

Chapter 2

The drivers behind the growth in the Australian imprisonment rate

2.1 The imprisonment rate in Australia has risen over the last 30 years. Imprisonment rates are linked to the level of criminal activity, changes to justice policies and practices, and social and economic factors such as poverty, levels of substance abuse, unemployment, and levels of social and community cohesion. The following discussion provides an overview of the rate of imprisonment in Australia and canvasses the issues linked to changes in the rate.

Rates of imprisonment in Australia

2.2 There were 114 custodial facilities across Australia at 30 June 2012 of which 87 are government-operated prisons, eight are privately operated prisons, four are transitional centres, one is a periodic detention centre and 14 are 24-hour court-cell complexes.¹ In addition, all jurisdictions provide community corrections services which are responsible for non-custodial sanctions and deliver post-custodial interventions.

2.3 On average, 29,213 people per day (excluding periodic detainees) were held in Australian prisons during 2011–12. This was an increase of 1.7 per cent over the average daily number in 2010–11. The daily average prison population in 2011–12 comprised 92.9 per cent males and 7.1 per cent females.²

2.4 The number of unsentenced (those on remand) prisoners comprised 23 per cent of the total prison population at 30 June 2012. Over half (55 per cent) of all prisoners had served a sentence in an adult prison prior to the current episode.³

2.5 As at 30 June 2012, Aboriginal and Torres Strait Islander prisoners comprised just over a quarter (27 per cent or 7,982) of the total prisoner population. The age standardised imprisonment rate for Aboriginal and Torres Strait Islander prisoners was 1,914 per 100,000 adult Aboriginal and Torres Strait Islander population. This was 15 times higher than non-Indigenous prisoners for whom the age standardised imprisonment rate was 129 per 100,000 adult non-Indigenous population.⁴

2.6 The most common offences for sentenced male prisoners were acts intended to cause injury (17 per cent) and sexual assault (15 per cent) while for females the

1 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2013*, Vol. 1, p. 8.5.

2 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2013*, Vol. 1, p. 8.5.

3 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

4 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

most common were illicit drug offences (17 per cent of female prisoners) and acts intended to cause injury (14 per cent).⁵

Trends in imprisonment rates

2.7 Australia's adult imprisonment rate was 168 per 100,000 adults at 30 June 2012.⁶ This compares with 734 and 154 per 100,000 population in the United States and the United Kingdom respectively in 2010.⁷

2.8 While the Australian imprisonment rate is significantly less than that of the United States and comparable to the United Kingdom, the rate has been increasing over recent decades. In 1984, the rate of imprisonment was approximately 86 per 100,000.⁸ Since that time the rate has nearly doubled. While there was a recorded decrease in the rate of imprisonment between 2010 and 2011, the rate increased 11 per cent over the last ten years.⁹

2.9 All states and territories, with the exception of New South Wales and Queensland, recorded increased imprisonment rates compared to 2002, with fluctuations in imprisonment rates occurring within this ten year period. The Northern Territory recorded the largest percentage increase in the imprisonment rate between 2002 and 2012, rising 72 per cent (from 480 prisoners per 100,000 adult population to 826 prisoners per 100,000 adult population). Western Australia had an increase of 37 per cent (from 195 to 267 prisoners per 100,000 adults). The imprisonment rate in Queensland decreased between 2002 and 2012 (down 6 per cent, from 168 to 159 prisoners per 100,000 adults). The imprisonment rate in New South Wales also decreased – down 1 per cent (from 172 to 171 prisoners per 100,000 adults).¹⁰

2.10 As noted above, the Northern Territory has had the highest increase in the rate of imprisonment for the period 2002 to 2012. The Northern Territory also recorded the highest proportional increase in prisoner numbers between 2011 and 2012 – 11 per cent. The prisoner population decreased by 4 per cent in New South Wales and by 3 per cent in Tasmania between 2011 and 2012.¹¹

2.11 The fastest growing area of the prison population is women prisoners. While the overall prison population increased 1 per cent during 2011–12, the number of female prisoners increased 8 per cent. The female imprisonment rate increased at a rate 21 times higher than the male rate.¹²

5 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

6 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

7 NJCEOs Working Group, *Justice Reinvestment/Causes of Crime*, p. 4.

8 Youth Justice Advisory Committee, *Submission 125*, p. 2.

9 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

10 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*; Northern Territory Chief Magistrate, *Submission 119*, 3.

