationship between homelessness, housing stress and criminal justice (Payne, Macgregor and McDonald 2015) found that the need for intensive accommodation support services in the detainee population was larger than previously understood. In the four weeks before entering prison, 5 per cent of entrants reported sleeping rough, and 28 per cent reported being in emergency accommodation (AIHW 2019a). Among prisoners about to be released, more than half (54 per cent) expect to go in to short-term or emergency accommodation (AIHW 2019b).

Post-release outcomes can be improved through continuity of support

Support for transitioning back to the community reduces the likelihood of reoffending, whether that be for employment, education, continuity of healthcare or housing services (Baldry 2007; Griffiths et al. 2016; QPC 2019). The effective throughcare model, briefly described in section 3.1, is one approach to helping inmates address a range of often complex needs, and return to society.

The need for effective case management to underpin improved rehabilitation upon a release from prison is discussed as a case study in chapter 4, along with more direct approaches to reducing recidivism through explicit system-wide targets.



Finding 3.3

Notwithstanding shortcomings in the empirical literature, the indirect costs of imprisonment on employment prospects are likely to be significant for some offenders.

The impact of incarceration on children and other family members is more nuanced, with studies reporting both negative and positive impacts.

More effective rehabilitation may lower the indirect costs of prison, but further research and evaluation is needed to provide the necessary evidence about what works.

4. Case studies of alternative practice

Key points

- * While acknowledging the community's desire to punish offenders and the need to maintain community safety, finding alternative pathways for some lower-risk offenders could deliver better outcomes for offenders, victims and the community and yield substantial savings.
- * Case studies of alternatives to current practice — both from Australia and other countries — suggest there is potential to attain better outcomes without jeopardising community safety.
- * The selected case studies are not exhaustive. They offer examples of policies and programs that have demonstrated net benefits from:
 - keeping some low-risk offenders out of prison by diversion, home detention or early parole
 - effective treatment of underlying issues while in prison and on release, helping offenders to reintegrate, rehabilitate and avoid further offending
 - developing prison systems that pursue new initiatives, measure and monitor outcomes and evaluate programs openly, to drive continuous improvement.
- * Although many of these case studies may not be novel to corrective services departments in Australian jurisdictions, they typically receive relatively little attention in public discourse. A wider appreciation of the options by the community may be a first step in paving the way for a broader policy discussion of alternative approaches.
- * No policy or program will necessarily translate to another jurisdiction without adjustment to reflect different social, budgetary and institutional settings — the case studies selected are about possibilities rather than a menu of reform options.

The preceding chapters have pointed to many issues that make the management of the criminal justice system difficult. Chapter 1 introduced the need to balance society's goals for the criminal justice system, the high cost of the system, and Australia's historically high rates of imprisonment. The challenge of balancing the objectives of punishment, deterrence, incapacitation and rehabilitation while ensuring an efficient criminal justice system was explored further in chapter 3. These tasks are made harder by the demographics of the prison population (chapter 2), particularly the high proportions of disadvantaged prisoners, prisoners with complex health needs and chronic reoffenders in the prison population. The disproportionate representation of Aboriginal and Torres Strait Islander people in prisons also remains a critically important issue.

Given these challenges, approaches to criminal justice that have the potential to meet society's requirements for a balanced system at a lower cost, while also achieving positive outcomes for individuals and meeting community expectations, are worthy of exploration. One way to do this is to learn from initiatives that have worked 'in the field'.

This chapter looks at case study-based examples of successful initiatives in Australia and other countries that aim to reduce imprisonment and recidivism. Evaluation results suggest that their broader implementation in Australian jurisdictions could reduce costs of imprisonment without increasing the risks to the community.

The initiatives are classified under six themes (table 4.1) and these are discussed in turn in sections 4.1 to 4.6 below. The chapter concludes with a discussion that draws the threads together (section 4.7).

Some of the case studies are particularly relevant to addressing the trends and drivers of imprisonment and recidivism discussed in chapter 2. Others illustrate some of the approaches introduced in chapter 3, where an economic lens is applied to criminal justice system issues: recognising and adopting effective trade offs between short-term and long-term safety; identifying and treating the underlying causes of offending; taking the most cost-effective options; and monitoring outcomes.

The Commission has sought to use examples where there has been a thorough evaluation but this was not always possible. Some case studies were chosen because they are widely referenced or particularly relevant to the Australian context. Where relevant, these reasons are spelt out in the case study summaries below.

Although the case studies may not be novel to corrective services departments in Australian jurisdictions, they typically receive relatively little attention in the broader community. A wider appreciation of the available options — including their costs and benefits — is a first step for a broader policy discussion of alternative criminal justice system approaches.

Table 4.1 – Case studies of key initiatives aimed at reducing imprisonment and recidivism

Take opportunities for diversion	<ul style="list-style-type: none"> • Diversion in the United States — avoiding convictions • Managing mental health needs as part of sentencing — Victoria's Assessment and Referral court • Aboriginal and Torres Strait Islander sentencing courts • Conditional diversions in the United Kingdom • Restorative justice in New Zealand
Home detention and early parole	<ul style="list-style-type: none"> • Home detention and electronic monitoring in South Australia • Court-ordered parole in Queensland
Treatment in prison	<ul style="list-style-type: none"> • Inpatient and intensive outpatient treatment during incarceration • Cognitive behaviour therapy for individuals classified as medium or high risk
Effective case management for rehabilitation and release	<ul style="list-style-type: none"> • ACT extended throughcare model
Clear system objectives and administrative guidance	<ul style="list-style-type: none"> • Targets for reducing recidivism – New Zealand • South Australia's strategy to reduce recidivism
Build the knowledge base	<ul style="list-style-type: none"> • Washington State Institute for Public Policy

Chapter 3 pointed to the high fiscal cost of prisons and the broader social and individual costs. Table 4.2 illustrates the scale of the potential gains from alternative approaches to imprisonment outlined in the case studies described in sections 4.1 to 4.6.

There are, however, a number of caveats that are commonly identified in case study analyses.

- As with all case studies, the net benefits observed from a single example may not be sustained following wider implementation.
- The gains realised in one jurisdiction may not translate easily to other jurisdictions for a number of reasons, including that the starting point may be different, the systems may be too different for the program to work or the offenders may have different characteristics.

Moreover, the estimates in table 4.2 are conservative and should be taken as illustrative only. They are drawn, where possible, directly from published evaluations or similar studies. The Commission has, for some studies, calculated the impact of the estimated reductions in recidivism as system cost savings using assumptions on sentence length and average imprisonment costs in the relevant jurisdiction. The quality of the evaluations from which the estimates are drawn is variable, although most at least involved efforts to compare offender outcomes to matched samples. Most of the studies made no attempt to put a value on the impacts of crime on victims and the community, and data for recidivism do not generally provide information on the sequence of crimes committed. Data sources and the underpinning assumptions and methodologies for any calculations undertaken by the Commission are outlined in appendix C.

Nevertheless, the case studies provide examples of alternative approaches that may be worth considering in Australian jurisdictions if similar programs are not already in place.

Table 4.2 – Summary of program case study benefits^a

Diversion for first time felony offenders in Harris County, Texas, 2007	Diversions were associated with 1.7 fewer convictions per person over ten years (and a 26 percentage point decrease in the likelihood of any reconviction) as well as an average increase of just over \$US41 000 (2018 dollars) per person in total earnings over ten years.
Victoria's Assessment and Referral Court	The total rate of offending among court participants fell from 87 per cent in the two years before the court process to 58 per cent in the two years after it. (Note these benefits were not corroborated against a matched sample.)
Aboriginal and Torres Strait Islander sentencing courts	The ACT Galambany Court benefit–cost assessment estimated net gains of about \$17 000–18 000 (2017 dollars in net present value terms) per program participant. A large part of this was income earned by participants who would otherwise have lost employment.
Conditional diversions in the United Kingdom	Moderate-risk offenders who accessed the program were 10 percentage points less likely to reoffend over a two-year period than equivalent offenders who went through the traditional criminal justice process. The program was estimated to deliver a benefit of £2 191 (2015-16 pounds sterling) per offender through reduced recidivism, but the spending required to achieve the outcome was unclear.
Restorative justice in New Zealand	The net saving was in the order of \$NZ400 per conference, due to reduced reoffending. Victims of crime also appeared to have less post-traumatic stress after conferencing.
Home detention and electronic monitoring in South Australia	The evaluation estimated net fiscal savings of \$34 000 per program participant due to reduced short-term imprisonment costs, and additional savings from reduced returns to custody of about \$20 000 per program participant. A small number of additional offences committed by offenders while on home detention were offset by reduced offending on completion of their sentence.
Court-ordered parole in Queensland	The introduction of court-ordered parole was associated with a reduction in 2009 of 435 prisoners relative to trend growth. Annual net savings were estimated to be \$47 816 (2008-09 dollars) for each of these prisoners. At any given time during the

	period 2009–2012, 3000 offenders were on court-ordered parole of which an estimated 1200 would have otherwise been on an alternative supervised order. The net saving is the reduction in prison costs from reduced prisoner numbers, less additional supervision costs for the remaining 1800 offenders on court-ordered parole. The net impact on crimes committed was unclear.
Inpatient or intensive outpatient drug treatment during incarceration in Washington State	Average total benefits per participant were estimated to be \$US13 762 on program costs of \$US1358 (2018 dollars). This represented a benefit–cost ratio of 10:1.
Cognitive behaviour therapy for individuals classified medium or high risk in Washington State	Average total life-cycle benefits per participant were estimated to be \$US9270 on program costs of \$US1470 (2018 dollars). This represented a benefit–cost ratio of 6:1.
ACT extended throughcare model	Returns to custody by program participants were estimated to be 23 percentage points lower over the three years of the evaluation. Net benefits per program participant were estimated to be \$14 334 three years after release.
Targets for reducing recidivism – New Zealand	Between 2012 and 2017, the rate of reoffending was reduced by 4.5 per cent but the level of spending required to achieve this outcome is unclear.
South Australian strategy to reduce recidivism by 10 per cent by 2020	South Australia recorded an 8 per cent reduction in the level of recidivism by 2019-20 (prisoners released in 2017-18) and appears on track to achieve its target. South Australia increased corrective services spending per prisoner but the spending required to achieve the outcome is unclear.

a. Sources for the estimates cited in this table are in appendix C.

4.1 Taking opportunities for diversion

The term 'diversion' can have many meanings. This paper follows Freiberg et al. (2016, p. 57) in using diversion to refer to interventions where 'the law can intervene effectively, proportionately and responsively to an alleged crime and to the person who is alleged to have committed it'.²²

Successful diversion programs offer the potential for savings in prison costs and benefits to the community. They are generally less costly in the immediate term than placing someone in prison, but more critically, they can potentially stop some of today's offenders from becoming tomorrow's repeat offenders. Diversion can also aim to help offenders better manage health issues or steer them towards more socially and economically productive behaviour beyond simply committing less crime, offering a further benefit to the community as well as to the individuals themselves.

Diversion programs are more commonly (though not exclusively) offered to younger offenders or those with a shorter criminal history, in the hope that the behavioural patterns driving their offending can be shifted before becoming more ingrained. They often also aim to address some of the disadvantaging circumstances prevalent among offenders and the prison population, such as mental illness and alcohol and drug abuse (chapter 2). And for Aboriginal and Torres Strait Islander offenders, providing a more culturally-appropriate court process, including the participation of community Elders, is considered likely to encourage behavioural change as well as being a desirable feature of the justice system in and of itself.

²² Freiberg et al. (2016, p. 57) preferred 'intervention' as a replacement for 'diversion' entirely, arguing that 'diversion' misleadingly implies 'an act of leniency or grace or a derogation from some ideal form of, usually adversarial, justice'.

Diversion operates in various forms around the world and in Australia, often combining elements such as alternative courtroom setups and processes, support programs and deferred or conditional sanctions. Accordingly, there are at least a few different ways in which diversion can positively influence offenders.

- It can enable offenders to be more appropriately positioned to avoid continuing the same patterns of offending by:
 - providing support to offenders so that they can better manage issues associated with their behaviour
 - allowing offenders to avoid a conviction and its adverse consequences.
- It may act as a wakeup call or cross-roads point, or change an individual's conception of their behaviour and the people impacted by it (Agan, Doleac and Harvey 2021a).

There is evidence that well-designed diversion can reduce reoffending rates, albeit that success has been far from uniform among historical programs. (See, for example, Lange et al. (2011) for a meta-analysis of mental health-related diversion programs, Logan and Link (2019) on drug courts, as well as the case studies below.) However, it is inevitably more challenging to tease out precisely how and how much different program *elements* (or their absence) contribute to or hinder the achievement of good outcomes. Moreover, a given diversion program or element of a program that works well for one group of offenders can be significantly less effective or even counterproductive for others (Latessa, Johnson and Koetzle 2020). This emphasises the need for continual observation and fine tuning of programs (sections 4.6 and 4.7).

Clearly, a decision to divert an offender from a prison sentence comes with the short-term risk that the offender, who is allowed to remain in the community, may commit further crimes that would have been prevented had they been imprisoned. Diversion may also challenge community expectations around the punishment of crime. It is important therefore that diversion is targeted and designed carefully, both to balance the trade-off between short-term risk and potential longer-term benefit, and to maintain community confidence in the justice system.

Five case studies are provided below, each illustrating a different form of diversion program.

The first case study summarises a number of separate initiatives in the United States that lessened the punishment applied to lower-risk offenders and yielded lower rates of reoffending (table 4.3).

The second case study (table 4.4) is of Victoria's Assessment and Referral Court. This court explores treatment options for offenders with mental illness alongside sentencing. These types of mental health courts originated in the United States in the 1990s, and they have since become widespread there. Some American mental health courts have also been shown to reduce recidivism — a meta-analysis (Lowder, Rade and Desmarais 2018) found a modest impact on a mix of reoffending outcomes relative to traditional courts, albeit with considerable variability across studies. Other Australian mental health courts include the Treatment Intervention Court in South Australia, the Start Court and Intellectual Disability Diversion Program Court in Western Australia and the Diversion List in Tasmania.²³ Even providing more effective legal advice in standard courts on behalf of people with cognitive impairments (for example, in New South Wales through the Justice Advocacy Service) can result in better outcomes, including improved offender understanding and compliance with court orders, reduced imprisonment and greater use of community corrections (NSW Department of Communities and Justice 2021).

²³ The Queensland Mental Health Court performs a different role to that of the mental health courts in other jurisdictions. It is a specialist court which primarily determines issues of fitness to plead and criminal responsibility.

Table 4.3 – Diversion in the United States — avoiding convictions

What was done?	<p>This case study covers three sets of actions by the police or judicial system that lessened or removed the punishment applied to lower-risk, adult offenders. It includes:</p> <ul style="list-style-type: none"> • decisions by Assistant District Attorneys (ADAs) in Sussex County, Massachusetts, about whether or not to prosecute non-violent misdemeanour offences over the period from 2004 to 2018 • two separate instances of changes to judicial incentives in Harris County, Texas, that created sudden changes in the share of lower-risk offenders receiving diversions. The changes took place in 1994 and 2007. <p>Both the Sussex County and the two Harris County actions were analysed in depth in Agan, Doleac and Harvey (2021b) and Mueller-Smith and Schnepel (2021), respectively.</p>
Why was it done?	<p>In each of these instances, the variation in non-prosecutions and diversions was not part of an explicit strategy to re-balance criminal justice system objectives or improve outcomes. Rather, differences in sentencing between different judges and different time periods allowed a natural experiment for similar offenders, some of whom were convicted and some not.</p>
How did it work?	<p>In the Sussex County case, the beneficiaries of the non-prosecutions had no action taken in response to their offences. They would otherwise have received a criminal record, and potentially a conviction with a typical sentence of probation or a fine, and faced a court process with an average time to finalisation of half a year. The analysis of outcomes relied on the fact that some of the ADAs were systematically more lenient than others in choosing whether to pursue prosecutions. As the ADAs were randomly assigned to criminal cases, independent of the characteristics of the offence and offender, this could be used to evaluate the causal impacts on the offenders of avoiding prosecution.</p> <p>In 1994, some Harris County drug and property crime offenders that would previously have received a diversion conditional on completing a probation period instead received an immediate conviction with the same probation term. The decrease in diversions stemmed from a law reform that made them harder to enforce, leaving judges less inclined to award them. In 2007, an increase in the use of diversions spared some offenders from a prison sentence, and some had their cases dismissed outright rather than getting a probation term. This time, the increase followed an unexpected defeat of a vote to expand the county's prison capacity.</p>
Outcomes	<p>The non-prosecutions and diversions in Sussex and Harris Counties were tied to substantial decreases in recidivism. Across the three examples, recidivism rates for the beneficiaries were between 26 and 33 percentage points lower than for equivalent offenders who did not benefit. The impacts were greatest for first-time offenders, and were exclusive to them in the 2007 Harris County case.</p> <p>The 1994 and 2007 Harris County diversions were also linked to substantial and long-lasting improvements in employment and earnings outcomes. Diversion produced estimated 18 and 15 percentage point increases respectively in average quarterly employment rates over the following ten years, and just over \$US 85 000 and \$US 41 000 (both in 2018 dollars) respectively in increased earnings over the same period. Moreover, the improvements to employment and recidivism generally applied to the same individuals.</p>
Lessons	<p>Each of these cases demonstrated a clear avoided-recidivism benefit to diverting lower-risk, adult offenders from an immediate conviction. The fact that first-time offenders were most impacted by the change suggests that criminal records are a particularly important determinant of reoffending. Combined with the cost saving from avoiding a court proceeding, the findings from these cases offer a strong argument for offering diversions to lower-risk first-time offenders.</p>
Caveats	<p>While a formal policy change to expand diversions or otherwise remove upfront sanctions for certain offences may produce the sort of ex-post avoided-recidivism benefit observed in these cases, the overall community safety benefit could be offset by the reduced deterrence of lesser sanctions. Policymakers also need to weigh up the acceptability of reduced sanctions to victims and the community.</p>

Source: Agan, Doleac and Harvey (2021b); Mueller-Smith and Schnepel (2021).

Table 4.4 – Managing mental health needs as part of sentencing — Victoria’s Assessment and Referral Court

What was done?	<p>The Assessment and Referral Court (ARC) was established in Victoria in 2010, as part of the state’s Magistrates’ Courts. It offers an alternative, therapeutically-minded legal process for offenders with mental illness or cognitive or neurological impairments who have made an admission of guilt (Magistrates Court of Victoria 2018; Victoria Legal Aid 2019, p. 33). The process centres on up to 12 months of supervision and case management to help offenders better manage their conditions, with sentencing finalised at the conclusion of the period and accounting for the offender’s engagement (Magistrates’ Court of Victoria 2019, pp. 11–12). The ARC currently operates at six Magistrates’ Court locations (Magistrates’ Court of Victoria 2019, p. 2), and is being expanded to all 12 of the state’s ‘headquarter’ Magistrates’ Court locations as recommended by the <i>Royal Commission into Victoria’s Mental Health System</i> (Armytage et al. 2021, p. 347; Victoria State Government 2021).</p>
Why was it done?	<p>The ARC was one of several specialist courts and services established as part of an initiative of the Victorian Attorney General’s ‘Justice Statement 2’, issued in 2008, to implement a problem-solving framework in the Magistrates’ Court for offending by groups over-represented in the justice system (Armytage et al. 2021, p. 368).</p>
How did it work?	<p>The ARC essentially combines a sentencing deferral with a tailored support process for the offending individual. It is available to people who are charged with summary offences (and indictable offences capable of being heard summarily), on bail and meet the following eligibility criteria:</p> <ul style="list-style-type: none"> • a diagnosis of one or more of the following: a mental illness, intellectual disability, acquired brain injury, autism spectrum disorder and/or neurological impairment • the diagnosis causes a substantially reduced capacity in self-care, self-management, social interaction or communication, and • is likely to benefit from the ARC process (Armytage et al. 2021, p. 369). <p>Eligible individuals can be referred into the court at the point of the case’s bail or first hearing in the Magistrates’ Court, and must enter a guilty plea to proceed.</p> <p>The court’s process begins with a case manager creating an Individual Support Plan (ISP) for the individual based on a psychosocial needs assessment. The ISP identifies needs that may have contributed to the individual’s offending behaviour, and sets out goals to promote their recovery or stabilisation, including engaging with health and support services. If the ISP is accepted by the magistrate, the individual will then formally commence the plan and must appear before the Magistrate on a regular (usually monthly) basis to discuss their progress (Chesser and Rutter 2016; Magistrates Court of Victoria 2018). Hearings are conducted in an informal manner, with the participant, their lawyer and case manager, the magistrate and police prosecutor all seated at the same table. The process is designed to make the individual an active participant in their recovery, combining support with accountability (Magistrates’ Court of Victoria 2019, p. 12).</p> <p>Sentencing options at the conclusion of the period are as normal but include the option of a sanction-free discharge. The magistrate can transfer the matter to the mainstream court for sentencing at any time if the individual does not comply with the ISP (Magistrates Court of Victoria 2018).</p>
Outcomes	<p>A study of the ARC’s first two years of operation (Chesser and Smith 2016) found that just over three quarters of participating offenders completed the program. Among all participants, offending rates decreased from 87 per cent in the two years prior to the program to 58 per cent in the two years after the program, with those who completed the program much less likely to reoffend than those who did not complete it. These results followed similar findings on offending patterns before and after participation in South Australia’s (Lim and Day 2014) and Tasmania’s (Newitt and Stojcevski 2009) mental health courts.</p> <p>The Royal Commission into Victoria’s Mental Health System cited ‘support [for the ARC] from across the justice sector’ (Armytage et al. 2021, p. 372) in its recommendation to expand the ARC.</p>

Lessons	The existing evaluations of Australian mental health courts, combined with international evidence and anecdotal reports from stakeholders such as magistrates and legal aid organisations suggest that these courts are likely to offer superior community safety and offender wellbeing outcomes relative to ordinary court processes.
Caveats	Existing evaluations of Australian mental health courts have not used rigorous statistical methods, and hence there is no high-quality quantitative evidence of how these courts have influenced recidivism outcomes relative to standard court processes in Australia. The ARC and other mental health courts rely on the involvement of multiple external service providers. As previously noted by the Commission (PC 2020, p. 1036), a lack of capacity from providers would constrain the expansion of mental health courts to all who could benefit from them.

The next case study considers Aboriginal and Torres Strait Islander sentencing courts that provide community engagement and input in sentencing (table 4.5). These courts exist in some form in all jurisdictions other than Tasmania. As well as potentially leading to reduced imprisonment and reoffending rates, they are important because of the way they incorporate culturally-appropriate court mechanisms for Aboriginal and Torres Strait Islander offenders and communities more broadly.

Some elements of mental health courts and Aboriginal and Torres Strait Islander sentencing courts do not appear to be conceptually specific to offenders in these cohorts. Approaches incorporating these elements could conceivably prove beneficial to broader cohorts of offenders. For instance, in the Assessment and Referral Court, consistent, positive, informal and less-confrontational interactions with authority figures such as police and magistrates encourage offenders to engage in the court's process and commit to the necessary changes in behaviour (Magistrates' Court of Victoria 2019, p. 12). The court's processes also recognise that recovery takes time and requires a collaborative and multidisciplinary approach (Victoria Legal Aid 2019, p. 33). The Aboriginal and Torres Strait Islander sentencing court processes focus on building a dialogue between the magistrate, the offender, the victim and community Elders as a key element of a culturally-appropriate approach. The courts also use communication that prioritises offenders' (and victims') understanding of the court process and sentencing outcomes, including the use of Aboriginal English and interpreters where required. These mechanisms promote an understanding of the underlying drivers of the criminal behaviour (Cultural & Indigenous Research Centre Australia 2013, pp. 83–84, 90; Wallace 2010).

