

YOUNG PEOPLE ON REMAND IN VICTORIA:

**GUILT YET TO BE
DETERMINED**

**BALANCING INDIVIDUAL AND
COMMUNITY INTERESTS**



**Dr Matthew Ericson
Professor Tony Vinson**



**JESUIT
SOCIAL
SERVICES**

BUILDING A JUST SOCIETY

YOUNG PEOPLE ON REMAND IN VICTORIA:

**GUILT YET TO BE
DETERMINED**

**BALANCING INDIVIDUAL AND
COMMUNITY INTERESTS**

**Dr Matthew Ericson
Professor Tony Vinson**



BUILDING A JUST SOCIETY

Acknowledgements

Thank you to Professor Anthony N. Doob of the Centre of Criminology at the University of Toronto; Dr. Sinéad Freeman of the Department of Social Sciences at Dublin Institute of Technology; Roger Bowles of the Centre for Criminal Justice Economics at the University of York; Professor Benjamin Steiner of the Department of Criminology and Criminal Justice at the University of South Carolina; Professor Christine Morgenstern, Lehrstuhl für Kriminologie, of the Rechts- und Staatswissenschaftliche Fakultät, Ernst-Moritz-Arndt-Universität Greifswald; Dr Ineke Pruin; Dr Anthea Hucklesby of the School of Law at University of Leeds; Prof Alfred Allan of the School of Psychology and Social Science at Edith Cowan University; Dr. Jennifer Sanderson of the Violence Research Program, Key Centre for Ethics, Law, Justice and Governance at Griffith University; Prof Rick Sarre of the School of Business at the University of South Australia; Jane Sanders of Freehills; Adrian de Graaf of the Department of Corrective Services, Western Australia; Malcolm Feiner and Dario Mejia of Corrections Victoria; David Amey of the Department for Correctional Services, South Australia; Julie Edwards, CEO of Jesuit Social Services, Amanda Watkinson, Service Innovation and Advocacy Director and other staff of Jesuit Social Services.

Title

Young people on remand in Victoria: balancing individual and community interests.

ISBN

978-0-9807366-4-9 (Softcover)

978-0-9807366-5-6 (Electronic)

Authors

Ericson, Matthew 1972-

Vinson, Tony 1935-

Abstract

This monograph provides recommendations for further improving the handling of young adult remandees in Victoria, Australia, on the basis of statistical evidence, a review of international and national practices and the experience of those working within the remand system. This report is structured in four sections. First, a general review of remand and its place within the criminal justice system is undertaken, including its conventional and emerging functions. The second section reviews evidence-based remand reform policies based on current practices which have effectively been implemented in Australia and overseas. The third section is a statistical analysis of remandees in Victoria which affords particular attention to age, gender and Indigenous status. The fourth section concludes with recommended remand reforms.

Suggested Citation

Ericson, Matthew, and Vinson, Tony (2010). Young people on remand in Victoria. Balancing individual and community interests. Richmond, Jesuit Social Services.

Published by Jesuit Social Services 2010

371 Church Street
PO Box 271
Richmond VIC 3121
Australia
Tel: +61 3 9427 7388
Email: jss@jss.org.au
www.jss.org.au

This monograph is funded by the Legal Services Board.

Designed by studioequator.com.au

Foreword

Jesuit Social Services has been working with young people in the justice system since 1977. During this time we have observed trends that disturb us and we have been impelled to advocate for the changes necessary to protect the dignity and human rights of this group of young people.

Over recent years we have become increasingly alarmed at the growing number of young people who are not granted bail but are placed on remand.

Of particular concern is the pattern of the most vulnerable and disadvantaged young people - especially those contending with difficulties such as homelessness, mental illness or substance abuse - being more likely to be remanded in custody.

While tough on crime policies are framed with community protection in mind, the root causes of crime - such as poverty and entrenched social disadvantage - generally remain hidden and therefore unaddressed. As a result, the long term cycles of offending continue.

These are the young people who get caught in a depressing cycle of offending.

The high volume and complexity of young people being detained in custody pose serious challenges for the justice system, policy makers and for us more broadly as a community.

The increased pressure on the justice system means that young people are being detained for longer periods - while awaiting trial to decide their guilt or innocence - in correctional facilities with hardened adult prisoners, thereby imperilling those young people's health, wellbeing and safety.

Further, the more time that young people serve in adult prisons, the more likely they are to re-offend upon release, perpetuating their criminal behaviour.

This study grew out of our desire to address this unjust and counterproductive situation. In order to advocate evidence-based remand reform, we sought to understand the facts relating to the size and nature of the remand population, and identify strategies to manage and reduce it.

Our goal is to see the rights of unsentenced young people protected while ensuring the safety of the community and its confidence in the justice system.

Julie Edwards
Chief Executive Officer
Jesuit Social Services

Contents

Acknowledgements	4
Foreword	5
Contents	6
List of Figures	9
List of Tables	9
Executive Summary	10
1. The foundations of remand: best interests of defendant?	14
1.1 Increasing use of remand	15
1.1.1 Canada	16
1.1.2 United Kingdom	16
1.1.3 Australia	16
1.2 Current practice in Victoria	17
1.2.1 Dual track system	17
1.2.2 International dual-track trends and the age of juvenile offenders	18
1.3 Problems associated with remand	18
1.3.1 Labelling theory and early interaction	19
1.3.2 Deaths and assaults in custody	19
1.3.3 Unnecessary custody	20
1.4 Profile of remanded people	20
1.4.1 Disorganisation of accused	21
1.4.2 The poor	21
1.4.3 The mentally ill	21
1.4.4 The intellectually disabled	22
1.4.5 The drug dependent	22
1.4.6 The homeless	23
1.4.7 Young women	23
1.4.8 Indigenous people	24
1.5 Relative costs	25
1.6 Offending rates	26
1.7 Therapeutic justice	26
1.8 Court Integrated Services Program	36
1.8.1 Effectiveness	28
1.8.2 Lack of resources	28
1.8.3 Support for CISP	28
1.8.4 Youth Justice Court Advice Service	28
1.9 The remand decision process	29

2.	Alternatives to remand	30
2.1	Methodological problems	30
2.2	Inadequate data reporting systems	30
2.3	Remand reform considerations	31
2.3.1	Public confidence	31
2.3.2	Impositions on liberty	32
2.4	Overview of alternatives	33
2.5	Bail hostels	34
2.5.1	England and Wales	35
2.5.2	Scotland	35
2.5.3	USA	35
2.5.4	Victoria	36
2.5.5	South Australia	36
2.5.6	Limitations	37
2.6	Drug programs	37
2.6.1	United Kingdom	38
2.6.2	Australia	38
2.7	Electronic monitoring	39
2.7.1	United States	39
2.7.2	United Kingdom	40
2.7.3	England and Wales	40
2.7.4	Scotland	41
2.7.5	Limitations	41
2.8	Bail support services	42
2.8.1	United States	43
2.8.2	England and Wales	43
2.8.3	Scotland and Ireland	44
2.8.4	Victoria	45
2.8.5	Limitations with bail intervention programs	46

3.	Statistical analysis	48
3.1	Descriptive data analysis	50
3.2	Areas of disadvantage	54
3.3	Discharge of remandees	55
3.4	Gender and Indigenous status	55
3.5	Detailed statistical analysis	66
3.5.1	Chi-square results from Kruskal Wallis and McNemar nonparametric tests	60
3.5.2	Binary logistic regression results	61
3.5.3	General log-linear regression results	63
4.	Recommendations	66
4.1	Young adult offenders	66
4.2	Bail support programs	67
4.3	Limited availability of long-term housing	68
4.4	Residential drug and alcohol treatment programs	68
4.5	Cases requiring close supervision	69
4.6	Additional bail measures	70
4.6.1	Availability of drug testing	70
4.6.2	Electronic monitoring	70
4.7	Transitional services	71
4.8	Early intervention and community strengthening	72
4.9	Developing an integrated data system	72
4.10	Reducing Indigenous remand rates	73
5.	Appendices	74
5.1	References	74
5.2	Acronyms and abbreviations	81

List of Figures

Figure 1: Remand population as a proportion of all prisoners in Victoria and Australia (Source: ABS)	17
Figure 2: Alleged young offenders by method of processing (Source: DEECD and DPCD, 2008)	20
Figure 3: Prisoners by sex and legal status at 30 June (Source: Corrections Victoria, 2009)	24
Figure 4: CISP program map (Source: Magistrates' Court of Victoria, 2010)	27
Figure 5: Young people's Indigenous status by quartiles of disadvantage	56
Figure 6: Young people's gender by quartiles of disadvantage	56
Figure 7: Young remandees' most serious charge by Indigenous status and areas of disadvantage	57
Figure 8: Young remandees' most serious charge by gender and areas of disadvantage	58

List of Tables

Table 1: The opportunity cost of remand detention in annual wages (Total = \$88,439,318)	25
Table 2: Average cost of alternative remand program (Source: Van Nostrand and Keebler, 2009)	26
Table 3: Two most important issues facing Australia, per cent (Source: Roberts and Indermaur, 2009)	32
Table 4: Frequency of US use of release conditions (Van Nostrand and Keebler, 2009)	33
Table 5: The use of conditional bail by UK Magistrates' Courts (van Kalmthout, et al, 2009)	34
Table 6: Accommodation status at CISP entry and exit (Source: DOJ, 2010)	36
Table 7: Electronic tagging on Bail in the UK (van Kalmthout, et al, 2009)	40
Table 8: Variable labels and codes	49
Table 9: Descriptive Statistics	50
Table 10: Spearman correlations	52
Table 11: Correlations controlling for most serious charge & eventual sentence length	53
Table 12: Concentration of remandees from postcodes of disadvantage	54
Table 13: All prisoners received into custody by age at reception and by discharge type	55
Table 14: Expected and actual MSC count data: by gender and Indigenous status	59
Table 15: Kruskal Wallis test by quartiles of disadvantage	60
Table 16: McNemar test results for gender and Indigenous status	61
Table 17: Binary logistic regression modelling for predictors of Indigenous status	62
Table 18: Binary logistic regression modelling for predictors of gender	63
Table 19: Negative Binomial regression modelling for predictors of disadvantage rank	64

Executive Summary

The contemporary focus of remand policy and decisions in most jurisdictions now emphasises the risk of offending on bail with a commensurate increase in restrictive bail practices. By contrast, the purpose of bail was to prevent the unnecessary detention of a defendant before conviction. However, in response to public attitudes, the Australian state legislatures have gradually reduced judicial discretion over bail decisions since the 1970s. The broad international consensus favours reducing the use of pre-trial detention and, whenever possible, encouraging the use of alternative measures such as release on bail or personal recognizance. The aversion to pre-trial detention is based on a cornerstone of the international human rights regime: the presumption of innocence afforded to persons accused of committing a crime.

Recent reforms in England and Wales have resulted in lower remand rates than comparable countries like Australia and Canada. When England and Wales significantly tightened their use of bail, the remand populations were reduced from 25% of the prison population in 1994 to 16% in 2008. These remand reforms are notable because they effectively reduced a long-term trend to increased rates of detention. Australia's remand rate increased 70% between 1984 and 2007. In this time, remanded prisoners increased from 12% of the prisoner population in 1984 to 22%. However, Victoria's remand rate is consistently lower than other Australian states. Victoria's justice system appears to provide or encourage greater judicial accountability, and provides programs to support defendants at risk of being remanded in custody based on an 'explicit acceptance of the concept of therapeutic jurisprudence.'

Current practice in Victoria

As part of a 'dual track system,' offenders aged 18-20 years can be sentenced to a youth justice custodial centre (YJC) whereas people of the same age on remand may be held in an adult institution. Around half of all 18-20 year olds in this dual track system are in the youth justice system. Recent reforms in Western Australia have adopted Victoria's dual track approach to young adults, which diverts many young people from the mainstream adult prisons.

Initially the intention of the present research was to consider the inclusion within the 'young adult' category of remandees up to 25 years of age. As the study progressed it became apparent that for present purposes the focus should be upon the age group which has been the subject of policy reform internationally, namely, young offenders between the ages of 18 and 21 years.

The UK now includes 'young adults' aged 18 to 20 years in the juvenile category of 'young offenders'. This corresponds with recent amendments to the *European Rules for Juvenile Offenders* regarding the appropriate age grouping and treatment of young people on remand. Specifically, young adult offenders (between the ages of 18 and 21) may, where appropriate, be regarded as juveniles and dealt with accordingly. The extended age of juveniles in the *Rules* reflects 'the extended transition to adulthood.' The European authorities have been influenced by neurological and social science evidence in arriving at this position.

Young people who have early interaction with the criminal justice system are more likely to be drawn further into the system. Remand detention can expose young people to negative influences and result in increased recidivism. It is consequently in the best interest of the community to manage young defendants in a manner that prevents the development of a young person's self-perception as 'deviant.' It is broadly recognised by police, social workers, magistrates and others that remand is increasingly being used to accommodate Victorians with health and social problems associated with engagement in crime, including mental health problems, alcohol and drug addictions and homelessness. The poor are also over-represented in the remand population. People having stable residence, stable employment and financial situations, or being able to post a bond as guarantee for appearance at trial are considered to be securely attached to the community. These criteria are often difficult to meet for the homeless, people with alcohol and drug problems, the chronically unemployed and persons suffering from mental disability, who thus find themselves in detention before and pending trial when less socially disadvantaged persons can prepare their defence at liberty.

Compared with other detainees on remand, those with substance misuse problems report more childhood adversity, conduct disorder, self-harm, past psychiatric treatment and current mood disorder, have fewer qualifications, are more likely to be unemployed and have more housing difficulties. Some Australian interventions have been successful but adequately supported skilled caseworkers are critically important to achieving that result. However, resource limitations are a major hurdle to dealing effectively with substance misuse defendants. The lack of accommodation is one of the most significant obstacles to young Australians being granted bail. It is argued that access to housing for defendants on bail should be a high priority because the shortage of accommodation is a point of significant stress within the system, requiring a more comprehensive, structural response.

Broadly speaking, women are less likely to be remanded than men. However, the trend is to an increasing proportion of female remandees in Victoria. The proportion of male remandees has remained stable as a proportion of Victoria's entire prison population. High incarceration rates for Indigenous people are a global trend and this is also true in Australia. Indigenous people are as over-represented in the remand population as they are in the general prison population. Studies have shown that young Indigenous people are particularly vulnerable to becoming trapped in a cycle of contact with the criminal justice system. Manifestations of that cycle include juvenile convictions, which are highly correlated with limited education and employment activities, drug and alcohol dependence, and insecure accommodation. In general, a person's Indigenous status compounds their social and economic disadvantage.

The *A Fairer Victoria* policy has seen crime rates reduced but remand rates do not yet reflect the lower crime trends. However, the lessons learned from Victoria's successful community safety and justice programs could be extended to remand reform. The therapeutic jurisprudence model adopted in the Victoria courts has resulted in a range of resources and support services.

This is a factor contributing to Victoria's relatively low remand rates compared with, for example, New South Wales. A fundamental principle of therapeutic justice is how courts address the underlying problems and disadvantages associated with criminal behaviour. Victoria introduced the Court Integrated Services Program (CISP) in 2006 as a pilot program. It is designed to 'ensure that defendants get support and services to reduce re-offending and make communities safer'. The most conservative estimates of the benefits of CISP included cost savings of \$4.46 million for the criminal justice system. This estimated benefit of the program was \$1.70 for every dollar spent on the CISP program. The recidivism rate amongst CISP participants is 39.5% compared with 49.5% amongst a control group.

On the basis of statistical evidence adduced in this report, a review of international and national practices and the experience of those working within the remand system, a number of recommendations are made for further improving the handling of young adult remandees. They are:

RECOMMENDATION 1 Therapeutic jurisprudence

In all but exceptional circumstances, the component institutions of the Victorian criminal justice system including the courts and penal institutes, should adopt the principles of therapeutic jurisprudence when dealing with young people up to twenty-one years of age.

RECOMMENDATION 2 Provide protective environments

In all but exceptional cases remandees up to twenty-one years of age should be separately housed in an appropriately protective environment that affords opportunities for self improvement and the strengthening of pro-social behaviour. This should be achieved by either increasing existing youth institutional accommodation or creating new young adult remand places that are authentically separate from adult prison regimes.

RECOMMENDATION 3 Increase housing options

There is an extreme shortage of housing available for young adult people on bail or exiting custodial remand. Corrections Victoria and the Office of Housing, in the course of any revision of the existing housing provision for men and women transiting from prison, should increase the stock of available housing by 20 units for dedicated use by young people on bail or exiting from remand for use by support services. For the proposed increase in the stock of housing to be effective in reducing breaches of bail and/or further offending by 'at risk' young people, the extra accommodation needs to be matched by appropriate staffing and located in places affording access to support services.

RECOMMENDATION 4 Widen flexibility and scope of accommodation/treatment packages

Without detracting from the importance of increasing the number of residential places for remandees who are drug and/or alcohol dependent, as an interim measure consideration be given to widening the flexibility and scope of accommodation/treatment packages available to remandees as outlined in the preamble to this recommendation (see page 69).

RECOMMENDATION 5 Supervised bail accommodation

Supervised bail accommodation with carefully defined control conditions should be piloted in Victoria. The pilot should be confined to two residences for a trial period of two years to decide whether the project should be extended. The management of the two homes should incorporate an Advisory Committee that includes representatives of the local community, the Police and local human service agencies.

RECOMMENDATION 6 Pilot limited, selective drug/alcohol testing

Courts determining whether alleged offenders should be granted bail or remanded in custody should have available the option of prescribing drug and/or alcohol testing at a specified frequency as a condition of bail and to receive feedback on the observance of those conditions in the context of progress otherwise demonstrated.

RECOMMENDATION 7 Review electronic monitoring

For the present, the utility of electronic monitoring be kept under systematic review. The efficacy of the measure and the components of support packages associated with favourable outcomes need to be identified in the light of formal studies and experience in other jurisdictions where electronic monitoring is being employed. The public credibility of the measure and its impact on confidence in the criminal justice system need to be elements of the ongoing review.

RECOMMENDATION 8 Fund transitional remand release/discharge programs

That the funding of a community-based bail and remand program providing services of similar scope to the recently de-funded TAILS program, be renewed. To enable the reconstituted service to provide more adequate post-release assistance to discharged remand detainees and generally meet best practice requirements, the level of funding of the program should be raised from its level of 0.6 EFT to 4.0 EFT workers and accompanied by the dedicated additional housing referred to in Recommendation 3.

RECOMMENDATION 9 Community strengthening, crime prevention planning

The data gathered on the postcodes of remandees in Victoria should be incorporated into community strengthening planning and provide a basis for 'whole of Government' collaboration between the Department of Justice, the Department of Planning and Community Development, the Department of Human Services, Department of Health and the Department of Education and Early Childhood Development.

RECOMMENDATION 10 Integrated data system

An integrated crime statistics organisation modelled on the NSW Bureau of Crime Statistics and Research (BOCSAR) should be established. The objective of the organisation should be to collate and report data on public safety and the criminal justice system to inform effective and efficient evidence-based policy.

RECOMMENDATION 11 Planning reduced Indigenous remand rates

A taskforce to facilitate comprehensive, 'linked-up' prevention measures should be created to reduce Indigenous remand rates (and offence rates) in Victoria. In addition to representation from the areas outlined in the preamble to this recommendation, the taskforce should include representatives of the Aboriginal community.

1. The foundations of remand: best interests of defendant?

This section compares the conventional and emerging use of remand and its place within the criminal justice system. This includes a comparison of the increasing rates of remand in Australia and overseas, and problems associated with the use of remand. This includes evidence that custodial remand is increasingly used to accommodate individuals with health and social problems. The section concludes with an overview of current practices in Victoria, with a particular focus on the Court Integrated Service Program.

Remand decisions historically focused on ensuring defendants do not abscond, commit further crimes, or undermine the integrity of the judicial process. However, the contemporary focus of remand policy and decisions in most jurisdictions now emphasises the risk of offending on bail with a commensurate increase in restrictive bail practices (Hucklesby and Sarre, 2009). King et al (2008) argue that the conventional remand focus has been augmented by a fourth commitment to ‘safeguard the best interests of the defendant.’ In Victoria, section 4(2)(d) of the Bail Act 1977 provides that bail will be refused if a court is satisfied:

- (i) that there is an unacceptable risk that the accused person if released on bail would—fail to surrender himself into custody in answer to his bail; commit an offence whilst on bail; endanger the safety or welfare of members of the public; or interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person...
- (iii) that it has not been practicable to obtain sufficient information for the purpose of deciding any question referred to in this subsection for want of time since the institution of the proceedings against him.