11 Australian Bureau of Statistics, *4517.0. Prisoners in Australia, 2012*.

12 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

Trends in re-offending rates

2.12 The Report on Government Services provides information on adult offenders released from prison who returned to corrective services within two years. For those released nationally in 2009–10, 39.3 per cent had returned to prison by 2011–12, while 46.1 per cent had returned to corrective services. The Northern Territory had the highest rate of return to prison (52.4 per cent) while the ACT had the highest rate of return to corrective services (56.1 per cent). South Australia recorded the lowest rate of return for both classes of returning prisoners (29.1 per cent and 41.3 per cent respectively).

2.13 The rate of return to prison under sentence has remained relatively stable since 2007–08 at about 40 per cent.¹³

Trends in incarceration of Aboriginal and Torres Strait Islander people

2.14 The Australian Bureau of Statistics reported that there were 7,979 prisoners who identified as Aboriginal and Torres Strait Islander at 30 June 2012.¹⁴ This represented just over one quarter (27 per cent) of the total prisoner population. Aboriginal and Torres Strait Islander prisoner numbers increased by 4 per cent between 2011 and 2012. The highest number of Aboriginal and Torres Strait Islander prisoners was in the Northern Territory (84 per cent of the total prison population) and the lowest in Victoria (8 per cent).

2.15 The age standardised rate of imprisonment for Aboriginal and Torres Strait Islander prisoners was 15 times higher than the rate for non-Indigenous prisoners at 30 June 2012, an increase in the ratio compared to 2011 (14 times higher). The highest ratio of Aboriginal and Torres Strait Islander to non-Indigenous imprisonment rates in Australia was in Western Australia (20 times higher for Aboriginal and Torres Strait Islander prisoners). Tasmania had the lowest ratio (four times higher for Aboriginal and Torres Strait Islander prisoners).

2.16 Between 2002 and 2012, imprisonment rates for Aboriginal and Torres Strait Islander Australians increased from 1,262 to 1,914 Aboriginal and Torres Strait Islander prisoners per 100,000 adult Aboriginal and Torres Strait Islander population. In comparison, the rate for non-Indigenous prisoners increased from 123 to 129 per 100,000 adult non-Indigenous population.

2.17 There were proportionally more Aboriginal and Torres Strait Islander prisoners than non-Indigenous prisoners with prior imprisonment. Nearly three-quarters (74 per cent) of Aboriginal and Torres Strait Islander prisoners had a prior

13 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2013*, Vol. 1, p. C.21.

14 The Australian Bureau of Statistics noted that the willingness of Aboriginal and Torres Strait Islander people to self identify may contribute to movements in Aboriginal and Torres Strait Islander prison numbers.

adult imprisonment under sentence, compared with just under half (48 per cent) of non-Indigenous prisoners.¹⁵

Trends in offending behaviour

2.18 In some jurisdictions, the growth in imprisonment rates may be linked to an increase in offending behaviour. For example, the Youth Justice Advisory Committee stated that over the last five years offending behaviour has increased in Alice Springs. This includes a 173 per cent increase in break-ins and an 80 per cent increase in motor vehicle theft. Overall, criminal offences increased 45 per cent over five years.¹⁶

2.19 However, in other jurisdictions crime rates have declined. In New South Wales, between 1990 and 2010, the rate of murder decreased 50 per cent, motor vehicle theft decreased 70 per cent and robbery with a firearm declined 66 per cent.¹⁷ In Victoria, crime rates have declined by an average of 18.4 per cent over the last 10 years. The St Vincent de Paul Society noted that 'taking national averages, it seems that violent crime has not increased over the last 20 years, while property crime rates have dropped significantly'.¹⁸

2.20 Some shift in the type of crime being attributed to certain groups was noted, with the Youth Justice Advisory Committee stating that property crime had been the main reason for youth offences in the Northern Territory but this has now shifted to personal violence offences.¹⁹

2.21 Jesuit Social Services argued that there is ample evidence that the Australian rate of imprisonment is largely independent of the incidence of crime. Jesuit Social Services concluded that the rate of imprisonment is:

...more a function of policy, the length of sentence imposed (and their summation) and, at any given time, the size of the operational police service.²⁰

2.22 This view was supported by other submitters including the National Association of Community Legal Centres which stated that the continued growth in imprisonment rate, despite falling crime rates, has been attributed to the introduction of harsher sentencing policies and political responses to social concerns about levels of crime.²¹

15 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

16 Youth Justice Advisory Committee, *Submission 125*, p. 4.

17 Juvenile Justice NSW, *Submission 124*, p. 3.

18 St Vincent de Paul Society, *Submission 108*, pp 2–3.

19 Youth Justice Advisory Committee, *Submission 125*, p. 4.

20 Jesuit Social Services, *Submission 104*, p. 6.

21 National Association of Community Legal Centres, *Submission 103*, pp 5–6.

Drivers behind the growth in the Australian imprisonment rate

2.23 As noted above, while crime rates have declined the rate of imprisonment has increased. Factors contributing to the rate of increase include changes to justice policies and practices including mandatory sentencing and more stringent bail conditions. There are also underlying economic and social determinants which contribute to criminal behaviour and thus bring people into contact with a more punitive criminal justice system.²²

2.24 The following section canvasses the drivers to the growth in the Australian imprisonment rate.

Changes to the justice system and attitudes to incarceration

2.25 Evidence received noted that the public response to crime in Australia has grown increasingly punitive. Generally, the public perception of crime is at odds with the actual incidence and trends in crime. This is attributed, in part, to the portrayal of crime in the media, especially more violent and sensational crime.²³ The Australian Justice Reinvestment Project stated many of the changes to judicial policy, such as mandatory sentencing, parole changes and restrictions to bail, have followed 'media-driven law and order campaigns around individual cases or as part of election campaigns seeking to demonstrate "tough on crime" credentials and sympathy towards victims of crime'.²⁴

2.26 Submitters commented that the growth of incarceration rates and 'tough on crime' policies are linked. The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) commented:

Crime rates have not been the driving force behind the growth of Australia's imprisonment rate. There has been no spike in the crime rate to which we can attribute such a significant increase in incarceration. Nor have increased incarceration rates led to any drop in the crime rate. Rather, the steady increase in imprisonment rates has been the result of legislative and policy changes implemented under the catch cry of being "tough on crime".²⁵

2.27 'Tough on crime' policies have been pursued in most jurisdictions. For example, it was submitted that the South Australian Government runs a 'tough on crime' policy that has resulted in increased penalties and the introduction of aggravated offences which also carry increased penalties.²⁶ Jesuit Social Services

22 See for example, Freedom Socialist Party, *Submission 12*; Justice Reinvest NSW, *Submission 44*; Alcohol and Other Drugs Council of Australia, *Submission 109*; Legal Aid NSW, *Submission 38*; Western Australian Council of Social Services, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*; South Australian Justice Reinvestment Working Group, *Submission 28*.

23 Juvenile Justice NSW, *Submission 124*, p. 3.

24 Australian Justice Reinvestment Project, *Submission 114*, p. 1.

25 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, pp 4–5.

26 South Australian Justice Reinvestment Working Group, *Submission 28*, p. 2.

provided the example of Victoria and stated that recent 'tough on crime' policies in Victoria had resulted in an increase of average daily prison population of 5.3 per cent compared to a national increase of 1.3 per cent between 2010–11 and 2011–12.²⁷ Similarly, Queensland has recently introduced more punitive measures by introducing legislation that increased the use of mandatory life sentences for certain sentences and standard non-parole periods.²⁸

2.28 It was also noted that the Western Australian Government has increased investment in prisons and has undertaken a 'tough on crime' approach including mandatory sentencing, minimum terms, and reduced parole. Despite these changes, there has been no reduction in offending rates or in recidivism rates.²⁹

2.29 In the Northern Territory, multiple governments have pushed for a more penalty driven justice system. The Central Australian Aboriginal Legal Aid Service (CAALAS) submitted that 'successive Northern Territory Governments have emphasised increased policing and tougher sentences as a key policy platform'. This has continued despite evidence presented that these policies were increasing incarceration rates.³⁰ It was further noted that a culture of incarceration is developing in the Northern Territory: imprisonment is not being used as a last resort; and bail is not granted to certain types of offenders who should be able to be sentenced to non-custodial options.³¹