To illustrate how these approaches could be used more broadly, the fourth case study (table 4.6) describes a move in this direction in the United Kingdom, in which lower-level offenders were offered diversions conditional on completing programs designed to address the causes of their offending.

Restorative justice processes provide a voice for victims and can result in agreed pathways between offender and victim that avoid or reduce prison sentences. The fifth case study describes the use of restorative justice in New Zealand, which is regarded as one of the leading jurisdictions in the practice (table 4.7). By 2015-16, New Zealand was expecting to undertake 3500 restorative justice conferences each year (New Zealand Ministry of Justice 2016b), with scope for further expansion. Positive results for reduced reoffending achieved in the New Zealand model were in line with the outcomes from randomised control trials conducted in the United Kingdom (Strang et al. 2013). Although Australian jurisdictions also undertake restorative justice conferencing, the positive benefit–cost outcomes that have emerged from the New Zealand experience and from other studies suggest there may be a case for expanding these initiatives in Australia.

These case studies suggest that dealing with the specific issues facing the offender, their victims and communities often results in better outcomes than imposing a common process on all offenders. Although diversion can be intensive and costly, it will often be less expensive than incurring the high costs of prison sentences. Savings are possible in the long term, as these options tend to be associated with reduced reoffending, and can also lead to better health (Lange, Rehm and Popova 2011; Logan and Link 2019) and

employment outcomes for offenders (table 4.3). There is a risk of crime due to the diversion but the risk is managed by offering diversions to low-risk offenders and generally with specific assistance to deal with the offender's issues.

The US case studies also show that even relatively 'no strings attached' diversion strategies for first-time offenders can produce substantially lower rates of recidivism — though the benefits of these policies need to be weighed against community standards for responding to offences.



Finding 4.1

Given the high costs of imprisonment it is worth pursuing opportunities to divert low-risk offenders from prison sentences or convictions where this can be done without jeopardising community safety. Examples include:

- placing offenders into behaviour change programs or increasing the use of community orders
- where underlying mental illness or drug and alcohol problems are the key drivers of offending, diverting offenders into treatment with appropriate court and system supervision
- using Aboriginal and Torres Strait Islander sentencing courts that allow for community engagement and input into sentencing
- using restorative justice processes to provide a satisfactory outcome for victims and the community, reinforce to the offender the pain caused to the victim and potentially reduce the need for an extended prison term.

Effective diversion can also yield dividends in terms of reduced recidivism, with lower long-term costs to taxpayers and the community.

Table 4.5 – Aboriginal and Torres Strait Islander sentencing courts

<p>What was done?</p>	<p>Aboriginal and Torres Strait Islander sentencing courts allow Elders or Respected Persons to participate in the court process while still using Australian criminal laws and procedures when sentencing (Marchetti and Daly 2007).</p> <p>The courts have historically existed in all states and territories except for Tasmania, but have been abolished in some jurisdictions before sometimes being reinstated (ALRC 2017, p. 329). They currently operate as Circle Sentencing courts in New South Wales and the ACT, Koori courts in Victoria, Nunga courts in South Australia and Murri courts in Queensland, and are being reinstated in the Northern Territory as Community Courts (Northern Territory Department of the Attorney-General and Justice 2021). The courts operate at a number of Magistrates Court sites (more than ten in each of New South Wales, Victoria and Queensland), but stakeholders have voiced concerns that access remains an issue in regional areas (ALRC 2017, p. 329).</p>
<p>Why was it done?</p>	<p>These courts were introduced to reduce the over-representation of Aboriginal and Torres Strait Islander people in prison, promote increased involvement of Aboriginal and Torres Strait Islander offenders, victims and local communities in the court process, and help deal with offending in a culturally-appropriate way. They were also introduced to reduce offending rates overall and increase rehabilitation (Marchetti and Daly 2007).</p>
<p>How did it work?</p>	<p>There are broad similarities in these courts across Australian jurisdictions, but this case study focusses on Circle Sentencing in New South Wales.</p> <p>It is available to offenders who have been found guilty, are appearing at a Local Court and have been assessed as suitable by an Aboriginal Community Justice Group. Some more serious types of offences are ineligible (Yeong and Moore 2020, p. 4).</p> <p>Participants in a Circle Sentencing model typically include: a presiding magistrate, a project officer, four Elders (usually two men and two women), a police prosecutor, the offender and their</p>

	<p>legal representation, and the victim and their support person (Yeong and Moore 2020, p. 4). Circle Sentencing courts sit within the standard court system. They allow diversion from incarceration and impose restrictions on the offender (Wallace 2010). During proceedings the circle discusses the background of the offender, the offences and their effects on the victim, the underlying causes of the crime, and the extent and effects of similar crimes in the community. The circle also discusses what can be done to prevent the behaviour, and to heal the victim and the offender. The magistrate hands down the sentence based on recommendations and deliberations of the Elders (Wallace 2010).</p> <p>These courts encourage a more open and honest communication between the offender and the magistrate, and place greater reliance on Aboriginal and Torres Strait Islander knowledge in the sentencing process (Marchetti and Daly 2007).</p> <p>One of the most important features of the courts is the involvement of the Elders and the effect they have on the offender's behaviour and attitudes (Marchetti and Daly 2007). Many offenders state that the circle sentencing process is more difficult to face than the standard court. The realisation that the person's own community does not accept their offending, and is prepared to help address it, is the basis of the success of circle sentencing (Potas et al. 2003, p. 53).</p>
<p>Outcomes</p>	<p>Most evaluations before 2009 found that the goals of providing a culturally-appropriate process, increasing community participation and contributing to reconciliation were being met (Marchetti 2009). Supporting cultural identity can build confidence, helping offenders and the community feel proud of themselves and their Aboriginality. This in turn can reduce mental health and social issues that manifest through domestic violence, drug and alcohol abuse (Wallace 2010). The courts have also been found to decrease offender non-appearance rates (Morgan and Louis 2010, p. xiv), with anecdotal evidence that offenders are also more likely to adhere to Circle Sentencing court orders (such as participation in mental health treatments) than those imposed by magistrates in standard courts (Wallace 2010).</p> <p>A recent study (Yeong and Moore 2020, p. 12) found that Circle Sentencing courts in New South Wales were 9 percentage points less likely to impose prison sentences relative to standard courts in the state, equating to a halving of the standard court rate. The study controlled for many differences between offender groups, but cautioned that some of the measured difference may be due to a residual selection bias in the offenders assessed as suitable for Circle Sentencing. Earlier evaluations of Koori courts in Victoria (Sentencing Advisory Council (Victoria) 2010) and Murri courts in Queensland (Morgan and Louis 2010) did not find the courts imposed custodial sentences less frequently than standard courts, while in both cases the courts were less likely to impose fines.</p> <p>The Circle Sentencing study also found the courts to be associated with a 3.9 percentage point decline (a 10 per cent relative decrease) in the rate of 12-month reoffending among offenders who did not receive a prison sentence (Yeong and Moore 2020). Earlier studies had found little evidence of an impact on reoffending in either direction (Cultural & Indigenous Research Centre Australia 2013; Fitzgerald 2008; Morgan and Louis 2010). However, it has been argued that this partly reflected a deficit of programs to address issues such as mental illness and substance abuse, which would ideally be integrated into the courts' sentencing (ALRC 2017, pp. 331–332).</p> <p>A recent benefit-cost analysis of the ACT's Galambany Court (Daly, Barrett and Williams 2020) estimated that the court provided an overall net benefit of about \$17 000–18 000 (2017 dollars in net present value terms) per participating offender (appendix C), including direct cost savings from assumed averted prison sentences and reduced reoffending, increased employment for offenders, and better health outcomes for offenders and their families.</p>
<p>Lessons</p>	<p>Aboriginal and Torres Strait Islander sentencing courts involve a dialogue between the legal system and Aboriginal and Torres Strait Islander communities that can be mutually beneficial. They promote a more holistic understanding of offending behaviours and what needs to change to reduce them. They respect and can help to strengthen Aboriginal and Torres Strait Islander communities and by doing so can reduce offending. There is emerging evidence to suggest that these courts can reduce recidivism among participating offenders, while the sorts of prosocial influences for Aboriginal and Torres Strait Islander communities described above may also contribute to reducing offending in the long term (Cultural & Indigenous Research Centre Australia 2013, p. 203).</p> <p>Some Aboriginal and Torres Strait Islander sentencing courts may achieve these outcomes while diverting some offenders from prison, offering a significant fiscal saving.</p>

Caveats	As with mental health courts, and as noted above, gaps in the availability of appropriate health and social services to address criminogenic issues may constrain the effectiveness of more problem-solving approaches employed by Aboriginal and Torres Strait Islander sentencing courts. This can include a lack of cultural safety in services delivered by non-Indigenous providers (ALRC 2017; Marchetti and Daly 2007; Wallace 2010, 2014).
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Table 4.6 – Conditional diversions in the United Kingdom

What was done?	<i>Operation Checkpoint</i> is a police-led scheme in County Durham and Darlington in the United Kingdom that offers conditional, support-based diversions to a range of lower-level offenders graded as being at low risk (unlikely to reoffend) or moderate risk (likely to reoffend but not for a serious offence) of offending within the next two years (Farinu and Watt 2021, Durham Police and Crime Commissioner's Office, pers. comm., 26 August 2021). The scheme began in 2015.
Why was it done?	The program was motivated by a belief that existing responses to low-level offending were ineffective at addressing 'cycles' of reoffending by some cohorts (Halliday 2020).
How did it work?	The diversions are offered to offenders in exchange for their completing a four-month, individually-tailored program designed to address the causes of their offending, and sometimes a restorative justice component. The program's focus on addressing contributing factors to the offending contrasts with other diversion options in the United Kingdom which do not require the same degree of engagement from the offender. Successful completion of the program results in no conviction being recorded (Durham Constabulary nd; Farinu and Watt 2021).
Outcomes	A randomised controlled trial (Weir et al. 2021) found evidence that <i>Operation Checkpoint</i> reduced reoffending rates relative to the standard criminal justice process in County Durham. The trial included offenders graded as moderate risk as described above, with the sample having almost 16 prior arrests on average. The majority of the offenders in the control group received a police-administered sanction such as a fine or warning without proceeding to court (with a small minority having no action taken at all), while 40 per cent were subject to a court proceeding (Durham Police and Crime Commissioner's Office, pers. comm., 26 August 2021). Reoffending rates among those that participated in Checkpoint were 10 percentage points lower over the next two years for those accessing the scheme compared to the control group (Weir et al. 2021, pp. 15–16). Theft offenders exhibited the greatest relative decrease, while drunk and disorderly offenders showed the least benefit of the offender categories, reoffending at the same rate as the control group (Durham Police and Crime Commissioner's Office, pers. comm., 14 September 2021). ^a
Lessons	The results of the randomised controlled trial suggest that support-based diversions have some scope to reduce reoffending even among offenders who have a criminal history, and who do not have as high a level of mental illness or impairment as those eligible for mental health courts. More specifically, the fact that a large fraction of the control group did not face a court sanction suggests that Checkpoint's tailored support or conditional diversion elements — and not just its avoidance of a court process and likely resulting conviction — played some role in its success. An implication is that diversions with these elements may, in the right circumstances, help to reduce reoffending beyond the impacts of 'no strings attached' style diversions. Further research to tease out the impacts of these different mechanisms would be valuable.
Caveats	As with the case study of the diversions in table 4.3, large-scale expansions of diversions may lead to reduced deterrence of offending, and would need to be weighed against community standards around punishment.

a. See appendix C for detailed sources and calculations.

Table 4.7 – Restorative justice in New Zealand

What was done?	In the New Zealand model, a restorative justice conference is an informal, facilitated meeting between a victim, offender, support people and any other approved people, such as community representatives or interpreters (New Zealand Ministry of Justice 2021). A trained facilitator ensures safety and support for those present and the facilitator also keeps the discussion on track. Restorative justice takes place before sentencing and the judge considers any agreements made at the time of sentencing.
Why was it done?	Restorative justice was first introduced in New Zealand in 1989 as the Family Group Conference for youth offenders. Following the success of this model, it was extended to adult offenders (Pfander 2020).
How did it work?	Restorative justice can involve a range of institutional forms — New Zealand's system places restorative justice under the supervision of the mainstream justice system, maintaining overall control of consistency and sentencing; this compares to the model adopted by the US State of Vermont, that allows more freedom for its Community Justice Centres to innovate and develop local solutions (Pfander 2020). The New Zealand approach requires attendance by victims for the conference to proceed (victims must be willing participants) and this engagement appears to be a strength of the system — the Ministry of Justice reported that in 2018, 86 per cent of victims were satisfied with their conferencing experience and 84 per cent would recommend the process to others (Gravitas Research and Strategy 2018). Each conference costs approximately \$NZ2500 (New Zealand Ministry of Justice 2016b).
Outcomes	The New Zealand Ministry of Justice suggested that for offenders participating in a conference, the reoffending rate compared to a matched sample was 15 per cent lower over 12 months and 7.5 per cent lower over three years following the conference (New Zealand Ministry of Justice 2016a). These results are in line with other studies showing a reduction of about 15 per cent (Strang et al. 2013). The New Zealand experience was that the process was more effective in reducing non-violent offences than violent offences. The process did not reduce driving offences causing death or injury. Victims of crime appeared to experience lower levels of post-traumatic stress. Offenders were also 10 per cent less likely to commit a high-level offence in the subsequent three years and were 29 per cent less likely to be imprisoned (New Zealand Ministry of Justice 2016a). Comparisons were with a matched sample of offenders but it is still possible that the group of offenders willing to participate in conferencing was inherently less likely to reoffend. Based on the annual cost of imprisonment and an assumed 6-month prison term for a low risk offender, the average net saving would be in the order of \$NZ400 per conference. ^a
Lessons	Restorative justice can have benefits for offenders, victims and the system as a whole in terms of reduced reoffending. Its effectiveness depends on the model used and is more effective for some offences than others.
Caveats	Not all justice systems have experienced positive results with restorative justice. Larsen (2014) found that reoffending outcomes from restorative justice were mixed and dogged by methodological issues. Nonetheless, she concluded that 'there is a growing body of evidence that supports the assertion that restorative justice can reduce reoffending' (Larsen 2014, p. 28), with the caveat that more attention needed to be paid to the results of rigorous studies. Larsen also pointed to the important impacts of restorative justice beyond reoffending, on individuals, communities and society, as providing an additional response to offending beyond the standard court processes. However, given the mixed results of different arrangements, careful evaluation should be part of any restorative justice implementation to monitor its ongoing effectiveness.

a. See appendix C for detailed sources and calculations.

4.2 Home detention, electronic monitoring and early parole

Pressures on prison populations and technological advances in monitoring have led to increased exploration of detention at home both for remand and sentenced prisoners. Electronic monitoring can form part of these arrangements to ensure offenders adhere to conditions of release.

Home detention and electronic monitoring are not appropriate for more serious offenders but they may offer a workable alternative for other types of offenders, particularly as monitoring technology improves. Decisions on home detention need to take account of the full circumstances of the offender, including the impact on the offender's family, which may be positive or negative.

A meta-analysis undertaken by Bouchard and Wong (2018) suggested that home detention can improve adult reintegration and reduce reoffending. Those authors found a sizeable, statistically significant reduction in recidivism in their analysis, based on data from 11 studies of home detention programs in the United States, Canada, England, Argentina, France and Sweden.

Electronic monitoring can add to the effectiveness of home detention, as demonstrated in a further meta-analysis of studies from the United States, Canada and Europe (Belur et al. 2020). That study also demonstrated the need for adequate staffing and technology, coordination between agencies, a clear vision and careful planning and good communication between agencies and the offender, their family and their employer.

Home detention involves a balance of risks — home detention is not as secure as prison and some offenders will break their detention to commit crimes. This is true even where home detention is augmented by electronic monitoring — electronic monitoring does not generally allow an immediate response. However, home detention (on its own and in tandem with electronic monitoring) can reduce the costs of detention and allow offenders to maintain family and work connections. It can potentially maintain offenders' connections to society and reduce reoffending (in a similar way to community corrections orders, discussed in chapter 3).

The effectiveness of the measures discussed in the case studies in this section depends on the alternative sentencing, detention and release options that are already available — for example, home detention may not improve outcomes as significantly in jurisdictions that start from a position with highly-developed community correction arrangements or other similar orders.

Two Australian case studies are provided: the increased use of home detention and electronic monitoring in South Australia from 2016 onwards (table 4.8) and the introduction of court-ordered parole in Queensland in 2006 (table 4.9).

Although the Queensland example does not appear to have been evaluated fully, Queensland Corrective Services has released its analysis of the high-level results of this process (QCS 2013) and this material has been used to prepare the case study in table 4.9.

Both the South Australian and Queensland examples significantly reduced the total numbers of offenders held in prisons while other outcomes appeared to be at least comparable to those achieved from prison sentences.

In the South Australian example, significant cost savings were achieved and offenders had lower rates of recidivism than a matched group who completed their sentences in prison. In the Queensland example, court-ordered parole appears to have been a major factor producing a declining trend in short-term prisoners between 2006 and 2011, in contrast to trends prior to 2006.



Finding 4.2

Alternatives to prison — such as home detention and early parole under active supervision — are worth considering for some low-risk prisoners. Advances in technology are improving the effectiveness of measures such as electronic monitoring, allowing improved supervision of offenders in the community. These options can result in better long-term outcomes by allowing offenders to maintain positive connections with family and work and reducing recidivism.

Table 4.8 – Home detention and electronic monitoring in South Australia

What was done?	In 2016, South Australia expanded arrangements for home detention and funded a support service for those on home detention (Government of South Australia 2016, p. 35).
Why was it done?	The changes were introduced as part of a strategy to reduce reoffending by 10 per cent by 2020.
How did it work?	<p>Home detention involves offenders serving a period confined to their residence and observing set conditions, such as not using drugs or consuming alcohol. Prisoners are subject to electronic monitoring and supervision by Department of Correctional Services staff. Approval for offenders to leave their residence can be granted to allow offenders to work, study, attend medical appointments and a range of other activities (Cale et al. 2019, p. 14). Home detention allows aspects of offenders' lives to continue or resume with less disruption — family relationships, employment and continuity of health care may help offenders avoid reoffending. There are two types of home detention. Release-ordered home detention can be agreed by the Department of Correctional Services. Prior to 2016, this form of release could only be provided if an offender had completed 50 per cent of their sentence and had less than 12 months left before their parole eligibility date. These restrictions were removed in 2016. The 2016 changes also introduced court-ordered home detention, which is generally available only for less serious offences (Cale et al. 2019, p. 15).</p> <p>The Home Detention Integrated Services Program was created to provide wraparound support for offenders on home detention. The program provides support to access accommodation, education and training, employment, mental health, alcohol and drugs treatment, help with family and community connections and support with independent living skills (such as budgeting) (Government of South Australia 2016, p. 36). Support is provided at three levels: settlement, intermediate and intensive, depending on offender need.</p>
Outcomes	<p>A 2019 evaluation found that prisoners who served release-ordered home detention were significantly less likely to return to custody compared to their matched counterparts who were discharged from prison (20.0 per cent compared to 34.3 per cent) (Cale et al. 2019, p. 9). Offenders on court-ordered home detention had lower risk profiles and none of these offenders returned to custody within the study period (Cale et al. 2019, p. 46). Prisoners serving either release-ordered home detention or court-ordered home detention who received a support package were significantly less likely to return to custody by October 2018 than a matched sample of prisoners who were discharged from prison (Cale et al. 2019, p. 9).</p> <p>Program costs (including contracted costs for service provision under the Home Detention Integrated Services Program) were aggregated across each home detention order type leading to an indicative average home detention cost per month of around \$1 808, which on an annualised basis represented less than 22 per cent of the cost of prison in South Australia (Cale et al. 2019, p. 11).</p> <p>By avoiding putting offenders in prison in favour of less-expensive home detention, savings averaged approximately \$34 000 per participant.^a The reduction in returns to custody yielded additional benefits of \$20 000 per participant (Cale et al. 2019, p. 77).</p>
Lessons	Home detention for lower-risk offenders appears to offer significantly lower cost than prison-based detention and a reduced likelihood of returning to custody compared to similar offenders who serve prison time.

Caveats	Home detention will only be a reasonable option for lower-risk offenders, although some of those released to home detention were originally sentenced for violent crimes and had good outcomes from home detention.
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a. Commission estimate based on costs identified in the evaluation. See appendix C for detailed sources and calculations.

Table 4.9 – Court-ordered parole in Queensland

What was done?	Queensland introduced court-ordered parole in 2006 (QCS 2013). The scheme covers offenders who have been sentenced to short periods of imprisonment for non-violent and non-sexual offences.
Why was it done?	The aim of the changes was to address the over-representation of short-sentenced, low-risk prisoners in Queensland Corrective Services (QCS) facilities (QCS 2013). These prisoners were responsible for a high degree of turnover in their prison population.
How did it work?	<p>Court-ordered parole replaced other early release schemes in Queensland and allowed supervision of offenders on release. QCS undertook a program of work from 2010 to further improve its management of offenders in the community with new case management tools and a more targeted approach to managing offenders according to their risk of reoffending (QCS 2013, p. 2).</p> <p>About 40 per cent of those who received court-ordered parole were paroled straight from court (QCS 2013, p. 1). Between 2008 and 2012, about 30 per cent of sentenced offenders were on court-ordered parole at any time (QCS 2013, p. 4).</p> <p>Prisoners are assessed for need (such as alcohol or drug treatment) and risk of reoffending while on parole. The most common reasons for court-ordered parole cancellation were that a further offence was committed or an assessment was made that there was an unacceptable heightened risk of reoffending, due to a change in the offender's circumstances (QCS 2013, p. 14).</p>
Outcomes	<p>Prior to the introduction of court-ordered parole, prisoner numbers in Queensland had been growing sharply. After its introduction, prisoner numbers were stable until 2012 when growth resumed (QCS 2013, p. 5). There was a declining trend in the number of short-term prisoners (serving less than 3 years) between 2006 and 2011. Over 70 per cent of offenders successfully completed court-ordered parole.</p> <p>The introduction of court-ordered parole was associated with a reduction in 2009 of 435 prisoners relative to trend growth. Annual net savings were estimated to be \$47 816 (2008-09 dollars) for each prisoner avoided. At any given time during the period 2009–2012, 3000 offenders were on court-ordered parole of which an estimated 1200 would have otherwise been on an alternative supervised order. The net saving is the reduction in prison costs from reduced prisoner numbers, less additional supervision costs for the remaining 1800 on court-ordered parole.^a</p> <p>The impact of court-ordered parole on recidivism has not been evaluated although the recidivism rate in general for intensive corrections orders is substantially lower than the rate of recidivism from prison (Wang and Poynton 2017). Against this potential improvement is the increased opportunity for crime while prisoners are on court-ordered parole. No figures are available on the net effect on crime.</p>
Lessons	Significant cost savings can be achieved if offenders can be placed in alternatives to short-term prison sentences. Offenders in the Queensland program had a relatively high level of completion and active supervision and risk assessment helped manage the risks of reoffending while on parole.
Caveats	This program has not been the subject of a full external evaluation. Thirty per cent of court-ordered parole orders were not completed and although many of these would have been based on risk of offending, rather than actual offending, others would have involved crimes committed while on parole. These need to be considered against reduced reoffending for those on court-ordered parole, ideally as part of a full evaluation of the program.

a. See appendix C for detailed calculations and sources.