By contrast, ‘the purpose of bail was to prevent the unnecessary detention of a defendant before conviction’ (King, et al, 2005). However, in response to public attitudes, the Australian state legislatures have gradually reduced judicial discretion over bail decisions since the 1970s. This has slowly undermined the *prima facie* right to bail at common law. In Victoria, 19 significant amendments to bail legislation have occurred since 1978, including six legislative changes aimed at protecting the community (Steel, 2009). Victoria ranks second only to NSW in its increasingly punitive legislative impositions on judicial decision making (Steel, 2009). However, the number of legislative changes appears to have no direct relationship with remand rates, possibly because there is less pressure for legislative intervention where remand rates are already high (Steel, 2009).

It is a basic principle of the criminal justice system that people are assumed innocent until proven guilty. Remand—or pre-trial detention—is used only to mitigate the risk that an accused person will fail to present for court appearances, may commit a further offence before the court can ascertain guilt and impose a sentence, or undermine the integrity of the judicial system (by interfering with witnesses, for instance).

There is a general presumption of bail by convention. However, policy makers have attempted to promote public confidence in the remand process and this has resulted in ever-increasing caveats being placed on the presumption of bail (King, et al, 2005: p.10). Nevertheless:

The broad international consensus favours reducing the use of pre-trial detention and, whenever possible, encouraging the use of alternative measures such as release on bail or personal recognizance. The aversion to pre-trial detention is based on a cornerstone of the international human rights regime: the presumption of innocence afforded to persons accused of committing a crime. International treaties and standards require policy makers to limit the use of pre-trial detention. (Shaw, 2008: p.1)

Many factors influence admission to remand including the seriousness of alleged crimes, criminal histories, prevalence of severe drug and alcohol abuse, mental health problems and homelessness. Van Nostrand and Keebler (2009) developed a risk classification scheme based on statistically significant predictors of 'pre-trial risk' in the United States, specifically: (1) whether there were other charges pending against the defendant at the time of arrest; 2) the number of prior misdemeanour arrests; 3) the number of prior felony arrests; 4) the number of prior failures to appear; 5) whether the defendant was employed at the time of the arrest; 6) the defendant's residency status; 7) whether the defendant suffered from substance abuse problems; 8) the nature of the primary charge, and: 9) whether the primary charge was a misdemeanour or a felony.

In terms of outcomes, a rare observational study of court proceedings found that extra-legal factors did not have an influence on remand decisions in Western Australia (Allan, et al, 2005). Defendants received bail on 47% of all 648 appearances. Age and race were not significant factors. However, defendants were less likely to be granted bail where they had previously breached bail or were subject to other orders including parole, where they faced five or more charges, or where they violated previous orders. The likelihood of being refused bail was 67.3% where the defendant was in violation of exiting orders, and 100% where the judge referred to the defendant's drug use. Unfortunately, a limitation of the study was that issues of accommodation were not addressed in the study.

1.1 Increasing use of remand

Changes in the remand population are driven by the volume of police arrests and court appearances, the proportion of accused being remanded, and the period spent on remand. This is conceptualised as the 'stock and flow'—the number of remanded prisoners and the period they spend in custody (King, et al, 2005). The effect of the various components is illustrated by Hucklesby's (2009) observation that the increased remand population in Australia is driven by increasing numbers of remandees, whereas Canada and Northern Ireland's result from the increased period spent awaiting trial. However, this finding with respect to Canada is challenged by other research (Webster, et al, 2009).

1.1.1 Canada

Canada's sentenced prison population has steadily declined while the remand population has tripled since 1978 (Webster, et al, 2009). In fact, Canadian remand times are twice as long as in England and Wales and increasing. The average time for case processing in Canada's adult courts increased from 160 days in 1996 to 217 days in 2005/6 (Canadian Centre for Justice Statistics cited in Hucklesby, 2009). Others, however, contend that 'Canada's growing remand population is largely the product of an increasing culture of risk aversion,' a 'culture of adjournments'—and the consequent delays—while greater use of release conditions results in a greater proportion of 'administration of justice' breaches and subsequent charges (Webster, et al, 2009).

1.1.2 United Kingdom

Recent reforms in England and Wales have resulted in lower remand rates than comparable countries like Australia and Canada (Hucklesby, 2009). Hucklesby has noted that when England and Wales significantly tightened their use of bail, the remand populations were reduced from 25% of the prison population in 1994 to 16% in 2008. These remand reforms are notable because they effectively reduced a long-term trend to increased rates of detention.

The average time untried male prisoners spent in custody in the UK increased from 25 to 57 days between 1975 and 1989, while females remand periods increased from 15 to 51 days in 1988 (van Kalmthout, et al, 2009). The recent remand reforms in Scotland emphasised the need to address the speed and efficiency of remand and bail programs (Scottish Government, 2005). They also reinforced the presumption in favour of bail, citing the considerations recognised by the European Court of Human Rights (Scottish Government, 2005).

The multitude of reforms in England and Wales since 1997 has resulted in the conditional bail of defendants who would previously have been remanded (Hucklesby, 2009). However, identifying and quantifying the effect of particular reforms is difficult because of complex interactions and the lack of data. As Hucklesby noted, 'the picture is complex and a lack of research evidence hampers any firm conclusions being drawn.' (Hucklesby, 2009) By contrast, time spent awaiting trial has been a driver for the increasing prison population in Northern Ireland (Hucklesby, 2009), while remand is increasingly becoming a strategic means of managing risk which is undermining the legitimate use of detention in the EU (Stevens, 2009).

1.1.3 Australia

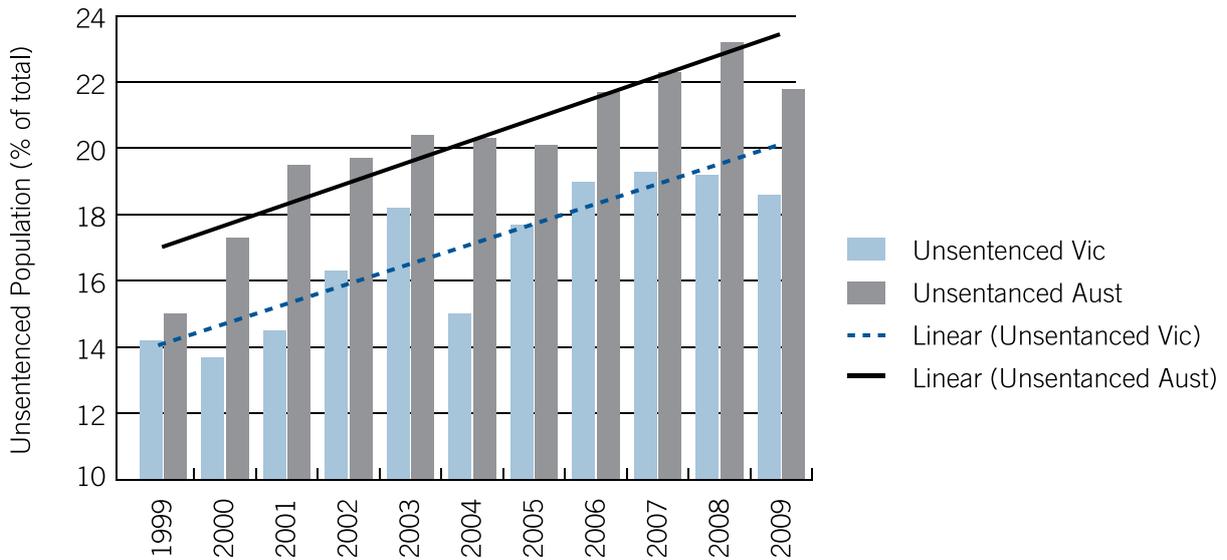
Australia's remand rate increased 70% between 1984 and 2007. In this time, remanded prisoners increased from 12% of the prisoner population in 1984 to 22% (Australian Institute of Criminology, 2008). The experience in Australia and Victoria mirrors the international trend. However, Victoria's remand rate is consistently lower than other Australian states (Figure 1). Moreover, Victoria consistently has a comparatively low rate of recorded crime against people and property and low imprisonment rates:

The question of why Victoria has such a different level of recorded criminal activity compared to other Australian jurisdictions has been a matter for discussion over many years and remains largely unresolved. Certainly, though, it was not possible to isolate the outcomes of remand in custody processes from this context alone. (King, et al, 2008)

King et al's explanation is, at best guess, that Victoria's justice system provides or encourages greater judicial accountability, and provides programs to support defendants at risk of being remanded in custody based on an 'explicit acceptance of the concept of therapeutic jurisprudence.'

1. The foundations of remand: best interests of defendant?

Figure 1: Remand population as a proportion of all prisoners in Victoria and Australia (Source: ABS)



1.2 Current practice in Victoria

1.2.1 Dual track system

The Victorian Youth Justice program is based in the Department of Human Services and 'has a strong emphasis on the diversion of young people away from the formal criminal justice system' (DEECD and DPCD, 2008). The key policy directions for Youth Justice are:

- 1) Diverting young people from entering the youth justice system, [and] progressing further into a life of crime;
- 2) providing better rehabilitation of high-risk young offenders; and 3) expanding pre-release, transition and post-release support programs for custodial clients. (DEECD and DPCD, 2008)

The age jurisdiction of the Children's Court was raised from 17 to 18 years in July 2005 (DEECD and DPCD, 2008). As part of a 'dual track system,' offenders aged 18-20 years can be sentenced to a youth justice custodial centre (YJC) instead of an adult prison if the court believes the young person has reasonable prospects for rehabilitation, or is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.

Around half of all 18-20 year olds in this dual track system are in the youth justice system.

Recent reforms in Western Australia have adopted Victoria's dual track approach to young adults, which diverts many young people from the mainstream adult prisons (OICS, 2009). For instance, the Western Australia government decided that the Rangeview Juvenile Remand Centre will be redesigned as a facility for young adult males aged 18 to 21 years. However, the new definition is not without risk, and policy makers need to be aware of the potential for net-widening. The OICS, for instance, expressed concern that young offenders 'who would previously have been placed on a community order or a suspended sentence will be sentenced to custody, or the courts may impose a longer custodial sentence.'

1.2.2 International dual-track trends and the age of juvenile offenders

The UK also has 'split sites' which detain young people and young adults aged 18-21 years. Many of these sites include both sentenced and unsentenced prisoners. Amongst the identified benefits of split sites, prisoners reported better relationships with staff and easier access to family, although there are other reported benefits of dedicated sites including a greater intent to stop offending (Tye, 2009).

The UK now includes 'young adults' aged 18 to 20 years in the juvenile category of 'young offenders' (Tye, 2009; van Kalmthout, et al, 2009). This corresponds with recent amendments to the *European Rules for Juvenile Offenders* regarding the appropriate age grouping and treatment of young people on remand (Committee of Ministers, 2008a; Committee of Ministers, 2008b). Specifically, 'young adult offenders (between the ages of 18 and 21) may, where appropriate, be regarded as juveniles and dealt with accordingly.' The Committee of Ministers (2008a) noted the rule change is in accordance with Rule 3.3 of the Beijing Rules which states that 'efforts shall also be made to extend the principles embodied in the Rules to young adult offenders' (United Nations, 1985).

The extended age of juveniles in the *Rules* reflects 'the extended transition to adulthood.' The European authorities have been influenced by neurological and social science insights:

The evidence is strong that the brain does not cease to mature until the early twenties in those relevant parts that govern impulsivity, judgement, planning for the future, foresight of consequences, and other characteristics that make people morally culpable...Indeed, age 21 or 22 would be closer to the 'biological' age of maturity. (Gur, cited in Junger-Tas and Dünkel, 2009: p.95)

The prolongation of the pre-adult phase of life has been linked to changes in the employment market, particularly employers requiring increasing levels of qualifications from their employees. European criminologists note that, in the 1950s, 70% of juveniles finished school at the ages of fourteen and fifteen in order to enter the labour market immediately (Dünkel and Pruin, 2010). At that time in Australia, the Wyndham Inquiry (Wyndham Inquiry, 1957) found an almost identical state of affairs when 30% of young people proceeded to the two final years of high school. Today young adulthood is characterised by a longer period of financial insecurity affecting the development of an independent personality and life structure (Dünkel and Pruin, 2010). The practical implications of this extended 'legal juvenile' status in Europe is an increasing emphasis on therapeutic justice (Junger-Tas and Dünkel, 2009: p.224).

1.3 Problems associated with remand

There are numerous problems associated with holding people on remand, over and beyond the loss of freedom for people presumed innocent until proven guilty. The risks of granting bail are highly visible and adjudged patently obvious to communities with little public confidence in the criminal justice system. However:

The benefits of a decision to release an accused are all 'hidden' or non-evident to most on-lookers. For instance, the right of the accused not to be denied bail without just cause is defended with the release of the accused. Further, considerable savings are reaped not only by society (particularly with respect to the high costs of remand) but also by the offender and his or her family (e.g., continuation of employment; increased ability to defend him or herself; personal liberty). However, these benefits generally go unnoticed or unrecognised by most members of society as well as fail to capture the media's attention. (Webster, et al, 2009: p.100)

The Scottish Prisons Commission (2008) argued that 'high prison populations do not reduce crime; they are more likely to create pressures that drive re-offending than to reduce it.' A survey of prisoners in England and Wales found that 43% of heroin users and 38% of crack/cocaine users first began using the drug in prison (Boys, et al, 2002).

1. The foundations of remand: best interests of defendant?

People remanded in custody often lose their accommodation and employment, and are more likely to commit suicide (Schönleich, 2008). Remandees are also more likely to be found guilty than defendants granted bail because:

Those on remand have fewer resources to prepare their defence, they may make a less favourable impression when they appear in court (they will probably be less well dressed and have experienced a loss of morale). They also miss the opportunity to impress the court by showing that they have met their bail conditions and appeared in court. The accused on remand will have limited opportunities for rehabilitation, will endure upset to their family life, and will suffer stigmatisation and possible contamination by contact with criminals. (Brignell, 2002)

1.3.1 Labelling theory and early interaction

The essence of labelling theory is that affixing labels by words or criminal justice processing can affect the self-identity of people, especially youth, and lead to behaviour that matches the expectation implicit in the label. Every effort needs to be made to prevent the cumulative development of a young person's self-identity as 'deviant.' The label affects the self-image of the person and reduces the perceived barriers to criminal behaviour.

Young people who have early interaction with the criminal justice system are more likely to be drawn further into the system. Remand detention can, in the words of Stubbs (2009) 'expose young people to negative influences and result in increased recidivism.' It is consequently in the best interest of the community to manage young defendants in a manner that prevents the development of a young person's self-perception as 'deviant.' Mazerolle and Sanderson explain the problem as follows:

Detention is viewed as detrimental because it involves further penetration into the formal justice system for the young person. Labelling theory maintains that processing the young person in court results in their stigmatization as they are labelled as deviant. This negative labelling leads the young person to gravitate toward groups of deviant peers which provides further criminal socialisation and increases the risk of reoffending. (Mazerolle and Sanderson, 2008: p.1)

Detention of young adults on remand in the company of older offenders can, in itself, serve to strengthen the younger people's adherence to anti-social norms. Researchers have reported that:

In the institutional world of the adult prison youths are more likely to learn social rules and norms that legitimate domination, exploitation and retaliation...custodial staff more often treat inmates with disdain and hostility clearly communicating that youths are irredeemable and incapable of change (Junger-Tas and Dünkel, 2009: p.98).

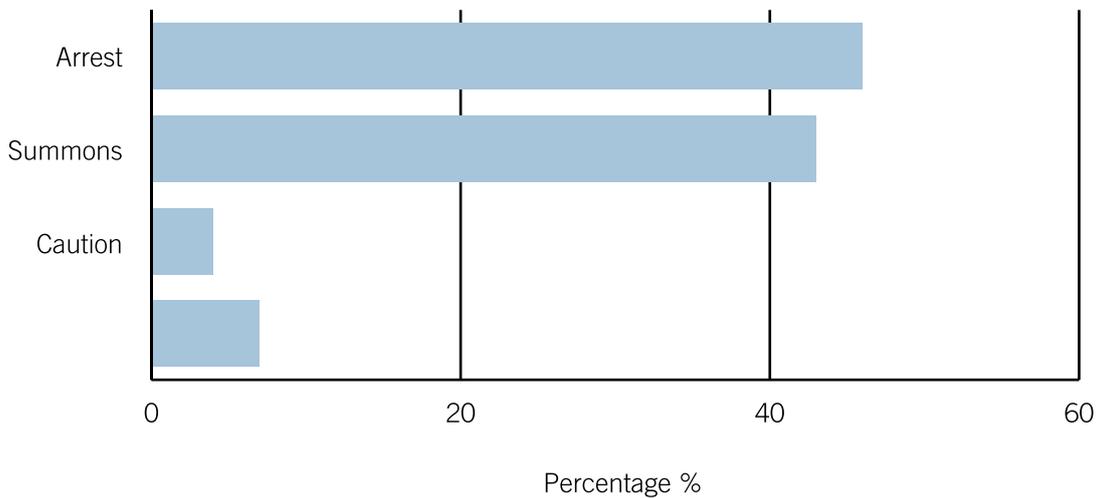
1.3.2 Deaths and assaults in custody

Remandees are also subject to violence. Young people are particularly vulnerable to harm and exploitation by older inmates, which recent amendments to European rules have sought to address (Committee of Ministers, 2008b, principle 59.3). Few details are available about the rates of violence and sexual assault in Australia's remand prisons. In the US there has been a concerted effort to reduce the rate of prison rape, including legislation and research into the problem. However, about half of prisoners in NSW are assaulted, and one quarter of prisoners aged 18-24 years are sexually assaulted (Sanders and Irwin, 2009). People with intellectual disabilities are more likely to be sexually assaulted while in prison. Moreover, about one-third of the deaths in custody are remandees. King et al (2008) found this to be roughly proportionate to the remand population, although Sarre et al (2006) claimed deaths may be higher among remandees than the general prison population.

1.3.3 Unnecessary custody

The proportion of remanded prisoners who do not go on to receive custodial sentences is an important consideration. A study of NSW prisoners remanded in March 1999 found that 56% were released without a custodial sentence (Thompson, 2001). In 2005, King et al (2005) found that about 60% of Victorian remandees spend additional time in custody because of the use of remand (that is, 40% of remandees are either found not guilty or sentenced to a period equal to, or less than, the time already served on remand). King et al (2005) found that an average of 39.7% of Victoria’s remandees were discharged at court in the years 2000-2003. Another study in NSW found that only 41% of remandees were given custodial sentences (Thompson (2001), cited in King, et al, 2005), while more than half of remanded prisoners were acquitted or not sentenced to imprisonment in the UK (Jones (2003), cited in King, et al, 2005). The Sentencing Commission for Scotland (2005) estimated that around half of remandees were either not convicted or not sentenced to custody; a high rate confirmed by the aScottish Prisons Commission (2008).

Figure 2: Alleged young offenders by method of processing (Source: DEECD and DPCD, 2008)



1.4 Profile of remanded people

Remand is increasingly being used to accommodate Victorians with health and social problems associated with engagement in crime, including mental health problems, alcohol and drug addictions and homelessness. Notably, remandees are more likely than other prisoners to be homeless, unemployed or have some form of mental disorder (King, et al, 2009). As King et al report, this trend is broadly recognised by police, social workers, magistrates and others:

The perception of our [interviewed] informants was that remand [decision-making] in recent years has required the assessment of risk in relation to individual defendants who are increasingly likely to have mental health problems, to abuse drug and alcohol and who are either independently or consequently only marginally socially integrated in terms of housing and other basic needs. (King, et al, 2005: p.116)

Edwards (2010) notes that many young people who have contact with the judicial system are socially and economically disadvantaged, but ‘can become law abiding, productive members of society’ with appropriate support:

1. The foundations of remand: best interests of defendant?

Typically, young people who have been imprisoned are also victims of crime, child abuse and neglect. They have poor literacy, poor education, low employment prospects and a dim outlook. It is little surprise that only about 6% of male prisoners in Victoria have completed secondary, trade or tertiary education. (Edwards, 2010)

The Scottish Prisons Commission (2008: p.14) also recognised that the 'high use of remand, and the use of prison to tackle those with mental health and substance abuse issues means prison is being used to deal with our own failures—in the criminal justice, social welfare and health systems.' Indeed, analysis by King et al (2005) noted that increased levels of drug abuse and mental health problems amongst defendants coincided with reduced seriousness of their criminal histories (although not necessarily the volume of crime).