2.30 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of Western Australia Inc., provided the following example to illustrate a culture of incarceration:

In 2005, I appeared for a 16-year-old boy from a place called Onslow who spent 12 days in custody for attempting to steal a \$2.50 ice cream. In 2009 I appeared for a 12-year-old boy who had never been in trouble who was charged with receiving a Freddo frog worth 70c. He did not come to court, because his mum got the dates confused, and he was remanded in custody. The police eventually withdrew that charge but defended the decision to prosecute on the basis that 'it was technically correct'.³²

2.31 The committee heard that the persistence of these punitive measures has directly resulted in the increased growth in rates of imprisonment due to 'the limited availability of non-custodial sentencing options, the limited availability of

27 Jesuit Social Services, *Submission 104*, p. 7; see also Freedom Socialist Party, *Submission 12*; Youth Affairs Council of Western Australia, *Submission 54*; Anti-Discrimination Commission Queensland, *Submission 71*.

28 Prisoner's Legal Service, *Submission 94*, p. 2.

29 Western Australian Council of Social Service, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*, p. 5.

30 Central Australian Aboriginal Legal Aid Service, *Submission 62*, p 7–8.

31 North Australian Aboriginal Justice Agency, *Submission 47*, p. 2.

32 Mr Peter Collins, Director, Legal Services, Aboriginal Legal Service of Western Australia Inc., *Committee Hansard*, 17 April 2013, p. 37.

rehabilitative programs and a judicial and political perception of the need for "tougher" penalties.³³

2.32 The South Australian Department for Correctional Services noted that the average length of sentences has increased. This contributes to increased incarceration rates:

...the number of prisoners in custody is primarily determined by the decisions of the Courts where in general, the key factors driving overall prisoner numbers are the numbers of offenders charged or sentenced to custody for serious offences and the length of sentences they receive. Average sentence lengths have increased from 66.4 months in 2007/8 to 70.6 months in 2011/12.³⁴

2.33 The National Congress of Australia's First Peoples noted that a study in New South Wales found that there was a rise in imprisonment rates between 2001 and 2008 but there had not been a corresponding rise in the conviction of Aboriginal and Torres Strait Islander peoples over this period. It was reported that this was due to changes in the justice system's response to offences rather than changes in offending itself.³⁵

Mandatory sentencing

2.34 Mandatory sentencing has been introduced in Western Australia and the Northern Territory. The Human Rights Law Centre (HRLC) noted that mandatory sentencing laws limit judicial discretion in sentencing and prevent courts from taking account of the cultural backgrounds and responsibilities of offenders, and the economic and social issues they face. The HRLC went on to comment that:

The arbitrary nature of mandatory sentencing laws is also compounded by some aspects of police practices. The exercise of police and prosecutorial discretion effectively determines whether or not an offender is subject to a period of imprisonment.³⁶

2.35 The St Vincent de Paul Society commented that mandatory sentencing 'disproportionately affects those who are compelled to have no choice but to commit crimes, for example, the mentally ill, those experiencing extreme poverty and children and young people'.³⁷ The Top End Women's Legal Service also commented on the use of mandatory sentencing laws and stated that they are likely to greatly increase the length of sentences imposed for violent offences and thus, significantly increase the prison population.³⁸

33 Justice Reinvest NSW, *Submission 44*, p. 9; see also Prisoners' Legal Services, *Submission 94*, p. 2.

34 Department of Correctional Services, South Australian Government, *Submission 110*, p. 3.

35 National Congress of Australia's First Peoples, *Submission 53*, p. 4.

36 Human Rights Law Centre, *Submission 120*, p. 19.

37 St Vincent de Paul Society, *Submission 108*, p. 3.

38 Top End Women's Legal Service, *Submission 116*, p. 4.

2.36 A further issue with mandatory sentencing laws raised by NATSILS was that they may actually increase the likelihood of reoffending as periods of incarceration diminish employment prospects, positive social links, and other protective factors that help prevent recidivism.³⁹

2.37 The Chief Magistrate of the Northern Territory provided the committee with evidence of incarceration rates as a result of the imposition of mandatory sentencing in the Northern Territory during the period 1997 to 2001. The Chief Magistrate noted that the imprisonment rate was 50 per cent higher during this period than following repeal of the laws. Non-custodial orders such as home-detention and community work were almost unused for property offences during the mandatory sentencing era.