4.3 Treatment in prison

Given the high proportion of prisoners with mental illness or alcohol and drug issues, there is little doubt that effective treatment while in prison is important. Survey data from the Australian Institute of Health and Welfare (2019b, p. 120) indicate that Australian prisoners have access to health care and programs to deal with mental illness and drug and alcohol issues. Prison can also operate as a circuit breaker from the pressures facing offenders prior to their imprisonment. In 2018, 39 per cent of prisoners reported improved mental health on their release from prison and 54 per cent reported improved physical health (AIHW 2019b, pp. 33, 65).

Benefit–cost evaluations of treatment undertaken in prisons are not generally publicly available and the Commission has not been able to locate program evaluations of treatment in prison in Australia. However, based on the limited information available, there appears to be scope to go further with treatment options. For example, despite more than half of prisoners reporting consuming alcohol at high-risk levels before prison, in 2018 only 8 per cent of prisoners on release reported accessing an alcohol treatment program while in prison (AIHW 2019b, p. 105). Psychologists, psychiatrists, alcohol and other drug treatment professionals, and mental health nurses or teams, combined, accounted for 16 per cent of all clinic visits recorded during the two-week data collection period, which may also be less than expected given the prevalence of mental illness and substance abuse issues among prisoners (AIHW 2019b, p. 132).

The scope for well-designed interventions to improve outcomes is illustrated by two meta-analyses from the Washington State Institute for Public Policy.

The first deals with inpatient or intensive outpatient drug treatment during incarceration (table 4.10).

The second examines cognitive behaviour therapy for individuals classified as medium or high risk of reoffending (table 4.11). Expansion of similar treatments in Australia should be accompanied by careful evaluation to ensure benefits exceed the additional costs.

These studies draw mainly on United States experience and may not be directly transferable to Australian prisons. The benefits can also be expected to be lower to the extent that similar programs are already in place in some Australian jurisdictions. However, the US-based analyses suggest there may be benefits to be achieved by adopting or expanding these types of treatment options in prisons.

Table 4.10 – Inpatient or intensive outpatient drug treatment during incarceration

What was done?	The Washington State legislature requested the Washington State Institute for Public Policy (WSIPP) to assess the effectiveness of intensive drug treatment for prisoners.
Why was it done?	The analysis is part of an ongoing program of evaluation and benefit–cost assessment undertaken by WSIPP.
How did it work?	WSIPP undertook a meta-analysis of intensive measures to address drug addiction during offenders' periods of imprisonment. The analysis drew on external studies and administrative data from Washington State (WSIPP 2019c). The study assessed the marginal benefit of the programs relative to non-treatment. The analysis focused on programs delivered to incarcerated individuals who have substance abuse problems (WSIPP 2019b). Treatment types included cognitive behavioural therapy, psychoeducation or a combination of approaches. The treatment period ranged from 1–18 months with treatment for up to five hours per day. The study drew on observations for nearly 2000 individuals.
Outcomes	The study found average total benefits per participant of \$US13 762 (2018 dollars) and average costs per participant of \$US1358 (2018 dollars) (WSIPP 2019b). This represented a benefit–cost ratio of 10:1. Net life-cycle savings to taxpayers through reduced offending were estimated to be \$US3840 (2018 dollars) and the net benefits accruing to victims and society more

What was done?	The Washington State legislature requested the Washington State Institute for Public Policy (WSIPP) to assess the effectiveness of intensive drug treatment for prisoners.
	generally were estimated to be \$US9921 (2018 dollars). WSIPP's assessment was there was a 98 per cent probability that program benefits exceeded program costs (WSIPP 2019b).
Lessons	Drug treatment is not available to all those who might need it in Australian prisons (Alcohol and Drug Foundation 2019). Based on WSIPP's analysis, Australian jurisdictions should explore expanding drug treatment programs.
Caveats	The study drew on United States data and programs and the results may not be directly transferable to Australian prisons. WSIPP applied a common methodology to policy initiatives and relied on a range of assumptions to undertake this process. WSIPP tested the sensitivity of its estimates to different values of these assumptions. Nevertheless, as with all such exercises, these assumptions partly determined the benefit–cost figures calculated.

Table 4.11 – Cognitive behaviour therapy for individuals classified as medium- or high-risk prisoners

What was done?	The Washington State legislature requested the Washington State Institute for Public Policy (WSIPP) to assess the effectiveness of cognitive behaviour therapy for medium- to high-risk prisoners. WSIPP notes that 'cognitive behaviour therapy emphasises individual accountability and teaches participants that cognitive deficits, distortions, and flawed thinking processes cause criminal behaviour' (WSIPP 2019a).
Why was it done?	The analysis was part of a program of evaluation and benefit–cost assessment undertaken by WSIPP.
How did it work?	WSIPP undertook a meta-analysis to assess the effectiveness of intensive cognitive behaviour therapy measures for medium- to high-risk offenders. WSIPP's analysis drew on external studies and administrative data from Washington State (WSIPP 2019c). The study assessed the marginal benefit of the programs relative to non-treatment. The cognitive behavioural therapy programs evaluated by WSIPP included various components, such as cognitive restructuring, behavioural activation, emotion regulation, communication skills, and problem-solving (WSIPP 2019a). Treatment was goal-oriented and generally of limited duration. For this broad grouping of studies, a variety of recognised programs were delivered to adults in either an institutional or a community setting for an average of 2.5 months. Studies evaluating cognitive behaviour therapy delivered specifically as sex offender treatment were excluded from the analysis.
Outcomes	The study found average total benefits per participant of \$US9270 (2018 dollars) and average costs per participant of \$US1470 (2018 dollars) (WSIPP 2019a). This represented a benefit–cost ratio of 6:1. Net life-cycle savings to taxpayers through reduced offending were estimated to be \$US2866 (2018 dollars) and net benefits accruing to victims and society generally were estimated to be \$US6424 (2018 dollars). WSIPP's assessment was that there was a 97 per cent probability that program benefits exceeded program costs (WSIPP 2019a).
Lessons	Cognitive behaviour therapy is widely used in prison programs in Australia. However, not all prisoners access programs in prison despite 40 per cent of prison entrants having at some stage been diagnosed with a mental illness (AIHW 2019b). About 20 per cent of prison entrants were referred to prison mental health services. WSIPP's analysis suggests that Australian jurisdictions should consider expanding and evaluating the provision of programs based on cognitive behaviour therapy for medium- to high-risk prisoners.
Caveats	The study drew on United States data and programs and the results may not be directly transferable to Australian prisons. WSIPP applied a common methodology to policy initiatives and relied on a range of assumptions to undertake this process. WSIPP tested the sensitivity of its estimates to different values of these assumptions. Nevertheless, as with all such exercises, these assumptions partly determined the benefit–cost figures calculated.

4.4 Effective case management for rehabilitation and release

Similar broad approaches to help reintegrate prisoners into the community have been applied in most countries and in Australian jurisdictions (Tissera 2019).

Throughcare was first introduced in South Australia in the late 1990s and versions of this system are operational in all states and territories to different degrees (Baldry 2007). Throughcare refers to the process of rehabilitation and reintegration aimed at helping inmates overcome a range of complex needs and return to society (Baldry 2007; Griffiths, Zmudzki and Bates 2017; QPC 2019a, pp. 325–326). A central principle is that this process should be coordinated to ensure offenders' needs are identified and the right supports are provided. One successful pilot program was undertaken and evaluated in the ACT between 2013 and 2016 (table 4.12). The program was extended for 4 years in the 2016-17 ACT Budget (ACT Government 2016, p. 78, 2017, pp. 1, 22).

Table 4.12 – The ACT extended throughcare pilot program

What was done?	The ACT extended throughcare program commenced in 2013 and aimed to reduce reoffending, improve community integration after release and improve client outcomes (Griffiths, Zmudzki and Bates 2017). The program offered coordinated and continuous support for offenders in prison and continuing for 12 months after their release.
Why was it done?	Extension of prisoner support beyond the completion of their custodial sentence was announced in the 2012-13 ACT Budget with the aim of reducing the risk of reoffending (ACT Treasury 2012, p. 123).
How did it work?	The program provided support with accommodation, health care, basic needs, income and community connections. The program was voluntary but there was a high level of take-up. The program is similar to those offered in some other jurisdictions except for the period over which support is offered (12 months is longer than other programs) and the inclusion of ex-detainees without ongoing supervision orders.
Outcomes	<p>Thirty-nine per cent of clients returned to custody within the three year period of the study, a reduction of 23 per centage points on the level of returns that could have been expected based on a comparison group (Griffiths, Zmudzki and Bates 2017, p. 3). Key elements of the program appeared to be housing support, mental health counselling, physical health supports and drug and alcohol rehabilitation. These supports were provided by community organisations and funded by the ACT Government.</p> <p>The evaluation noted that:</p> <p>The majority of interview participants felt that the program had helped to decrease their likelihood of reoffending. Clients attributed this success to material support from the program, as well as non-material 'moral' support and encouragement. (Griffiths, Zmudzki and Bates 2017, p. 4)</p> <p>It also found that the program had a particularly positive outcome for Aboriginal and Torres Islander women, with this target group gaining high levels of program access and achieving relatively lower rates of return to custody in comparison to national and ACT reported figures (Griffiths, Zmudzki and Bates 2017, p. 4).</p> <p>The cost of the program was estimated to be \$4700 per participant (Griffiths, Zmudzki and Bates 2017, p. 4). The reduction in returns to custody translated to a total saving of \$19 034 per program participant, or \$14 334 in net savings.^a The program was extended for a further four years in the 2016-17 ACT Budget (ACT Government 2016, p. 78).</p>
Lessons	The pilot demonstrated that significant reductions in recidivism are possible through well-organised support for offenders prior to and on release. These reductions could be achieved at relatively low cost compared to the expenses incurred for offenders who returned to prison.

What was done?	The ACT extended throughcare program commenced in 2013 and aimed to reduce reoffending, improve community integration after release and improve client outcomes (Griffiths, Zmudzki and Bates 2017). The program offered coordinated and continuous support for offenders in prison and continuing for 12 months after their release.
Caveats	The ACT has a relatively small number of offenders and the challenges of extended throughcare may be more significant in larger jurisdictions.

a. Commission estimate based on the evaluation figures for reduced reoffending. Detailed calculations and data sources can be found in appendix C.

The ACT Government's extended throughcare pilot demonstrated that providing prisoners with housing support, mental health counselling, physical health supports and drug and alcohol rehabilitation for 12 months after release significantly reduced their likelihood of reoffending. The costs of providing these supports were relatively small compared to the cost savings from reduced imprisonment due to reoffending. Although other jurisdictions have some level of support for prisoners leaving custody, the ACT example demonstrates benefits from a longer period of support and from well-designed assistance.



Finding 4.3

Well-designed support and treatment in prison and on release can reduce recidivism, reducing pressures on the system over time and producing better outcomes for offenders and the community.

- Effective treatment of underlying mental illness, and alcohol and drug issues, improves outcomes during and after prison.
- Support for basic needs such as housing, employment and living skills can prevent offenders returning to crime on release.

4.5 Clear system objectives and administrative guidance

Criminal justice systems need to balance the sometimes-competing objectives of punishment, deterrence, incapacitation and rehabilitation (chapter 1). In some European countries, including Germany and the Netherlands, rehabilitation has been adopted as the sole or predominant goal of prison and community corrections arrangements (Subramanian and Shames 2013). In countries based on the English justice system — notably Australia, the United Kingdom, the United States and New Zealand — punishment remains an expectation in the treatment of offenders in prisons. Achieving successful rehabilitation in such environments is more challenging.

Two case studies are provided to illustrate some key systemic elements that are needed to achieve consistent progress towards reducing reoffending through improved rehabilitation and reintegration:

- high-level objectives that are shared throughout the system — this is particularly important given the challenges of achieving rehabilitation outcomes in tandem with punishment and community safety objectives
- measurement of outcomes, accessible data and an evaluation culture that allows the system to build on successes and stop undertaking activities that do not work.

The first case study is the New Zealand program to reduce recidivism by 25 per cent between 2012 and 2017 (table 4.13). This program has not been formally evaluated but the key features of the program and its outcomes are evident. The program had support from the highest levels of government and was

implemented energetically by the New Zealand Department of Corrections and the prison system. That Department also had key elements of a learning organisation in place, including consistent outcome measurement and evaluation. These factors provided a strong initial base. Early outcomes were strong but the eventual reduction in recidivism was limited to 4.5 per cent, with the New Zealand Government pointing to a prisoner cohort that became more concentrated towards serious offenders (Radio New Zealand 2017).

The second case study is the South Australian program to reduce reoffending by a more modest target of 10 per cent between 2016 and 2020 (table 4.14). So far, the South Australian program is on track to achieve its target. The case study is an example of using a high-level government commitment to mobilise resources in the corrections system. An annual report is provided of progress against the target and the initiatives being taken. This program has not yet been formally evaluated but progress to date appears encouraging and in line with the target.

Table 4.13 – Targets for reducing recidivism – New Zealand

What was done?	In 2012 the New Zealand Government made a commitment to reduce recidivism by 25 per cent by 2017 (New Zealand Public Service Commission 2021). Recidivism was measured as the number of sentenced offenders released from either prison or a community sentence that were reconvicted within 12 months <u>and</u> received a prison or community sentence (Johnston 2014). The New Zealand Government also targeted a 2 per cent reduction in violent crime and a 25 per cent reduction in youth offending.
Why was it done?	The recidivism target was one of the New Zealand Government's Better Public Service targets, tackling difficult issues like reducing crime, reducing long-term welfare dependency and reducing educational underachievement (Key 2021).
How did it work?	<p>The target was embedded in the Department of Corrections statement of intent. Funding was increased for programs within the prison system and SERCO Group PLC was contracted to run a new private prison with financial incentives to meet the recidivism target. Other specific measures included:</p> <ul style="list-style-type: none"> • preparing offenders for employment, expanding rehabilitation programs, tackling alcohol and other drug abuse, and strengthening reintegration services • increasing program delivery to short-serving and community-sentenced offenders, including introducing an opt-out process to enrol all new short-serving prisoners onto alcohol and other drug and family violence programs. It was estimated that up to 80 percent of offenders had an alcohol or other drug dependence and up to 60 percent had family violence issues • better sequencing of rehabilitation programs to increase effectiveness • providing refresher training for probation officers in 'brief interventions' — evidence-based ways to intervene effectively with offenders to get them to consider the impact of their actions • getting better advice back to court concerning offenders' risk, needs and potential responsivity issues • providing work and living skills to more offenders (Lewis, Consedine and Hickey 2015).
Outcomes	<p>The 25 per cent target was always recognised as ambitious (Lewis, Consedine and Hickey 2015). A 12.5 percent reduction in the reoffending rate was achieved by 2014 but this was not sustained. Over the full period to 2017 the reduction in the rate of reoffending was 4.5 per cent (Radio New Zealand 2017). However, there was also a reduction in the number of reoffenders over the target period. In 2017, the New Zealand Government announced a new target of a reduction in the number of serious crime victims by 10 000 by 2021.</p> <p>Spending on custodial services rose by 18 per cent between 2011-12 and 2016-17 (New Zealand Department of Corrections 2012, 2017). Spending on rehabilitation and reintegration also increased by 18 per cent. The number of prisoners increased by 16 per cent.</p> <p>The recidivism rate is the outcome of many influences and these can affect the achievement of a target. The New Zealand Minister for Corrections argued that the prison system was dealing with more complex offenders in the latter part of the target period (New Zealand Herald 2016). The target was announced at a time when the recidivism rate was actually falling in New Zealand, although this may not have been evident at the time. Consolidating and furthering this</p>

	reduction appears a worthwhile achievement and the announcement of the target appears to have driven significant effort in the Department of Corrections to rehabilitate offenders.
Lessons	It is possible to change system outcomes through consistent goals, messaging, incentives and specific actions. These actions need to lead to behaviour change in the prison system and sustained innovation if large changes are to be maintained. Even with these elements in place, achieving long-term change can be challenging.
Caveats	There does not appear to have been any thorough evaluation of the target or the influences that led to New Zealand falling short of its achievement. Because recidivism is the result of a range of complex influences, a reoffending target is subject to significant uncertainty.

Table 4.14 – South Australia’s strategy to reduce recidivism

What was done?	In 2016, the Government of South Australia announced a strategy to reduce reoffending by 10 per cent by 2020 (Government of South Australia 2016). The strategy has included additional investment, new programs and initiatives for offenders (including home detention policies described in table 4.8), with a focus on appropriate governance, monitoring and evaluation for all initiatives.
Why was it done?	The strategy identified the need to break the cycle of reoffending to achieve benefits including safer communities, fewer victims and cost savings (Government of South Australia 2016, p. 6).
How did it work?	<p>The strategy aimed to reduce reoffending (measured by those released from prison who returned to prison or a new correctional sanction within two years) from 46 per cent to 41.4 per cent by 2020. The strategy comprised six elements (Government of South Australia 2016, p. 8):</p> <ul style="list-style-type: none"> • successful return to community, involving individualised case management plans for all offenders from entry to the system on remand to six months post release • employment and industry, with partnerships between the Department of Correctional Services (SA DCS) and businesses to improve employment outcomes including by investigating the feasibility of joint ventures with business to produce new products and increasing in-prison training opportunities • prioritising cohorts where there is the greatest return on investment and prisoners are responsive and ready to change, especially women prisoners on short sentences, prisoners on remand and offenders in community corrections • considering the specific cultural needs of Aboriginal and Torres Strait Islander offenders when implementing all aspects of the strategy • SA DCS agency and staff response, ensuring that the reoffending target is supported by the department’s culture, resources, capabilities and structures • partnerships and collaboration with other government agencies and public and private sector partners to ensure successful delivery of the strategy. <p>The strategy noted the Government was ‘committed to ensuring that SA DCS training, resourcing, programs and policies support positive interactions between staff and offenders’ (Government of South Australia 2016, p. 12).</p> <p>The strategy as a whole is continuing to evolve as the South Australian Government announces new elements (Government of South Australia 2020). Real net operating expenditure on prisons rose by 13 per cent between 2015-16 and 2019-20 and by 14 per cent in per-prisoner terms (South Australian Department of Correctional Services 2013, 2013).</p>
Outcomes	Achievement of the strategy’s target recidivism rate of 41.4 per cent will not be known until 2023. However, in 2019-20 recidivism in South Australia was 42.3 per cent, and there has been a decline in this measure in most years since 2015-16 (SCRGSP 2021b). Over this period, recidivism has risen at a national level, and no other state or territory has achieved a decline as large as South Australia.

	If the current trend continues, South Australia is well placed to achieve its target recidivism rate of 41.4 per cent (or will come very close to it), while recidivism rates remain flat or even increase in other states and territories.
Lessons	Progress against the South Australian strategy suggests that a concerted effort can lead to reductions in recidivism when it is supported at the highest levels of government and successful in changing attitudes and behaviours throughout the corrections system.
Caveats	The strategy has another year to run; final results and an evaluation will be available in 2023. Due to the range of influences affecting recidivism, it will always be difficult to attribute target achievements entirely to the strategy.

4.6 Greater use of benefit–cost assessments

Benefit–cost studies remain significantly under-used in Australia. The Washington State Institute of Public Policy (WSIPP) conducts a program of benefit–cost evaluations of policy interventions as requested by the Washington State legislature and has been included as a separate case study (table 4.15). These evaluations draw on the criminal justice literature and administrative data from Washington State.

Table 4.15 – The Washington State Institute for Public Policy

What was done?	The Washington State Institute of Public Policy (WSIPP) provides the Washington State legislature with advice on the effectiveness of potential public policy options, including in the justice area. WSIPP uses a consistent benefit–cost model to assess potential models and the sensitivity of the results to risk (WSIPP 2019c). The model results draw from evidence in the international literature and from Washington State’s own justice system.
Why was it done?	WSIPP was created in 1983 to improve the ability of the Washington State legislature and other Washington State policymakers to make sound, evidence-based policy decisions. It was established after the State legislature recognised the need for effective policy evaluation but found that there was a lack of expertise within government to address it (The Governance Lab 2021).
How did it work?	The state legislature assigns projects to WSIPP in order to evaluate if a certain program is likely to be effective in Washington State. These projects may cover areas such as criminal justice reform, public health and education reforms. They may involve measuring effectiveness of existing programs and policies or conducting benefit–cost analyses for new ones. WSIPP has access to administrative data for Washington State, allowing more accurate assessment of costs and program outcomes (The Governance Lab 2021). WSIPP has developed a consistent benefit–cost framework that it applies to its analysis and the methodology is available on WSIPP’s website (WSIPP 2019c). WSIPP also assesses the sensitivity of the estimates to variations in assumptions.

Outcomes	<p>WSIPP has calculated benefit–cost estimates for a range of potential policy initiatives with respect to the justice system. These estimates inform decision making. Two examples of WSIPP’s analysis are provided in section 4.3.</p> <p>The two adult justice programs with the highest benefit–cost ratios on the current list of programs evaluated by WSIPP are for correctional education (post-secondary education) and employment counselling and job training (transitional re-entry from incarceration into the community) (WSIPP 2021).</p>
Lessons	High-quality benefit–cost assessments developed using a consistent framework allow governments to consider which spending options offer the best return to the community.
Caveats	All estimates of this sort rely on assumptions and imperfect data. WSIPP is transparent about its methodology, assumptions and sensitivity analyses.

Examples of the outcomes from the WSIPP process are presented below (table 4.16).

Australian jurisdictions could usefully consider developing a similar model to provide national advice analogous to the state-based advice produced by WSIPP.

Table 4.16 – Examples of WSIPP assessments of criminal justice interventions
Drawn from a longer list on the WSIPP website

Intervention	Unit cost of intervention (\$USD)	Benefit to cost ratio (\$ return for each \$1 invested)	Chance that benefits will exceed costs (%)
Employment counselling and job training (transitional re-entry from incarceration in the community)	2563	18.21	89
Offender Re-entry Community Safety Program (for individuals with a serious mental illness)	38 600	1.90	97
Circles of Support and Accountability (for sex offenders re-entering the community)	4117	7.30	92
Drug Offender Sentencing Alternative (for persons convicted of drug offences)	1714	13.95	99
Mental health courts	3266	5.56	96
Inpatient or intensive outpatient drug treatment during incarceration	1358	10.13	98
Juvenile awareness programs (including Scared Straight) for court-involved youth	28	-630.45	3
Vocational and employment training for youth in state institutions	838	-1.84	44

Source: Washington State Institute for Public Policy (2021).

4.7 Drawing the threads together

Some lessons can be drawn out of the case studies discussed in this chapter.

- There are many avenues that can be explored to reduce costs and improve outcomes from sentencing and prison arrangements.

- Alternatives that effectively deal with the underlying causes of offending (and can be pursued without undermining community safety) can result in better long-term recidivism outcomes, lowering the cost of crime to the community, and producing better outcomes for the offender.
- Alternative pathways can involve more short-term risk and this needs to be carefully managed — by monitoring offenders actively at an individual level and making effective use of available technologies such as electronic monitoring; and by monitoring outcomes to ensure that longer-term gains in reduced reoffending compensate for any increase in the short-term offending risk.
- There are potential programs that can result in more effective reintegration and rehabilitation after offenders have served their time. Increased investment in the short term may be justified by lower costs due to reduced reoffending. The case studies suggest there is potential for better individual and social outcomes, with lower long-run risks compensating society for accepting higher short-term risks, and achieved at a lower overall cost.
- Taking advantage of these options requires criminal justice systems that can experiment successfully. Setting clear goals, measuring and monitoring outcomes, adjusting delivery mechanisms and evaluating programs to promote continuous improvement can all underpin behavioural change and innovation in corrections.