1.4.1 Disorganisation of accused

There is international recognition that many accused live 'chaotic lifestyles' (King, et al, 2005; Sentencing Commission for Scotland, 2005; Townhead, 2007). This is also true of Victorians on remand. Many of the difficulties associated with accused people relate to disorganisation in their personal lives, in combination with personal problems such as homelessness and mental illness. This is increasingly being recognised and understood, and some jurisdictions are beginning to develop policies which address 'defendant disorganisation' (King, et al, 2008). Sarre et al argued that:

Many defendants' failures to attend court as required are simply the result of disorganised lives or indifferent attitudes. Alternatives to custody for this group of defendants range from increased social support and case worker intervention to the use of surveillance technologies, for example, electronic monitoring of home detention defendants under curfew. (Sarre, et al, 2006: p.6)

1.4.2 The poor

The poor are also over-represented in the remand population. According to Townhead:

People having stable residence, stable employment and financial situation, or being able to make a cash deposit or post a bond as guarantee for appearance at trial are considered as well-rooted. These criteria of course are often difficult to meet for the homeless, drug users, substances abusers, alcoholics, the chronically unemployed and persons suffering from mental disability, who thus find themselves in detention before and pending trial when less socially disadvantaged persons can prepare their defence at liberty. (Townhead, 2007: p.15)

1.4.3 The mentally ill

People with mental health problems are remanded into custody at much higher rate than other prisoners and the general population (White, et al, 2006). It is incorrect to assume that remand rates are driven solely by the seriousness of the crime; in fact, mental health and drug abuse are common contributors to increased remand rates. Victorian data demonstrates that there has been a decline in the seriousness of the criminal history of remandees, and an increasing rate of severe mental health and drug and alcohol abuse problems (Sarre, et al, 2006). One legal aid worker expressed the problem thus:

One of the major issues we've come across recently is that the remand system seems to have become the dumping ground for people with mental health problems and with intellectual disabilities ... There has been a massive increase of people with mental health issues who are in the remand system and who've got nowhere to go. (cited in King, et al, 2009: p.33)

The rapid international deinstitutionalisation trend has led to the hasty reduction of the numbers of patients in psychiatric hospitals and an increasing number of prison inmates. By the early 1980s there were more prison inmates in Canada and the United States with mental illness than patients in psychiatric hospitals (Ogloff, 2002).¹ However, the global deinstitutionalisation trend has not resulted in the promised 'care and integration in the community' for the mentally ill. Rather, the mentally ill are now punished in prisons (Gostin, 2008). To what extent this has occurred in Victoria is unknown but, of all Victorian prisoners aged 18-24 years in May 2007, 13% of females and 6.3% of males had a history of psychiatric admission (DEECD and DPCD, 2008).

A 'small but growing body of evidence' suggests that mental health courts and similar interventions may be an effective policy option. There are now 1665 drug courts in the US alone (Kuehn, 2007). While there is as yet little evidence bearing on whether jail diversion for people with mental health problems is effective in reducing recidivism, jail diversion initiatives can reduce the period of jail for people with mental illness (Sirotych, 2009). It is likely that general bail intervention programs would benefit people with mental illness. Yet some bail decision-makers argue that defendants with mental illness were remanded 'because there was a better prospect of defendants accessing some form of treatment' (King, et al, 2005).

1.4.4 The intellectually disabled remandees

People with an intellectual disability are over-represented in the prison population and may have emotional and behavioural problems (Parton, et al, 2004; Riches, et al, 2006). Prisoners with intellectual disabilities are also vulnerable to mental health problems and substance abuse (Crocker, et al, 2007). Many authorities argue that there is a particular need for law reform and diversionary practices for intellectually disabled remandees (Parton, et al, 2004).

Of all Victorian prisoners aged 18-24 years in May 2007, 9% of females and 3% of males had an intellectual disability (DEECD and DPCD, 2008). Intellectually disabled Victorians serve on average a greater number of remand-only terms of imprisonment than people without intellectual disabilities, although the period spent on remand is similar for both groups (Holland and Persson, 2010). People with an intellectual disability are more likely to be remanded to custody than non-intellectually impaired. Moreover, first time Victorian remandees with intellectual disabilities serve twice the period served by non-intellectually impaired remandees (Holland, et al, 2007). Victorian prisoners with an intellectual disability are also younger and have a greater number of previous remand-only terms of imprisonment (Holland, et al, 2007).

1.4.5 The drug dependent

King et al (2005) reported that interviews with judicial stakeholders identified an increasing trend of drug-related crime 'as being a major influence on the remand process' in Australia.' The inter-relationship between drug dependence and mental problems compounds the problem because:

Compared with other prisoners on remand, prisoners on remand with substance misuse problems reported more childhood adversity, conduct disorder, self-harm, past psychiatric treatment and current mood disorder, and had fewer qualifications, were more likely to be unemployed and have more housing difficulties. (White, et al, 2006: p.263-64, referring to Brink et al)

Properly identifying Australian remandees' drug and alcohol problems is difficult because many do not receive a full reception assessment (King, et al, 2005). However, of all Victorian prisoners aged 18-24 years in May 2007, 43% of females and 71% of males had a history of drug and alcohol addiction (DEECD and DPCD, 2008).

¹ The increased use of jail in lieu of psychiatric treatment in Australia is widely recognised (see, for instance, Baldry, et al, 2008; Dowse, et al, 2009)

1. The foundations of remand: best interests of defendant?

Some Australian interventions, such as the CAPS Merit pilot drug program in New South Wales, have been successful but adequately supported skilled caseworkers are critically important (Passey, et al, 2007; Passey, et al, 2006). However, resource limitations are a major hurdle to effectively dealing with drug-abusing defendants, and the consequent limitations of remanding these defendants in custody were recognised by many bail decision-makers who recognised the scarcity of appropriate programs (King, et al, 2005). Recent Scottish reforms included the introduction of drug testing and treatment bail conditions aimed at 'breaking the cycle of drug related re-offending' (Scottish Government, 2005).

1.4.6 The homeless

The lack of accommodation is one of the 'most significant obstacles' to young Australians being granted bail (Denning-Cotter, 2008). A review of South Australian magistrates found that 13% of defendants were remanded because of 'unsuitability or lack of residence' (Marshall, et al, 2004). For these reasons, King et al (2005) argued that access to housing for defendants on bail should be a high priority because the shortage is a 'point of significant stress within the system that required a more comprehensive, structural response.' The problem with granting bail can be as simple as a homeless defendant having no contact address (King, et al, 2005).

It should be a priority to develop accommodation services with adequate resources to support defendants through the court process (King, et al, 2005), especially for people with severe mental disorders (White, et al, 2006: p.260). However, homelessness is a difficult problem to address because of the scarcity and cost of suitable housing. A number of attempts aimed at young people in New South Wales have been documented by Boyle (2009), including the bail accommodation programs in Moree and Inverell.

1.4.7 Young women

Women are less likely to be remanded than men. One reason identified in Scotland is that most prosecutors and judges thought 'that the presence of dependent children will make [prosecutors] less likely to ask for remand or to remand' (Brown, et al, 2004). Brown et al concluded from their interviews with justice system stakeholders that 'there is a perception that females who are remanded are often repeat or persistent minor offenders who have a record of failing to turn up for court and offending while on bail.' It could be that most female remandees in Scotland are drug or alcohol dependent. Brown et al (2004) identified a consensus among interviewees that extra bail conditions can reduce the likelihood of remand in custody, but reported 'a lack of awareness on the part of some judges and prosecutors of the schemes provided by social work departments and the voluntary sector in their locality.'

In the UK more broadly, around 60% of women are acquitted at trial or receive a non-custodial penalty (Player, 2007). Player argued that women in the UK are particularly disadvantaged by the practical application of bail and laws, and pointed out that 'each of the grounds that permit the courts to intrude on the liberty of a suspected offender has implications for the equal treatment of men and women.'

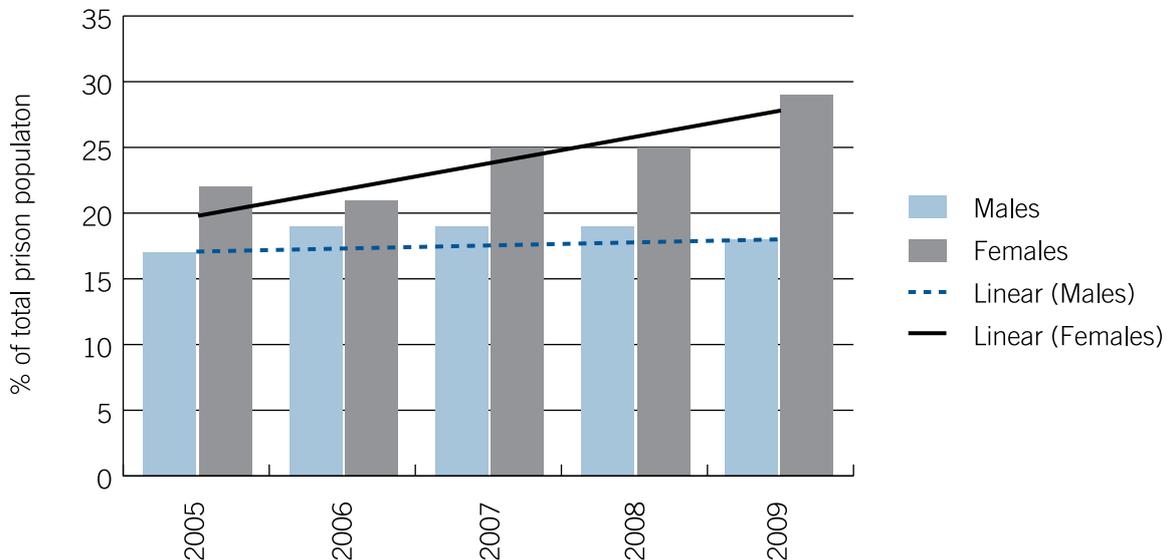
Research in the United States found that women defendants are more likely to receive bail than their male counterparts. The gender effect on pre-trial release outcomes is generally uniform across the racial- ethnic comparison groups. although Hispanic and black defendants are more likely to be detained than white defendants (Demuth and Steffensmeier, 2004). In Canada, the number of provincial remand prisoners doubled between 1995/1996 and 2004/2005 while the number of sentenced female admissions declined by 8% (Gartner, et al, 2009).

Women constituted 10% of Victoria's total prison population in June 2009, but represented 29% of the State's remandees. Moreover, the trend is to an increasing proportion of female remandees in Victoria (Figure 3). This is considerably higher than the proportion of male remandees which

Young People On Remand In Victoria

has remained stable as a proportion of Victoria's entire prison population. However, women serve shorter remand periods (King, et al, 2005) and, consequently, a greater proportion of women are remanded as a proportion of the total prison population.

Figure 3: Prisoners by sex and legal status at 30 June (Source: Corrections Victoria, 2009)



One reason women have relatively higher remand rates is because conventional factors in the decision to grant bail have a discriminatory impact on women. Most notably, the stability indicators of regular employment and stable accommodation can affect women significantly. This is because fewer women than men have regular employment or hold property in their own name (such as rental accommodation). Consequently, women 'appear by these indicators to be at greater risk of absconding' (Townhead, 2007). Moreover, women facing remand often have complex needs:

'Women offenders typically come from economically and socially disadvantaged segments of society. Typically, they are young, unemployed, have low levels of education and have dependent children. Many have histories of alcohol and substance abuse. A high proportion of women offenders have experienced violence or sexual abuse. They are also likely to have mental health problems. (Townhead, 2007: p.16)

1.4.8 Indigenous people

High incarceration rates for Indigenous people is a global trend (Bartlett, 2005). Indigenous people constituted 5.5% of Victoria's total prison population in June 2009, and 5.6% of the remand population (Corrections Victoria, 2009). It has long been recognised that Indigenous Australians 'encounter problems' with respect to bail, according to Western Australia's Law Reform Commission (2006). The Commission found that Indigenous people were more likely to be refused bail, and 'more likely to be unable to meet the requirements or conditions that have been imposed.' Such conditions include stable accommodation. Yet, a 2005 survey of male Indigenous remandees in South Australia found that 36% were homeless before admission, and 73% anticipated no secure accommodation on release (Krieg, 2006). Effective remand reforms should address such impediments.

1. The foundations of remand: best interests of defendant?

Indigenous people have a distinct trajectory to absorption in the general prison population, and remand decisions play an important role in this. Denning-Cotter (2008) has pointed out that young Indigenous people are ‘particularly vulnerable to becoming trapped in a cycle of contact with the criminal justice system.’ Other factors include juvenile convictions, which are highly correlated with limited education and employment activities, drug and alcohol dependence, and insecure accommodation (King, et al, 2005). A Queensland study found that most Indigenous juveniles on supervised orders in 1994-95 had progressed to the adult corrections system by 2002. The study found a very high proportion of Indigenous people came from disadvantaged backgrounds: 72% as opposed to 48% for the non-Indigenous group (Lynch, et al, 2003). Indeed, while children who have been maltreated are more likely to have contact with the criminal justice system, this is particularly the case for Indigenous juveniles according to evidence from Queensland (Dennison, et al, 2006).

Over-policing is also common, and Indigenous youth consequently come to court with a more serious record of offending. Yet Indigenous juveniles have lower rates of diversion which result from—and contribute to—more frequent contacts with the criminal justice system. This was found to be the case even when accounting for offence characteristics and prior history in New South Wales, South Australia and Western Australia (Snowball, 2008a; Snowball, 2008b).

In general, a person’s Indigenous status compounds their social and economic disadvantage. As an example, a Victorian study which explored intellectual disability amongst male prisoners found a much higher rates of intellectual disability amongst Indigenous prisoners (16.7%) than in the non-intellectually impaired sample (4.9%) (Holland, et al, 2007). Effective remand reform would provide evidence-based programs for Indigenous people faced with incarceration. These include housing, mental health, substance abuse, general health, education and employment service programs (Krieg, 2006; Machin, et al, 2010; Vinson, 2009).

1.5 Relative costs

The financial costs of remand are burdensome. There were 815 remandees in Victoria’s prisons at the last census on 30 June 2009 (Corrections Victoria, 2009), and it costs \$108,515 per year to house a prisoner (SCRGSP, 2010). This is the average cost per prisoner and underestimates the cost of detaining remandees for the following reasons: 1) remandees require more intensive assessment and monitoring than longer-term convicted prisoners; 2) remandees are rarely housed in minimum security facilities (there was only one minimum security remandee as at 30 June 2009); and 3) the costings are for the financial year 2008-09.

Nevertheless, even with these conservative costings, the price in public services foregone is substantial. In fact, Victoria could employ one nurse and one police officer for every remandee held in custody, and still leave enough money for one social worker for every five remandees (Table 1).

Table 1: The opportunity cost of remand detention in annual wages (Total = \$88,439,318)

		Cost Per Unit	N Units	Totals
Detaining 815 Remandees ^a = Σ	Nurses ^b	\$48,729	815	\$39,714,298
	Police Officers ^c	\$51,156	815	\$41,692,140
	Social workers ^d	\$38,744	181	\$7,012,664

a: The conservative cost of holding 815 remandees for a year is \$108,514 per remandee

b: First year registered nurse without shift penalties

c: First year constable without shift penalties

d: First year crisis accommodation social worker without shift penalties

The intended purposes of imprisonment are broader than deterrence but a ‘taste of prison’ is claimed by some to justify a period of remand for some alleged offenders. Recent research conducted in New South Wales by the Bureau of Crime Statistics (Weatherburn, 2010) found no evidence that prison deters offenders convicted of burglary or non-aggravated assault. Indeed, someone who goes to jail is more likely to re-offend than someone who commits the same offence and does not go to jail (Weatherburn cited in Colvin, 2010). On the other hand, there are far more effective and cost-effective alternatives to remand. The average cost of alternative remand programs in the United States is set out in Table 2. These alternatives address the underlying causes of many offending behaviours (1.4), including drug and alcohol dependence, poor mental health and homelessness.

Table 2: Average cost of alternative remand program (Source: Van Nostrand and Keebler, 2009)

	Cost (US\$)	% of remand costs ^a
Third-party custodian	\$0	0.0
Substance abuse testing	\$196	1.0
Electronic monitoring	\$756	3.9
Mental health treatment	\$1,477	7.7
Substance abuse treatment	\$2,060	10.7
Housing and shelter	\$6,047	31.4

a: Average cost of detention estimated at US\$19,253

1.6 Offending rates

Youth and crime are highly correlated, and remandees are younger than the general sentenced prisoner population. According to King et al (2005), this is because young people are ‘more socially and economically marginal than older offenders, or because they are more likely to have breached bail conditions in earlier episodes.’ Young offenders in Victoria ‘are involved in one-off, relatively minor events.’ (DEECD and DPCD, 2008). *A Fairer Victoria* (Victoria, 2010) states the Victorian government is ‘committed to breaking the cycle of crime and tackling growth in Victoria’s prison population.’ The government has indeed reduced crime rates dramatically, but remand rates do not yet reflect the lower crime trends. However, the lessons learned from Victoria’s successful community safety and justice programs could be extended to remand reform. In particular the improvements in juvenile justice offer a base from which to launch a generational change in crime and community safety policy. This necessarily involves broader social welfare programs because:

Risk factors for involvement in crime include parenting experiences (such as a lack of parental supervision and involvement), truancy, the influence of peers and unemployment and substance abuse. Young people who repeatedly offend are often socio-economically disadvantaged and may have experienced physical abuse and childhood neglect, with neglect being one of the strongest predictors of youth offending. (DEECD and DPCD, 2008: p.145 of unnumbered report)

1.7 Therapeutic justice

The therapeutic jurisprudence model adopted in the Victoria courts has resulted in a range of resources and support services. King et al (2005; 2009) argue that this is a factor contributing to Victoria’s relatively low remand rates. Such programs include CISP and the Bail Advocacy Unit:

Some Victorian magistrates have adopted what has been described as the ‘therapeutic justice’ model. This appears to be in part a response to the changing characteristics of the defendants appearing in the remand system, and their needs. As a consequence of this view, the Victorian courts appear to have attracted a greater and broader range of resources to assist defendants who would have, but for these alternatives to custody, found themselves incarcerated awaiting trial. (King, et al, 2005: p.8)

1. The foundations of remand: best interests of defendant?

A fundamental principle of therapeutic justice is how courts address the underlying problems and disadvantages associated with criminal behaviour (Ross, 2009). King et al (2008) identified a number of 'therapeutic remand' programs including the Bail Advocacy Unit and the CREDIT program.

1.8 Court Integrated Services Program

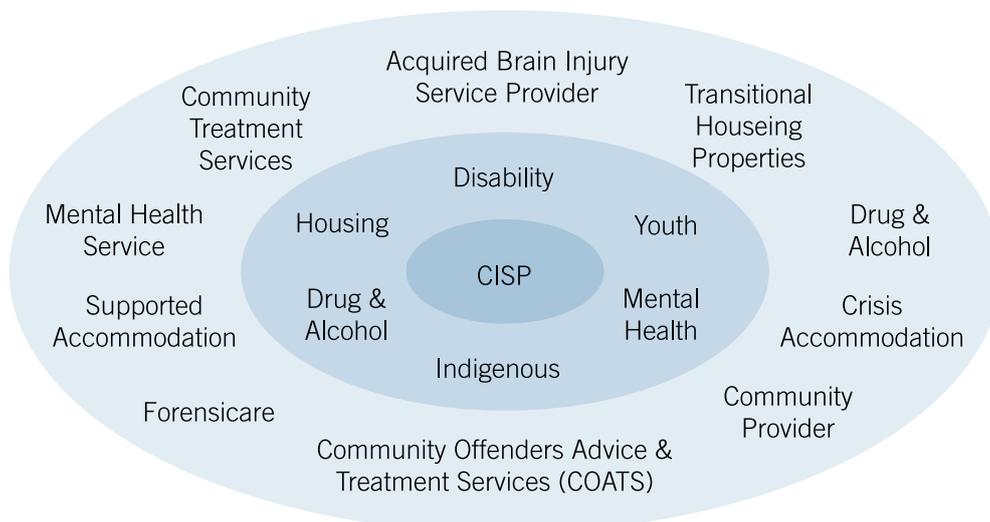
Victoria introduced the Court Integrated Services Program (CISP) in 2006 as a pilot program. It is designed to 'ensure that defendants get support and services to reduce re-offending and make communities safer' (Magistrates' Court of Victoria, 2010). CISP cost \$1.24 million in the initial 2005-06 financial year which grew to \$2.92 million in 2008-09 with increasing service provision (DOJ, 2010). The total cost of the program over this period was \$8.52 million. The most conservative estimates of the benefits of CISP included cost savings of \$4.46 million for the criminal justice system. This estimated benefit of the program was \$1.70 for every dollar spent on the CISP program (DOJ, 2010).