2.38 In 2008, mandatory sentencing was introduced for first time assault offenders where the injury interferes with a person's health and results in 'serious harm'. Mandatory sentencing also exists for drink driving and drug driving offences and for breaches of Domestic Violence Orders. The Chief Magistrate noted that as acts intended to cause injury account for a significant number of matters before the Court in the Northern Territory, this could significantly affect imprisonment rates. In addition, in 2013, mandatory imprisonment periods were introduced for serious assaults and repeat offenders. Again, the Chief Magistrate stated that these changes are likely to result in significantly increased imprisonment rates particularly in regards to Aboriginal offenders.⁴⁰

Bail and remand

2.39 Changes in the criminal justice system have made it difficult for offenders to comply with strict conditions such as stringent bail conditions. An offender may be unable to meet bail conditions and may be remanded in custody for conditional or technical breaches of bail. The occurrence of bail being granted is decreasing, with offenders being refused bail due to an absence of appropriate accommodation or the lack of a responsible adult who can appropriately care for them.⁴¹

2.40 CAALAS provided the committee with information about changes to bail practices in the Northern Territory. In 2003, 230 breaches of bail were recorded in the Northern Territory. In 2010–2011, 1442 breaches were recorded. In March 2011, the Bail Act (NT) was amended to include a new offence of breach of bail. As a consequence, 2431 breaches were recorded in 2011–12. CAALAS stated that this represents a rise of 67 per cent over a single year and the breach of bail offence provision has meant that more people have been serving longer sentences in Central Australia.⁴²

2.41 NATSILS noted that in certain areas of Australia, if bail is breached and the offender is remanded, there are no legislated limits on the terms of remand, leading to

39 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 7.

40 Chief Magistrate of the Northern Territory, *Submission 119*, pp 5–6.

41 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 6.

42 Central Australian Aboriginal Legal Aid Service, *Submission 62*, p. 9.

a disproportionate amount of time the offender spends in prison. NATSILS submitted that, with increased court congestion, many offenders end up serving longer periods on remand than the sentence they eventually receive on conviction.⁴³

Parole, strict compliance and 'street time'

2.42 NATSILS and CAALAS drew the committee's attention to the impact of 'strict compliance' approaches to supervision and monitoring. NATSILS noted that in several jurisdictions, probation and parole officers are subject to internal guidelines which remove any element of discretion, and require all breaches to be reported, however minor. As a consequence, there are high rates of parole revocations. For example, in the Northern Territory in 2011, of the 46 parole revocations, only five were for offending. All the remainder were for breached conditions which may have been for single instances of failing to report at the required time, being exited from a residential rehabilitation program, or travelling without permission.

2.43 NATSILS also noted that in some jurisdictions, it is required that 'street time' be served out in the event that parole is revoked. Thus a prisoner whose parole has been revoked must serve the total number of days that were outstanding against his or her sentence at the date they were first released on parole. In some cases, this has resulted in individuals serving total periods of supervision that exceed the original full term date of their sentence by months or years.⁴⁴

2.44 In addition, because of the strict compliance requirements and street time provisions, probation and parole officers have become increasingly reluctant to recommend parole for those prisoners where it is perceived there are barriers to the successful completion of parole. NATSILS concluded that:

Such policies impact disproportionately on vulnerable parolees with unstable living arrangements, limited financial means, and support networks that lack understanding of the parole process. Aboriginal and Torres Strait Islander parolees face additional barriers to achieving or successfully completing parole, especially in cases where an individual does not speak English or seeks to reside in a remote or regional community.⁴⁵

Other factors contribution to increasing rates of incarceration

2.45 Submitters also noted that increased police presence in remote communities, as a result of the Territory Emergency Intervention, has been linked with the rising rate of imprisonment from 2007 onwards.⁴⁶ CAALAS commented that the greater police presence in many communities has led to the effective criminalisation of

43 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 6.

44 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, pp 7–8.

45 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 8.