There are no guarantees that taking any of the case studies described in this chapter and implementing them in a different jurisdiction would be successful, at least at first. Programs need to be selected and tailored for local conditions and offenders.

However, adopting the types of programs examined in this chapter would move Australian prison systems towards a stronger emphasis on rehabilitation and have the potential for better long-term outcomes. This is a journey that has been taken by a number of European countries, notably Finland and Germany from the 1960s (Mauer 2017), Norway in the 1990s and early 2000s (Evans 2020) and the Netherlands since the 1998 Penitentiary Principles Act was enacted (Subramanian and Shames 2013). Adopting some or all of these programs is ultimately a decision for each jurisdiction in concert with evolving community expectations about the role of prisons in punishing, deterring, incapacitating and rehabilitating offenders.

5. Where to from here?

As noted in chapter 1, the scope of this paper is deliberately narrow. It has considered three specific questions built around an empirical observation about the Australian criminal justice system: that while the rate of offending appears to be falling, the rate of imprisonment is rising.

The questions are as follows.

- what are the underlying drivers of the offending and imprisonment rates? In particular, to what degree is the increasing imprisonment rate driven by policy choices?
- what is imprisonment costing the Australian community, both in terms of the narrow fiscal cost and any broader individual and social costs?
- are there alternatives to imprisonment available that can reduce costs and reoffending without compromising community safety?

This paper shows that there is a range of drivers of increased imprisonment, and these differ between jurisdictions. It also shows that some of these drivers are controlled by government. In that sense, at least part of the increase in imprisonment reflects deliberate policy choices.

There are many valid reasons for such policy choices. However, the analysis in this paper highlights some of the costs. Imprisonment is expensive, both in terms of direct fiscal costs and its effects on the lives of the imprisoned individuals and their families. While imprisonment can obviously reduce offending and improve community safety in the short term, it may not enhance community safety in the longer term, given that a significant proportion of criminal activity involves repeat offending. Indeed, imprisonment may increase the likelihood of such reoffending.

Finally, the paper has explored a range of potential alternatives to prison that could be used to meet the two criteria of cost reduction and maintenance of community safety. More work would need to be done to trial and evaluate the introduction or expansion of these options to ensure that they meet community expectations.

The limited scope of this paper means that it has not addressed many significant issues in criminal justice, such as the overrepresentation of Aboriginal and Torres Strait Islander people in prison or how the youth justice system should best operate. Similarly, the paper has not attempted to assess the activities of the police or courts in any detail. The Commission hopes to return to some of these important issues in future work.

The criminal justice system in Australia lacks accessible, comparable and high-quality data. This limits the analysis both in this paper and by other researchers.

More generally, the criminal justice system often operates through distinct components, making it difficult to assess its effectiveness as a whole. Evaluation is sparse. While some programs are evaluated carefully, many aspects of the system, often those that have been part of the system for a long time, are not evaluated publicly.

All these issues are fertile ground for research and policy development. Several areas are highlighted here for further work.

5.1 Building the evidence base

Empirical evidence is key both to a proper assessment of the effectiveness of existing processes in different jurisdictions and for evaluating the merit of alternative approaches. It is the foundation of good program design and implementation. Unfortunately, the Commission has come across significant evidence gaps in undertaking this paper. For example, the data do not provide a clear picture of how long people stay on remand. Nor do they provide a good understanding of reoffending patterns once people leave prison.

A more comprehensive evidence base would involve:

- longitudinal data to help future research better understand the pathways people take through the criminal justice system. Linking longitudinal data to services and programs both in prison and externally would also allow more nuanced research into what works in terms of reintegration and reducing reoffending
- microdata on the types of offences prisoners are charged with, to enable more detailed analysis of shifts in the prison population based on offence type rather than just by 'most serious offence'
- data on remand, including more specific information about both the length and outcomes of periods of remand.

Some efforts are underway to fill these gaps. A joint project by the Australian Bureau of Statistics and several Australian Government agencies — the Multi-Agency Data Integration Project — is linking correctional data with other data sources, although data will not be available under this initiative for some time. Some jurisdictions are also developing linked datasets using administrative data from the criminal justice system.

Data that would allow for a full assessment of the cost-effectiveness of policies and programs are limited or unavailable (for example, data on the cost and outcomes of mental health and drug treatment programs, supervision on remand and parole, and additional court costs where alternative approaches are taken such as restorative justice). Better longitudinal data are the key building blocks for more effective evaluation.

5.2 More systematic research into the criminal justice system

While better data are needed to underpin policy reform for the criminal justice system, further research should not wait for these data. Although there is already some compelling Australian-based research, there are few systematic studies with sufficient empirical depth and theoretical ambition to inform large-scale policy reform and evaluation. Systematic studies of the criminal justice system and decision-making (covering policing, prosecution, sentencing, corrections and parole) in the Australian context are largely missing.

Future research into the criminal justice system needs to:

- be informed by better measurement of the indirect costs associated with imprisonment, including the causal effects of prison on offender outcomes, the wellbeing of their children and families, and post-release behaviour
- use longitudinal studies to examine the pathways people take through the criminal justice system and how these pathways affect outcomes for different cohorts
- examine how new technologies affect the opportunities for committing crime and also the regulatory and surveillance capacities that they offer.

Importantly, while there has been a lot of research into the *reasons* for the overrepresentation of Aboriginal and Torres Strait Islander people in prison, there have been few attempts to trial and evaluate *solutions*. Further work in this area is of the highest priority.

5.3 More trials and evaluation of improvements and alternatives to prison

An effective criminal justice system will balance the costs and benefits of different forms of punishment, while meeting legitimate community expectations that those convicted of more serious crimes receive significant prison sentences. Australia's justice systems already provide a range of sanctions for those convicted of crimes, including fines, community corrections and imprisonment.

The programs and initiatives highlighted in chapter 4 suggest there are opportunities to deal better with convicted prisoners who are assessed as low to medium risk to the community. These include:

- diversion of some low- and medium-risk prisoners from prison sentences to other forms of detention where their underlying issues may be managed better
- improved treatment of some offenders in prison (including on parole) where mental illness or drug and alcohol issues are the key drivers of offending
- better support for those leaving custody to help prevent reoffending.

Attempts to introduce new programs to improve justice system outcomes require active monitoring, adjustment and evaluation. New approaches inherently involve the risk of failure. Early problem identification is integral to risk management. Box 5.1 provides some lessons drawn from New Zealand's attempts to introduce innovation in the prison system.

Careful measurement of program outcomes and thorough evaluation are critical. The building blocks for this evaluative approach are in place in most Australian jurisdictions and can be built upon.

Exemplars of good assessment of justice system options are evident in the work of the various sentencing advisory councils across Australian jurisdictions (see, for example, the Queensland Sentencing Advisory Council (2021) for a survey of sentencing options and the Victorian Sentencing Advisory Council (2018b) regarding public opinion on the harshness of penalties). There are also examples of good program evaluation from Australian corrective services departments, including the studies underpinning tables 4.8 and 4.12, and data collection is improving.

The contribution of external agencies can be particularly valuable. The Australian Institute of Criminology, the New South Wales Bureau of Crime Statistics and Research and the Victorian Crime Statistics Agency all undertake important program assessment and research. Australian universities also deliver useful research and insights.

A consistent evaluation framework should be applied to help the system to learn as it goes. Innovation in the justice system would benefit from a broader schedule of rigorous program evaluation and public release of the outcomes.

Benefit–cost studies remain significantly underdone in Australia. The program of benefit–cost assessments undertaken by the Washington State Institute for Public Policy provides an excellent model of the consistent application of benefit–cost assessment. The case studies in chapter 4, including the additional calculations undertaken for this paper, demonstrate that useful benefit–cost estimates can often be drawn from well-constructed evaluations to help guide policy development.

Box 5.1 – New Zealand's experience with prison-system innovation

Johnston (2017) made a number of observations about what had been learnt about rehabilitation from 15 years of program outcomes analysis conducted by the New Zealand Department of Corrective Services. Amongst other things he noted:

- Overall, most of what we [New Zealand] are doing to reduce reoffending, succeeds. Under routine delivery across the general offender population, our rehabilitative interventions have modest but positive impacts on reoffending. Effect sizes are mostly in the 3–8 percentage-points range. For a program with the latter [effect size] this means that, instead of an 'expected' rate of reimprisonment after 12 months of 25 percent, a program's participants would have an actual reimprisonment rate of 17 percent.
- New programs seem to require a 'bedding in' period before demonstrating impact, usually of two to three years. ... This bedding-in effect is likely to be associated with staff developing their skills, gaining confidence in their roles, learning to work together as a team, becoming more familiar with program materials, and so on.
- There tends to be a direct and positive relationship between the intensity of the program (that is, number of hours of face-to-face facilitator–participant contact) and the magnitude of [the impact on reoffending].
- Correctional rehabilitation has potential to make participants worse off. A program known as 'Straight Thinking' was delivered between 1997 and 2005, as [a New Zealand] adaptation of a 'cognitive skills' course developed overseas. Participants in Straight Thinking were found to be reconvicted and re-imprisoned at rates several percentage points higher than comparison offenders. ... [and] the program was discontinued.
- ... adequately designed but poorly-delivered programs often fail to generate measurable impacts. ... These findings underline the reality that multiple things need to 'go right' for positive impacts to occur: good program design, skilled and motivated facilitators, sound selection of participants, a stable/supportive environment within which delivery occurs, and good retention rates of participants. (Johnston 2017)

Australian jurisdictions could consider developing a model to provide advice in the Australian context in a similar way to the operation of the Washington State Institute for Public Policy. Such a body could operate on a state-by-state basis or work to a board representing state and territory governments. A national body could undertake evaluations across jurisdictions aimed at sharing knowledge and improving practice.



Finding 5.1

Better criminal justice system outcomes can be achieved over time through:

- consistent measurement of program outcomes, with benefit–cost assessment used where possible
- rigorous evaluation of new and existing programs, including assessment of longer-term outcomes for reoffending and reintegration of offenders — the evaluations should be released publicly
- a culture of learning and continuous improvement across the components of the criminal justice system.

5.4 A whole of system approach

The justice system is large and complex, even within each jurisdiction, and governance mechanisms do not always promote cohesion across its components. The laws that are enacted and how they are upheld by the police and courts determine the task for corrections systems, and the effectiveness of rehabilitation in prison in part determines the future challenges for the police, courts and society generally.

Better outcomes for society and offenders are likely to be achieved if all the elements of the criminal justice system work together. This issue has been beyond the scope of this paper but remains an important challenge.

The lack of system cohesion is reflected in the state of criminal justice system data. Data are collected differently and separately for the police, the courts and corrections, making it harder to track offenders through the system. High-quality evaluation depends on being able to map the influences in all parts of the system that determine outcomes, which in turn requires information across the main justice agencies, not just within each one. Poor comparability of data and sensitivity regarding correctional outcomes appear to be limiting what should be one of the strengths of Australia's federal system, namely the ability to make comparisons of the effectiveness of similar programs in different jurisdictions.



Finding 5.2

The effectiveness of criminal justice systems in Australia stands to benefit from a more collaborative approach across states and territories to improve the evidence base and share knowledge about initiatives that can lead to better outcomes for individuals and society more broadly. There may be scope to facilitate such collaboration through a national body that could also have a mandate to undertake benefit–cost analyses of criminal justice programs, akin to the work undertaken by the Washington State Institute for Public Policy.

Appendices

A. Consultations

This appendix lists the organisations that were consulted in the preparation of this paper (table A.1). The Commission is grateful for their assistance.

Table A.1 – Consultations

Participants

Australian Bureau of Statistics (ABS)

Australian Capital Territory Corrective Services

Australian Community Support Organisation

Australian Institute of Criminology

Australian Institute of Health and Welfare (AIHW)

Corrective Services Western Australia

Enough is Enough

Freiberg, Arie (Monash University)

Griffith Criminology Institute, Griffith University

Institute for Crime and Justice Policy Research, School of Law at Birkbeck, University of London

Jesuit Social Services

Justice Tech Lab, Texas A&M University

National Aboriginal and Torres Strait Islander Legal Services (NATSILS)

New South Wales Bureau of Crime Statistics and Research (BOCSAR)

New South Wales Corrective Services

New Zealand Department of Corrections

Northern Territory Correctional Services

Queensland Department of Corrective Services

Queensland Productivity Commission

South Australian Department for Correctional Services

Tasmania Prison Service

Travers, Max (University of Tasmania)

Victorian Department of Justice and Community Safety

Victoria Police

Washington State Institute of Public Policy (WSIPP)

Participants

Weatherburn, Don (University of New South Wales)

Williams, Megan (University of Sydney)

B. Drivers of imprisonment

This appendix provides details of the Commission's analysis of drivers of imprisonment, summarised in chapter 2. As noted elsewhere, the analysis is subject to significant data limitations.

The first part of this appendix (section B.1) identifies the relative importance of different drivers of the increased imprisonment rates that have been observed Australia-wide (chapter 1) and in most jurisdictions (chapter 2) between 2011 and 2019.

The second part then discusses several of those drivers in more detail. Section B.2 considers the effect of the composition of offending on increasing imprisonment rates. The appendix then examines broad trends in: remand (section B.3); sentencing (section B.4); parole (section B.5); and recidivism (section B.6).

B.1 The relative effects of drivers of imprisonment

Australia's imprisonment rate — prisoners per 100 000 adults — increased from 167 in 2012 to 219 in 2019 (about 31 per cent) despite about an 8 per cent fall in the offender rate (chapter 1). A similar pattern is observed across jurisdictions — imprisonment increased in all jurisdictions (chapter 2) while offending rates only grew in South Australia (8 per cent), New South Wales (0.5 per cent), and the Northern Territory (0.1 per cent). This led to the ratio of prisoners to offenders growing in all jurisdictions (except in the Northern Territory, where it was mostly stable) (figure B.1).

Little's Law can help disentangle the factors driving imprisonment

Imprisonment rates measure the stock of prisoners — a snapshot of the number of prisoners on 30 June each year. The stock is generated by an underlying flow, with new people arriving as they are prosecuted and sentenced and others leaving as they are released. In between, people remain in prison and are counted as part of the stock. During this time prisoners (both sentenced and on remand) can be thought of as 'queuing' to be released.

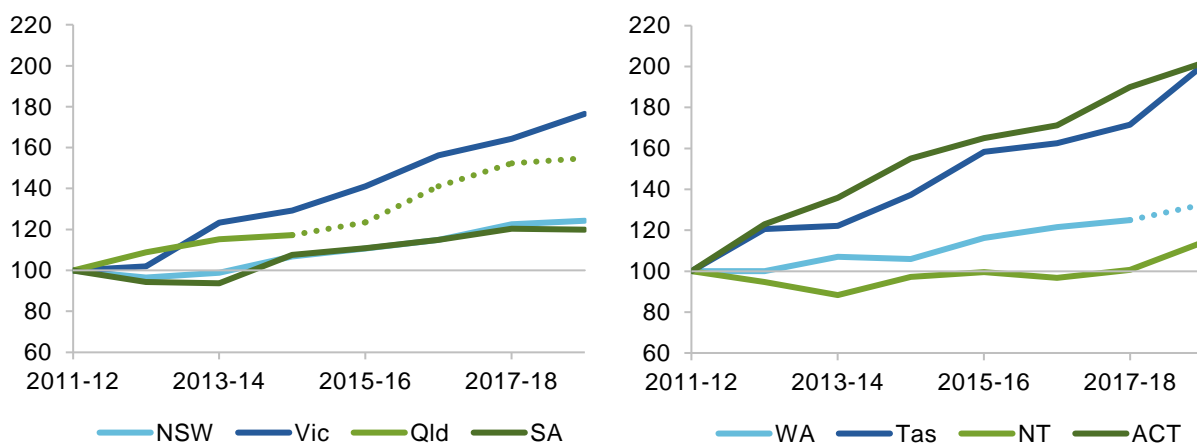
If prison is thought of as a queue, then the arrival rate is generated by people offending, being brought to court (while on bail or held on remand), found guilty and then sentenced. The length of time spent in the queue is determined by the average sentence length handed down (for those found guilty) and the duration of the remand period for remandees.

Little's Law is a mathematical description of how such a queue depends on the underlying flows (Little 1961). Under Little's Law, in the long-run steady state, the average number queueing (L) equals the average arrival rate (A) times the average time spent waiting in the queue (W), where the time spent waiting accounts for the exit rate (box B.1).

The Little's Law framework can disentangle the extent to which each component of the underlying flows affects imprisonment rates (and has been used to do so (Weatherburn 2018)). While this framework can highlight the key drivers of imprisonment rates, it does not shed light on the underlying factors (for example, what policy developments may have been at play). Therefore, the analysis also draws on existing literature to explain what may lie behind the drivers.

Figure B.1 – Imprisonment rates grew faster than offending rates in most jurisdictions between 2011-12 and 2018-19^{a,b,c,d}

Index of prisoners per offender 2011-12 to 2018-19, 2011-12 = 100



a. Imprisonment rate is prisoners per 100 000 persons aged 18 years and over; offending rate is offenders proceeded against by police per 100 000 persons aged 10 years and over. Index of prisoners per offender is ratio of imprisonment rate to offender rate. **b.** Queensland offending data from 2014-15 onwards are not comparable with earlier periods. **c.** South Australian offending data from 2018-19 onwards are not comparable with earlier periods. **d.** Western Australian principal offence data from 2017-18 onwards are not comparable with earlier periods..

Source: ABS (*Recorded Crime – Offenders, 2020* and *Prisoners in Australia, 2020*).

Changes to policy, practice and offending (including composition) affect both arrival and the length of stay. For instance, the arrival rate (A) can be increased by:

- the **offending rate** and **composition of offending** — if more people offend or commit offences that are easier to catch or more likely to end in conviction. Generally, the composition of offending increases arrival if offending shifts towards serious offences
- the **characteristics of offenders** — for example, an increase in reoffending can increase imprisonment because courts are more likely to imprison repeat offenders. The characteristics of offenders are unobserved in this analysis but can be important (box B.2)
- **policing policy** — if offenders face a higher probability of arrest via increased *effort* or *technology* (catching more offenders) or a change in *priorities* (catching offenders more likely to be successfully prosecuted and sentenced to prison, such as repeat offenders or those on bail)
- **penal policy** — if offenders face a higher probability of imprisonment via increased use of imprisonment as a sentence or if certain acts are added to or removed from the definition of criminal conduct.

Similarly, offending, policing and penal policies all affect the length of imprisonment (W).

Box B.1 – Using Little’s Law to understand the drivers of imprisonment

The analysis in this paper breaks the simple version of Little’s Law — where arrival rates (A) and length of stay (W) are used to approximate imprisonment (L) — into components (that is, offenders proceeded against by police, the number of court cases, people on remand, guilty verdicts and prison sentences). Each component is then examined individually to assess its relative contribution.

The analysis uses customised data from *Criminal Courts* (ABS 2020a) for the number of finalisations (court cases), F , people found guilty, G , and people sentenced to custody in a correctional institution (imprisoned), C , for 2011-12 to 2018-19, by offence and jurisdiction. The mean sentence length, W^p , is from publicly available data in *Criminal Courts* (ABS 2020a). Offender counts, N , are from *Recorded Crime – Offenders* (ABS 2021d), and refer to offenders proceeded against by police. Prisoners held on remand, R , and mean time on remand, W^r , are from *Prisoners in Australia* (ABS 2020b).

Data are at the offence level for each jurisdiction and year except for prisoners held on remand and time on remand. The number of people imprisoned is calculated for each offence, i , jurisdiction, j , and year, t , with final results aggregated to the jurisdiction/year level. In particular, the analysis approximates the number imprisoned by jurisdiction, j , in year, t , with the formula

$$\widehat{L}_{j,t} = \widehat{A}_{j,t} \widehat{W}_{j,t} = \sum_{i=1}^{13} \left[pop_{j,t} \frac{N_{i,j,t}}{pop_{j,t}} \frac{F_{i,j,t}}{N_{i,j,t}} \frac{G_{i,j,t}}{F_{i,j,t}} \frac{C_{i,j,t}}{G_{i,j,t}} W_{i,j,t}^p + \left(1 - \frac{G_{i,j,t}}{F_{i,j,t}} \frac{C_{i,j,t}}{G_{i,j,t}} \right) pop_{j,t} \frac{R_{j,t}}{pop_{j,t}} W_{j,t}^r \right]$$

A complex array of decisions made by offenders, police and the courts are only *partly* captured by this model. This is because, although decisions can be represented by a number of simplified variables, the data used imperfectly measure these variables.

Unobserved factors can, therefore, drive results. For example, the offender count, N , is affected by (among other things):

- the number of people actually offending, O and the composition of offending, $\%O$
- offenders’ underlying characteristics and social determinants, X_o
- the proportion of crime reported to police, p_{rp} , and that the police solve, p_{sv} .

Hence, N is a function of these (and other) variables, suggesting the offending count equals $N(O, \%O, X_o, p_{rp}, p_{sv})$. Some of these data are available from other sources — such as the Australian Bureau of Statistics and the Bureau of Criminal Statistics and Research — but are not utilised because they are not consistently available for all jurisdictions or offences. Some data, such as offender characteristics, are held by state and territory governments but not publicly available. Other data are unavailable.

Data limitations mean that some important components are not perfectly accounted for:

- measures of time on remand are imperfect and may bias downward the estimate of time spent in prison (box B.3)
- parole decisions are not observed in the data used. Excluding parolees’ biases the approximation upward by making time in prison appear longer

Using stock data for people on remand who are not subsequently imprisoned can lead to bias in the measure of average time on remand. And using the unconditional probability of imprisonment, $\frac{G_{j,t}}{F_{j,t}} \frac{C_{j,t}}{G_{j,t}}$, to adjust the number of people on remand can lead to bias if people on remand are more or less likely to be imprisoned than the average defendant.

Box B.1 – Using Little’s Law to understand the drivers of imprisonment

The simplification of complex decisions and the imperfect data might lead to poor approximations of imprisonment, such that $L_{j,t} = \widehat{L}_{j,t} + \varepsilon_{j,t}$, where $\varepsilon_{j,t}$ includes omitted variables.