CISP 'represents a development of existing pre-trial and bail support program models, and in particular the CREDIT and Bail Support programs, established in Victoria in 1998 and 2001 respectively' (Ross, 2009). CISP is a 'complex' service model (see Figure 4), and has been gradually refined over its period of operation—in fact, the CISP Policy and Procedures Manual was not finalised until late 2008 (Ross, 2009). Through various referral and delivery processes, CISP provides a range of services to clients including mental health, acquired brain injury (ABI), alcohol and drug treatment programs, and accommodation, employment and social support services:

The program provides a coordinated, team based approach to the assessment and treatment of defendants. It [links] defendants to support services such as drug and alcohol treatment, crisis accommodation, disability services and mental health services. The program builds on other successful programs operating in the Magistrates' Court, such as the CREDIT/Bail Support Program and the Aboriginal Liaison Program. (Magistrates' Court of Victoria, 2010: p.2)

CISP program participants must have a 'history of offending or current offending [which] indicates a likelihood of further offending,' and have physical disabilities or mental illness, drug or alcohol dependency and misuse issues, or have inadequate family and economic support which contributes to the frequency or severity of offending (Magistrates' Court of Victoria, 2010). Of the 3,736 CISP referral assessments in 2007 and 2008, 60% involved defendants who were in custody (Ross, 2009). Participants received guidance and assistance for an average of 110 days (Ross, 2009).

Figure 4: CISP program map (Source: Magistrates' Court of Victoria, 2010)



During the two years in question, magistrates could require monitoring of a defendant's progress on CISP and 77% of cases referred to CISP were subject to judicial monitoring (Ross, 2009). However, there was a decline in judicial monitoring, possibly because magistrates developed 'greater confidence' in CISP case management, or possibly to reduce workloads (Ross, 2009).

1.8.1 Effectiveness

CISP services are well integrated and effectively matched to the risk and needs of clients. The program has achieved a high rate of referral of clients to treatment and support services and people who undertook the CISP had significantly lower re-offending rates after completing the program (Ross, 2009). The recidivism rate amongst CISP participants is 39.5% compared to 49.5% amongst the control group (PwC, 2009). The reduced recidivism amongst CISP participants resulted from a 20% reduction in re-offending including a 30% drop in the frequency of re-offending (DOJ, 2010). In other words, CISP participants were less likely to reoffend and, where they did reoffend, they offended less frequently.

According to Ross (2009), the most important predictors of non-completion were whether the offender was in custody at the time of assessment, whether CISP was made a condition of bail, and the offenders' accommodation stability at the time of CISP entry. In addition, Indigenous clients were less likely to complete the CISP program.

1.8.2 Lack of resources

The major problems with the CISP program relate to limited availability of residential drug and alcohol treatment programs, mental health services, long-term accommodation in the Justice Housing Support Program, and temporary housing more generally (Ross, 2009). In particular, Ross recommended that the protocols for the Justice Housing Support Program (JHSP) be reviewed 'to give greater weight to the needs of pre-trial defendants,' with greater emphasis on short-term accommodation.

1.8.3 Support for CISP

The program is highly supported by magistrates, with an 'increasing preparedness' to refer people to CISP (DOJ, 2010). CISP also has support from policy makers, including the Attorney-General who recognised that CISP is 'contributing to a safer, healthier Victoria' (DOJ, 2010). The Attorney-General has said:

This program has shown us that the lives of criminal defendants in court can be turned around by addressing cases of drug and alcohol addiction, homelessness and undiagnosed or untreated mental illness or disability. (cited in Milovanovic, 2010).

The effective implementation of CISP indicates that complex social support and guidance programs can be developed and implemented in Victoria. Notably, CISP is a comprehensive bail support service model which includes program elements addressing many well established social and economic factors associated with crime, and capable of attracting favourable recognition from policy makers and the media.

1.8.4 Youth Justice Court Advice Service

The Youth Justice Court Advice Service (YJ-CAS) deals with remandees aged 18-20 years and has been operating throughout Victoria since approximately 2000. YJ-CAS has approximately 22 frontline staff who deal with young people charged with serious indictable offences. YJ-CAS staff believe that most of their clients would not be bailed unless supervised by the program, and report high levels of support amongst magistrates. However, YJ-CAS is not available to young people who receive police bail.

1. The foundations of remand: best interests of defendant?

Funding is thought to be recurrent but no program costs, outputs and outcomes are available. While no program evaluation or assessment appears to have been undertaken, it is thought that young people are supported for an average of eight months on the YJ-CAS program (as opposed to a maximum four months on CISP). It is possible that YJ-CAS cases were included in the CISP evaluation (PwC, 2009; Ross, 2009).

YJ-CAS staff believe the program is effective, but less so where young people have a significant history of offending, mental illness and, in particular, mental health and drug dependence co-morbidity. However, staff also believe that young people charged with violent offences may respond better to the program than older defendants. This is possibly because of their capacity to adapt and fear of jail.

YJ-CAS provides young people with various drug and alcohol services, accommodation and mental health services, behavioural interventions including family counselling and CBT. Referrals to other services are also undertaken. YJ-CAS has some Indigenous workers in the North and West Metropolitan and Gippsland regions, although Indigenous referrals are relatively small as the Koori Courts have specific comparable programs.

1.9 The remand decision process

King et al (2009) point out that, 'for all practical purposes,' bail decisions occur at three points: apprehension, at the police station and in court. These decisions are shaped by legislative, social and organisational contexts. Police bail decisions include issues such as whether to arrest or to summons a defendant. The bail decision can be affected by considerations regarding criminal investigations including 'the definition of the crime committed' and 'the numbers of people held in police cells' (King, et al, 2008: p.337). In any case, there is evidence that Australian police prefer arrest to proceeding by summons (Hucklesby and Sarre, 2009) and the 'intelligence-led policing' model adopted in Victoria encourages the targeting of offenders as a preventative measure when police suspect repeat offending. These decisions can be driven by the key performance indicators of local police (King, et al, 2008: p.337), and preventing offending to protect the community is 'a high priority' for police involved in bail decisions. It has been claimed that Victorian Police officers are poorly informed about bail support services in the sense that information is poorly disseminated (Colvin, 2009), and 'bail decisions are made with an assumption of guilt on the behalf of the decision-maker and not with a presumption of innocence as deemed by Victoria's legal system. In Victoria, police can take the charged person before either a magistrate or a bail justice if the court is not sitting (the defendant is not usually represented during a bail justice hearing).

Magistrates face complex and competing policy goals when making decisions. Yet bail decisions in the Anglo-Australian common law courts is a cursory process, with judicial decision-makers 'working in high volume environments, with considerable time pressures and limited information' (King, et al, 2009). As a consequence, Victorian bail hearings are often brief—lasting an average of 18 minutes in 2006. In this time, judicial decision-makers need to consider a number of entangled common determinants of unnecessary remand detention, and effective alternatives to remand which address the risks to the community and judicial system. The word 'alternatives' is widely used to encapsulate non-custodial measures and it is used in this discussion. However, it is important to avoid the preconception that detention is the normative approach and other measures conceptualised as 'alternatives' are residual. The three main interventions considered internationally are personal support, electronic monitoring and bail houses, while punitive non-custodial programs may have lower rates of success (Freeman, 2009). Yet many young people could be diverted from remand if alternative community based options were in place, according to Freeman (2009), including those remanded for breach of bail, and homeless or drug-affected defendants.

2. Alternatives to remand

This section analyses policy options for remand reform in Victoria. It begins with a review of the methodological issues, including the rationale for pursuing evidence-based policy and the importance of ensuring community confidence in the criminal justice system. Then four international innovations are identified and assessed, specifically: 1) bail hostels; 2) drug programs; 3) electronic monitoring; and 4) bail support services. Each international innovation is systematically reviewed to assess the rationale and method of implementation, its outcome, and the capacity of Victoria to adopt the policy.

2.1 Methodological problems

A number of problems arise in international policy analysis of alternatives to remand. Most notably, the limited comparability of remand data. Some European countries include prisoners in the 'pre-trial detention' category who have been convicted and sentenced but might appeal the decision. For instance, the Belgian rate of 46% includes sentenced prisoners engaged in an appeal, whereas only 25% of prisoners are detained pending or during their first trial (Morgenstern, 2009).

Moreover, there is a 'paucity of public statistics and research,' possible because remand research receives very little political and public attention (Hucklesby and Sarre, 2009). As a result of this lack of data, 'it is hard even to gauge the impact of any reform effort or the cause of a particular outcome' (Varenik, 2008). In some jurisdictions, such as England and Wales, only a very 'very basic picture' can be gleaned from published statistics (Hucklesby, 2009).

However, the best available data is used, including the *World Prison Brief*, which is compiled at King's College London and is an important source of comparative data (Morgenstern, 2009). While this problem relates to remand data in general, the lack of detailed and reliable data on young people aged 18-24 years is even more pronounced.

2.2 Inadequate data reporting systems

Victoria's data system requires substantial improvement. The Victorian Auditor-General (2008) has criticised the lack of program monitoring and evaluation, and bail data is not currently able to be extracted in a manner that allows reliable and consistent analysis of outcomes. The 'lack of data, especially in Victoria,' is a problem particularly when comparing trends (King, et al, 2005: p.9). Victoria's inadequate data system also 'constitutes a significant barrier to the evaluation of court programs' (Ross, 2009).

Corrections Victoria has an inadequate data system, with related information maintained on separate systems, and a lack of staffing to manage the data system. While relevant data is currently collected, the reporting system limitations thwart its effective use. For instance, we do not know what proportion of remandees are homeless or intellectually disabled. Consequently, we do not know: how social, health and economic problems relate to remand decisions for most serious crimes; and whether remandees are released with these problems ameliorated or exacerbated; or any other important issue related to the criminal justice system of public safety. This means that policy makers cannot be accountable for the efficiency or effectiveness of the entire criminal justice system or public safety more broadly.

As Victoria lacks an integrated crime statistics organisation such as the NSW Bureau of Crime Statistics and Research (BOCSAR), it is difficult to assess how remand practices can effectively benefit the community given the inadequate data system. It is notable that recent Scottish prison reforms included streamlined information technology and electronic data transfer between stakeholders ‘in the interests of greater speed and accuracy’ (Scottish Executive, 2005; Scottish Government, 2005). Improvements to Victoria’s justice data system should also be an administrative component of remand reform.

2.3 Remand reform considerations

Another notable research problem arises from the complex interface of criminology and social policy and their interaction with economic and social conditions. These include policy drivers such as community confidence in the judicial system, and the cost of managing remand facilities and bail programs. Academic research such as that by King et al similarly point out that:

Good practice in remand takes into account the needs of defendants who have mental health issues, are drug or alcohol dependent, are homeless or living in poverty or have low levels of English or comprehension. In some cases, the needs of these defendants create a risk to the community, and bail decision-makers feel unable to grant bail without a secure facility to provide care for them. (King, et al, 2005: p.110)

The Victorian Council of Social Service (VCOSS, 2010) has also pointed out ‘that investing in mental health, unemployment, homelessness and drug and alcohol services is more cost effective and socially sustainable than putting more people in prison.’ Such arguments find their way into the public arena via the media (see, for instance, Austin, 2010), and the Victorian Attorney General has recognised that:

If we’re truly serious about stopping crime, we must get better at tackling its causes—preventing people from being further into its cycle if it is their first offence; or breaking that cycle for those long caught on a roundabout of illness or disadvantage and offending behaviour. (DOJ, 2010: p.3)

Yet, as Freiberg and Carson (2010) argue, ‘evidence alone is unlikely to be the major determinant of policy outcomes, rather interest groups and public confidence are an integral part of the public debate over data and evidence. It is important to produce usable advice for government, and this is why the Remand Reform taskforce guided this research and its recommendations. The inter-agency Taskforce has assisted the development of a collaborative remand agenda.

2.3.1 Public confidence

The need for policy makers to accommodate community opinion frequently leads to policy which is inhumane, inefficient, ineffective and counter to rational evidence-based policy (Goldson and Jamieson, 2002). Some countries are renowned for their innovative criminal justice procedures. For instance, according to Tak (2003) ‘the Dutch criminal justice system has long been noted for its mildness.’ Yet others have instituted major reforms while maintaining a ‘tough on crime’ stance. For instance, The Scottish reforms were sold as ‘Tougher rules for bail’ (The Scottish Government, 2005). In order to bolster public confidence in prison reform, the Scottish Prisons Commission also sought to ‘engage the public in rational debate, arguing that ‘public surveys show that people feel drug and alcohol abuse is a bigger problem than crime, suggesting openness to a rational debate about crime and punishment.’

(Scottish Prisons Commission, 2008: p.2). The ‘tougher rules for bail’ included electronic tagging as ‘an additional measure to protect the public,’ and the Scottish government sold remand reforms thus:

Our goal is clear. A tougher response to those who flout bail, but support for those willing to break the cycle of offending. Both targeted on the reduction of re-offending. (Scottish Government, 2005: p.4)

The argument that may ameliorate the public’s long-standing resistance to criminal justice reform has been advanced by the Human Rights Commission (2010) which noted that ‘countries with the biggest divergence between the rich and the poor such as Britain, the US and Australia have greater violence, crime and mental health problems.’ Studies show that crime is considered a lesser priority than affordable housing and economic inequality (Table 3). Barely 6% of Australian’s consider crime to be one of their most pressing concerns. Rather the drivers of crime, such as economic inequality, affordable housing and inadequate health care are the issues that Australians are most concerned about.

Table 3: Two most important issues facing Australia, per cent (Source: Roberts and Indermaur, 2009)

	Most Important	Next Most
Health care and hospitals	14.7	13.4
Environmental damage	12.6	8.1
An ageing population	10.5	6.2
Lack of affordable housing	10.0	8.9
Taxes too high on ordinary Australians	8.9	5.9
Lack of moral values in the community	8.6	7.7
Gap between rich and poor	6.9	7.4
Australian jobs going to other countries	6.8	10.6
Crime	6.1	4.7
Drugs	3.8	6.2
Terrorism	3.0	3.0
Minorities too much say in politics	1.6	3.4
Australian involvement in military conflicts overseas	1.5	5.2
Corruption in government	1.4	1.3
Refugees and asylum seekers	1.0	2.7
Not enough progress in Aboriginal reconciliation	0.9	1.4
Inadequate public transport	0.9	2.1
Too much ‘red tape’ holding business back	0.7	1.6
Total	100	100

2.3.2 Impositions on liberty

Even with the best of intentions, judicial reform can result in impositions upon the liberty of defendants. Remand reform for young people can result in ‘net-widening,’ meaning a greater proportion of young people may be placed on remand or bail requirements which restrict liberty. The potential for net-widening is particularly significant in light of the increasing importance of managing risk to protect the public (Hucklesby, 2009).

2. Alternatives to remand

There is a widespread perception amongst both policy-makers and researchers that risk-averse policy options have been in the ascendancy since the 1970s. For instance, increased risk aversion has been noted as a cause of Canada’s increased remand population (Webster, et al, 2009). This is important as the accused is considered—by convention—innocent until proven guilty. Many practitioners and academics argue that being released into the community on bail, even under highly restrictive conditions, is preferable to exposing an alleged offender to the hazards associated with imprisonment. Yet we accept the ‘pervasive attitude that being released into the community [on bail], even under highly restrictive conditions, is better than being placed in custody’ (Hucklesby and Sarre, 2009).

2.4 Overview of alternatives

The objective of remand reform is to minimise hazards to the alleged offender and simultaneously reduce risks to the public. A number of jurisdictions have implemented effective alternative programs to remand.

Moreover, the transfer of policies is advantageous from a policy maker’s perspective because they can be assessed empirically (Wolman, 1992). According to Newmark (2002), policy transfer can act ‘as a shortcut to problem solving that attempts to avoid reinventing the wheel... [and] a way of dealing with the problem quickly and at lower cost.’

Dolowitz (2003: p.101) explains the benefits thus:

Since policy-making is all about lesson-learning, two of the most important lessons policy-makers can learn are, first, that foreign political systems offer interesting laboratories of policy innovation, and second, that it is often possible to use the work done in these laboratories in the development of policies in the policy maker’s own political system.

Table 4 presents the rates of use of various remand alternatives implemented in the United States and the United Kingdom, including: 1) bail hostels and other housing alternatives; 2) drug programs; 3) electronic monitoring; and 4) components of bail support services. These four policies have been influential in shaping the recommendations presented later in this report. The effective implementation of such programs have contributed to the stability of remand populations in countries like England and Wales (Hucklesby and Sarre, 2009).

Table 4: Frequency of US use of release conditions (Van Nostrand and Keebler, 2009)

		3rd Party Custodian	Sub. Abuse Testing	Sub. Abuse Treatment	Location Monitor	Housing & Shelter	Mental Health Treatment	Sex Offender Treatment	Computer Monitor
USA	N	17604	101947	59441	29920	6894	15839	692	2582
	%	10.4%	60.1%	35.1%	17.6%	4.1%	9.3%	.4%	1.5%

Table 5: The use of conditional bail by UK Magistrates' Courts (van Kalmthout, et al, 2009)

	Condition in % of cases	
	1994 ^a	1998 ^b
Residence	79	72
No contact	46	41
Boundary	28	28
Curfew	21	20
Reporting	17	18
Surety	4	6
Bail hostel	4	-
Others ^c	6	3

a: Raine and Willson and

b: Morgan and Henderson (cited in van Kalmthout, et al, 2009);

c: includes surrender passport and driving ban.

2.5 Bail hostels

The availability of appropriate accommodation for the alleged offender is important to judicial decision-makers because:

Most notably it is linked to community ties, which, if strong, make it less likely, in theory, that defendants will abscond before trial. Accommodation can also be related to risk of re-offending and interference with victims and/or witnesses. Therefore, accommodation may be linked to the three main exceptions to the right to bail. (Hucklesby and Goodwin, 2004: p.5)

Bail hostels have operated in the United Kingdom for many years. Bail accommodation can be conceptualised as ‘between bail and jail’ as it provides supervised accommodation within the community rather than a prison (Freeman, 2009). Bail house options including supervised hostel accommodation and supported living in single homes can be used where the defendant has no fixed address or where judicial decision-makers consider inadequate accommodation might contribute to the risk of offending on bail. Studies of bail accommodation projects report success rates of up to 50% with regard to non-offending and bail condition compliance (Freeman, 2009). One reason for the improved outcomes of BSS programs is that:

While poor or unstable housing does not directly cause crime, it is a critical factor in achieving other program outcomes. Defendants who are homeless or in emergency accommodation have a higher risk of non-compliance with bail, are more likely to be remanded in custody, less likely to attend treatment programs and have poorer outcomes from treatment and support interventions. (Baldry, McDonnell, Maplestone, & Peeters, 2003, cited in Ross, 2009: p.93)

This emphasises the need for bail hostels to be integrated with other bail support programs. There needs to be both single and multiple bed bail hostels, and consideration needs to be given to the needs of defendant in every case. King et al have noted some benefits and pitfalls of each:

The need for increased levels of supported accommodation for defendants seeking bail was identified as a high priority in both jurisdictions [Victoria and South Australia]. This is different from oft mentioned bail hostels as the need was perceived to be one of support and structure rather than control. The provision of such accommodation must compete with other demands on the state and Commonwealth housing budgets and will need active champions from within the remand system to get appropriate attention. (King, et al, 2005: p.120)

2. Alternatives to remand

2.5.1 England and Wales

The national Bail Accommodation and Support Scheme (BASS) was established in June 2007. This marked the rebirth of bail hostels after a period of increasing occupation by predominantly 'high-risk sentenced offenders' (Slack, 2009). It is also probable that the declining use of bail hostels had been related to costs and consequent limited available places (Dhami, 2004). Following the 2007 reforms, UK bail hostels are now privately managed by ClearSprings but they continue to house paroled prisoners (Slack, 2009). The reformed 2007 Bail Accommodation Support Scheme in England and Wales was introduced to provide 'support for some offenders held on remand enabling them to be bailed' and had a positive impact on receptions (MoJ, 2009). Hucklesby says:

This scheme provides a network of supported accommodation across the country. This was required because bail hostels, which traditionally provided this service, are now almost exclusively used for high-risk sentenced offenders, leaving a significant gap in pre-trial accommodation provision. The scheme aims to provide accommodation for defendants who have no suitable bail address and/or to provide support for defendants who are identified as needing support to comply with their bail and who are likely to be remanded in custody as a result. The support comprises of regular meetings with workers with the aim of assisting defendants to comply with their bail, to prevent offending on bail and to deal with their immediate and long-term needs. It can be provided alone or in conjunction with accommodation. The scheme is intended to be used for defendants who are assessed as being low risk, which has limited its practical use both generally and as an alternative to custodial remands... The scheme has been controversial, attracting political and media attention. This is partly because it is operated by the private sector and partly because accommodation has been provided in 'ordinary' houses, leading to accusations that bail hostels have been set up without going through the correct channels (i.e. a planning process including public consultation), arguably putting the public at risk. It was also set up very quickly, resulting in some implementation problems. (Hucklesby, 2009: p.13)

The introduction of the bail accommodation and support programs requires the court-based bail information schemes to 'identify eligible cases.' In England and Wales, these were based on US policies, and there are also assessment programs focused on remand prisoners preparing for their second appearance (Hucklesby, 2009).