46 Youth Justice Advisory Committee, *Submission 125*, p. 3.

driving, with police targeting unlicensed drivers and vehicles without registration or insurance.⁴⁷ The Australian Human Rights Commission (AHRC) commented:

Of particular concern, research has also found there has been a 62% increase in the recorded traffic and vehicle regulatory offences. According to analysis by Dr Thalia Anthony, the majority of these offences do not involve alcohol or lead to harm. Instead, they are regulatory offences such as not having a driver's license, driving unregistered or in an unroadworthy vehicle. According to Dr Anthony "the common trifecta is driving unlicensed, driving unregistered and driving with an unroadworthy vehicle." When these offences are prosecuted together there is a strong possibility of a custodial sentence.⁴⁸

2.46 As a consequence of greater policing, approximately 25 per cent of the Northern Territory prison population comprises driving offenders, of whom approximately 97 per cent are Aboriginal.⁴⁹ The AHRC concluded:

Enforcement of traffic offences has a role to play [in] increasing safety. However, it also needs to be acknowledged that the lack of public transport, access to suitable vehicles and licensing services in remote communities disproportionately disadvantages Aboriginal and Torres Strait Islander people in the Northern Territory.⁵⁰

2.47 Sisters Inside also commented that over policing can lead to further charges being laid against the person:

Over policing does not reduce crime in these communities or make them safer to live in, rather it creates a net-widening effect. There are many low level crimes that are often undetected and untargeted in non-Indigenous communities, however net-widening often results in these crimes being detected and charged within Indigenous communities. In addition, increased interaction with the police increases the risk that charges will become escalated with an individual also being charged with offences such as resisting arrest and assaulting police.⁵¹

2.48 The Chief Magistrate of the Northern Territory noted that mandatory reporting requirements have increased reporting of crime in the Northern Territory. This relates to domestic violence as well as mandatory reporting requirements for children. The Chief Magistrate commented:

Increased reporting does not alone signify an increase in crimes committed, only crimes recorded. In this sense the growth in imprisonment rates brought about by increased reporting may be a positive change.

47 Central Australian Aboriginal Legal Aid Service, *Submission 62*, p. 8.

48 Australian Human Rights Commission, *Answer to question on notice No. 1*, received 4 June 2013.

49 Central Australian Aboriginal Legal Aid Service, *Submission 62*, p. 8.

50 Australian Human Rights Commission, *Answer to question on notice No. 1*, received 4 June 2013.

51 Sisters Inside, *Submission 69*, p. 12.

Additionally, mandatory reporting allows for the community to take responsibility for violence. However, there are also concerns that it may deter victims from seeking medical treatment and whether it has in fact increased rates of reporting.⁵²

2.49 White Ribbon also commented that there has been a significant increase in domestic violence reporting and police response rates to family violence offences in all jurisdictions. White Ribbon stated that '[a]lthough it is difficult to conclude whether the increase is reflective of increases in the incidence of violence, it is arguable that this increase in reporting will lead to further pressure on the prison system as increases in prosecution ensue'.⁵³

Economic and social determinants of crime

2.50 The Anti-Discrimination Commission Queensland stated that a number of social and economic drivers relating to the growth of imprisonment rates in Australia have been identified over the years in numerous reports and academic journals. These drivers include:

- socio-economic conditions such as poverty;
- low or under education;
- lack of employment opportunities;
- mental health issues;
- lack of appropriate housing;
- the increasing availability and use of alcohol and drugs;
- the increase and diversity of the population and the challenges this presents;
- social exclusion; and
- systemic discrimination.⁵⁴

2.51 Submitters pointed to the study by Tony Vinson in 2007 which highlighted the association between crime and disadvantage, indicating that the bulk of crimes are committed by a small population which are densely located within a small number of poorer socio-economic localities.⁵⁵ The Victorian Alcohol and Drug Association stated that various research findings supported this association including that:

- 75 per cent of offenders have completed only up to year 10 of schooling (Australian Institute of Health and Welfare 2010);
- between seven and eight per cent of males and 11 per cent of women were homeless prior to their imprisonment (Willis 2004);