Complex decisions made by offenders, police and courts are only partly captured

	Offender	Police	Courts
Complex decisions that are affected by context, policy and practice	<ul style="list-style-type: none"> Does the person offend? What type of offence does the person commit? 	<ul style="list-style-type: none"> Is the offence reported to police? Do police solve the offence? Do police take court action against the offender? Do prosecutors pursue imprisonment or another punishment at court? 	<ul style="list-style-type: none"> Does the offender get bail? Do the courts find the offender guilty? Do the courts sentence the offender to imprisonment? How long is the sentence imposed? Does the offender get parole?
Simplified variables that represent complex decisions	<p>O = Number of people offending</p> <p>$\%O_j$ = Offending in category j as a proportion of total offending</p> <p>X_o = Characteristics of the offender</p>	<p>p_{rp} = Proportion reported</p> <p>p_{sv} = Proportion solved</p> <p>p_{co} = Proportion taken to court</p> <p>p_{ip} = Proportion where imprisonment is pursued</p>	<p>P = People on remand</p> <p>W^r = Duration of remand</p> <p>p_g = Proportion found guilty</p> <p>p_p = Proportion given custodial sentence</p> <p>W^p = Length of prison sentence</p> <p>p_{pa} = Proportion offered parole</p> <p>W^{pa} = Length of sentence given parole</p>
Data that imperfectly measure the simplified variables	<p>$N(O, \%O, X_o, p_{rp}, p_{sv})$ = Offender count</p> <p>$\%N_j = \frac{N_j}{\sum N_j}$ = Offending composition</p>	<p>$F(O, \%O, X_o, p_{rp}, p_{sv}, p_{co})$ = Finalisations</p>	<p>$G(O, \%O, X_o, F, p_{ip}, p_{gt})$ = Guilty verdicts</p> <p>$C(O, \%O, X_o, F, G, p_p)$ = Custodial sentences</p> <p>$W^p(O, \%O, X_o, F, G, C)$ = Mean sentence length</p>
Model ($L = AW$)	<p>Well measured $p_{op} \frac{N}{pop} \frac{F}{pop} \frac{G}{N} \frac{C}{F G} (W^p + p_r W^r) + \left(1 - \frac{G}{F G}\right) p_{op} \frac{R}{pop} W^r$ Less well measured</p>		

These underlying factors are usually not independent from one another and Little's Law is not able to control for this. For example, a change in policing policy may increase the probability that an offender gets caught and subsequently taken to court. This can reduce the incentive to offend, reducing the offending rate. Little's Law would simply show the outcomes (say, offending going down and court cases going up) not the causal relationship.

Box B.2 – Different drivers for different groups

The likelihood of imprisonment (or other outcomes) can often depend on the underlying circumstances of the alleged offender. Characteristics such as gender, Aboriginal and Torres Strait Islander status, age, education and employment history, offending history and other socioeconomic factors can all be important indicators of those circumstances.

This implies that different factors can drive outcomes for different groups of people. However, to the extent that some of these groups represent a relatively small share of the prison population, the relevant drivers may not necessarily be apparent in national or jurisdictional level analyses.

Drivers of imprisonment for Aboriginal and Torres Strait Islander people

Aboriginal and Torres Strait Islander people account for about 25 per cent of the prison population in most jurisdictions, except in the Northern Territory where Aboriginal and Torres Strait Islanders account for about 83 per cent of the prison population (ABS 2020b).

In most jurisdictions the drivers of non-Indigenous imprisonment will, therefore, be the dominating story. For example, the analysis shows that the composition of offending was not an important driver of imprisonment in New South Wales. However, the composition of offending by Aboriginal and Torres Strait Islander adults in New South Wales has been shown to be a driver of Aboriginal and Torres Strait Islander imprisonment in that state (Fitzgerald 2021).

In this context, the analysis also abstracts from other important and complex issues including:

- the higher likelihood of imprisonment for Aboriginal or Torres Strait Islander people even after controlling for sentence-relevant factors (Thorburn and Weatherburn 2018)
- the earlier age at which Aboriginal and Torres Strait Islander people come into contact with the criminal justice system (Weatherburn and Ramsey 2018)
- the higher prevalence of risk factors for offending among Aboriginal and Torres Strait Islander people (SCRGSP 2020b)
- institutional and structural factors that operate to the detriment of Aboriginal and Torres Strait Islander people. For example, a lack of secure accommodation can disadvantage Aboriginal and Torres Strait Islander people when applying for bail, or cultural obligations may conflict with commonly-issued bail conditions (ALRC 2017; PC 2014).

Assessing the performance of Little's Law

The approximation of the number of prisoners using Little's Law ($\widehat{L}_{j,t}$) is an estimate of the number of people actually imprisoned ($L_{j,t}$). The two numbers will necessarily differ.

The analysis uses the difference between the approximation ($\widehat{L}_{j,t}$) and the actual number of people imprisoned ($L_{j,t}$) in 2018-19 as a measure of Little's Law performance. The larger the difference, the larger the error and the less the approximation reflects the current prison context. Two measures of sentence length (the mean and median) are used to calculate $\widehat{L}_{j,t}$ and are then compared to the actual $L_{j,t}$. These differences are presented in table B.1.

Table B.1 – Little's Law is a good approximation of imprisonment rates in some jurisdictions but less so in others

Difference between the approximated^a and the actual number of people in prison, 2018-19

	$\widehat{L}_{j,t}$ approximated using mean sentence length (%)	$\widehat{L}_{j,t}$ approximated using median sentence length (%)
New South Wales	51.6	20.4
Victoria	6.6	-38.5
Queensland	114.3	66.2
South Australia	4.3	-17.2
Western Australia	-2.4	-24
Tasmania	27.7	-13
Northern Territory	24.8	-24.6
ACT	-6.1	-27.5
Australia	42.9	4.2

a. This difference is a measure of the error of the model $(\widehat{L}_{j,t} - L_{j,t})/L_{j,t} = \varepsilon_{j,t}/L_{j,t}$. The larger the difference, the larger the error and the less the approximation reflects the current prison context. The error of the approximation arises from any omitted variables, biased variables, or because the system is unlikely to be in its long-run equilibrium.

Source: Commission estimates based on ABS (*Criminal Courts, 2012 to 2020* and custom data request, *Prisoners in Australia, 2020; Recorded Crime – Offenders, 2021*).

The error in the approximation arises from a range of sources, including any omitted variables (such as people on parole), any biased variables, or the fact that the system is unlikely to be in its long-run equilibrium. (Keeping in mind that some biases might offset others, so the effect of a missing variable can be larger than the observed error.)

For example, one source of bias arises from the fact that time on remand is not well measured (box B.3). In turn, this means the available data do not accurately count arrival or measure length of stay in prison.

Another source of error in the approximation arises from using a static model (as embodied in Little's Law) while the system may still be moving to its long-run equilibrium or 'steady state'. The Little's Law model estimates a long-run imprisonment number whereas the actual data reflect the current path to the long run. For instance, if a prison sentence for a given offence suddenly became much longer (say through changes to sentencing guidelines) it could take a while for the stock to adjust and reach its new long-run level. In contrast, the approximation using Little's Law would account for this change immediately.

Box B.3 – Time on remand is difficult to measure

Time spent on remand is difficult to measure with available data. Remanded periods can be short and episodic. An individual may move in and out of remand a few times before their court appearance.

To identify time spent on remand in the Little's Law model, remandees are classified into two types, which are distinguished by the likelihood that any offender will not be sentenced to custody in prison.

1. Prisoners on remand who are subsequently sentenced to time in prison.
 - The Commission's analysis accounts for these prisoners' time in prison through their convicted sentence length. Most jurisdictions backdate a prison sentence to the first date of remand.
2. Prisoners on remand who are: not subsequently sentenced to time in prison; found not guilty; had their case dismissed; or found guilty and received a sentence other than custody in prison.
 - As offence-level flow data into remand are not available, this group's time on remand is included in the Commission's analysis as the aggregate stock of people on remand and their expected time on remand at 30 June each year at the jurisdictional level.

This approach creates a few problems.

- Some jurisdictions exclude time on remand from the measure of the average sentence length. This creates a downward bias on the average time spent in prison (or time 'in the queue' using Little's Law) for remandees who are sentenced to prison.
- The likelihood that any offender will not be sentenced (used in the model) may not represent the true likelihood of a remandee not being sentenced (which is not observed).
- Whether the approach approximates actual time spent on remand well.

Exploring the drivers of imprisonment using Little's law

Small changes in flows can have large effects on the number of prisoners — particularly if those changes occur for offences likely to end in imprisonment. Therefore, it is important to compare the relative effect that a given factor has on the imprisonment rate.

To measure the relative effect of a given factor, the analysis — following Weatherburn (2018) — uses a series of 'what ifs' (scenarios) that hold that factor constant and lets all other variables change as observed. For example, the chance a guilty person is sentenced to prison can be held at its 2011-12 value, with all other variables allowed to change.

This approach provides insight into the *relative* importance of each variable for the overall change in imprisonment from 2011-12 to 2018-19. The distance (as a percentage) of each of the scenarios from the approximate number of people in prison, $\widehat{L}_{j,t}$, based on 2018-19 observations is one measure of importance (table B.2) — this distance represents how much 'pressure' the variable that is held constant puts on imprisonment rates. The larger this distance, the greater the influence the variable held constant in the scenario had on imprisonment. The sign of the distance represents the direction of the 'pressure'.

For example, the percentage distance between $\widehat{L}_{j,t}$ and the scenario that held the composition of offending constant is 17.0 per cent in Victoria in 2018-19. This suggests that offending shifted to more serious offences and put upward pressure on the imprisonment rate. In comparison, the distance for the same scenario in South Australia was -6.6 per cent, suggesting the composition of offending put downward pressure on the imprisonment rate.

This technique was repeated for each variable to develop eight scenarios (table B.2) to compare against the approximated number of people in prison, $\widehat{L}_{j,t}$.²⁴

Caution should be taken when interpreting the estimates in table B.2 because:

- the approximation error is large in some jurisdictions — especially Queensland. Some of this will be due to omitted or biased variables and some will be due to the long-run nature of the approximation. This can affect rankings of which drivers are the most important
- the variables are endogenous, so changes in one part of the criminal justice system will affect decisions in other parts. This is partly controlled for by performing the analysis for each offence and jurisdiction, but the characteristics of offenders remain unobserved
- there may be a 'cocktail effect' in some cases — where a shift in one factor can reinforce or offset the effect of another — so the scenarios may not accurately measure the contribution of each variable
- the results may be sensitive to the time period chosen. Calculating changes based on start and end dates can leave out variation within the intervening period. Moreover, data management and other peculiarities can have unexpected effects on the data²⁵
- the analysis compares differences in variables between two points in time, and treats both points as a steady state. This will tend to under-represent the importance of variables whose path is not evenly changing between those points in time. A dynamic modelling approach would be required to identify transition effects (see, for example, Halloran, Watson and Weatherburn 2017; Johnson and Raphael 2012).

That said, the results provide some useful insights. For example, the approximations suggest that increases in the chance a guilty person is sent to prison put upward pressure on imprisonment in all jurisdictions and had a larger effect than changes to court cases per offender (or the chance an offender was taken to court).

Further, the Little's Law analysis highlights a number of areas that are worth exploring in more detail. For example, compositional shifts appear important in Victoria, Western Australia, Tasmania (and, marginally, Queensland). And court outcomes appear to be becoming more severe in all jurisdictions (either through an increase in the chance of being found guilty, having a sentence of imprisonment or longer prison sentences).

The following sections use the Little's Law results to focus the analysis of trends for each jurisdiction, using a less formal approach.

²⁴ The scenario is compared against the approximation rather than the actual number imprisoned because the approximation and the scenario are both long-run representations and exclude people on parole.

²⁵ For example, from November 2018 the South Australian Police began recording offender data in a new data management system. The 2018-19 offender data for South Australia includes data from the previous system for July to November 2018 and from the new system from November 2018 to June 2019. The Australian Bureau of Statistics advised caution when analysing 2018-19 offender data, especially when comparing to earlier reference periods, as the impact of this change on the data is unknown.

Table B.2 – The drivers of imprisonment vary across the jurisdictions
Average distance of scenario in 2018-19 from the approximated number of people imprisoned,^a holding each variable constant at its 2011-12 level in turn

	Variable held constant							Average sentence length (%)
	Offender count ^c (%)	Offender composition ^d (%)	People held on remand ^e (%)	Time on remand (%)	Chance offender is taken to court (%)	Chance a court case is found guilty (%)	Chance a guilty person is sent to prison (%)	
NSW	0.4	1.9	5.4	1.5	2.8	3.3	4.3	38.7
Vic	-22.1	17.0	7.9	0.3	2.6	3.1	15.7	-25.6
Qld ^b	-8.6	9.8	4.3	0.0	2.6	-4.0	24.1	12.9
SA	6.5	-6.6	5.0	0.9	-23.6	-0.2	20.5	-10.1
WA	-2.4	9.8	5.5	4.1	-22.7	-0.6	16.6	3.7
Tas ^b	-46.3	19.6	6.6	3.8	-4.9	-11.6	27.2	17.6
NT	0.1	2.3	1.2	1.1	-31.3	17.0	10.8	-18.9
ACT	-44.7	7.2	5.9	-4.8	-8.3	17.1	11.2	-30.4
Australia ^b	-7.2	8.1	6.2	1.5	0.0	2.1	14.3	15.6



a. The numbers represent how much pressure each variable held constant under the scenario put on imprisonment. A positive number implies that the variable put upward pressure on imprisonment rates. Conversely, a negative number implies that the variable put downwards pressure on imprisonment rates. b. Based on the results in table B.1, this analysis uses the median sentence length for Australia, New South Wales, Queensland and Tasmania and mean sentence length for the other jurisdictions. c. The effect of the offender count is calculated by fixing the total number of offenders at its 2011-12 level and distributing the total across each offending category based on the composition observed in each year. d. The effect of the offender composition is calculated by fixing the offending rate for each category at its 2011-12 level and growing them at the rate that total offending grows. The compositional effect does not imply that a compositional change increased imprisonment rates. In some cases a positive compositional effect simply means that the decline in offending should have led to greater falls in imprisonment had composition of offending remained the same (that is, the compositional change slowed the fall in imprisonment implied by the fall in total offending). e. Remand population measures the number of people placed on remand who were *not* subsequently sentenced to imprisonment.

Source: Commission estimates based on ABS (*Criminal Courts* 2012 to 2020 and custom data request; *Prisoners in Australia*, 2020; *Recorded Crime – Offenders*, 2021).

B.2 Composition of offending

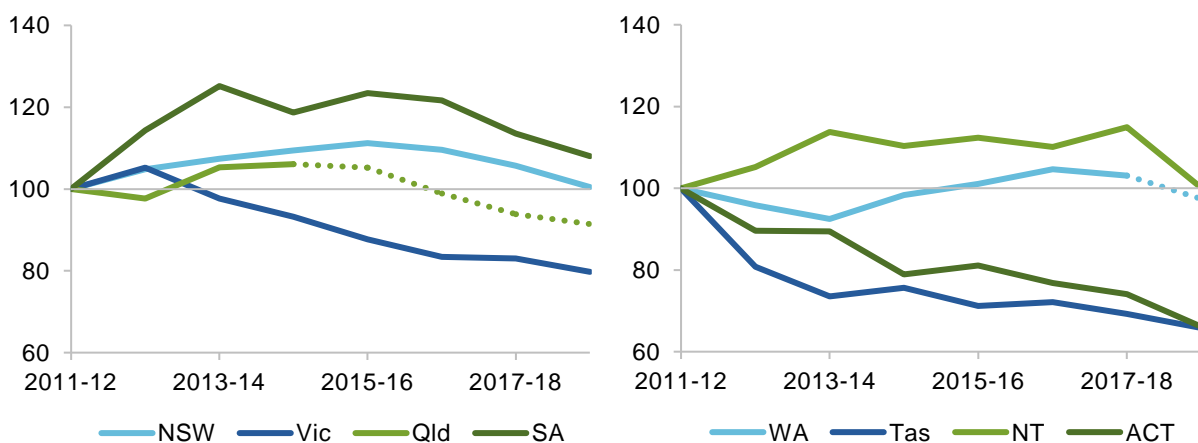
The number of offenders is unlikely to be driving imprisonment rates

Offending rates (offenders proceeded against by police per 100 000 people aged 10 years and over) decreased in half of the jurisdictions and were relatively stable in Western Australia, which suggests that

fewer *people* have been alleged to have committed a criminal offence and proceeded against by police in court and non-court actions in those states and territories (figure B.2). The offending rate was lower in 2018-19 than in 2011-12 for all jurisdictions except in New South Wales, South Australia and the Northern Territory. As such, the *number* of offenders is unlikely to be driving the increase in the imprisonment rate in most jurisdictions. This is consistent with Little's Law results (table B.2) that the offender count put downward pressure on prisoner numbers in most states and territories.

Figure B.2 – Offending rates increased in three jurisdictions^{a,b,c,d}

Index of offender rates, 2011-12 = 100



a. Offending rate is offenders proceeded against by police per 100 000 persons aged 10 years and over. **b.** Queensland offending data from 2014-15 onwards are not comparable with earlier reference periods. **c.** South Australian offending data from 2018-19 onwards are not comparable with earlier reference periods. **d.** Western Australian principal offence data from 2017-18 onwards are not comparable with earlier reference periods.

Source: ABS (*Recorded Crime – Offenders, 2020*).

In some jurisdictions, offending rates increased before subsequently falling. In these jurisdictions that pattern of offending likely contributed to the increase in imprisonment rates by the end of the period. However, in all cases imprisonment rates grew faster than offending rates (figure B.1), so there is more to the story than just changes to offending rates.

The hump-shaped trend in offending rates seen in New South Wales, South Australia and the Northern Territory data will not be picked up by the Little's Law analysis because the analysis simply compares two data points in time. Little's Law might understate the importance of the increased offending rate in those jurisdictions.

It is also important to note, however, that offending rates include offenders only once per year, even if they commit more than one offence during that time. Offenders are categorised by their most serious offence. This means that the measurement of less serious offences will be biased downwards because offences will be undercounted for people who commit multiple offences at once or multiple times per year. In other words, less serious offending could *appear* to be decreasing if offenders committed a more serious offence alongside a less serious one.

Undercounting can obscure important drivers of imprisonment. For example, whether a prison sentence is handed down can depend on the number of offences committed, not just the most severe one. This unobserved interaction would explain increased imprisonment rates in the face of offending rates that appear to be decreasing.

Compositional shifts in offending are contributing to imprisonment in some jurisdictions

A shift in the composition of offending towards more serious offences (that are more likely to result in prison sentences and/or attract longer prison sentences) could be driving an increase in imprisonment. Little's Law analysis suggests that a change in the composition of offending appears to be a relatively important driver of imprisonment in Victoria, Queensland, Western Australia and Tasmania (table B.2).²⁶

However, Little's Law does not distinguish between two types of compositional shift that can affect imprisonment rates:

1. an increase in serious offending and a decrease in non-serious offending (or a larger increase in serious offending than in non-serious offending)
2. a decrease in serious offending by less than the decrease in non-serious offending.

It is important to consider these different types of compositional shifts separately. Only the first type leads to an increase in the imprisonment rate.

To gauge the importance of the two types of compositional shifts in offending, changes in offending rates between 2011-12 and 2018-19 were compared in each state and territory for 'serious' and 'non-serious' offences (table B.3).

The assessment drew on three different measures of the seriousness of offences, based on:

- *the chance of imprisonment* — where offences with a below-average chance of imprisonment are considered 'non-serious' and offences with an above-average chance considered 'serious'
- *whether the offence was classified as violent* using the Australian and New Zealand Standard Offence Classification (ANZSOC) — where violent offences against a person are offences in divisions 01 to 06 of ANZSOC are considered 'serious', and non-violent offences (that is all other offences)²⁷ are considered 'non-serious'
- *median sentence length* — where offences whose median sentence length was shorter than a year are considered 'non-serious' and offences whose median sentence was a year or longer are considered 'serious'.

²⁶ Although the Little's Law results suggest compositional change was not one of the top two drivers in Queensland, it was a close third and had an equivalent effect in Queensland and Western Australia.

²⁷ An increase in reporting of some serious offences or an increased willingness to prosecute those offences by police can increase the number of offenders. This is because the offender count considered here is a function of those who have been reported and prosecuted. This means that it is possible that the level of criminal conduct in the community can remain unchanged, with changes in attitudes (of society or the police) driving an increase in the recorded number of some serious offences.

Table B.3 – Change in offending rates for serious and non-serious offences
Change in the adjusted^a offending rate (per 100 000 adults) from 2011-12 to 2018-19 by three measures of serious and non-serious offences

	Offences by chance of imprisonment ^b		Offences by whether it was classified as violent ^c		Offences by median sentence length	
	Below average (change in rate)	Above average (change in rate)	Non-violent (change in rate)	Violent (change in rate)	Shorter than a year (change in rate)	A year or longer (change in rate)
NSW	17.8	-4.6	7.8	5.4	10.2	3.0
Vic	-38.4	2.9	-44.5	9.0	-36.4	0.9
Qld	-13.2	-0.8	-18.3	4.3	-20.4	6.4
SA	30.8	-1.1	32.9	-3.2	28.2	1.5
WA	-0.8	-5.8	0.2	-6.8	-7.4	0.8
Tas	-149.6	-9.0	-154.4	-4.2	-157.4	-1.0
NT	-1.6	34.8	48.8	-15.6	37.4	-4.1
ACT	-44.0	-36.8	-80.8	0.0	-75.0	-5.8
Australia	-8.8	-2.0	-14.5	3.7	-10.9	0.0

a. Adjusted by the proportion of court cases that were sentenced to imprisonment in 2018-19. b. Chance of imprisonment is measured by the proportion of court cases that were sentenced to imprisonment. c. Violent offences are those in ANZSOC divisions 01 to 06. Non-violent offences are all other ANZSOC offences.

Source: Commission estimates based on ABS (*Criminal Courts, 2020* and custom data request, and *Recorded Crime – Offenders, 2021*).

Of the jurisdictions identified in the Little's Law results where a compositional change in offending was identified as a relatively important driver of imprisonment rates,²⁸ only Victoria and Queensland appear to have had a shift to serious offending that could have put upward pressure on imprisonment rates — that is, an increase in serious offending and a decrease in non-serious offending. The compositional shift in Victoria was driven by increases in violent offending that was likely to end in imprisonment, whereas the compositional shift in Queensland was driven by increases in offences with longer prison sentences. For example, the results in table B.3 show that in:

- Victoria, the adjusted offending rate²⁹ for offences considered violent increased by 9 points between 2011-12 and 2018-19, while the adjusted offending rate for offences considered non-violent fell by 44.5 points

²⁸ That is, Victoria, Western Australia and Tasmania (table B.2) plus Queensland, where it was a close third.

²⁹ To enable the three measures of serious and non-serious offending to be aggregated across offences and compared, the offending rate is adjusted by the proportion of court cases that were sentenced to imprisonment in the year 2018-19. To do this, the offending rate for each offence was multiplied by the number of court cases sentenced to imprisonment divided by the total number of court finalisations for that offence. This weights each offence by how important it is for prison numbers; otherwise offences which occur at high volumes but which rarely receive prison sentences disproportionately affect the results.

- Queensland, the adjusted offending rate for offences for which the median sentence was longer than a year increased by 6 points between 2011-12 and 2018-19 while the comparable rate for offences whose median sentence was shorter than a year fell by 20 points.

Although the Little's Law results suggest that a compositional change was a relatively important driver of imprisonment in Tasmania and Western Australia (table B.2), it is unlikely that the compositional shift was driven by an *increase* in serious offending in those jurisdictions (table B.3). For example, in Western Australia, the adjusted offending rate for offences with longer sentences barely changed, while the adjusted offending rate for both violent offences and offences likely to end in prison fell by 6 and 7 points respectively (table B.3). Similarly in Tasmania, the adjusted offending rate fell across all three measures of serious and non-serious offences, but non-serious offending fell by the largest amount. These results suggest that the compositional changes observed in Little's Law analysis could not have led to *increased* imprisonment, rather the compositional change in these jurisdictions slowed a fall in imprisonment.