2.5.2 Scotland

A report by the Sentencing Commission for Scotland (2005) recognised the apparent 'routine' of remanding homeless people in custody. The Scottish Prisons Commission (Scottish Prisons Commission, 2008) has since recommended increased use of community-based bail accommodation and specialist bail accommodation.

2.5.3 USA

Various forms of bail-related accommodation are used in the United States. These include halfway houses, community housing or shelters (Van Nostrand and Keebler, 2009). In a halfway house placement, the defendant is designated to a residential facility and may leave for approved purposes only, including employment and education. About 4.1% of defendants were subject to such bail hostel orders, however the effectiveness of the intervention is not statistically significant (Van Nostrand and Keebler, 2009).

2.5.4 Victoria

In discussing remand reform with stakeholders, King et al (2005) noted common calls for ‘supervised bail accommodation’. The authors noted that, while Victoria does not have ‘bail hostels,’ it is providing public housing to accommodate defendants otherwise at risk of being remanded in custody. In addition:

Some non government agencies are prepared to accept remandees into supported accommodation, although many are unwilling to accept responsibility for urine sampling (as sometimes required by Victorian bail decision-makers. (King, et al, 2005: p.121)

Victoria lacks accommodation resources, which has previously been noted as negatively affecting CISP outcomes (Ross, 2009). In addition, the Central After Hours Assessment and Bail Placement Service in Victoria provides after hours bail assessments, but has no funding to provide accommodation (Denning-Cotter, 2008: p.4-5)

Frank Guivarra, director of the Victorian Aboriginal Legal Service, claims there is a ‘chronic’ shortage of bail hostels for Indigenous juveniles. Guivarra has argued that bail hostels would prevent Aboriginal children being needlessly detained in harsh conditions (cited in Wilson, 2010). In addition, Indigenous people are less likely than non-Indigenous people to be diverted into BSS programs because they more often lack stable accommodation (Denning-Cotter, 2008). However, specialised bail hostels for Indigenous people might help address this problem, such as Warrakoo Station which previously provided an alternative to incarceration and was managed by the Mildura Aboriginal Corporation (Wilson, 2010).

Table 6: Accommodation status at CISP entry and exit (Source: DOJ, 2010)

	Status at entry		Status at exit	
	N	%	N	%
Owned or buying	149	12.%	99	8%
Long-term rental	607	51%	153	56%
Residing with family	119	10%	153	13%
Supported accommodation	8	1%	23	2%
Boarding house or short-term rental	144	12%	126	11%
Emergency or transitory	100	8%	100	8%
Homeless	46	4%	12	1%
Unknown	27	2%	21	2%
Total	1,201	100%	1,201	100%

2.5.5 South Australia

‘The South Australian Courts Unit assists defendants in locating accommodation in SAAP programs and in hostels,’ although insufficient resources have been allocated to the program and there is a shortage of housing stock. Consequently, defendants are often held in custody pending appropriate accommodation. It is also notable that some accommodation does not have the facilities for home detention monitoring, ‘so if the bail authority is minded to place significant restrictions on the defendant these forms of housing will not provide an opportunity for monitored bail.’ (King, et al, 2005: p.116-17)

2. Alternatives to remand

2.5.6 Limitations

The most common problem with bail hostels is the lack of short-term accommodation. This has undermined bail support programs in the UK (Thomas, 2005). The lack of bail accommodation is a likely contributor to ‘the unnecessary use of custodial remands’ for young people (Hucklesby and Goodwin, 2004). Notwithstanding the exposure of remandees to criminal influences in jails, some commentators have argued that bail hostels consolidate and perpetuate criminal activity:

Consultees identified a range of disadvantages which they associated with bail hostels. A few remarked that bringing together alleged offenders in such accommodation served to perpetuate or encourage criminal tendencies especially amongst young people. It was suggested that crime in the vicinity of hostels can increase and local residents become wary of their presence. (Sentencing Commission for Scotland, 2005: p.38, Ch.6)

Another issue raised in the same consultations was the need to avoid placing sex offenders in community based accommodation while they are on bail. Another problem, paradoxically, is that services can be over-resourced if they are poorly designed and implemented. For example, bail hostels for women are sometimes under-occupied because hostels refuse certain women—because of drug dependency issues, for instance—while other women reject certain hostels which lack facilities for children, for instance (Townhead, 2007: p.33). The major problem here is a failure to coordinate services to the needs of clients. In addition, accepting bail hostel accommodation may result in the defendant losing current tenancy and housing benefits (Sentencing Commission for Scotland, 2005).

Finally, community and media opposition is also a problem which affects the location and management of bail hostels. As an example, the sensationalist tabloid *Daily Mail* newspaper reported that:

The [hostel] initiative centres on reducing the use of remand. Suspects are jailed if the courts are not happy that they have a stable home address and may abscond. The same reason prevents a convict from being freed early with an electronic tag under the Home Detention Curfew scheme. (Slack, 2009)

This *Daily Mail* then quoted the British opposition justice spokesman as saying:

Labour’s jailhouses are blighting communities with crime and anti-social behaviour. If a suspect cannot safely be bailed to their own home, it is unfair on local residents to place them in someone else’s neighbourhood. (cited in Slack, 2009)

The lesson to be learned from these experiences is the need for appropriate guidelines regarding the mix of residents and the establishment of a working relationship with local residents. Following the exercise of care in choosing appropriate sites and allocating manageable remandees, there is a need to engage neighbourhood representatives in an authentic and influential consultative group and keep the local population well informed about policies and practices. International experience shows that bailed residents should not be held with people on parole.

2.6 Drug programs

Substance abuse treatment in the United States usually requires the remandee ‘to participate in a drug or alcohol dependency program and/or to submit to a period of drug testing’ (Van Nostrand and Keebler, 2009). In the United States, 20-35% of bailed defendants were subject to substance abuse treatment bail orders, but 60% of bailed defendants were subject to substance abuse testing (Van Nostrand and Keebler, 2009).

Drug testing and treatment bail conditions were introduced in Scotland in 2005 with the recognition of an inter-relationship between drug use and crime, whereby some courts have an option of imposing a bail condition requiring drug testing and treatment (Scottish Government, 2005). The objective of these Drug Treatment and Testing Orders (DTTO) is that accused people 'engage with treatment services at all stages of the criminal justice system' (Scottish Government, 2005; Sentencing Commission for Scotland, 2005). This includes mandatory drug testing, which the government explained as follows:

We are introducing provisions for the mandatory testing for Class A drugs of those arrested for certain trigger offences, specifically offences of theft and under the Misuse of Drugs Act. The results of that mandatory test can be taken into account by the court in taking a decision on bail. (Scottish Government, 2005: p.3-4)

2.6.1 United Kingdom

England and Wales require drug-using defendants to attend assessment and treatment programs to reduce drug-related offending while on bail. This condition alone is contentious because it involves coercion where the defendant has not been convicted (Hucklesby, 2009). According to Hucklesby (2009), 'low level persistent offenders such as shoplifters' are commonly subject to drug treatment conditions although they are unlikely to receive custodial remand. There is also a political element to this condition, specifically that:

In any event, the aim of diverting defendants from custodial remands was an implicit rather than an explicit aim of this measure, mainly because of government fears of being seen to encourage the greater use of bail and, therefore, of being open to criticism for being 'soft on crime' (Hucklesby, 2009: p.12)

2.6.2 Australia

Drug programs operate in every state of Australia, including court programs for defendants whose drug dependency contributed to their offending (Wundersitz, 2007). These include the NSW Youth Drug and Alcohol Court and the Victorian Drug Court (Dandenong Drug Court, 2009) which offers a two-year program for offenders who plead guilty to an offence which would normally result in a custodial sentence.

Most Australian jurisdictions have programs for people with alcohol and drug dependencies which defendants can be referred to as a bail condition. The Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) in Victoria is a treatment program for defendants who are drug dependent. In 2004 CREDIT was combined with the Bail Support Program, and later CISP, to provide a 'model of treatment and broader support services.' These include facilitating access to accommodation, welfare, legal and other support to assist the defendant in meeting bail conditions (Denning-Cotter, 2008). Similarly, the Court Assessment and Referral Drug Scheme (CARDS) is used in South Australia. However, as Denning-Cotter notes;

Such programs cannot properly be regarded as bail support as the focus is not to assist the person in meeting their bail conditions, but rather to provide them with the opportunity for treatment (Denning-Cotter, 2008: p.4).

King et al (2008) suggest that Victoria's Bail Act could allow drug testing, arguing that 'while such conditions are not specifically provided in the Bail Acts, s5(4) of the Bail Act 1977 (Vic) does provide that one of the conditions of bail may be that the defendant undergoes a medical examination.'

2. Alternatives to remand

2.7 Electronic monitoring

Electronic monitoring on bail was introduced in England, Wales, Italy and Portugal between 1989 and 2002 with daily costs per offender of 15-40 (Haverkamp, et al, 2004). Electronic monitoring as an alternative to remand has since been adopted in France (Raes and Snacken, 2004), Hungary, Netherlands, Poland, Romania and Slovenia (van Kalmthout, et al, 2009). Electronic monitoring in Germany is possible but, because of 'scepticism amongst scholars and practitioners with regard to this far-reaching measure,' electronic monitoring is currently only used in Hessen.' The state of Baden-Württemberg opted not to adopt electronic monitoring as an alternative to pre-trial custody (van Kalmthout, et al, 2009). A two-year pilot program in the Netherlands using electronic monitoring for juveniles aged 12-18 was initiated in January 2000, but the results were inconclusive (Terlouw and Kamphorst, 2002). In 2009, the Netherlands still had regulations pending, and electronic monitoring as a remand alternative remained under the pilot scheme but subject to the 2005 Public Prosecution Service regulations (van Kalmthout, et al, 2009). Electronic monitoring cannot be imposed as a measure in Luxembourg, although a pilot program began in 2006 and there is a 'possibility that, after the experiment has been completed, the measure will be extended to preventive [remand] detention' (van Kalmthout, et al, 2009)

Cassidy et al (2005) investigated electronic tagging on bail as a remand alternative for juveniles in England and Wales. While urging caution with the pilot program results, Cassidy et al concluded that 'fewer young people breached after being tagged, compared to previous untagged periods on remand.' Electronic tagging in England and Wales is used for 'persistent offenders' who have committed an average of seven offences. One reason that tagging is effective is because 'young people indicate that tagging helped improve compliance by giving young people an excuse that they can use with their friends to stay out of trouble' (Cassidy, et al, 2005). While there were some indications that magistrates used tagging 'primarily as an alternative to custodial/secure remand, the evidence was not conclusive.' (Cassidy, et al, 2005).

In the context of South Australia and Victoria, King et al (2005) argued that electronic monitoring of home detention could enforce curfews with little disruption to defendants and the families with significant cost saving over imprisonment.

2.7.1 United States

In the US, 17.6% of bailed defendants were subject to location monitoring bail conditions (Van Nostrand and Keebler, 2009). Since 1984, varieties of home detention confinement have 'increasingly gained acceptance within the criminal justice community' (Mahoney, et al, 2001; Van Nostrand and Keebler, 2009). This has largely been in parallel with electronic monitoring to maximise the defendant's compliance with home confinement (Van Nostrand and Keebler, 2009).

Electronic monitoring works equally well for all types of offenders, including serious, violent, property and drug offences, with 'scant' evidence for a net-widening effect resulting from the addition of electronic monitoring into Florida's home confinement program, except for those with drug related offences (Padgett, et al, 2006). In a study of 75,661 Florida cases, electronic monitoring was found to reduce the likelihood of re-offending and absconding, as well as revocation when controlling for socio-demographic characteristics of the offender, current offence, prior record, and terms of supervision factors and conditions (Padgett, et al, 2006). Padgett et al (2006) found there was little difference between radio frequency (RF) and Global Positioning System (GPS) monitoring outcomes. Citing daily 2005 costs of active GPS monitoring at \$8.97 compared with \$1.97 for RF monitoring, and prison at \$51.22. Padgett et al (2006) concluded that 'at more than four times the cost, policy makers may want to reconsider their commitment to GPS over RF monitoring.'

However, there may be additional value in using GPS monitoring in the case of violent offenders in Victoria as it is likely to give greater confidence to the community. This issue will be given further consideration in the recommendations section of the report.

2.7.2 United Kingdom

Courts in the UK courts have increasingly made use of ‘electronic tagging’ as a bail condition (Table 7). Electronic monitoring is available as a condition of bail in support of a curfew condition, and is thought to ‘restrict an individual’s liberty while he/she is released on bail and brings regularity to what may otherwise be a chaotic lifestyle.’ Police are notified within a short period in cases of a breach and have the responsibility for returning the defendant to court. (van Kalmthout, et al, 2009) Satellite tracking using GPS enables remote monitoring in real time, and the person is locatable (Hucklesby, 2008).

Table 7: Electronic tagging on Bail in the UK (van Kalmthout, et al, 2009)

Year	Youths	Adults	Total
2006	7,878	6,356	14,234
2007	10,442	14,171	24,613
2008	10,206	18,332	28,538

2.7.3 England and Wales

Electronically monitored curfew bail conditions were introduced in England and Wales in 2005. There were about approximately 3,500 adults on electronically monitored bail in March 2009 (Hucklesby, 2009). Electronic monitoring is operated by private security companies (Haverkamp, et al, 2004).

Hucklesby (2008) points out that ‘electronic monitoring is officially promoted as primarily punitive although it is also seen as having the potential to stabilize offenders’ lives.’ On the other hand, Nellis (2005) notes three reasons electronic monitoring has been implemented in England and Wales:

- Firstly, a desire to reduce expenditure on imprisonment and to manage rising prison numbers.
- Secondly, and independently of this, a desire to make community penalties more controlling.
- Thirdly, a substantive and symbolic commitment to modernisation, to the creation of ‘a 21st century electronic monitoring service for a 21st century criminal justice system’ (Nellis, 2005: p.125)

Hucklesby notes the negative impacts of curfew orders include disruption to employment and family activities. However, she concedes that electronic monitoring of curfew orders can reduce offending by decreasing the offender’s interaction with the people and places that might encourage re-offending, and encouraging offenders to engage in family and employment activities (Hucklesby, 2008).

2. Alternatives to remand

Where defendants are monitored for at least nine hours per day, they are credited with half a day on remand in terms of time served (Hucklesby, 2009). However, unlike Florida, there are major concerns about net-widening resulting from electronic monitoring in England and Wales. A pilot project evaluation suggested electronically monitored bail conditions were being used as a remand alternative in only around half of cases (Hucklesby, 2009, citing Airs et al.2000).

2.7.4 Scotland

Between 1997 and 2007, Scotland's remand population increased by 69%. With more than half of its entire prison population on remand, the Scottish Prisons Commission (2008) recommended expanding the use of electronically monitored bail conditions. The 2004 Act originally provided for electronic monitoring as a condition of bail where bail has previously been refused. However, the Sentencing Commission for Scotland (2005) identified 'considerable potential for enhanced provision of bail supervision and electronic monitoring.' The Commission consequently recommended electronic monitoring orders 'in any case where it considers that this would improve the prospects of an accused person not offending while on bail or of appearing in court when required to do so.' (Sentencing Commission for Scotland, 2005: p.9). In terms of net widening, Hucklesby argued:

Electronic monitoring bail operates with specific safeguards to reduce net-widening. An evaluation of a pilot suggested that electronically monitored curfew bail conditions were being used as an alternative to custody. Despite this it also concluded that there was no impact on the prison remand population. (Hucklesby, 2009: p.12)

2.7.5 Limitations

There is contradictory evidence in regard to the effectiveness of electronic monitoring. (see, for instance, Padgett, et al, 2006; Renzema and Mayo-Wilson, 2005). Electronic monitoring is certainly not a guarantee against re-offending or absconding, according to Hucklesby:

Electronic monitoring cannot incapacitate because it does not result in offenders being physically prevented from not complying and/or offending. Offenders choose whether to comply and/or offend as they are able to cut off their tag or leave their address at any time although the chances of detection are heightened and there are likely to be consequences for doing so. (Hucklesby, 2008: p.53)

Most electronic monitoring research has analysed less serious offenders, with exceptions including Padgett et al (2006). In some studies the intervention is highly cost effective. It is also claimed to strengthen the community's confidence that the judicial system is acting to protect the community while preventing unnecessary imprisonment and the hazards that accompany it for the individual and the community as a whole.

The experience in England and Wales is that electronic monitoring can be sometimes be characterised as a soft alternative to prison. This adds importance to the safeguards recommended by some practitioners as the public and media 'are, at best, lukewarm' about electronic monitoring. It is considered a soft alternative to prison (Hucklesby, 2008). Young people who are electronically monitored report that it can be a badge of honour among young people, as well as 'a punitive experience characterised by a deprivation of liberty and autonomy' (Freeman, 2009).

Finally, social workers believe electronic monitoring is 'most likely to improve compliance when it is one element of an overall support package,' such as bail support services (Cassidy, et al, 2005). Elsewhere, Freeman (2009) contends that electronic monitoring 'should only be used in conjunction with other schemes such as bail accommodation and bail support and supervision when deemed absolutely necessary to prevent custodial remand.'

2.8 Bail support services

Bail support services (BSS) are among the most effective alternatives to custodial remand. Around 70% of individuals who are not thought to require bail supervision complete bail successfully, while BSS schemes have a success rate of approximately 80% with regard to preventing re-offending and abiding by bail conditions (Freeman, 2008).

Bail support is defined as:

The provision of services, intervention or support, designed to assist a person to successfully complete their bail period. These programs may be undertaken on a voluntary basis or mandated as a condition of bail. These programs usually aim to: 1) Reduce re-offending while on bail; 2) Increase court appearance rate, and: 3) Provide magistrates and police with a viable alternative to remand or incarceration. (Denning-Cotter, 2008: p.1)

The elements of BSS programs can be broad and varied:

Both compulsory and voluntary elements of the schemes may include a range of measures to aid individuals while on bail, including substance use interventions, health counselling and referral, anger management, training courses, employment advice, liaison with employers and education providers, assistance in finding stable accommodation, referrals to specialist accommodation services, family mediation and participation in constructive leisure activities. The monitoring of curfews may be specifically provided via telephone, visits or in some cases voice verification or electronic tagging. Court attendance may further be assisted by BSS staff's attainment of correct information from solicitors, police and the courts, along with encouraging responsible attitudes among individuals and their family members towards court. (Freeman, 2008)

The primary benefit of BSS programs is to allow defendants to remain free pending their trial. This enables continued employment, contact with family, access to health services, and a greater ability to prepare their defence (Tanner, et al, 2008). Effective bail support services should focus on the risk of re-offending and ensuring the defendant appears before court. A major benefit of BSS programs is 'the assistance young people receive is likely to be of benefit to their lives even after the remand period' (Freeman, 2009).

Denning-Cotter (2008) recommended that BSS programs be voluntary, supportive, well coordinated and adaptable to the needs of the individual and their community. The best BSS programs offer an opportunity to address the multiple social drivers of criminal behaviour. Rutherford and Duggan (2009) have pointed out that 'the vast majority of prisoners have several health needs which combine at different levels of severity. This complexity of needs often amalgamates to include mental and physical illnesses, homelessness, unemployment, and drug and alcohol addictions.' The success of BSS programs shows that people do not need to be incarcerated to deal with complex problems.