52 Chief Magistrate of the Northern Territory, *Submission 119*, p. 4.

53 White Ribbon, *Submission 115*, p. 3.

54 Anti-Discrimination Commission Queensland, *Submission 71*, p. 3.

55 Victorian Alcohol and Drug Association, *Submission 92*, p. 4.

- Aboriginal and Torres Strait Islander peoples are significantly overrepresented in prisons and generally experience more exacerbated adverse social determinants than other prisoners;
- 37 per cent report that they have had a mental health disorder at some stage in their lives and 18 per cent are currently on medication for mental health related conditions (Australian Institute of Health and Welfare 2010);
- 41 per cent are infected with Hepatitis C and 20 per cent infected with Hepatitis B (Victorian Ombudsman 2011);
- prisoners are heavy consumers of both licit and illicit drugs with 81 per cent being current smokers (compared with 16.6 per cent of the general population) (Ministerial Council on Drug Strategy 2010);
- 52 per cent of prisoners reported that they drink alcohol at harmful levels compared with 20.4 per cent of the general population (Preventative Health Taskforce 2009); and
- 71 per cent of prisoners had used illicit drugs in the past 12 months, compared with 13 per cent in the general community (Australian Institute of Health and Welfare 2010).⁵⁶

2.52 The National Association of Community Legal Centres stated that as criminal behaviour is closely associated with disadvantage in living standards, health, education, housing and employment, the 'failure to adequately address these issues in many urban and rural communities in Australia has ensured that people in these communities are more likely to offend and be put in prison'.⁵⁷

2.53 Similarly, Australian Lawyers for Human Rights (ALHR) commented on factors contributing to juvenile offending:

...juvenile offending is highly likely to lead to adult offending, particularly serious crimes...the findings [of research into this issue] reveal that unemployment, child abuse/neglect, drug and alcohol abuse, mental health issues and performance at school are all factors highly associated with juvenile offending.⁵⁸

2.54 The impact of poverty on incarceration rates for women was raised by Sisters Inside which commented that 'any attempt to divert women and children from the juvenile justice and criminal justice systems must address the fundamental issue of poverty'. Sisters Inside noted that prior to imprisonment 50 to 75 per cent of women prisoners were unemployed while the majority of criminalised women (and their children) survived on Centrelink benefits prior to incarceration.⁵⁹

56 Victorian Alcohol and Drug Association, *Submission 92*, pp 4–5.

57 National Association of Community Legal Centres, *Submission 103*, p. 6; see also Outcare, *Submission 61*, p. 5.

58 Australian Lawyers for Human Rights, *Submission 74*, p. 3.

59 Sisters Inside, *Submission 69*, p. 11.

Drug and substance abuse

2.55 Another factor that relates heavily to incarceration rates is drug and substance abuse. Crime and substance abuse seem to be intrinsically linked as 'substance use leads to crime; crime leads to substance use and substance use and crime are caused by the same factors'.⁶⁰

2.56 Alcohol abuse is observed as a significant factor in offending behaviour and is more prevalent than any other drug.⁶¹ The Alcohol and other Drugs Council of Australia (ADCA) cited South Australian police data reporting percentages of offensive behaviour that related to alcohol, such as:

- 81 per cent of incidents of assaulting police;
- 76 per cent of disorderly or offensive behaviour; and
- 77 per cent of hindering police/resisting arrest.⁶²

2.57 In addition, in 2008, 75 per cent of prison entrants in South Australia had a substance misuse history. This was most prevalent for younger offenders.⁶³ Nationally, the most frequently used drug prior to imprisonment was cannabis at 81 per cent, followed by amphetamines at 57 per cent, cocaine at 45 per cent and ecstasy at 44 per cent.⁶⁴

2.58 The South Australian Network of Drug and Alcohol Services pointed to a number of specific factors contributing to the rise in imprisonment rate associated with substance abuse, including:

- increase in the range of offences as a result of more drugs being listed as illegal drugs;
- improvements in drug detection technology;
- increasing intoxication rates at late night venues and frequency of police attending a range of incidents which carry potential prison sentences; and
- inadequate numbers and types of pre and post release programs, increase the risk of recidivism.⁶⁵

2.59 Recidivism through alcohol and substance abuse is substantial particularly for injecting drug users. Prisoners with a history of injecting drug use were found to be three times more likely to be re-incarcerated than their non-injecting peers.⁶⁶