For other states and territories compositional changes in offending were found to be relatively less important drivers of imprisonment in the Little's Law analysis (table B.2). The results presented in table B.3 are largely consistent with the Little's Law results. For New South Wales, South Australia and the Northern Territory a compositional change in offending — towards less serious offending across most of the three measures (table B.3) — slowed the rise in imprisonment implied by the increased offending rate in those jurisdictions (figure B.2). In the ACT large decreases in most measures of offence seriousness (table B.3) are consistent with the offender count being the driver putting the most *downward* pressure on imprisonment in the Little's Law results (table B.2) and the observed decline in the offending rate (figure B.2).

The analysis in table B.3 was undertaken with jurisdiction-level data, so a shift to more serious offending could also hold within jurisdictions for specific demographic groups. For example, offending by Aboriginal and Torres Strait Islander adults in New South Wales is becoming more serious (Fitzgerald 2021). Such a shift would be hidden by the data used in this analysis.

B.3 Remand

Between their arrest, initial court appearance and case finalisation an alleged offender may either be on bail or held on remand.

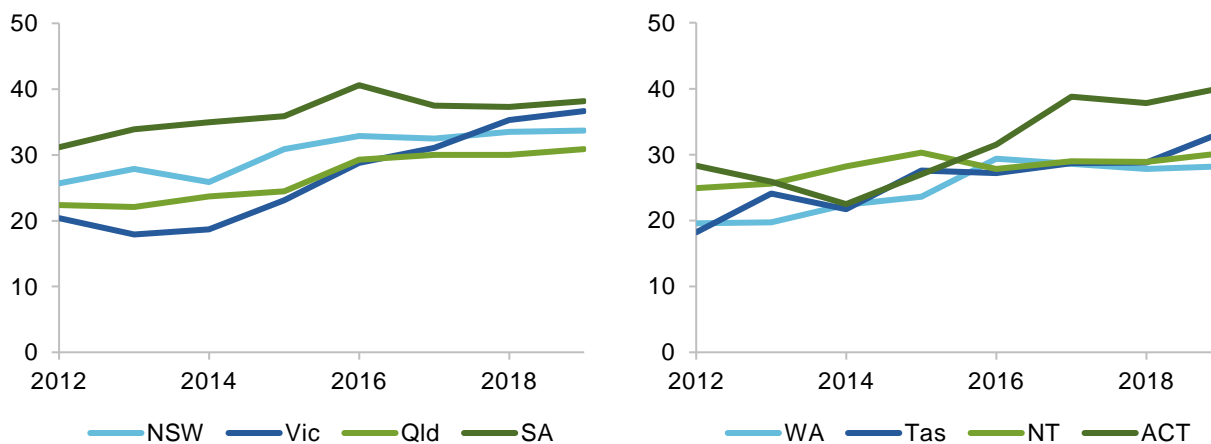
The number of people on remand grew rapidly after 2012 and appears out of step with declining offending rates. Further, the sentenced prisoner population grew at a slower rate than the unsentenced population, increasing the share of unsentenced prisoners (figure B.3).

About 64 per cent of the growth in the prison population between 2012 and 2019 was in prisoners on remand. In some jurisdictions (and over shorter periods of time) this growth made up much more of the increase. For instance in Victoria 92 per cent of additional prisoners from 2014 to 2019 were remandees (Sentencing Advisory Council (Victoria) 2020).

The degree to which changes in remand affect the overall prison population depends in part on whether remandees are subsequently found guilty and the length of sentence they ultimately receive. If *all* remandees ultimately receive a sentence at least as long as their time spent on remand, then growth in remand will not add to the overall prison population, but rather shift some of the period of time in prison from after to before sentencing.

Figure B.3 – The share of the prison population on remand increased across all jurisdictions

Per cent of prison population on remand at 30 June 2012 – 2019, by jurisdiction



Source: ABS (*Prisoners in Australia*, 2020).

However, data to establish the extent to which remandees are found guilty and the effect of remand on their sentence length are not routinely available. For example, the proportion of remandees who receive a sentence of 'time served' — a statistic that could help better estimate the length of time in prison or 'in the queue' (box B.1) — is not widely published.

- In Victoria 87 per cent of remandees received a prison sentence longer than their remand period in 2011-12. However, this had dropped to 66 per cent of remandees by 2017-18 (Sentencing Advisory Council (Victoria) 2020). Victoria is not necessarily representative of the other jurisdictions given it had the sharpest increase in its remand population (figure B.3).
- In South Australia over the period 2015-16 to 2019-20, on average, 60 per cent of prisoners who were discharged had only been in prison on remand.³⁰ Of those, 56 per cent had been released on bail and 29 per cent were given either time served or had their charges withdrawn. Many of these remand episodes were relatively short, with a median of 24 days and an average of 57.5 days. Similar to Victoria, South Australia's remand population has increased over time (figure B.3). By August 2021 almost 45 per cent of prisoners in South Australia were on remand (South Australian Department for Correctional Services, pers. comm., 25 August 2021).

In terms of the effects of remand numbers and time on remand on imprisonment rates, the Little Law's analysis suggests that the number of people held on remand only appears to be a relatively more important driver of growth in the prisoner population in New South Wales (table B.2). This is despite high remand rates being a concern within the criminal justice system more broadly (chapter 2) and the strong growth in the number of prisoners on remand. This discrepancy may be due to the data limitations outlined earlier (section B.1). Alternatively, *if* most remandees end up being sentenced to a prison sentence at least as long as their time spent on remand, as noted earlier, the period of time the sentenced prisoner population spends in prison shifts from after to before sentencing.

³⁰ The South Australian Department for Correctional Services data on discharges do not represent unique individuals. On average there were about two imprisonment episodes per individual over the period (South Australian Department for Correctional Services, pers. comm., 25 August 2021).

Nonetheless, increases in the remand population will have had some impact on the size of the overall prison population, because not *all* remanded cases result in a guilty verdict and not *all* guilty verdicts result in imprisonment. For example, in New South Wales, on average from 2012 to 2019, 10 per cent of defendants who were on remand at case finalisation did not receive a guilty verdict and 25 per cent of those who received a guilty verdict did not receive a prison sentence. This suggests that, on average, about 33 per cent of people on remand might not have served any time in prison had they been placed on bail between 2012 and 2019 (Commission estimates based on Bureau of Crime Statistics and Research unpublished data).

While the Little's Law results suggest that a growing remand population is a key driver of the size of the prison population in New South Wales and is a less important driver in other jurisdictions, a growing remand population presents issues for the criminal justice system beyond the growth in the prison population. This is because an increasing number of remandees may be found not guilty and will effectively face many of the indirect costs associated with a short sentence (chapter 3), and remandees typically have limited access to prison programs and rehabilitation.

The increase in remand reflects several factors, including:

- the volume of people appearing before the courts — this can be affected by changes in crime rates, apprehensions or charging practices
- bail legislation and practices that affect the probability of bail being granted or refused
- defendant characteristics (such as drug (including alcohol) and mental health issues), that make remand more likely
- court delays that affect the average period spent on remand.

Why has remand increased?

The data on remand that the Commission was able to obtain has some important limitations. In particular, each defendant may have multiple episodes of remand before case finalisation, and statistics on time spent on remand reflect only the individuals' most recent remand episode. Moreover, many remand episodes may be very short (measured in days or weeks) most of which will not be captured in an annual census of the remand population such as those reported by the Australian Bureau of Statistics (ABS), in *Prisoners in Australia*.

This analysis abstracts from these data limitations by focusing on two high-level determinants of the remand population: the duration of court cases and bail legislation. This approach does not take account of any changes in discretionary bail decision making by the courts throughout this period.

Court processing times have increased

Increases in court processing times are likely to be contributing to the increase in the remand population. The median time to process cases increased from 5 to 6 weeks in the magistrates courts and from 29 to 36 weeks in the higher courts between 2010-11³¹ and 2018-19. Median court duration increased across most jurisdictions, except for the ACT (in the higher courts) and New South Wales, the Northern Territory and Victoria (in the magistrates courts). A similar pattern is observed for mean court duration — the mean time to

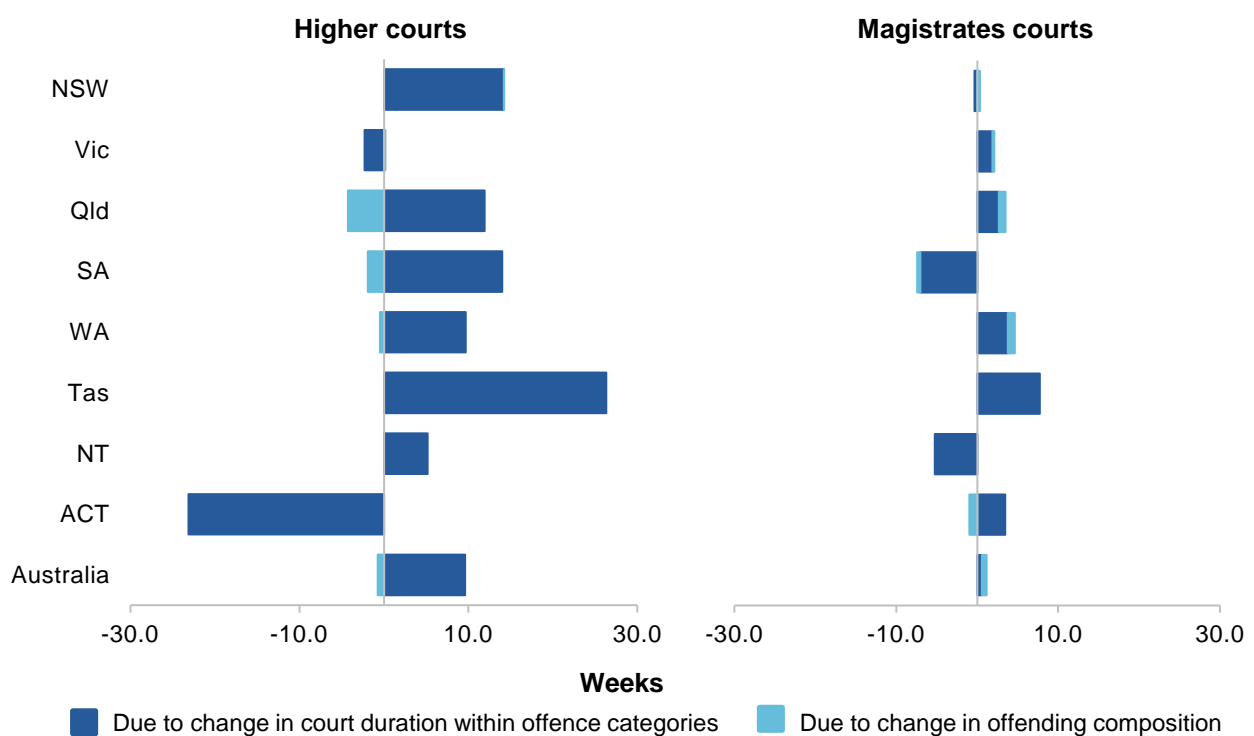
³¹ 2010-11 is used as a base year in this analysis because 2011-12 appears to be an outlier for the Northern Territory, South Australia, and the ACT. For example, in the Northern Territory mean processing times were typically between 20 and 30 weeks between 2010-11 and 2018-19 but in 2011-12 it was 114 weeks. In South Australia, mean processing times were typically between 30 and 40 weeks between 2010-11 and 2018-19 but in 2011-12 it was 62 weeks. In the ACT, the respective figures were between 17 and 22 weeks versus 41 weeks.

process cases increased from 15 to 16 weeks in the magistrates courts and from 40 to 49 weeks in the higher courts between 2010-11 and 2018-19.

A shift-share analysis of mean court duration suggests that the observed increased court duration cannot be attributed to changes in the composition of offences coming before the courts (figure B.4).

Figure B.4 – The increase in court duration cannot be attributed to changes in the composition of offences^a

Change in total mean court duration attributed to either changes in court duration at the offence level or changes in the composition of offending, between 2010-11 and 2018-19 (shift-share analysis)



a. The two contributions sum to the total change court duration.

Source: Commission estimates based on ABS (*Criminal Courts*, custom data request).

Other possible explanations for increased court duration are:

- increased length of hearings
- insufficient court resources or problems with the management of court and caseload
- inefficient legal procedures and court processes, and party delays.

Bail laws have been tightened

Changes in the rate of bail refusal appear to be an important driver of the increase in remand with many studies pointing to changes in bail legislation as a key driver of increasing rates of remand across Australia (Auld and Quilter 2020; Bartels et al. 2018; Brown 2013; King, Bamford and Sarre 2005; Steel 2009; Travers et al. 2020a; Weatherburn 2018). Amendments to bail legislation reflect shifting views on the purposes of bail and the principles underlying the system (Bartels et al. 2018).

The right to bail following arrest and charge was, until the mid-1970s, based on common law doctrines (Steel 2009). At common law, the prime justification for refusing bail was a concern over the likelihood of a failure to attend the subsequent trial. However, due to concern that bail discriminated against the poor and benefited the rich, a process of legislative reform commenced, beginning with Victoria in 1977.

Each jurisdiction took different approaches to codifying the decision of whether to grant or deny bail, but the emphasis was primarily on ensuring court attendance and refusal of bail was made on a case-by-case analysis of the offender and their circumstances (Steel 2009).

There have been significant amendments to bail legislation in most jurisdictions since their introduction, and the original principles that promoted release on bail have largely been reversed. These amendments have typically followed high-profile cases where defendants on bail have committed serious offences. Victoria's Bourke Street incident, the Teresa Bradford murder in Queensland, the Martin Place siege in New South Wales and Western Australia's 'Evil 8' are all cases that attracted substantial media attention and increased public pressure on lawmakers to tighten bail laws (Bartels et al. 2018).

The key element of this tightening has been to require bail authorities to discard the presumption of bail in favour of a presumption against bail. This requires the applicant to 'show cause' why he or she should be given bail, rather than a police officer or prosecutor having to offer persuasive reasons why bail should be denied (Bartels et al. 2018). There have also been legal changes in some jurisdictions to make it harder to secure bail where an accused has previously been convicted of sexual offences or has been the member of a criminal organisation. Some jurisdictions have also extended the range of conditions a court can impose, including the introduction of mandatory conditions in certain circumstances (Bartels et al. 2018).

Nonetheless, the ability to directly link changes in bail legislation with changes in the remand population is constrained by the lack of data (Weatherburn 2018).

B.4 Case finalisations and sentencing

Court cases per offender have generally been flat or declining

For an alleged offence, police may offer a caution, conference, counselling or penalty notice. These actions will typically not end up in court, and so cannot lead to a prison sentence. All other options available to police create a 'court action', which may eventually lead to a prison sentence. Offenders who police take to court are counted as a 'case finalisation'.

Court cases (or case finalisations) reflect the types and composition of offending, the amount of reoffending, and decisions of police and the courts (influenced by policy and practice). For example, police practices might focus attention on offences more likely to be taken to court. Penal policy can expand the range of offences considered in court, increasing the number of court cases.

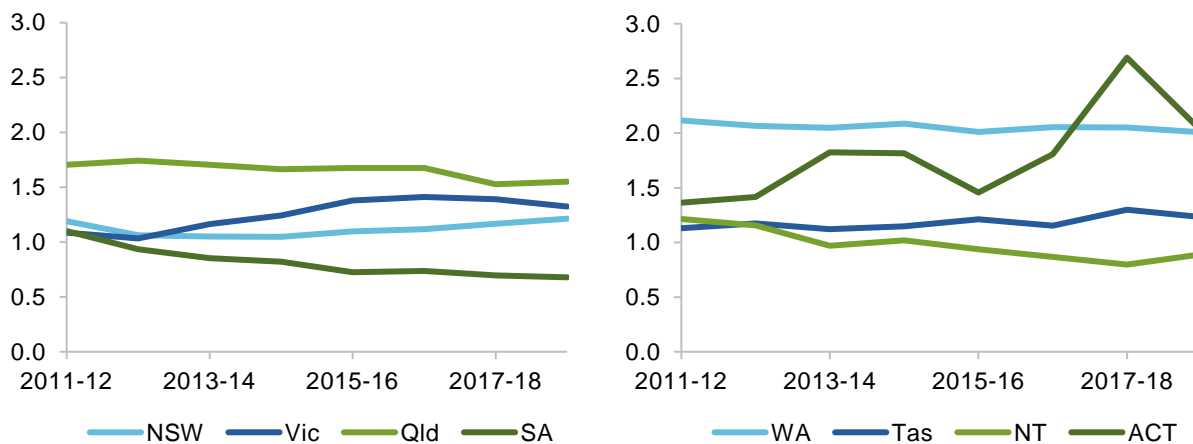
In jurisdictions where court cases per offender decreased alongside the offending rate, increases in imprisonment must have been because courts were more likely to impose a prison sentence or longer prison sentences. Jurisdictions where court cases per offender increased while offending rates decreased leave open the additional possibilities that police brought a larger proportion of alleged offenders to court or a larger proportion of offenders were repeat offenders (and finalised multiple times in one year).

Court cases per offender were relatively flat or decreasing in most jurisdictions (figure B.5).

In Victoria, the increasing number of court cases per offender from 2011-12 to 2015-16 might be related to the drop in the use of diversion programs by police. Diversion dropped from 25.6 per cent of cases in

2007-08 to 12.5 per cent in 2015-16 (Cowan et al. 2019). This decline was at least partly due to the political climate and media attention, but was also likely related to the composition of offending and the characteristics of offenders³² (Cowan et al. 2019).

Figure B.5 – Court cases per offender were relatively flat or decreasing in most jurisdictions
Case finalisations per offender (count) by jurisdiction, 2011-12 to 2018-19



Source: Commission estimates based on ABS (*Recorded Crime – Offenders, 2021; Criminal Courts*, custom data request).

Legislative changes may also have expanded the scope for cases to be dealt with in the courts — particularly for sexual assault and consorting/association offences. New offences introduced since the mid-1980s include knife possession, bushfire arson and cyber-crimes (Leigh 2020b). More recently, between 2012 and 2017, there were 143 criminalisation statutes passed across New South Wales, Victoria and Queensland relating to ten selected areas of criminalisation (McNamara et al. 2019). That said, courts can offset legislative change designed to impose harsher policies via their practices (Freiberg 2017).

Court sentences are becoming more severe

As a case moves through the court system, it seems likely that sentencing policy and court practices play a dominant role in deciding outcomes. This is because the outcome is largely decided by judge and/or jury. Policing policy and practices still have a residual effect because they dictate which cases are pursued and the size of evidence base, or they can target offenders with certain characteristics — all of which can affect the probability of conviction and imprisonment.

Conviction rates were relatively stable in most jurisdictions

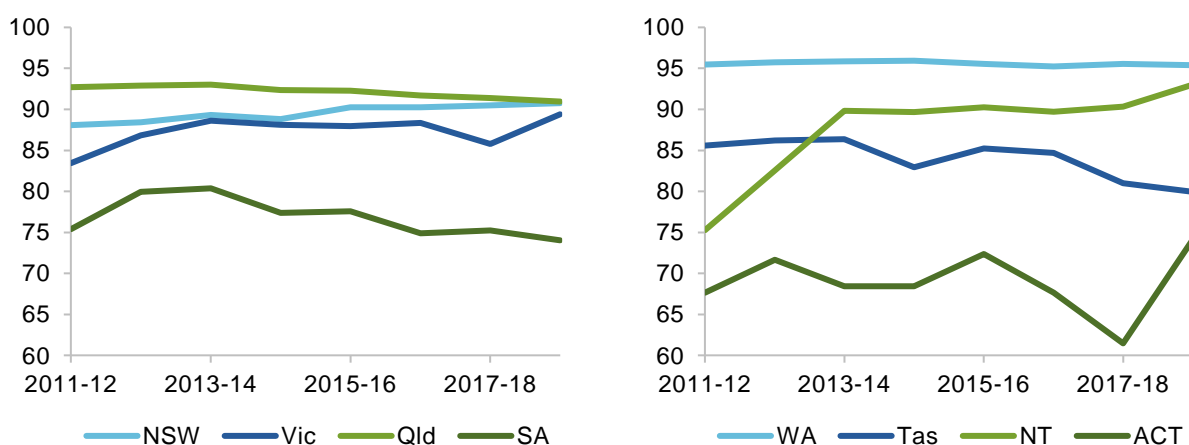
Overall conviction rates either fell slightly or were relatively stable in most jurisdictions between 2011-12 and 2018-19 (figure B.6). This is not surprising given that cases are only brought to courts where there is a reasonable basis for a conviction, and rules and processes for evidence in courts are relatively stable. In contrast, as discussed below, the type of custodial order and the length of sentence can be more easily influenced by social norms, sentencing guidelines and legally prescribed sentences (such as mandatory sentences).

The Little's Law analysis suggests changes to guilty verdicts per court case tended to have a modest effect on imprisonment rates compared with the increases in prison sentences per guilty verdict (table B.2). Still,

³² For instance, some offences are ineligible for diversion and offenders may be ineligible based on their offending history.

guilty verdicts per court case appear to be the most important driver of imprisonment rates in the Northern Territory and the ACT³³ (table B.2).

Figure B.6 – Conviction rates fell slightly or were relatively stable in most jurisdictions
Per cent of court cases found guilty, 2011-12 to 2018-19



Source: Commission estimates based on ABS (*Criminal Courts*, custom data request).

People found guilty are more likely to be sentenced to prison in all jurisdictions

Courts can award custodial orders to those found guilty. Custodial orders include custodial sentences in correctional institutions (or imprisonment), community orders and fully-suspended sentences.

The likelihood that courts impose a prison sentence (a custodial sentence in a correctional institution) can be measured by prison sentences per guilty verdict. While average national prison sentences per guilty verdict tended to be about 10 per cent in 2018-19, there are marked differences across jurisdictions that reflect a wide array of differences in offending composition, offender characteristics, and policing and penal policy. In particular, the chance of imprisonment after a guilty verdict is about six times higher in the Northern Territory.

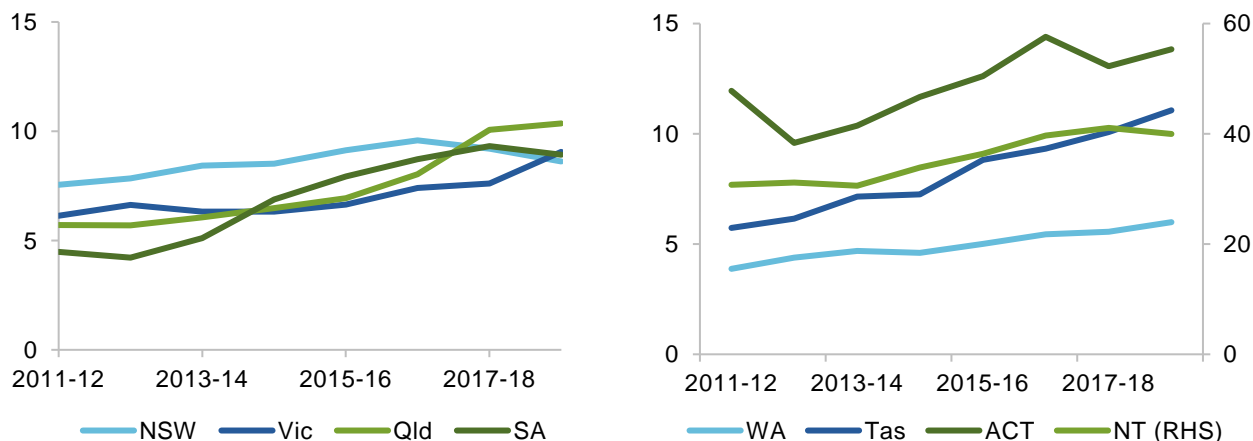
Prison sentences per guilty verdict was the only ratio that increased in all jurisdictions, and it more than doubled in some cases (figure B.7).