2. Alternatives to remand

2.8.1 United States

In the United States, BSS programs were introduced in the 1960s (Clark and Henry, 2003). The Pre-trial Services Act (1982) was a watershed in American justice, but failed to reduce the rate of remand in favour of a 'presumption of detention' for most defendants (Byrne and Stowell, 2007). The Pre-trial Services Act sought to reduce unnecessary detention as a primary motivation, which was also a motivation for the Bail Reform Act (1984) (Cadigan, 2008). Nevertheless, BSS programs were largely dismissed as 'over-rated failures by researchers and policymakers' until interest was rejuvenated during the 1990s (Tanner, et al, 2008), and the number of BSS programs have grown since (Clark and Henry, 2003).

Contemporary US pre-trial service programs allow program staff to gather information about defendants to inform judicial decisions regarding release or custody, as well as monitoring compliance with bail conditions, improving the likelihood of the defendant attending their scheduled hearing, and enhancing community safety (Tanner, et al, 2008). Mental health treatment requires the defendant to 'undergo psychological or psychiatric treatment to reduce the risk of non-appearance and/or danger to the community associated with his emotional or mental health' (Van Nostrand and Keebler, 2009).

Despite the historical disdain for early BSS programs in the US, Tanner et al found considerable support amongst many current corrections stakeholders:

Members of the local detention and judicial systems view the impact of these programs in a positive manner and do believe that they assist in improving the speed at which the courts operate and contribute to lowering detention populations. Their opinions lend further support to the belief that these programs benefit defendants, noting that respondents favour them over traditional bail, and the programs prevent failure to appear incidents, offer rehabilitation, deter new offences during the supervision period and even substantially impact rates of arrest for future offences. (Tanner, et al, 2008: p.26)

At least 202 pre-trial services programs were operating in 2001 (Clark and Henry, 2003). Mahoney et al (2001) have prepared a wide-ranging overview of the development of BSS programs in the United States for the Department of Justice. BSS programs are also expected to 'review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible' (Clark and Henry, 2003). The most notable characteristic of American BSS programs is their use of technology, including drug testing (68%), alcohol testing (51%) and electronic monitoring (54%). Six per cent of electronic monitoring used GPS technology in 2003. However, BSS programs are still criticised, particularly for inadequate data collection such as rearrest rates (Clark and Henry, 2003).

2.8.2 England and Wales

The 2007 Bail Accommodation Support Scheme (BASS) has been implemented with the Home Detention Curfew scheme under which some offenders are electronically tagged. These were 'key legislative and policy changes' in England and Wales, according to a Ministry of Justice review, and the BASS resulted in 'support for some offenders held on remand enabling them to be bailed' (MoJ, 2009).

According to Thomas:

Prior to funding by the Youth Justice Board (YJB), the provision of Bail Supervision and Support services across England and Wales could be described as patchy, ad hoc and informal. It was generally not seen as a priority in terms of service delivery, or an integral component of remand management or pre-trial provision. The Crime and Disorder Act 1998 placed a duty on local authorities to provide this service, following recommendations made by the Audit Commission in 1998. The YJB funded the development of Bail Supervision and Support in 144 youth offending teams (YOTs). (Thomas, 2005: p.5)

About 76% of young people placed on BSS programmes did not offend (Thomas, 2005). This high rate of program effectiveness was partially a result of practitioners negotiating BSS conditions, and effectively engaging stakeholders to identify young people appearing in juvenile and adult courts. Thomas (2005) also noted that magistrates were generally supportive of BSS programs, but more so for juveniles rather than young adults. BSS programs need to be to be 'embedded' as an effective remand management strategy, according to Thomas. This takes time and resources to build staff skills and develop effective program designs (Thomas, 2005).

2.8.3 Scotland and Ireland

One objective of the Scottish remand and bail reforms was to achieve a judicial system that 'works across organisations effectively and efficiently' including better information management systems and ensuring that 'organisational boundaries never become barriers to justice' (Scottish Executive, 2005). To ensure effective supervision of bail, the Scottish reforms improved funding for bail services provided by local authorities and non-government organisations. The improved resourcing of bail conditions included increased funding for bail accommodation and piloting electronic monitoring, and drug testing and supervision programs (Scottish Government, 2005). It is notable that the Scottish reforms integrated a number of innovative programs in their reform of bail and remand. However, people are still often remanded in custody because of a 'lack of services in the community to support people on bail' (Scottish Prisons Commission, 2008).

Scotland's Bail Information and Supervision Schemes are not expected to 'supplant standard bail,' but rather provide an additional option to target defendants who would otherwise be remanded (Sentencing Commission for Scotland, 2005). Consequently, priority for BSS programs is given to defendants with 'mental health problems, women accused, single parents, and young people aged between 16-17.' According to Kirkwood and Dickie, 80% of those completing bail supervision in the period 2006-07 did not receive a custodial sentence, which 'strongly suggests' the BSS programs are meeting their 'objective of restricting the use of custody.' (Kirkwood and Dickie, 2008)

While Ireland has been slow to develop bail support services, Freeman (2008) argues that the programs would likely be effective in Ireland principally on evidence from Scotland, England and Wales. England, Scotland and Northern Ireland have introduced bail support and supervision schemes in order to minimise the use of custodial remand among those who breach bail but do not pose a threat to public safety. These BSS programs have proven effective, according to Freeman (2008).

2. Alternatives to remand

2.8.4 Victoria

There were three bail support programs in operating in 2008, in Victoria, Queensland and New South Wales. The Queensland Conditional Bail Support Program provides intensive support programs for young people, while the Youth Bail Accommodation Support Service provides referrals and financial support to secure accommodation. According to Denning-Cotter (2008), evaluations of these programs found they successfully diverted young people from remand. In addition, the Intensive Bail Support Program is being implemented in New South Wales.

The major limitations to current Australian bail support services generally regard inadequate resource allocations, particularly for Indigenous people and rural and remote residents, according to Denning-Cotter:

The most significant deficiency in bail support programs for young people throughout all states and territories is the lack of available and appropriate accommodation for young people. This is the single most significant factor associated with young people being remanded in custody (Denning-Cotter, 2008: p.5)

Denning-Cotter (2008) identified four Victorian BSS programs which were operational in 2007: 1) Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT)/Bail Support Program for adults; 2) Central After Hours and Bail Placement Service for young people; 3) the Koori Youth Bail Intensive Supervision Support Program which is Australia's only Indigenous specific and culturally appropriate service, and; 4) Adult Court Advice and Support Service for Adults 18-20 years. In addition, CISP has been noted as operating at this time.

Previously, King et al had noted the important role the Victorian Bail Advocacy and Support Programme (BASP) plays as an alternative to remand. By coordinating resources and intervening before a matter is heard, considerable savings in court time are achieved and the probability of bail being granted is increased (King, et al, 2005). King et al found that, relative to South Australia, Victoria was effective in utilising bail support services:

In particular the high profile of welfare services in Victoria and the perceived relevance of these to judicial decision-makers seemed to be a success story for all concerned. Not only did judicial decision-makers know about and indeed actively shape the services provided to them through official channels some decision-makers developed their own links with non-government agencies to ensure that services they felt necessary were provided. (King, et al, 2005: p.119-20)

Evidence from related studies suggests that CISP would benefit by including mandatory group conferencing as a central component for young people. There have been 'impressive results' from group conferencing including victims and perpetrators of crime where the offender was aged 10-18 years charged with offences which are not serious and violent (DEECD and DPCD, 2008). The group conferencing program is:

Based on the principles of restorative justice and community reintegration, the group conferencing model brings victims and offenders together before the case is heard by the Children's Court. In the process, the program aims to address the issues that led to the young person offending and divert them from a custodial sentence. One of the key elements of the program involves the victim describing their experience, in order to make the young offender aware of the impact their actions have had on others... And, after a year, only 16% of participants had re-offended, compared with a 40% re-offending rate among those who did not take part. (DEECD and DPCD, 2008: p.153 of unnumbered report)

2.8.5 Limitations with bail intervention programs

The major problem with bail support services is that effective components such as drug programs are fleeting because of short term funding (Hucklesby and Sarre, 2009). This was highlighted in the Ross (2009) evaluation of the operations of the Court Integrated Services Program.

More broadly, Denning-Cotter (2008) observed that ‘the overarching gap in the provision of bail support programs for adults is the limited number of services available.’ This is an international problem noted with BSS programs, as Freeman observed:

It is vital that BSS schemes receive the necessary government support and investment with regard to the provision of human resources and training. Indeed, any financial concerns which may arise out of such a practice should be negated by the research demonstrating BSS schemes are more cost-effective than custodial remands (Freeman, 2008)

Thomas (2005) found that BSS programs in the UK were impeded by inadequate data which resulted in service gaps, as well as problems in recruiting and retaining staff.

A secondary problem concerns the number and intensity of bail program interventions which impose significant restrictions upon unconvicted people. Bail support programs undermine the traditional understanding of bail as they ‘impose significant restrictions upon individuals’ and widen the net of ‘formal social control’ (Mather, 2008). Mather noted that young people could be bailed with requirements to attend family counselling or attend employment or mental health programs, and argued that:

Within the therapeutic [jurisprudence] framework the distinction between guilt and innocence loses all relevance. It is not that young people were necessarily being presumed guilty but rather, that determinations of guilt or presumptions of innocence were not seen to have any role within the supervision of bail. (Mather, 2008: p.686)

The ‘voluntary’ admission to such programs is, in the circumstances of a custodial alternative, a not altogether convincing rationale. The avoidance of incarceration and its associated harms, coupled with the alleged offender’s involvement in the identification of positive measures within the BSS program, go some distance towards reconciling the requirements of effective control and the preservation of individual rights.

3. Statistical Analysis

Descriptive statistics and correlation results are presented in section 3.1, with following sections related to locations of disadvantage (3.2) and discharge data (3.3), then remand disparities according to gender and Indigenous status (3.4). Finally, regression modelling which analyses multiple factors is presented in section 3.5.

The remainder of this section sets out the basic codebook (value and label) which has been developed. The codes and labels most relevant to this initial report are: employed remandees are coded as those who are not pensioners or unemployed; education level increases (no formal schooling = 0, to tertiary education = 6); while Indigenous status, male gender and dependent children are positively binary coded (Table 8). Sentence lengths are coded by the number of maximum months, where 0 = unsentenced to 360 = 30 years. However, sentences of life and 40+ years are coded as 480.

Finally, regions of cumulative disadvantage in Victoria are ranked by quartiles according to postcode, and are sourced from a previous publication of Jesuit Social Services (Vinson, 2007). Disadvantage in this context refers to a ranking of cumulative disadvantage including unemployment, low birth weight, domestic violence and so on, where 1 is the most disadvantaged postcode and 715 is the least disadvantaged. In addition, remand bail ($n = 187$), appeal bail ($n = 20$), trial bail ($n = 24$) and rehearing bail ($n = 1$) have been classified as bailed at court. Acquitted ($n = 33$), orders to discharge ($n = 12$), special authority discharge ($n = 2$), home detention program ($n = 86$), and fine paid ($n = 18$) have been classified as Non-custodial. Other changes include the most serious charge (MSC) where *Escape Youth Training Centre* appears once but it is not a separate MSC in Victorian codes. It has consequently been coded as *Escape from Prison* (MSC: 525).

Table 8: Variable labels and codes

	Label	Code
Employed	Employee	1
	Employer	1
	Home Duites	1
	Other	1
	Part-time permanent	1
	Pensioner	0
	Self employed	1
	Student	1
	Unemployed	0
	Unknown / Not stated	-
	Age	18-24 years
Other years		0
Education Level	Tertiary	6
	Technical / trade / apprenticeship	5
	Completed secondary	4
	Part secondary	3
	Completed primary	2
	Part primary	1
	No formal schooling	0
	Unknown/not stated	-
Indigenous status	Indigenous	1
	Not Indigenous	0
	Not known	-
Gender	Male	1
	Female	0
Dependent children	Dependent children	1
	No dependent children	0
	Unknown/not stated	-
Disadvantage	Lowest quartile (most disadvantaged)	1
	Second quartile	2
	Third quartile	3
	Highest quartile (least disadvantaged)	4

Source: Vinson (2007)

3.1 Descriptive data analysis

The descriptive statistics are set out in Table 9. The data from 11,524 remand receptions was collected between 1 July 2008 and 30 June 2010 by Corrections Victoria. These cases include 2491 reception records for young people aged 18-24 years. Young women constituted 7.3% of remandees aged 18-24, as opposed to 10.9% of the older cohort. On the other hand, Indigenous people constituted 8.9% of remandees aged 18-24 years compared to 6.3% of the older remandees. The remand rate for Indigenous people of all ages is more than 10 times their proportion of the state's population of 0.6% in 2006 (ABS, 2007).

Table 9: Descriptive Statistics

Aged 18-24		N	Min	Max	Mean	SD	Skewness (SE)		Kurtosis (SE)	
No	Age at reception	9033	17	83	36.05	8.955	1.271	(.026)	2.019	(.052)
	Indigenous status	8665	0	1	.06	.242	3.610	(.026)	11.032	(.053)
	Gender	9033	0	1	.89	.311	-2.514	(.026)	4.324	(.052)
	Dependent children	8934	0	1	.62	.485	-.504	(.026)	-1.746	(.052)
	Education level	8833	0	6	3.06	.490	2.869	(.026)	22.272	(.052)
	Employed	8713	0	1	.20	.398	1.518	(.026)	.304	(.052)
	MSC code	9027	111	880	421.82	208.322	.105	(.026)	-.887	(.052)
	Minimum sentence length	4755	0	480	12.82	29.623	6.033	(.036)	60.517	(.071)
	Warrant status	9033	0	1	.39	.484	.434	(.026)	-1.792	(.052)
Yes	Age at reception	2491	18	24	21.47	1.898	-.293	(.049)	-1.044	(.098)
	Indigenous status	2387	0	1	.09	.285	2.884	(.050)	6.320	(.100)
	Gender	2491	0	1	.93	.260	-3.295	(.049)	8.861	(.098)
	Dependent children	2471	0	1	.26	.441	1.075	(.049)	-.845	(.098)
	Education level	2436	1	6	3.03	.274	5.638	(.050)	59.709	(.099)
	Employed	2392	0	1	.15	.354	2.003	(.050)	2.012	(.100)
	MSC code	2489	111	880	372.33	211.265	.465	(.049)	-.722	(.098)
	Minimum sentence length	1534	0	240	7.89	20.058	5.405	(.062)	70.626	(.125)
	Warrant status	2491	0	1	.30	.452	.899	(.049)	-1.169	(.098)
Total	Age at reception	11524	17	83	32.90	9.983	.989	(.023)	1.275	(.046)
	Ages 18-24	2491	18	24	21.47	1.898	-.293	(.049)	-1.044	(.098)
	Indigenous status	11052	0	1	.07	.525	3.420	(.023)	9.697	(.047)
	Gender	11524	0	1	.90	.301	-2.650	(.023)	5.024	(.046)
	Dependent children	11406	0	1	.54	.498	-.179	(.023)	-1.968	(.046)
	Education level	11269	0	6	3.06	.453	3.158	(.023)	26.219	(.046)
	Employed	11105	0	1	.169	.390	1.608	(.023)	.587	(.046)
	MSC code	11516	111	880	411.12	209.943	.178	(.023)	-.892	(.046)
	Minimum sentence length	6289	0	480	11.62	27.677	6.154	(.031)	63.653	(.062)
Warrant status	11524	0	1	.37	.479	.527	(.023)	-1.702	(.046)	

3. Statistical Analysis

The extent to which aspects of the background of remandees are associated has also been analysed. Table 10 presents the non-parametric Spearman correlations. Table 11 presents the correlations by age group while controlling for the seriousness of the alleged offence (based on the MSC code) and eventual aggregate sentence length. The Spearman rank order correlation (r_s) lies between -1.00 and +1.00. When r_s is 0 we say there is 'no correlation' between two variables. Where r is -1.00 there is a perfect negative correlation; that is, when X increases, Y decreases. Where r is +1.00 there is a perfect positive correlation; when X increases, Y increases. Table 10 depicts the correlation between the attributes of remandees and, for the more mathematically inclined, the degree of statistical significance attached to the correlations.² However, this information needs to be combined with an assessment of each coefficient's practical import.

From Table 10 and Table 11 it can be seen that younger remandees are less likely to be employed, and have less education. However, level of education is not statistically significant for remandees aged 25 years and over. Indigenous remandees tend to be younger with less education, are less likely to be employed and more likely to have dependent children. Young indigenous people are also more likely to have been remanded for a more serious charge. Young women aged 18-24 years are more likely to have dependent children than males of the same age group, but have less education and are less likely to be employed. Remandees from less disadvantaged areas are better educated and less likely to be unemployed, while remandees from more disadvantaged areas tend to be Indigenous and are also more likely to have dependent children. The correlations also reveal notable results regarding the number of periods spent on remand in the two year period. Young women were more likely to be remanded on multiple occasions than men of any age. In addition, less education and lower rates of employment were associated with multiple remand periods, while Indigenous young people were more likely to be remanded for multiple periods than non-Indigenous young people.

These findings are a reminder of the way that an identifier like 'Indigenous' can be interwoven with several other important environmental and personal attributes that combine to constitute a social and economic context within which offences occur, and within which they need to be interpreted.

² As a general rule, less confidence should be given to results which do not have an asterisk. One asterisk denotes the correlation achieves a statistical confidence level of at least 95%, and additional asterisks denote greater levels of confidence.

Table 10: Spearman correlations

	Age	N remand periods	Indigenous status	Gender	Dependent children	Education level	Employed	Disadvantage	MSC Code
Aged 18-24	Age at reception	1	-.145**	-0.016	.247**	.035**	.034**	0.018	-0.016
	N remand periods	-.145**	1	-.035**	-.056**	-.049**	-.115**	-0.008	0.008
	Indigenous status	-.048**	.059**	-.052**	.108**	-.052**	-.061**	-.080**	-.047**
	Gender	-0.016	-.035**	1	-.125**	-.116**	-.111**	0.01	-0.006
	Dependent children	.247**	-.056**	.108**	1	-.035**	.040**	-.092**	-0.011
	Education level	.035**	-.049**	-.052**	-.116**	1	.091**	.078**	0.001
	Employed	.034**	-.115**	-.061**	-.111**	.040**	1	.061**	0.013
	Disadvantage	0.018	-0.008	-.080**	0.01	-.092**	.061**	1	-0.014
	MSC Code	-0.016	0.008	-.047**	-0.006	-0.011	0.013	-0.014	1
Not aged 18-24	Age at reception	1	0.002	0.003	.172**	0.025	.106**	.044*	.178**
	N remand periods	0.002	1	-0.025	0.009	-.047*	-.099**	0.024	.041*
	Indigenous status	-.071**	0.021	-0.108**	.147**	-0.037	-.060**	-.084**	-.043*
	Gender	0.003	-0.025	1	-0.062**	-.087**	-.083**	0.038	-.048*
	Dependent children	.172**	0.009	.147**	1	-.047*	-.045*	-.093**	0.027
	Education level	0.025	-.047*	-0.037	-.047*	1	.163**	.063**	0.034
	Employed	.106**	-.099**	-.060**	-.083**	-.045*	1	.047*	-.041*
	Disadvantage	.044*	0.024	-.084**	0.038	-.093**	.047*	1	-0.028
	MSC Code	.178**	.041*	-.043*	-0.048*	0.027	-.041*	-0.028	1
All ages	Age at reception	1	-.109**	-.045**	.367**	.042**	.064**	.023*	.072**
	N remand periods	-.109**	1	-.032**	-.048**	-.049**	-.113**	-0.001	0.012
	Indigenous status	-.063**	.051**	1	-.061**	.099**	-.063**	-.081**	-.052**
	Gender	-.045**	-.032**	-.061**	1	-.123**	-.108**	0.015	-.020*
	Dependent children	.367**	-.048**	.099**	-.123**	1	.039**	-.083**	.027**
	Education level	.042**	-.049**	-.049**	-.113**	-.027**	.102**	.075**	0.009
	Employed	.064**	-.113**	-.063**	-.108**	.039**	1	.059**	0.008
	Disadvantage	.023*	-0.001	-.081**	0.015	-.083**	.059**	1	-0.015
	MSC Code	.072**	0.012	-.052**	-.020*	.027**	0.009	-0.015	1

* = sig < .05, ** = sig < .01 level

3. Statistical Analysis

Table 11: Correlations controlling for most serious charge & eventual sentence length

	Control Variables	Age at reception	N remand periods	Indigenous status	Gender	Dependent children	Education level	Employed	Disadvantage
Aged older than 18-24	MSC code & Aggregate sentence length	1.000	-.131**	-.055**	.001	.218**	.033**	.012	.031**
	N remand periods	-.131**	1.000	.056**	-.052**	-.047**	-.015	-.102**	-.012
	Indigenous status	-.055**	.056**	1.000	-.053**	.107**	-.045**	-.057**	-.085**
	Gender	.001	-.052**	-.053**	1.000	-.122**	-.108**	-.111**	.010
	Dependent children	.218**	-.047**	.107**	-.122**	1.000	-.037**	.034**	-.089**
	Education level	.033**	-.015	-.045**	-.108**	-.037**	1.000	.101**	.075**
	Employed	.012	-.102**	-.057**	-.111**	.034**	.101**	1.000	.063**
	Disadvantage	.031**	-.012	-.085**	.010	-.089**	.075**	.063**	1.000
	Age at reception	1.000	.030	-.064**	.015	.167**	.040	.118**	.064**
	N remand periods	.030	1.000	.011	-.078**	-.003	-.040	-.093**	.030
Aged 18-24	MSC code & Aggregate sentence length	-.064**	.011	1.000	-.118**	.134**	-.034	-.063**	-.080**
	Indigenous status	.015	-.078**	-.118**	1.000	-.060**	-.051*	-.085**	.046*
	Gender	.167**	-.003	.134**	-.060**	1.000	-.051*	-.048*	-.093**
	Dependent children	.040	-.040	-.034	-.051*	-.051*	1.000	.166**	.052*
	Education level	.118**	-.093**	-.063**	-.085**	-.048*	.166**	1.000	.049*
	Employed	.064**	.030	-.080**	.046*	-.093**	.052*	.049*	1.000
	Disadvantage	.064**	.030	-.080**	.046*	-.093**	.052*	.049*	1.000

* = sig < .05, ** = sig < .01 level

3.2 Areas of disadvantage

Just 16 Victorian postcodes account for more than 25% of remandees. To avoid stigmatising the localities concerned and thereby compounding the difficulties facing these areas, their identities will be transmitted to the authorities with major responsibilities for community strengthening in Victoria (see Recommendation 9 in section 4.8).