60 Justice Reinvest NSW, *Submission 44*, p. 18.

61 Alcohol and other Drugs Council of Australia, *Submission 109*, p. 5.

62 Alcohol and other Drugs Council of Australia, *Submission 109*, p. 5.

63 South Australian Network of Drug and Alcohol Services, *Submission 37*, p. 3.

64 Justice Reinvest NSW, *Submission 44*, p. 11.

65 South Australian Network of Drug and Alcohol Services, *Submission 37*, p. 4.

66 Alcohol and other Drugs Council of Australia, *Submission 109*, p. 5.

Recidivism

2.60 The imprisonment rate is also driven by the rate of recidivism. Submitters suggested that the Australian corrections system does not assist in deterring offenders from reoffending. Rather, it reinforces offending behaviour as it does not address the underlying causes for incarceration, while placing an unnecessary burden on police forces and the justice system.⁶⁷ Sisters Inside also submitted that 'once a young person has experienced imprisonment...their likelihood of further imprisonment is increased', leading to a life cycle of reoffending.⁶⁸

2.61 The committee was also informed that there are many social and economic factors that are associated with recidivism that are not appropriately addressed by the justice system. These factors can include, for example, inadequate housing and poor nutrition as individuals without a safe residence or access to three meals a day are more likely to reoffend in order to acquire these necessities.⁶⁹

2.62 At times, the justice system reinforces recidivism by affecting offenders negatively and creating difficult release environments such as suspended drivers licences, transitory living arrangements, unpaid fines and prior records that can act as barriers to finding gainful employment.⁷⁰ With the growth in the Australian imprisonment rate, the overcrowding of prisons has made it difficult for prisoners to access programs that are aimed at addressing the underlying causes of offending behaviours. This is because the programs are unavailable due to funding issues or are oversubscribed.⁷¹

Growth in the incarceration of women

2.63 There has been a sharp rise in the incarceration of women. The South Australian Justice Reinvestment Group noted that the rate of women committing certain offences is increasing, particularly offences that include deception, acts likely to cause injury and homicide.⁷²

2.64 Factors contributing to female incarceration include poverty, poor education outcomes, unstable housing, domestic violence and/or sexual abuse and trauma. Women who have been incarcerated have a higher chance of substance abuse, mental health problems, debts and poor credit rating and socioeconomic disadvantage.⁷³

67 Australian Youth Affairs Coalition, *Submission 105*, p.16

68 Sisters Inside, *Submission 69*, p. 10.

69 Indigenous Social Justice Association Melbourne, *Submission 14*, p. 5.

70 New South Wales Reconciliation Council, *Submission 31*, p. 3.

71 Western Australian Council of Social Services, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*, p. 13.

72 South Australian Justice Reinvestment Group, *Submission 28*, p. 3.

73 Victorian Equal Opportunity and Human Rights Commission, *Submission 42*, p. 5; Flat Out, *Submission 51*, p. 2; Top End Women's Legal Service, *Submission 116*, p. 9.

2.65 Submitters commented on Aboriginal and Torres Strait Islander women who enter the corrections system. In particular, the impact of family violence and trauma on women was noted. The Victorian Equal Opportunity and Human Rights Commission stated that:

Family violence and other stressors manifest across the life cycle, and across generations. This cycle is typified by periods in prison, which entrenches trauma, family breakdown, contact with child protection and out-of-home-care systems, homelessness, family violence, substance misuse and mental health episodes. These inform further contact with the criminal justice system, re-imprisonment, post-release breakdown, re-offending and re-imprisonment.⁷⁴

2.66 The issue of recidivism is just as significant when it comes to female prisoners as it is with the general prison population, with at least 40 per cent of women leaving prison subsequently reoffending – 17 per cent of those within 12 months and 27 per cent within two years.⁷⁵

Conclusion

2.67 It is acknowledged that the Australian imprisonment rate has been growing and that prison populations have reached an unacceptable level. Drivers behind the increase in imprisonment rates include changes in the justice system and the introduction of more punitive measures as a result of 'tough on crime' policies. In addition, the underlying social and economic determinants of crime compound systemic changes. To halt the increasing incarceration rate in Australia, all drivers of crime must be addressed.

74 Victorian Equal Opportunity and Human Rights Commission, *Submission 42*, p. 5.

75 Sisters Inside, *Submission 69*, p. 10.