Various commentators have suggested that penal policy drove imprisonment growth over the past 25 years or more (Anderson 2012; Cunneen et al. 2013; Freiberg 2005; Freiberg and Ross 1999; Pratt and Eriksson 2013; Simpson and Griffith 1999; Warner 2002). These reforms rarely make penal policy more lenient. In general, penal policies, such as standard sentences, sentencing guidelines and mandatory sentencing laws, increase the probability that a given offence results in incarceration as well as increasing the likely sentence length (Law Council of Australia 2014).

³³ This might be driven by noise in the data. The proportion of court cases found guilty in the ACT is volatile. And 2011-12 seems to be an outlying year in the Northern Territory — in 2010-11 the percentage of court cases found guilty was consistent with the rest of the series, at about 90 per cent of cases. These may be because both of these jurisdictions are relatively small.

Figure B.7 – The proportion of guilty verdicts given a prison sentence increased in all jurisdictions

Per cent of guilty verdicts that are sentenced to prison, 2011-12 to 2018-19



Source: Commission estimates based on ABS (*Criminal Courts*, custom data request).

There are some penal policy changes that could be linked to the trends above. For example, sentences per guilty verdict increased from 2015-16 onwards in Victoria. And from March 2017, ‘category 1’ offences were introduced where those found guilty *must* be imprisoned and ‘category 2’ offences introduced where guilty offenders must be imprisoned except under limited circumstances (such as mental impairment) (Sentencing Advisory Council (Victoria) 2018a). (Note that this is merely correlation.)

Some jurisdictions also phased out suspended sentences — Victoria from 2011 to 2014, New South Wales in 2017, and more recently Tasmania began to phase them out.³⁴

In Victoria, imprisonment tended to replace suspended sentences (over community correction orders), particularly early on (Freiberg 2019). This change likely contributed to the changing mix of custodial orders — the percentage of custodial orders that included some time in prison increased from about 49 per cent in 2011-12 (with the remaining 51 per cent of orders including suspended sentences or community orders) to about 95 per cent in 2018-19 (Commission estimate based on unpublished data from ABS *Criminal Courts*). That said, the use of imprisonment did not grow as quickly as the use of other orders fell, which suggests that not all suspended sentences were substituted for imprisonment — as also discussed by Frieberg (2019).

In New South Wales, suspended sentences were nominally replaced by Intensive Correction Orders that can be issued as an alternative to imprisonment (NSW Department of Communities and Justice 2019). This is supported by (time-limited) data, which show that the proportion of custodial orders that included some time in prison dropped from 62 per cent in 2016-17 to 60 per cent in 2018-19 (Commission estimates based on unpublished data from ABS *Criminal Courts*).

Tasmania’s increase in prison sentences cannot be directly related to the removal of suspended sentences. Prison sentences per guilty verdict steadily increased from 2011-12, well before the policy change was announced in 2014 and then legislated in 2017. What’s more, the proportion of custodial orders that included some time in prison increased from about 37 per cent in 2011-12 to about 44 per cent in 2016-17, which suggests

³⁴ The Tasmanian Government committed to the phase out in 2014 and legislated the change in 2017 with the *Sentencing Amendment (Phasing Out of Suspended Sentences) Bill 2017*. In December 2018 an amendment deferred the phase out to allow for an 18 month trial of alternative options of home detention and community correction orders (Clark 2020).

the shift towards a greater use of imprisonment occurred before the policy was legislated (Commission estimates based on unpublished data from ABS *Criminal Courts*).

These changes in Tasmania are also unlikely to be driven by compositional shifts towards offences more likely to be found guilty. Offending composition was not a significant factor leading to increased imprisonment rates in Tasmania (table B.3). In comparison, prison sentences per guilty verdict increased across almost all offence categories, with significant increases in the use of imprisonment for non-serious offences, such as weapons/explosive offences (1158 per cent growth), offences against justice (226 per cent growth), theft (175 per cent growth) and illicit drug offences (120 per cent growth) (Commission estimates based on unpublished data from ABS *Criminal Courts*).

That said, penal policy can be offset by court practices — and there is evidence that it has been the case historically in New South Wales, Western Australia and Victoria (Tubex et al. 2015) — so effects of penal policy are not always apparent in the data (Weatherburn 2018).

Changes in the characteristics of the individuals who are offending³⁵ could also be driving the increased imprisonment rate. In New South Wales, between 2012 and 2019, the numbers of offenders with three or more and four or more prior convictions both grew (by about 28 per cent and 30 per cent, respectively) and the number of offenders with two or more indictable offences grew by about 24 per cent (Weatherburn 2020). Weatherburn (2020) showed that the chance of imprisonment in 2014 and 2018 was the same once these (and other) offender characteristics were controlled for.

Weatherburn (2020) suggested that policing policy drove the change in the characteristics of offenders in New South Wales, with only the increase in illicit drug offences attributable to changes in offending numbers. Weatherburn further noted that, although it is impossible to be sure, circumstances that contributed to the change in the characteristics of offenders included:

- strong requirements in the 2011 New South Wales plan for police to reduce crime rates via ‘high visibility and targeted operations’ (NSW Government 2011)
- increased funding and police numbers, alongside reduced offending rates (Goh and Ramsay 2020)
- a resurgence in police confidence in their capacity to control crime, including through ‘focussed deterrence’ strategies that have been shown to be in reducing offending for a variety of violent offences (Braga, Weisburd and Turchan 2018; Morgan et al. 2020). In New South Wales this approach is embodied in the Suspect Target Management Plan (LECC 2020).

Strategies consistent with focussed deterrence — that provide a ‘swift and certain punishment’ to all offenders that escalate based on offending history (Morgan et al. 2020) — are used by other police forces. In Western Australia, police implement strategies that target recidivist offenders and repeat crime locations. A new project has also been established to identify and locate prolific high-harm offenders (WaPol 2020).³⁶ In Victoria the Firearm Prohibition Order scheme was introduced in 2018 to prevent people who may pose a risk to the public from accessing firearms. In 2019-20, 231 of these orders were issued against known violent offenders, including members of various crime groups (Victoria Police 2020). While focussed deterrence was shown to reduce recidivism in its original evaluation (Hawaii’s Opportunity Probation with Enforcement (HOPE)), upon expansion of the program and evaluation in multiple and differing sites the results were inconclusive and showed that focussed deterrence cannot guarantee reduced recidivism beyond what can

³⁵ These include the number of previous convictions, the number of indictable offences per court case, or other socio-economic factors. The characteristics of the individuals who are offending are unobserved in the data used here and for the Little’s Law analysis.

³⁶ Although these are only one of a number of operational areas discussed in their annual report.

be achieved with normal probationary rules (Kenny et al. 2017; Lattimore et al. 2018). Overall, this suggests that deterrence strategies should be considered and tailored to specific contexts.

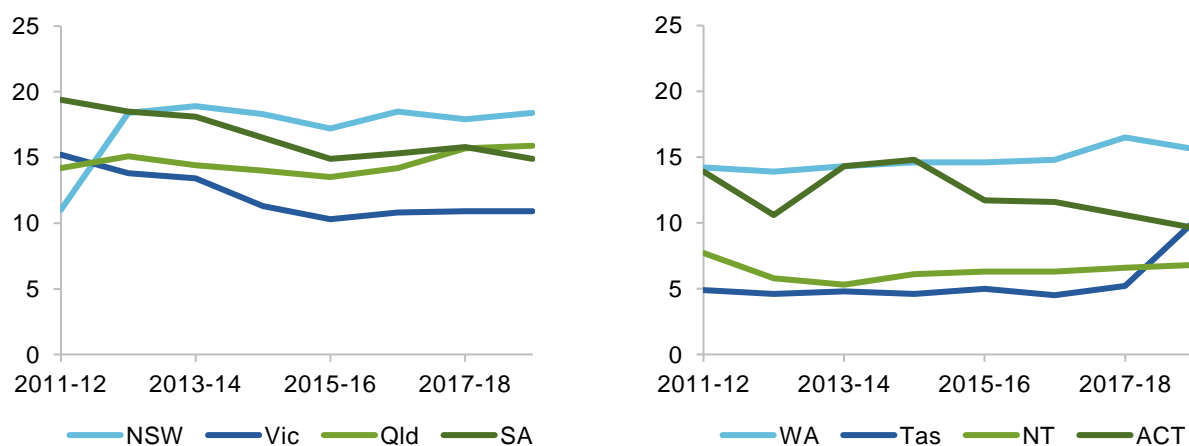
Sentences are becoming longer in some jurisdictions

While offending rates, the number of court cases, guilty verdicts and prison sentences affect the arrival rate of offenders, the stock of prisoners at a point in time is also affected by the length of sentences imposed.

Mean sentence length increased in New South Wales, Queensland, Western Australia and Tasmania (figure B.8) (as well as nationally). The Little's Law analysis suggests that the increase in sentence length was an important driver in New South Wales, Queensland and Tasmania³⁷ (table B.2).

Figure B.8 – Mean sentence length increased in half of the jurisdictions^a

Mean sentence length (months), 2011-12 to 2018-19



a. This is mean sentence handed down by the court at time of sentencing. The actual time served can be less than this for people offered parole.

Source: ABS (*Criminal Courts, 2012 to 2020*).

However, these results need to be interpreted cautiously because of the complex nature of sentencing in Australia. For example:

- conditional on maximum penalties and jurisdictional limits of the court, judicial officers have a large degree of sentencing discretion (including sentence length) (Freiberg 2010)
- sentences can be discounted depending on the behaviour of offenders — and those discounts can change over time — including discounts of up to 30 per cent for those who plead guilty early (Freiberg 2010)
- some offenders can be sentenced to a combined sentence of imprisonment and community corrections order, where a sometimes substantial period of the sentence can be served in the community (Sentencing Advisory Council (Victoria) 2016). These sentences are becoming increasingly common due to their flexibility to be tailored to the offender's particular circumstances (including the severity of their offence) (ABS 2021c). This flexibility also means they cannot be accurately reflected by a single sentence type classification (ABS 2021c)

³⁷ While formally sentence length was the third most important driver in Tasmania, it is only slightly less important than the second most important driver (offender composition).

- legislative changes may interact with other changes — as was the case in the Northern Territory, where mandated minimum sentences for certain violent offenders increased sentences for repeat offenders but not first-time offenders (Northern Territory Department of the Attorney-General and Justice 2015).

The data used here represent the expected sentence length at the point of sentencing. The actual time served can be shorter, depending on whether the offender is released on parole (section B.5). For example, although the mean sentence awarded by the courts grew by about 73 per cent in Queensland between 2010-11 and 2018-19 (ABS 2020a), the duration of time in prison at release did not change overall between 2011-12 and 2017-18 (QPC 2019a).

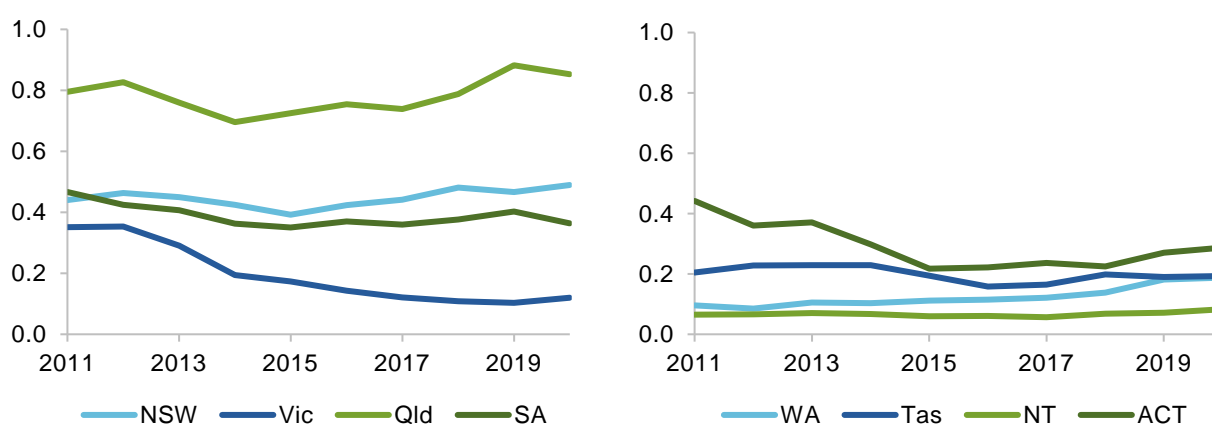
B.5 Parole

Parole is a form of conditional release of prisoners, which allows an offender to serve the whole or part of their sentence in the community, subject to conditions. In December 2020, there were 18 000 people on parole in Australia (ABS 2021a), the highest number on record. The period before parole is allowable and the terms on which it is provided affect the total prisoner population because they can reduce the impact of the initial sentence length.

The use of parole varies widely by jurisdiction (figure B.9). The ratio of people on parole to the number of prisoners fell by a sizable amount in Victoria and the ACT and a smaller amount in South Australia and Tasmania between 2011 and 2019.

Figure B.9 – The ratio of people on parole to the number of people held in full-time custody fell appreciably in Victoria and the ACT

Ratio of people on parole to people in full-time custody, 2011 to 2019

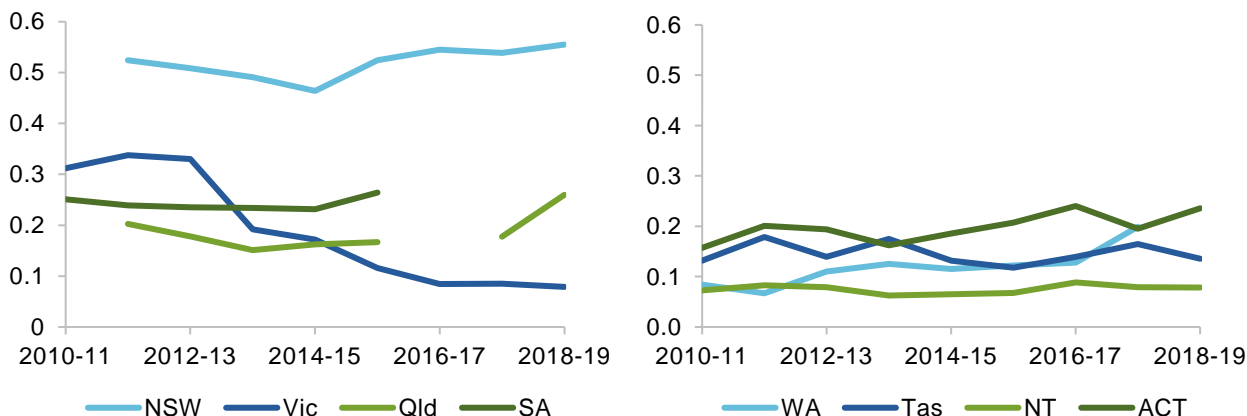


Source: Commission estimates based on ABS (*Corrective Services, Australia, December quarter, 2020, 2017, 2014 and 2011*).

The ratio of people on parole to the number of people in full-time custody is an imperfect measure of the number of people discharged on parole in a given year — it conflates both length of prison sentences and length of parole periods as well as the number of discharges. Nevertheless, changes in this ratio may reflect (in part) changes in parole policy.

Complete data for people discharged on parole are not available for all jurisdictions or all years and the Commission was unable to find data on the length of parole periods. The data the Commission was able to piece together on discharges, however, is mostly consistent with the trends observed in the ratio of people on parole to those in full-time custody (figure B.10).

Figure B.10 – Parole discharges per prisoner only fell in Victoria
Parole discharges per prisoner, 2011-12 to 2018-19^a



a. Northern Territory data reported by calendar years.

Source: ABS (*Prisoners in Australia, 2020*); ACT Justice and Community Safety Directorate (2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019) Annual report; BOCSAR (2013, 2021) NSW custody statistics quarterly updates; Corrections Victoria (2020) Annual prisoner statistical profile 2009-10 to 2019-20; Parole Board of Tasmania (2013, 2018, 2019) Annual report; Parole Board of the Northern Territory (2019) Annual report; Prisoners Review Board of Western Australia (2011, 2013, 2015, 2017, 2019) Annual report; Queensland Parole Boards (2012, 2013, 2014, 2015, 2016, 2018, 2019) Annual report; South Australian Department of Correctional Services (2011, 2013, 2016) Annual report.

Interestingly, parole discharges per prisoner increased in the ACT, suggesting that the parole rate increased faster than the imprisonment rate. Given the ratio of people on parole to people in full-time custody dropped, it is possible that parole periods dropped faster than the length of prison sentences.

Victoria appears to be less willing to leave parole decisions with the courts or parole boards and have gradually reduced the latter’s authority, powers and discretion (Freiberg et al. 2018). For example, the proportion of people discharged under the authority of the parole board in Victoria dropped from 32 per cent in 2010-11 to 5.5 per cent in 2018-19 (Corrections Victoria 2020).

Strict guidelines that provide no room for discretion may have also resulted in high rates of parole revocations in some jurisdictions (Senate Legal and Constitutional Affairs 2013).

Bartels, Fitzgerald and Freiberg (2018) classified recent reforms to Australian parole laws and policies as falling under five key themes:

- the prioritisation of community safety over other relevant considerations in parole decision making
- more limits are being imposed on the courts’ discretion to set non-parole periods, through the use of mandatory or presumptive non-parole periods
- questioning or reducing the discretion of parole boards to make decisions involving perpetrators of serious offences
- giving greater weight to victims’ concerns about what they see as appropriate sentences and release conditions
- a shift in the rationale for parole from a prisoner-centred and reintegrative process to one focused on a prisoner’s forfeiture of rights due to their offending behaviour.

That said, tightening of parole conditions was not necessarily observed across all jurisdictions. Parole discharges per prisoner is flat or increasing in most jurisdictions (figure B.10). Further, the high ratio of

people on parole to people in prison and the low ratio of parole discharges per prisoner in Queensland suggests that parole periods are relatively long in that state.

The magnitude of the effects of changes to parole policy on imprisonment numbers is difficult to ascertain due to limited data on parole periods, but looks likely to have been one factor explaining a higher prison population in recent years in some jurisdictions.

B.6 Recidivism

Prison is often a recurring destination for people, with many experiencing multiple periods of imprisonment over their lives, punctuated by periods of freedom.

A standard measure of recidivism — the number of current prisoners who have been imprisoned before — has been increasing over the past decade. Further, despite changes in the composition of offending likely to put downward pressure on recidivism in general, recidivism seems to be increasing across most offending categories (chapter 2).

Although it is not possible to be certain, the increasing rate of recidivism could be indicative evidence that reoffending patterns are playing a role in increasing Australia's rate of imprisonment. For example, from 2012 to 2019, the number of people in Australian prisons who had a prior spell of imprisonment grew by about 55 per cent whereas the number of people with no prior spell only grew by about 36 per cent. In New South Wales, a similar trend in reoffending increased the likelihood of a prison sentence, and placed upward pressure on prisoner numbers (Weatherburn 2020).

The Little's Law analysis is not able to include reoffending because reoffending rates are not observed in the ABS' *Criminal Courts* data. In particular, differences in prison sentences (including length of sentence) are not observed for reoffenders and first-time offenders separately. This limits the ability of the analysis to attribute changes in imprisonment to changes in reoffending.

C. Case studies: data sources and methodology

This appendix provides additional detail on the benefit and cost estimates associated with each of the case studies discussed in chapter 4.

The estimates should be taken as illustrative. Where possible, they have been drawn directly from published evaluations or similar studies, while for some of the case studies the Commission has made additional assumptions to calculate its own estimates. This appendix provides sources for the estimates and the methodology for any additional calculations.

The evaluations from which the estimates are drawn or constructed are of varying quality, although most involve efforts to compare offender outcomes to matched samples. Most of the studies make no attempt to put a value on the impacts of crime on victims and the community. The data for recidivism in the studies do not generally include detailed information on the crimes committed.

Most of the additional calculations made by the Commission were to convert estimated reductions in recidivism to system cost savings. This involved making assumptions around average sentence lengths and imprisonment costs in the relevant jurisdiction. Conservative assumptions have been adopted.

Where jurisdictions choose to consider approaches adopted in other settings for implementation in their own jurisdiction, further work will be required to assess the relative merit and feasibility of particular policies and programs in their jurisdiction. For example, similar programs may already be in place, reducing the benefits to be gained, or the legal or prison environments may affect how a new program should be implemented.

C.1 Diversion for first time felony offenders in Harris County, Texas, in 2007

Table C.1 – Benefit–cost estimates

Estimated effect of intervention, per offender

Direct fiscal impact	Unknown, but diversions involved both community supervision sentences and some outright case dismissals — the former involves low costs relative to custodial sentences while costs for the latter are negligible.
Effect on recidivism	Diversions were associated with 1.7 fewer convictions per person over ten years (and a 26 percentage point decrease in the likelihood of any reconviction) and may also have been associated with a decrease in cumulative time imprisoned.
Employment and productivity	Diversions were associated with an average increase of just over \$US41 000 (2018 dollars without applying discounting) per person in total earnings over ten years. They were also associated with a 15 percentage point increase in quarterly employment, implying additional savings from reduced welfare spending.
Health and other effects	Unknown, but likely to have had some benefit based on improved employment outcomes.
Total net benefit	At least \$US41 000 (2018 dollars without applying discounting) per person over ten years.

The estimates provided for this case study are taken directly from Mueller-Smith and Schnepel (2021).

C.2 Victoria's Assessment and Referral Court

Table C.2 – Benefit–cost estimates

Estimated effect of intervention, per offender

Direct fiscal impact	Costs of the Assessment and Referral Court (ARC) are not published separately.
Effect on recidivism	The total rate of offending among court participants from 2010 to 2012 (the court's first years of operation) fell from 87 per cent in the two years before the court process to 58 per cent in the two years after it. However, it is not clear that that this change solely represented an effect of the ARC, or how this change would compare with a counterfactual court process.
Employment and productivity	Unknown.
Health and other effects	Unknown.
Total net benefit	Unknown.

The data on offending are taken directly from Chesser and Smith (2016, pp. 147–8).

C.3 Aboriginal and Torres Strait Islander sentencing courts

Table C.3 – Benefit–cost estimates

Estimated effect of intervention, per offender

Direct fiscal impact	Net savings of about \$2600–\$3700 (2017 dollars in net present value (NPV) terms) per participant.
Effect on recidivism	In the Galambany Court benefit–cost assessment it was assumed that there would be one fewer imprisonable conviction each year from yearly cohorts of 45 participants, reducing imprisonment by 120 days. Combined with reduced police and court costs, this saved about \$1300 (2017 dollars NPV) per participant.
Employment and productivity	Benefit of \$11 000 (2017 dollars NPV) per participant.
Health and other effects	Benefit of \$2300 (2017 dollars NPV) per participant.
Total net benefit	About \$17 000–\$18 000 (2017 dollars NPV) per participant.

All estimates are taken from the *Cost Benefit Analysis of the Galambany Court* (Daly, Barrett and Williams 2020). The Galambany Court is an Aboriginal and Torres Strait Islander sentencing court in the ACT. The estimates for the included benefits were based on assumptions, argued by the authors to be conservative, rather than directly observed data on outcomes for court participants.