Previous research by Jesuit Social Services found a remarkably high level of spatial concentration of the postcodes of residence of people admitted to Victoria's prisons in 2003 (Vinson, 2004). If that pattern were found to be similar among the remandees it would have important implications for the geographic location of preventative social measures envisaged by the *A Fairer Victoria* policy (Victoria, 2010). Current overseas research is highlighting the need to locate relevant social services in close proximity to where people in need of those services live. For example, Allard (2009) has studied social services in Washington, D.C., Chicago and Los Angeles and found that approximately 70% of 'high poverty neighbourhoods' have low levels of social service provision often involving only a few extremely over-burdened agencies. Services located outside of these areas are more difficult for needy families and individuals to reach. The point of departure for a recent study of the York Region in Southern Ontario, Canada, has been to examine the availability of education, employment, housing and settlement services and the access to these services experienced by specified groups including recent immigrants and the poor (Lo, et al, 2009). The research strategy employed involves comparing the proximity of service agents in the relevant service categories to the areas of concentrated residence of the target groups. The Healthy City project in Los Angeles County has worked towards the same end; with data in hand, it has developed maps showing concentrations of probation youth along with area-specific resources (Healthy City, 2006). These maps clearly display where services are available and where they are needed.

These are but three examples of an increasingly emphasised administrative principle underlining the necessity of achieving a geographical match between need and services. The UK Social Exclusion Unit (2001) has summarised the findings in the following way: First, awareness of services is tied to the use of services yet awareness declines with lower income; and second, public transport is an important for vulnerable people to access services.

Data available to the present project has enabled us to identify a remarkable degree of concentration of remand cases within Victoria's postcodes and the findings are almost identical with the pattern of prison admissions in 2003 (Table 12). It needs to be remembered that these calculations are based on places, not populations – the latter factor is taken into consideration in the next phase of analysing the relationship with cumulative disadvantage. Meanwhile, 2.1% of Victoria's postcodes account for 25% of the remand cases; 15% of the cases derive from 1% of postcodes. These postcodes include some of the most disadvantaged areas in Victoria. The planning implications of these findings are taken up in the recommendations section of this report.

3. Statistical Analysis

Table 12: Concentration of remandees from postcodes of disadvantage

Remandees 2008-2010 — 2.2% of 726 postcodes = 25.4% of remandees
Prison admissions (2003) — 2.1% of 647 postcodes = 25% of prison admissions

3.3 Discharge of remandees

Table 13 shows the discharge details of remandees. Young people under 25 years are 33% more likely than those over twenty five years to be remanded only to be later bailed at court, and twice as likely to be classified as loss at court—that is, to receive community based orders, suspended sentences and other dispositions. However, the limitations of Victoria’s data system (see section 2.1) seriously undermines the capacity for integrated policy analysis of remandees social and economic background, most serious charges, court decisions, discharge outcomes, and so on. This highlights the need to improve Victoria’s criminal justice data system (see Recommendation 10 in section 4.9).

Table 13: All prisoners received into custody by age at reception and by discharge type

		Age (Years)			
		< 21	21-24	<25	≥ 25
Bailed At Court	Sum	259	348	607	1604
	% of Total	33	20	24	18
Loss At Court	Sum	188	148	336	662
	% of Total	24	9	14	7
No Discharge	Sum	167	452	619	2494
	% of Total	21	27	25	28
Non-Custodial	Sum	9	16	25	172
	% of Total	1	1	1	2
Other	Sum	21	5	26	23
	% of Total	3	0	1	0
Parole	Sum	69	235	304	1185
	% of Total	9	14	12	13
Sentence Lapse	Sum	75	502	577	2890
	% of Total	10	29	23	32
Total	Sum	788	1706	2494	9030

3.4 Gender and Indigenous status

Indigenous young people are far more likely to come from poorer backgrounds than non-Indigenous people (Figure 6). While the numbers of non-Indigenous remandees are relatively equal across the four quartiles of disadvantage, many more Indigenous people are clustered in areas of disadvantage. Figure 5 illustrates there is also a gender disparity in that young female remandees tend to come from more disadvantaged areas.

Figure 5: Young people's Indigenous status by quartiles of disadvantage

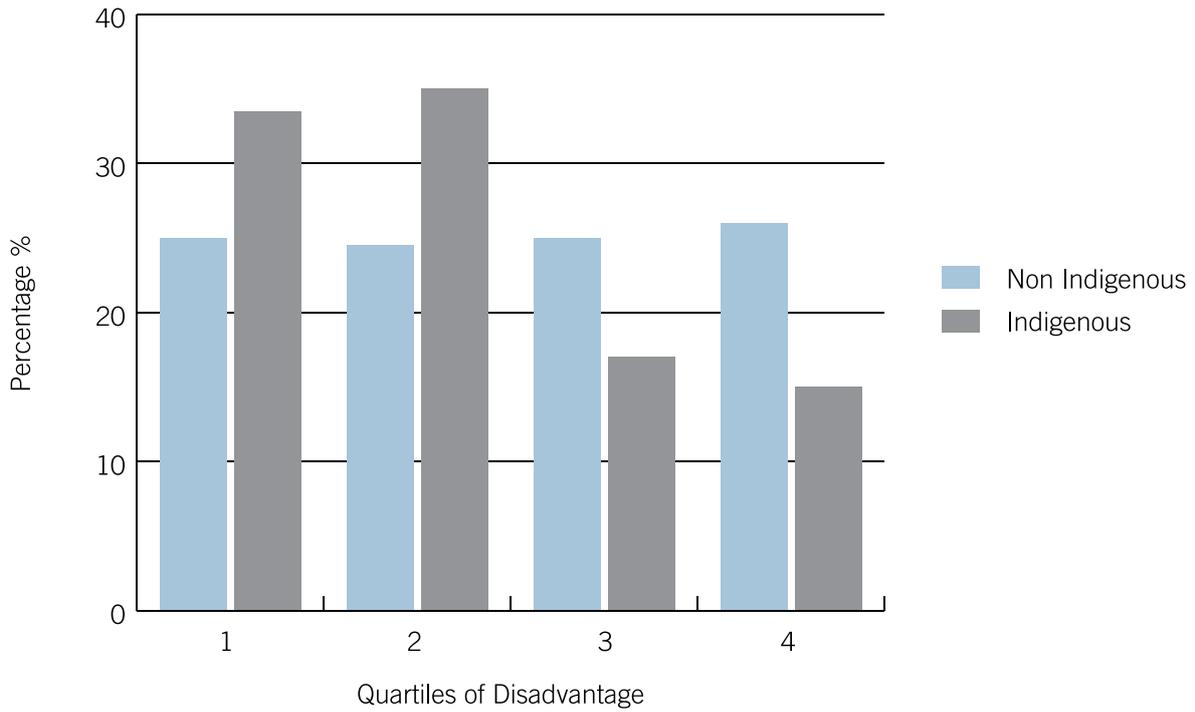
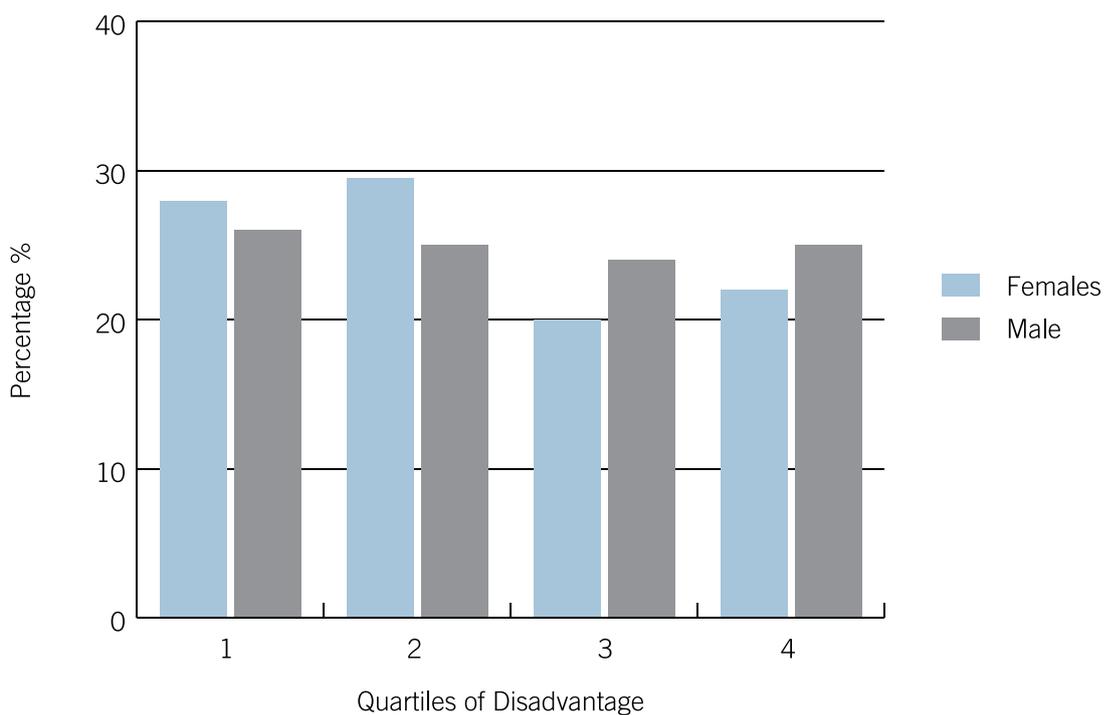


Figure 6: Young people's gender by quartiles of disadvantage



3. Statistical Analysis

Figure 7: Young remandees' most serious charge by Indigenous status and areas of disadvantage

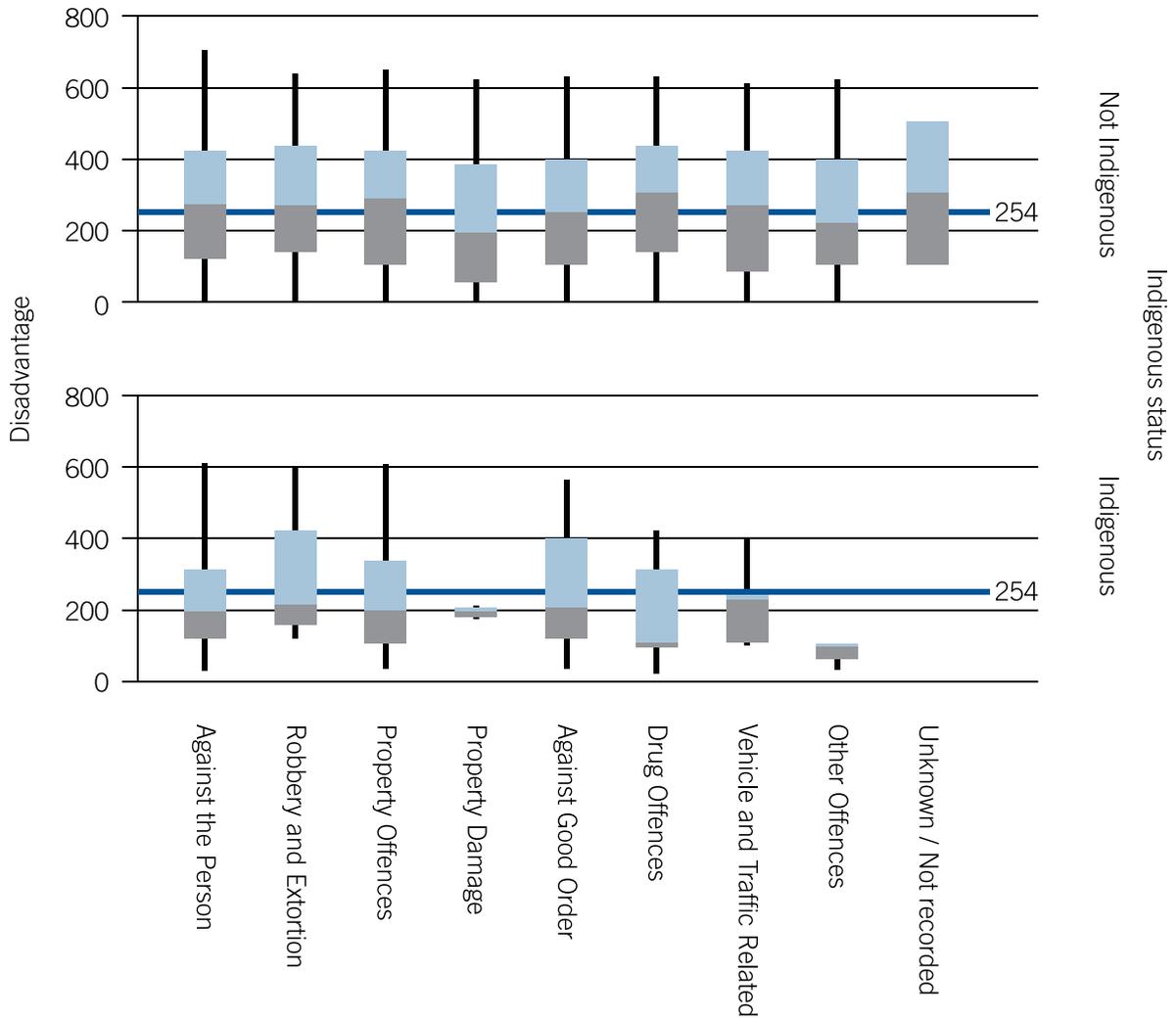


Figure 8 illustrates the areas of disadvantage by gender according to the most serious offence that the young person has been charged with. The average disadvantage rank of young women is below the median and male average rank of 254. However, young women charged with robbery and extortion offences are above the median. The same is true of the 'other offences' category, the details of which are not recorded by Corrections Victoria.

Young People On Remand In Victoria

Figure 8: Young remandees' most serious charge by gender and areas of disadvantage

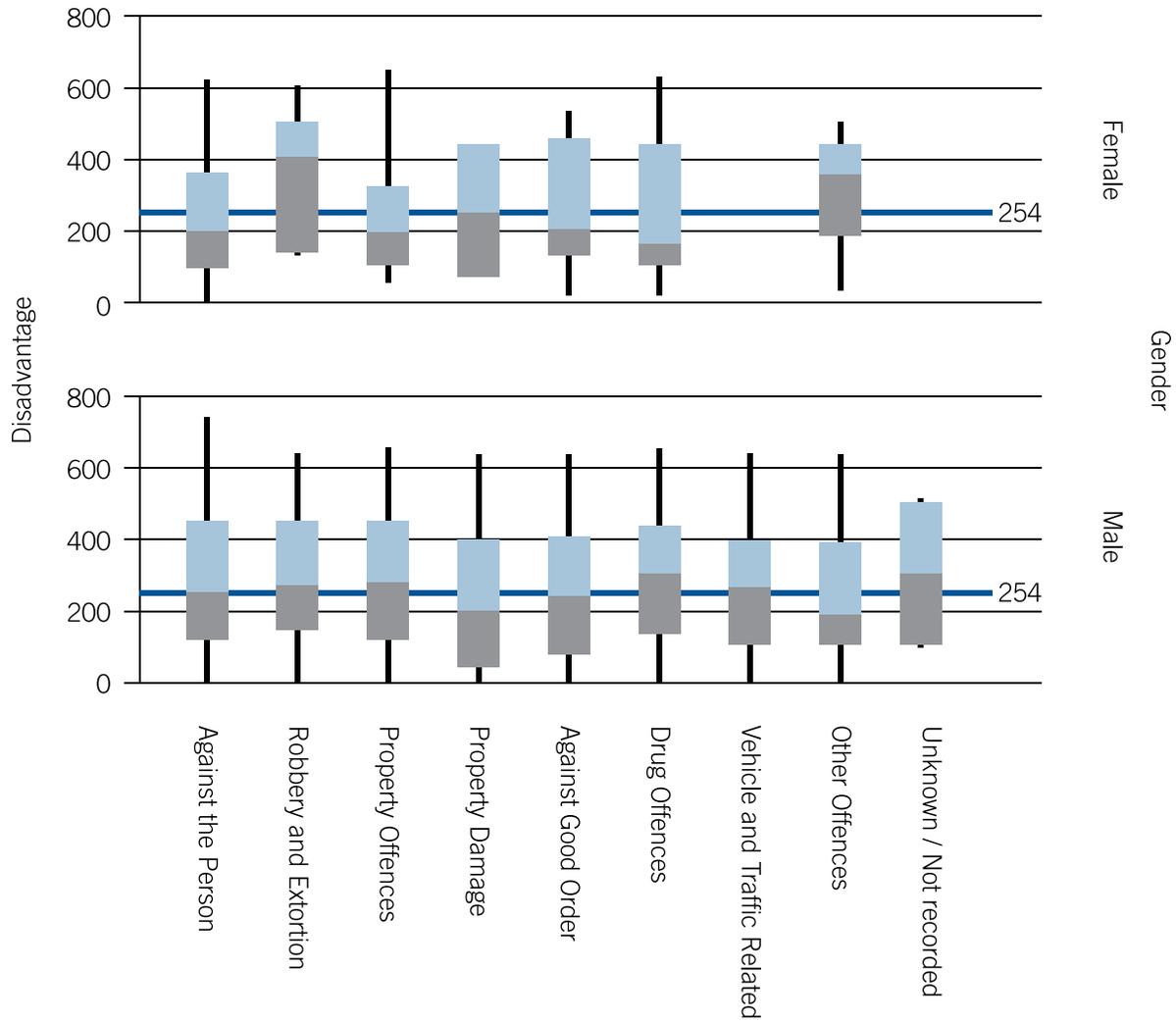


Table 14 indicates the actual and expected count data by category of alleged offence. Where there are 25 or more cases in each charge category, the differential per cent between actual and expected counts is expressed in the final column named Diff (%) expected. This compares the proportion of charges for each category by the variation we would expect given the proportion of remandees by gender (6.8% female) and Indigenous status (6.8% Indigenous). For instance, young indigenous female remandees are over-represented in the category of alleged offences against the person. We would predict that this group of people would represent seven instances of remand for this charge, however the recorded number of remands is nine—22% higher than the proportion of young Indigenous women on remand would predict. On the other hand, we find that young indigenous women remanded for drug charges at a rate 26% less than their proportion of the remand population would predict. Similarly, young Indigenous men are over-represent by 29% as a proportion of the remand population facing property offence charges, but underrepresented by 55% amongst remandees facing vehicle and traffic related offences.