The direct fiscal impact included costs and savings from the court’s operations and immediate impacts. Total estimated costs for an average of 45 offenders per year (in 2017 dollars) included court running costs (\$282 000), additional community services used by offenders as a requirement of the court (\$45 000), and additional time spent on remand by some offenders owing to a longer court process (\$40 000). The main saving was an avoided cost of prison for offenders who would otherwise have received a custodial sentence from a standard court — assumed, based on discussions with stakeholders, to be 10 out of 45 participants with an average prison sentence of 120 days (\$480 000). Other savings included reduced court appeals and rescheduled appearances in the mainstream court system (\$5000), and a potential saving in prison operational costs from reduced conflict between Aboriginal and Torres Strait Islander community and the justice system (\$50 000). This summed to about \$2600–3700 per participant, depending on the inclusion of the operational saving from reduced conflict.

Daly et al.’s (2020) cost–benefit analysis estimated savings from reduced recidivism including reduced prison costs (\$48 000) and court costs (\$3000) based on an assumed one fewer repeat conviction and 120 day prison sentence from the average 45 offenders (or a 2.2 percentage point decrease), and reduced police intervention costs (\$7000) from an assumed 12 fewer interventions. This summed to about \$1300 per participant. While there was little evidence from comparable Aboriginal and Torres Strait Islander sentencing courts to support the assumed reduction in reoffending, the figure used is lower than the estimated 3.9 percentage point decrease in reoffending associated with Circle Sentencing courts in New South Wales (Yeong and Moore 2020).

Employment and productivity gains were based on an assumption that five of the ten offenders who avoid an average three-month custodial sentence retain their existing employment, earning the minimum wage for

that period. Two of the ten benefiting offenders were also assumed to obtain work at the minimum wage for an additional five years. These increased earnings summed to \$375 000 in net present value (NPV) terms using a discount rate of 2 per cent. It was also assumed that five offenders gain an average of one extra year of working life (occurring 19 years in the future on average) earning the minimum wage, adding another \$120 000 in NPV. This summed to \$11 000 in NPV per participant.

Health and other effects included a number of small benefits and associated savings of roughly equal value, including educational benefits and reduced educational assistance for offenders' children, avoided need for child protection services for the children of some of the offenders who avoid prison (five children on average from the ten offenders who avoid prison), lower health costs for offenders who avoid prison, reduced violence against women from the Court more effectively dealing with perpetrators of domestic violence, and avoided homelessness after release for some offenders who avoid prison. Daly et. al's analysis concluded that these impacts resulted in a net benefit of \$103 500 in NPV, or \$2300 per participant.

Adding the net benefit from all of these categories gives a total net benefit of about \$17 000–\$18 000 (NPV), depending on the inclusion of the operational saving from reduced conflict.

C.4 Conditional diversions in the United Kingdom

Table C.4 – Benefit–cost estimates

Estimated effect of intervention, per offender

Direct fiscal impact	Unknown. Annual staffing costs for the program total approximately £417 000. Based on the number of participating offenders between 2018 and 2019, this represents a cost of just over £850 per offender. These costs are exclusive of any services used by offenders as a condition of the program.
Effect on recidivism	A 10 percentage point decrease (equating to a 22 per cent relative decrease) in the proportion of moderate-risk individuals who reoffended within two years. Based on the estimated impact on reoffending, Durham Police Force estimated a saving to the police and criminal justice system of about £536 000 (2015-16 pounds sterling), or about £551 per offender. The reduced reoffending also translated to an estimated £1 595 000 (2015-16 pounds sterling) in avoided consequences of crime and expenses incurred in anticipation of crime, or about £1639 per offender. This totals to an overall benefit to society of approximately £2191 (2015-16 pounds sterling) per participating offender.
Employment and productivity	Unknown, but the diversion conditions include interventions to address identified priority criminogenic needs, including (among other categories) employment, training and education, alcohol or drug abuse, and mental and physical health.
Health and other effects	As for employment and productivity above.
Total net benefit	Unknown.

The estimated decrease in the proportion of individuals who reoffended is taken directly from Weir et al. (2021). Staffing costs and savings from reduced reoffending are based on information provided to the Commission by the Durham Police and Crime Commissioner's Office.

The savings estimates provided by Durham Police and Crime Commissioner's Office are based on the program's estimated impacts on reoffending, which translate to 505 prevented offences from the 973 offenders who participated in the program over 2018 and 2019. The Durham Police and Crime

Commissioner's Office material also uses costs of offending based on Heeks et al. (2018), which separately estimated costs to:

- the police and criminal justice system from responding to crime
- society as a consequence of crime, including stolen or damaged property, physical and emotional harms, lost output, health service costs and victim service costs
- society in anticipation of crime, including defensive expenditures such as security and insurance administration costs.

Only 359 (71 per cent) of the 505 prevented offences could be costed based on these categories. For this fraction of the offences, the total savings (in 2015-16 pounds sterling) were:

- £536 000 in prevented costs to the police and criminal justice system from responding to the offences
- £1 491 000 in prevented costs to society as consequences of the offences
- £104 000 in prevented costs to society in anticipation of the offences.

These costs equate to £551, £1532 and £107 respectively per offender, totalling to £2191.

The Commission's calculation of per-offender staffing costs assumes a total of 487 participating offenders per year, based on the total of 973 offenders who were processed between 2018 and 2019.

C.5 Restorative justice in New Zealand

Table C.5 – Benefit–cost estimates

Estimated effect of intervention, per offender

Direct fiscal impact	The average cost per completed restorative justice conference was estimated to be \$2500 in 2016. It was estimated that 3500 conferences would be undertaken in the year to June 2016.
Effect on recidivism	Compared to a matched sample, the reoffending rate was 15 per cent lower in the 12 months after a conference and 7.5 per cent lower over three years. A UK-based meta-analysis estimated a likely reduction of 15 per cent in reoffending over two years. With less reoffending, there was a reduction in the proportion of those returning to prison within three years of the conference of just over 4 percentage points.
Employment and productivity	Unknown.
Health and other effects	Victims of crime appear to experience lower levels of post-traumatic stress after restorative justice conferencing.
Total net benefit	Based on an annual daily cost of imprisonment of \$NZ385 and an assumed 6-month prison term for a low-risk offender, the average saving is \$NZ2910 per conference, resulting in a conservative net benefit of approximately \$NZ400 per conference.

The net benefits of the program were calculated as the estimated prison cost savings from reduced reoffending less the costs of undertaking the restorative justice conference.

According to New Zealand data for the five years from 2008 to 2013 the rate of reoffending among conference participants was 15 per cent lower than a matched sample of offenders over the following 12 month period and 7.5 per cent lower over three years (New Zealand Ministry of Justice 2016a). These lower rates of reoffending were associated with a 4.2 percentage point reduction in the rate of reimprisonment within three years from 14.4 per cent to 10.2 per cent, or a 29 per cent reduction in the

proportion of conference participants returning to prison. Offenders who were conference participants also committed fewer offences and fewer serious offences.

More recent studies, including a significant UK-based meta-analysis drawing on United Kingdom, Australian and United States studies, also suggest consistent reductions in reoffending (New Zealand Ministry of Justice 2016b; Strang et al. 2013).

In line with these studies, the Commission's calculations are based on the initial New Zealand estimate of a reduction in the likelihood of a prison sentence of 4.2 percentage points for offenders who participate in a restorative justice conference. It is assumed that these offenders avoided prison sentences with an average duration of six months. These are reasonably conservative assumptions, given that the decrease in the proportion of offenders who returned to prison at any point in the three years likely understates the reduction in *instances* of imprisonment (as some offenders may be reimprisoned more than once), and that the average New Zealand prison sentence was 548 days in 2019-20 (New Zealand Department of Corrections 2020, p. 162). That said, there is some uncertainty about the true distribution of prison sentence lengths for the avoided sentences. The most common sentence in New Zealand is six months or less and restorative justice conferencing is limited to less serious offenders.

The average daily cost of prison (\$NZ385) is taken from the New Zealand Department of Corrections (2020, p. 162).

Based on these figures, the total benefit is estimated to be approximately \$NZ2910 per conference (180 days at \$NZ385 per day multiplied by 0.042, the additional probability of avoiding reimprisonment due to participating in the conference). Program cost estimates of \$NZ2500 per conference are drawn from a New Zealand Government evidence brief on restorative justice (New Zealand Ministry of Justice 2016b).

When subtracted from the total benefit, the estimated net benefit from each restorative justice conference is \$NZ410 per conference. This is likely to be a conservative figure because it makes no allowance for the benefits for victims, who were also found to have a reduced incidence of post-traumatic stress.

C.6 Home detention and electronic monitoring in South Australia

Table C.6 – Benefit-cost estimates

Estimated effect of intervention, per offender

Direct fiscal impact	Net savings of \$34 000 per program participant, representing the savings achieved from reduced prison costs while offenders served their sentences on home detention, less the costs of supervision and support.
Effect on recidivism	Reduction in one-year return to custody from 34.3 per cent to 20.0 per cent. Program evaluation estimates were for savings from reduced return to custody of about \$20 000 per program participant.
Employment and productivity	Unknown; to be assessed further in a later evaluation.
Health and other effects	Unknown.
Total net benefit	Approximately \$54 000 per program participant.

This case study relies on data and estimates from a 2019 evaluation (Cale et al. 2019). The net fiscal savings were estimated in this evaluation, and represent the direct cost offsets through prison time avoided of \$38.8 million, achieved while incurring program costs of \$8.5 million (the costs of supervision and support for offenders). This saving is from the reduced prison costs while offenders served their sentences on home detention rather than in prison. Subtracting the program costs and dividing the resulting net gain by the number of orders, 882, gives an average gain per participant of \$34 400.

Further savings are realised from reduced recidivism after offenders complete their sentences. The reduction in return to custody over one year from 34.3 per cent to 20.0 per cent produces estimated savings of approximately \$20 000 per program participant, the result of the estimated additional total savings of \$18 million taken directly from the evaluation (Cale et al. 2019, p. 77), divided by the number of orders, 882 (Cale et al. 2019, p. 74). It is possible that the reduction in return to custody may decline over time, in which case this element of the savings may be an overestimate of the long-term gains.

C.7 Court-ordered parole in Queensland

Table C.7 – Benefit–cost estimates

Estimated effect of intervention, per offender

Direct fiscal impact	Net savings in 2008-09 are estimated to be \$47 816 (2008-09 dollars) per year per prisoner avoided.
Effect on recidivism	Unknown but recidivism outcomes for community orders are normally lower than from a prison sentence so to the extent court-ordered parole has similar characteristics it should result in reduced recidivism.
Employment and productivity	Unknown.
Health and other effects	Unknown.
Total net benefit	At least \$47 816 (2008-09 dollars) per year per prisoner avoided from 2008-09.

The benefit and cost estimates for this program are derived from historical data for imprisonment rates and the number of people on court-ordered parole (QCS 2013).

There is a significant level of uncertainty around estimating costs and benefits because it involves interpreting aggregate trends that are potentially the result of many factors, and making the assumption that the introduction of court-ordered parole was the main factor driving these trends. With this uncertainty in mind, a conservative interpretation of the changes has been adopted, including only attributing the deviation from the trend increase in prisoner numbers between 2006 and 2009 (when numbers on court-ordered parole were growing) to the policy change, despite the gap between actual and trend numbers of prisoners continuing to grow until 2012.

The introduction of court-ordered parole was associated with a period of steady prisoner numbers from 2006 to 2012, after growth averaging 180 prisoners per year between 2000 and 2006. By 2009, the gap between where the trend would have taken prisoner numbers (6100 prisoners) and the actual number (5665), was 435 prisoners (ABS 2010a, 2015). It is assumed that these prisoners would have been serving court-ordered parole instead of a prison sentence, reducing overall prison costs by \$44.5 million (2008-09 dollars).

Offsetting this gain are the costs of supervising the offenders placed on court-ordered parole. The number of people subject to court-ordered parole rose quickly between 2006 and the end of 2008 from zero to 3000 and was then stable until 2013 (QCS 2013, p. 5). However, court-ordered parole appears to have partly taken the place of other orders, notably fine option orders (down about 900 between 2006 and 2009 (QCS 2013, p. 4)), intensive corrections orders (down about 300 between 2006 and 2009) (QCS 2013, p. 4)) and partially-suspended sentences (down about 250 over the same period) (QCS 2013, p. 6).

Fine option orders involve supervision by a parole officer in much the same way as court-ordered parole (and therefore involve similar costs). Similarly, any substitution between intensive corrections orders and court-ordered parole is unlikely to involve significant additional costs.

To estimate the net benefits, the ongoing savings of having 435 fewer offenders in prison at any given time each year are compared with the additional supervision costs of having 3000 offenders on court-ordered parole at any given time each year (table C.8).

Table C.8 – Estimated effect of changes due to court-ordered parole
Annual effect from 2009 onwards (\$2008-09)

Previous treatment of offender	Reduction in number of offenders	Net benefit (\$m)
Offenders in prison (estimated)	435	38.8 ^a
Fine option orders (approximate)	900	0.0
Intensive corrections orders (approximate)	300	0.0
Partially suspended sentences (approximate)	250	-3.3 ^b
Unknown ^c	1115	-14.7 ^b
Total	3000	20.8

a. Annual savings for each prisoner avoided are estimated by multiplying the net operating expenditure and capital costs per day of \$280 (SCRGSP 2010, table 8A.7), by 365 days, which results in a saving of \$102 277 (2008-09 dollars) per prisoner. Offsetting these savings are supervision costs of \$36 per day (\$13 140 per prisoner per year) while offenders are on parole. **b.** These totals represent the parole supervision costs for offenders that would not otherwise have incurred costs. The costs are calculated at a rate of \$36 per day (\$13 140 per prisoner per year). **c.** Some of these parolees may have otherwise received sentences from a range of less common sentencing options. However, it is also possible that the introduction of court-ordered parole caused an expansion in the proportion of offenders receiving a conviction and serving their sentence in the form of court-ordered parole. In the absence of a clear accounting for these offenders, it is assumed that additional supervision costs are incurred for all of these offenders and that this is an inherent cost of the introduction of court-ordered parole.

Specific costs for parole supervision in Australia do not appear to be published. Parole supervision costs of \$NZ45 per day were reported by the New Zealand Department of Corrections (2020, p. 162), compared to costs for community detention and community-based supervision of about \$NZ25 per day.

In Australia, the average cost of community corrections in 2009-10 from the *Report on Government Services* was about \$20 per day (SCRGSP 2012, table 8A.11) and based on the New Zealand ratio of parole costs to community supervision, parole costs would have been approximately \$36 per day. These figures appear reasonable compared to those reported by Gelb et al. (2019) for a range of sentencing options outside prison.

These assumptions may understate the cost reductions of court-ordered parole in the case that some of the unaccounted-for 1115 parolees represent further avoided prison sentences, fine option orders, intensive correction orders or other sentencing options that would have incurred costs.

Overall there was an estimated net gain each year of \$20.8 million (2008-09 dollars) or a net benefit of \$47 816 (2008-09 dollars) per year per prisoner avoided.

C.8 Inpatient or intensive outpatient drug treatment during incarceration

Table C.9 – Benefit–cost estimates

Estimated effect of intervention, per offender

Direct fiscal impact	Program costs were estimated to be \$US1358 (2018 dollars).
Effect on recidivism	Life-cycle savings to the criminal justice system through reduced offending were estimated to be \$US3840 (2018 dollars).
Employment and productivity	Life-cycle net benefits accruing to victims and society generally were estimated to be \$US9921 (2018 dollars), including reductions in crime victimisation, the economic benefits from a more educated workforce, benefits from employer-paid health insurance and other technical adjustments.
Health and other effects	As for employment and productivity above.
Total net benefit	Average total benefits per participant were \$13 761 (in 2018 US dollars) and net total benefits per participant (in 2018 US dollars) were \$12 403. The benefit-cost ratio was 10:1.

The estimates included in this case study are taken directly from estimates published by the Washington State Institute for Public Policy (2019b).

C.9 Cognitive behaviour therapy for individuals classified as medium- or high-risk prisoners

Table C.10 – Benefit–cost estimates

Estimated effect of intervention, per offender

Direct fiscal impact	Program costs were estimated to be \$US1470 (2018 dollars).
Effect on recidivism	Net life-cycle savings to taxpayers (largely through the criminal justice system) due to reduced offending were estimated to be \$US2902 (2018 dollars).
Employment and productivity	Life-cycle net benefits accruing to victims and society generally were estimated to be \$US6424 (2018 dollars), including reductions in crime victimisation, the economic benefits from a more educated workforce, benefits from employer-paid health insurance and other technical adjustments.
Health and other effects	As for employment and productivity above.
Total net benefit	Average total benefits per participant were estimated to be \$US9270 (2018 dollars) and net total life-cycle benefits per participant were \$US7800 (2018 dollars). The benefit-cost ratio was 6:1.

The estimates included in this case study are taken directly from estimates published by the Washington State Institute for Public Policy (2019a).

C.10 ACT extended throughcare model

Table C.11 – Benefit–cost estimates

Estimated effect of intervention, per offender

Direct fiscal impact	Average cost per client of the program was \$4700 across a group of high- and low-risk prisoners.
Effect on recidivism	Returns to custody by program participants were estimated to be 23 percentage points lower over the three years of the evaluation. This translates to a saving of \$19 034 (without discounting) per program participant realised in the three years after release.
Employment and productivity	Unknown.
Health and other effects	The program evaluation identified likely improvements in physical and mental health and reduced homelessness although these effects were not costed.
Total net benefit	Net benefit per program participant of \$14 334 (without discounting) at the end of three years after release.

This case study provides average per-client program costs and return to custody outcomes as reported in an evaluation of the ACT extended throughcare pilot (Griffiths, Zmudzki and Bates 2017, pp. 85, 89). The Commission has estimated the financial savings from the return-to-custody outcomes using the ACT median sentence length of five months or 150 days (ABS 2020a) and the average daily prison cost of \$559 (SCRGSP 2021b). Once a prisoner is released, the likelihood of return to prison over the following three years is lower by 22.7 percentage points for those participating in the extended throughcare pilot compared to a matched sample (Griffiths, Zmudzki and Bates 2017, p. 89). Based on these figures, the future prison cost saving through reduced reoffending is \$19 034 per program participant, realised in the three years after release. This estimate does not include any ongoing saving from reduced reoffending in later years.

C.11 Targets for reducing recidivism – New Zealand

Table C.12 – Benefit–cost estimates

Estimated effect of intervention, per offender

Direct fiscal impact	Spending on custodial services rose by 18 per cent between 2011-12 and 2016-17. Spending on rehabilitation and reintegration also increased by 18 per cent. The number of prisoners increased by 16 per cent.
Effect on recidivism	The New Zealand 2012 target was for a 25 per cent reduction in recidivism by 2017. This was a blended target involving both custodial and community corrections offenders. By 2014, a 12.5 per cent reduction was achieved but this was then eroded until the reduction was 4.5 per cent by 2017.
Employment and productivity	Unknown.
Health and other effects	Unknown.
Total net benefit	Overall, spending per prisoner increased over the target period and some progress was made towards the target. However, the total number of prisoners increased and recidivism rates remained high.

The way the targets set by the New Zealand Government were calculated is set out in Johnston (2014) and in a report by the New Zealand Auditor-General, which also includes commentary on progress up to 2013 (2013, pp. 66–68). The 4.5 per cent reduction to 2017 was reported by Radio New Zealand (2017). Levels of recidivism for various cohorts were also reported in annual reports by the Department of Corrections each year and the data in the table draw from the New Zealand Department of Corrections (New Zealand Department of Corrections 2014, 2017, 2019). Spending figures are sourced from the New Zealand Department of Corrections (2012, 2017).

C.12 South Australian strategy to reduce recidivism

Table C.12 – Benefit–cost estimates

Estimated effect of intervention, per offender

Direct fiscal impact	Real net operating expenditure on prisons rose by 13 per cent between 2015-16 and 2019-20 and by 14 per cent in per-prisoner terms.
Effect on recidivism	South Australia recorded an 8 per cent reduction in the level of recidivism by 2019-20 (prisoners released in 2017-18) and appears on track to achieve its target.
Employment and productivity	Unknown.
Health and other effects	Unknown.
Total net benefit	Despite the reduction in the level of recidivism, prisoner numbers were flat between 2015-16 and 2019-20. Overall spending has increased

The reduction in recidivism is calculated based on the *Report on Government Services* (SCRGSP 2021b, table CA.4). Real net operating expenditure is drawn from the same source (SCRGSP 2021b, tables 8A.2 and 8A.20).

C.13 The Washington State Institute for Public Policy

The key information and estimates provided in the case study on the Washington State Institute for Public Policy are from material published by the Institute (WSIPP 2019c, 2021).

Abbreviations

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AIHW	Australian Institute of Health and Welfare
ALRC	Australian Law Reform Commission
ANZSOC	Australian and New Zealand Standard Offence Classification
ARC	Assessment and Referral Court
BOCSAR	Bureau of Crime Statistics and Research (NSW)
JHFMHN	Justice Health and Forensic Mental Health Network
NATSILS	National Aboriginal and Torres Strait Islander Legal Services
NOI	National Offence Index
OECD	Organisation for Economic Cooperation and Development
PC	Productivity Commission
QCS	Queensland Corrective Services
QPC	Queensland Productivity Commission
SA DCS	South Australian Department for Correctional Services
SCRGSP	Steering Committee for the Review of Government Service Provision
UK	United Kingdom
US	United States
WSIPP	Washington State Institute for Public Policy

Glossary

Term	Description
Community corrections	Management of offenders in the community, including through community-based court-ordered sanctions, post-prison administrative arrangements (such as parole) or fine conversions for offenders. Offenders are not detained in a corrective services institution but may have restrictions imposed on their freedom of movement in the community. They may also be required to meet other conditions, such as participating in treatment programs or reporting to a case officer.
Corrective services	A range of services that impose sanctions on offenders, including imprisonment, community correction orders and other programs such as parole and community work.
Custodial orders	Sentences that restrict the liberty of a defendant for a specified period of time (for example, detainment in an institution or home, or intensive supervision by corrections personnel while residing in the community).
In custody	A state of being detained, including, but not limited to, being held in prison.
Home detention	A corrective services program requiring offenders to be subject to supervision and monitoring by an authorised corrective services officer while confined to their place of residence or a place other than a prison.
Non-custodial orders	Sentences that do not involve being held in custody (for example, fines, community service orders, good behaviour bonds).
Offence	Any act or omission by a person or persons for which a penalty could be imposed by the Australian legal system.
Offender	A person aged 10 years or over who is proceeded against and recorded by police for one or more criminal offences. In this paper, an offender is only counted once during the reference period irrespective of the number of offences allegedly committed or the number of separate occasions that police proceeded against that offender.
Police proceeding	A proceeding is a legal action initiated against an alleged offender. In this paper, police proceedings represent a count for each separate occasion on which police initiate a legal action against an offender. It does not represent a count of offences, as multiple offences can occur within a proceeding.
Prisoner	A person held in custody in a prison or other corrective services institution. This includes both sentenced prisoners and unsentenced prisoners held on remand.
Recidivism	The tendency of a previously convicted offender to reoffend. In this paper, recidivism (or reoffending) is measured by whether a previously convicted offender comes back into contact with correctional services after release, usually within a 12 to 24 month timeframe.
Remand	Remand, also known as pre-trial detention, is the process of detaining a person until their trial after they have been arrested and charged with an offence. A person who is on remand is held in a prison or detention centre or held under house arrest.
Remandee	A person being held on remand.

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