3. Statistical Analysis

Table 14: Expected and actual MSC count data: by gender and Indigenous status

Aged 18-24	Gender	Alleged offence	Not Indigenous		Indigenous		
			Recorded	Expected	Recorded	Expected	Difference(%)
Yes	Female	1 Against the Person	28	30	9	7	+22
		2 Robbery and Extortion	9	8	1	2	-50
		3 Property Offences	41	42	12	11	+12
		4 Property damage	2	2	0	0	.
		5 Against Good Order	29	29	7	7	-3
		6 Drug Offences	23	22	4	5	-26
		8 Other offences	3	3	1	1	.
		9 Unknown/Not recorded	2	2	0	0	.
	Male	1 Against the Person	570	574	54	50	+7
		2 Robbery and Extortion	174	173	14	15	-8
		3 Property Offences	517	530	60	47	+29
		4 Property damage	53	51	2	4	-55
		5 Against Good Order	365	370	37	32	+14
		6 Drug Offences	161	152	4	13	-70
		7 Vehicle and Traffic Related	133	127	5	11	-55
		8 Other offences	64	62	3	5	-44
		9 Unknown/Not recorded	2	2	0	0	.
	No	Female	1 Against the Person	120	122	15	13
2 Robbery and Extortion			24	23	1	3	-60
3 Property Offences			308	318	45	35	+28
4 Property damage			15	15	2	2	+18
5 Against Good Order			160	159	16	18	-9
6 Drug Offences			139	127	2	14	-86
7 Vehicle and Traffic Related			27	26	2	3	-31
8 Other offences			23	25	5	3	+79
9 Unknown/Not recorded			0	2	2	0	.
Male		1 Against the Person	1613	1626	114	101	+13
		2 Robbery and Extortion	222	224	16	14	+15
		3 Property Offences	1914	1916	121	119	+2
		4 Property damage	104	108	11	7	+64
		5 Against Good Order	1631	1661	133	103	+29
		6 Drug Offences	924	885	16	55	-71
		7 Vehicle and Traffic Related	664	646	22	40	-45
		8 Other offences	232	237	20	15	+36
		9 Unknown/Not recorded	2	2	0	0	.

These statistical findings illustrate the inter-connections between variables like Aboriginality, gender and socio-economic circumstances. The following section (3.5) presents more detailed statistical modelling of Victoria’s remand population using these variables. The most salient findings from the detailed statistical analysis are summarised below and readers with the requisite technical background can consider the basis of the summary in Section 3.5:

- The difference between Indigenous and non-Indigenous educational attainment is not statistically significant, but Indigenous remandees are much less likely to have been employed.
- Young Indigenous remandees come from more disadvantaged areas.
- Young Indigenous remandees are around twice as likely to be women when compared to their older counterparts.
- Repeated periods of remand are more common amongst women than men in both age groups, while young women are twice as likely to have repeated periods of remand than older women.
- The difference in the disadvantaged rank is not a significant predictor of gender amongst either the younger or older group of remandees.
- Young men are less likely to be employed than women.
- Younger remandees come from more disadvantaged areas.
- Remandees from more disadvantaged backgrounds have lower levels of education and employment.

3.5 Detailed statistical analysis

3.5.1 Chi-square results from Kruskal Wallis and McNemar nonparametric tests

Non-parametric tests of related samples using Chi-square comparable tests have been undertaken to test whether the distribution of different values across variables are equally likely. The results of the Kruskal Wallis test for young people indicate that, when comparing quartiles of disadvantage, the only non-significant results ($\alpha = <.05$ for χ^2 or H) are found for the dependent variables of age at reception, $\chi^2(3) = 7.220$, $p = .065$, and gender, $\chi^2(3) = 6.782$, $p = .079$ (Table 15).

Table 15: Kruskal Wallis test by quartiles of disadvantage

Aged 18-24		Age at reception	N remand periods	Indigenous status	Gender	Dependent children	Education level	Employed
No	Chi-square	7.220	11.809	53.750	6.782	76.349	60.004	24.508
	df	3	3	3	3	3	3	3
	Asymp. Sig.	.065	.008	.000	.079	.000	.000	.000
Yes	Chi-square	24.194	6.036	25.292	2.836	18.014	11.389	8.310
	df	3	3	3	3	3	3	3
	Asymp. Sig.	.000	.110	.000	.418	.000	.010	.040

The test for the same null hypothesis for the gender and Indigenous status variables were undertaken using the McNemar nonparametric test (for details, see Everitt, 2006). The results, $\chi^2(1) = 7038$, $p = <.000$ (Table 16), also result in the null hypothesis being rejected.

3. Statistical Analysis

Table 16: McNemar test results for gender and Indigenous status

Aged 18-24		Indigenous status & Gender
No	N	8665
	Chi-square ^a	7038.430
	Asymp. Sig.	.000
Yes	N	2387
	Chi-square ^a	1937.297
	Asymp. Sig.	.000

a. Continuity corrected

3.5.2 Binary logistic regression results

Following the Chi-square tests, binary logistic regression modelling has been undertaken to predict the social and alleged offending predictors of remandees by Indigenous status (Table 17) and gender (Table 18).

The model predicting Indigenous status is accurate for 93.7% of remandees aged 25 years and over, $\chi^2(8) = 282.752$, $p < .000$, while 90.8% of young remandees are predicted, $\chi^2(8) = 95.776$, $p < .000$ (Table 17). The most notable difference between young people and their older cohort is that three predictors are only significant for older remandees: the number of periods of remand ($B = .012$, $p = .873$), most serious charge ($B = -.001$, $p = .126$), and education ($B = -.438$, $p = .266$) are not statistically significant predictors of Indigenous status for young people on remand. The convergence of education attainment between Indigenous and non-Indigenous young people is largely explained by the low education rates amongst all young remandees, 97% of whom have not completed secondary school.

The gender predictor is twice as large for younger Indigenous remandees ($B = -1.126$, $p < .000$) than for the older age group ($B = -.520$) but equally significant at the 99.9% confidence level. Young Indigenous people are twice as likely to be women when compared to their older counterparts.

There are two possible explanations for the education differences between the younger ($B = -.438$, $p = .266$) and older ($B = -.325$, $p = .003$) groups of Indigenous remandees. First, there may have been improvements in education attainment for younger Indigenous people—as a result of improved government policies for instance. Another, more intriguing explanation is that older Indigenous remandees remain in contact with the criminal justice system for longer if they have lower educational attainment.

Finally, while the difference between Indigenous and non-Indigenous young people educational attainment is not statistically significant ($B = -.438$, $p = .266$), Indigenous remandees are much less likely to have been employed ($B = -.808$, $p = .005$).

Young People On Remand In Victoria

Table 17: Binary logistic regression modelling for predictors of Indigenous status

Aged 18-24		B	S.E.	Wald	Sig.	Exp(B)
No	Age	-.042	.007	40.544	.000	.959
	Gender	-.520	.131	15.788	.000	.594
	Dependent children	1.166	.122	90.817	.000	3.208
	Education	-.325	.110	8.737	.003	.723
	Employed	-.757	.151	25.274	.000	.469
	Disadvantage	-.002	.000	36.290	.000	.998
	Remandee returns	.164	.043	14.249	.000	1.178
	MSC code	-.001	.000	10.197	.001	.999
	Constant	.103	.444	.054	.816	1.109
Yes	Age	-.145	.042	11.894	.001	.865
	Gender	-1.126	.224	25.209	.000	.324
	Dependent children	.960	.161	35.606	.000	2.613
	Education	-.438	.394	1.239	.266	.645
	Employed	-.808	.290	7.765	.005	.446
	Disadvantage	-.001	.000	6.750	.009	.999
	Remandee returns	.012	.075	.026	.873	1.012
	MSC code	-.001	.000	2.336	.126	.999
	Constant	3.342	1.479	5.110	.024	28.289

a: $R^2 = .035$ (Cox & Snell), $.093$ (Nagelkerke); $\chi^2(8) = 282.752$, $p < .000$

b: $R^2 = .043$ (Cox & Snell), $.095$ (Nagelkerke); $\chi^2(8) = 95.776$, $p < .000$

The model predicting gender is accurate for 89.7% of remandees aged 25 years and over, $\chi^2(8) = 334.350$, $p < .000$, while 92.8% of young remandees are predicted, $\chi^2(8) = 71.540$, $p < .000$ (Table 18).

The difference in the disadvantaged rank is not a significant predictor of gender amongst either the younger or older group of remandees. Notable differences between young people on remand and their older cohorts is that the gender differences in education are not significant for the younger cohort ($B = -.437$, $p = .055$), while higher educational attainment is significant amongst the older remand population ($B = -.532$, $p < .000$). It is also notable that men amongst both age groups are less likely to be employed than women.

The older cohort is much more likely to have children, while repeated periods of remand are more common amongst women in both age groups. In addition, Indigenous status is a highly significant predictor of gender in both age cohorts, but the beta value predicting female Indigenous remandees is twice as large for young people ($B = -1.110$, $p < .000$) in comparison to the older cohort ($B = -.506$, $p < .000$).

3. Statistical Analysis

Table 18: Binary logistic regression modelling for predictors of gender

Aged 18-24		B	S.E.	Wald	Sig.	Exp(B)
No ^a	Age	.011	.005	5.261	.022	1.011
	Indigenous	-.506	.131	14.930	.000	.603
	Dependent children	-.997	.094	113.437	.000	.369
	Education	-.532	.060	79.411	.000	.588
	Employed	-.762	.084	81.788	.000	.467
	Disadvantage	.000	.000	.564	.453	1.000
	Remandee returns	-.214	.036	35.447	.000	.807
	MSC code	.000	.000	.002	.963	1.000
	Constant	4.455	.273	266.581	.000	86.085
Yes ^b	Age	.077	.048	2.637	.104	1.080
	Indigenous	-1.110	.224	24.658	.000	.329
	Dependent children	-.453	.187	5.881	.015	.636
	Education	-.437	.227	3.693	.055	.646
	Employed	-.957	.210	20.726	.000	.384
	Disadvantage	.001	.000	3.117	.077	1.001
	Remandee returns	-.301	.071	18.052	.000	.740
	MSC code	-.001	.000	3.497	.061	.999
	Constant	3.008	1.165	6.667	.010	20.244

a: $R^2 = .041$ (Cox & Snell), $.084$ (Nagelkerke); $\chi^2(8) = 334.350$, $p = <.000$

b: $R^2 = .032$ (Cox & Snell), $.080$ (Nagelkerke); $\chi^2(8) = 71.540$, $p = <.000$

3.5.3 General log-linear regression results

Rank regression Poisson modelling cannot be used with the data set because of over-dispersion, $\chi^2(1) = 5728.04$, $p = < 0.000$. Consequently, a log-linear regression model using a negative binomial distribution has been used to predict remandees disadvantage rank. Table 19 presents modelling for the entire remand population where valid count data is available ($n = 10,156$) as well as young people on remand ($n = 2,189$). This is a smaller number of observations than the previous modelling due to missing data. It should also be noted that this modelling was undertaken using Gretl, a specialist econometric modelling program, rather than SPSS which is a general statistical program for the social sciences (Cottrell and Lucchetti, 2010; SPSS, 2010).

The usefulness of this model is that we can begin to compare the social and economic attributes of remandees based on the ranked disadvantage of the remandees' last known place of residence. This enables us to develop basic predictions of the social and economic characteristics of remandees using the postcode of last residence, and vice versa.

Age is a significant predictor of a young person's disadvantage rank ($B = .004$, $p = <.000$), even more so when account is taken of remandees of all ages ($B = .024$, $p = .014$). Young Indigenous people are also more likely to come from more disadvantaged areas ($B = -0.148$, $p = .019$), which is also a more significant predictor for the general remand cohort ($B = -.194$, $p = <.000$). Dependent children are also a predictor of a remandee's disadvantaged background, while higher rates of education ($B = .084$, $p = <.000$) and employment ($B = .089$, $p = <.000$) are positive predictors of remandee coming from a less disadvantaged background.

Young People On Remand In Victoria

Table 19: Negative Binomial regression modelling for predictors of disadvantage rank

		B	S.E. ^a	Z	Sig.
Aged 18-24 ^b	Constant	4.725	.304	15.566	.000
	Age	.024	.010	2.452	.014
	Remandee returns	.024	.018	1.323	.186
	Indigenous	-.148	.063	-2.338	.019
	Gender	.126	.070	1.802	.072
	Dependent children	-.136	.042	-3.262	.001
	Education	.100	.069	1.447	.148
	Employed	.058	.052	1.115	.265
	MSC code	.000	.000	-1.434	.152
	Alpha	.688	.019	35.795	.000
All years ^c	Constant	5.301	.075	70.810	.000
	Age	.004	.001	4.284	.000
	Remandee returns	.004	.008	.462	.644
	Indigenous	-.194	.033	-5.943	.000
	Gender	.036	.028	1.296	.195
	Dependent children	-.120	.018	-6.774	.000
	Education	.084	.019	4.449	.000
	Employed	.089	.021	4.175	.000
	MSC code	.000	.000	-1.709	.087
	Alpha	.668	.009	76.980	.000

a: Standard errors are computed using a numerical approximation to the Hessian at convergence.

b: Log-likelihood = -14403.742, $\chi^2(2) = 251.969$, $p = 1.93069e-055$, $n = 2,189$

c: Log-likelihood = -66952.013, $\chi^2(2) = 1208.312$, $p < 0.000$, $n = 10,156$

This statistical analysis gives us an insight into the social and economic determinants of young people on remand. It cannot be considered a precise explanation, nor can the statistical modelling allow us to identify the demographic predictors of crime and punishment, due in considerable measure to the lack of comprehensive integrated data (see section 2.2 and Recommendation 10 in section 4.9). However, this modelling can be used to inform evidence-based policy development and guide effective implementation. More precise statistical modelling would be possible with better resources, including an integrated data system such as BOCSAR in NSW. In particular, more information is needed on health aspects of the remand population, including mental health, drug dependency and so on. This data is maintained by the Victorian government but the data system is inadequately integrated. Finally, it should be emphasised that this research regards the remand population—but evidence-based policy development would benefit substantially from comparative analysis of defendants who are bailed and remanded. In particular, future research needs to ask why some defendants are bailed while others are detained.

4. Recommendations

Since the present project was conceived there have been notable improvements in some of the services intended to assist young adult Victorians on remand to place their lives on a better footing and to live within the law. Principal among these developments has been the strengthening of bail support services and Jesuit Social Services acknowledges the progress that has been achieved in this regard by the Government and those who have driven these reforms.

The progress so far achieved does not mean that the overhaul of the State's handling of young adults charged with offences is complete. That is evident from the Victorian Law Reform Commission's 2007 Review of the Bail Act and examination of the Bail Amendment Bill 2010 by the Scrutiny of Acts and Regulations Committee. It is hoped that the overview presented in Chapter 1 of the present report on practices in comparable overseas jurisdictions, together with local evidence and experience incorporated in the framing of the report's recommendations, contribute to the identification of reforms that will bring social and economic benefits to the Victorian community. The recommendations made essentially involve an extension of the basic principles upon which the reforms so far enacted have been built. Fundamentally they involve the protection of young adults from avoidable exposure to the influence of more criminally hardened offenders and the provision of corrective opportunities to young adults at a stage where they are more amenable to change. Wherever possible the recommendations are guided by evidence of the effectiveness of the proposed measures.

4.1 Young adult offenders

Our review of policies in industrially advanced societies has outlined fundamental changes in their structure and function that impact upon the rate at which young people mature (see section 1.2.2). Of central importance is the prolonged education and training that is now required to meet increasingly technical work roles and the consequential extension of the period of young people's dependence on their families. Increased knowledge of brain architecture and function supports the view that age twenty-one is a better approximation than eighteen years to the attainment of capacity for adult responsibility and that therapeutic jurisprudence, as discussed in the body of the report, should be emphasised in the criminal justice system's handling of alleged offenders up to and including twenty-one years of age. It is now appropriate to consolidate this policy in a formal way. The State would exercise its own judgment concerning the form of that consolidation but a useful starting point would be an examination of the Committee of Ministers of the Council of Europe's work in developing European Rules for Juvenile Offenders Subject to Sanctions or Measures.

RECOMMENDATION 1 Therapeutic jurisprudence

In all but exceptional circumstances, the component institutions of the Victorian criminal justice system including the courts and penal institutes, should adopt the principles of therapeutic jurisprudence when dealing with young people up to twenty-one years of age.

When the use of custodial remand is necessary, the afore-mentioned principles as well as contemporary practice in many other industrially advanced societies support the ensured separate housing of young adults in an environment that is appropriately protective and which encourages detainees' connection with programs that increase the likelihood of lawful and socially rewarding conduct. This is presently not the case in Victoria where young people above eighteen years of age are remanded within adult institutions but upon being sentenced eighteen to twenty year olds are eligible for placement within Youth Justice Centres. It is acknowledged that at present Corrections staff do attempt to protect young remandees but the separation of young adults in the way proposed in Recommendation 2 (below) would be more advantageous and consistent with the Victorian Charter of Human Rights and Responsibilities Act (2006) than the present arrangements. Section 22 of that Act specifies that "An accused person who is detained or a person detained without charge must be segregated from persons who have been convicted of offences, except where reasonably necessary," and "An accused person who is detained or a person detained without charge must be treated in a way that is appropriate for a person who has not been convicted."

The prison staff dealing with young adults should be appointed on the basis of their compatibility with the requirements of a therapeutic environment and, whichever site is chosen, visits by relatives and community members should be encouraged by the provision of affordable transport.

RECOMMENDATION 2 Provide protective environments

In all but exceptional cases remandees up to twenty-one years of age should be separately housed in an appropriately protective environment that affords opportunities for self improvement and the strengthening of pro-social behaviour. This should be achieved by either increasing existing youth institutional accommodation or creating new young adult remand places that are authentically separate from adult prison regimes.

4.2 Bail support programs

As we have earlier shown, bail support programs are now a regular feature of court systems in comparable societies. The Victorian Court Integrated Services Program (CISP), built upon existing pre-trial and basic support programs, effectively commenced at the beginning of 2007. The therapeutic goals of CISP are more ambitious than predecessor services which emphasised referral rather than direct service. The program logic of CISP turns on the provision of integrated services that match clients' assessed levels of risk and need(s) with resultant efficiencies in service provision, improvements in personal functioning and consequential reductions in rates of re-offending (see section 1.8). Comments received throughout the course of this project have consistently indicated that the program is generally favourably received at all levels of the system, a view shared by an official evaluation (Ross, 2009).

It is not surprising that, in company with all human service systems, one as laudable as CISP has scope for continuous improvement in some areas. Two such areas in particular are discussed below and they are of concern to both government and community-based service providers. Coverage of these two issues will then be followed by consideration of the scale of the challenge facing CISP and the role, both extant and potential, of a community-based program in meeting the need for additional bail support in Victoria.

There are two crucial service requirements: the limited availability of housing and residential drug and alcohol treatment programs.

4.3 Limited availability of long-term housing

It is apparent from experience both here and abroad that assured and appropriate housing is a foundation upon which other constructive bail measures can be built. For many alleged offenders having a stable place of residence in the form of a private dwelling, boarding house or community sponsored home may meet a court's basic requirements, but research and long practice experience show that for young people available housing needs to be accompanied by integrated 'wrap-around' support services.

Jesuit Social Services through its bail support program known as the Transitional Assistance Information Links Service or TAILS, and more generally through its range of youth services, is aware of the fundamental importance of settled housing in the lives of young adults. That need is urgent and overwhelming for the majority of TAILS clients and probably represents the greatest gap in services. The work undertaken by TAILS is outlined in a later section but suffice it to say at this point that despite the strenuous efforts of TAILS caseworkers to assist the bailing of remandees, these efforts sometimes break down because it is not possible to provide evidence of stable, secure accommodation. There is a critical shortage of housing generally in Melbourne and more widely across the state. While some supported housing is attached to transitional support programs such as Link Out for sentenced prisoners and bail support programs such as CISP, TAILS participants are not eligible for these services unless referred to CISP. Corrections Victoria has recently (2008) secured funds to expand the stock of housing available to high need sentenced prisoners returning to the community. However, remandees are not included in the target cohort.³

All Victorian prisons are served by Housing Intake and Assessment workers, whose role is to work within the Victorian Government's newly established *Opening Doors* program, (which prioritises services on the basis of homelessness or 'imminent risk of homelessness') and assist prisoners with housing needs. However, these workers operate within the reality of the general, acute housing shortage across Victoria.

RECOMMENDATION 3 Increase housing options

There is an extreme shortage of housing available for young adult people on bail or exiting custodial remand. Corrections Victoria and the Office of Housing, in the course of any revision of the existing housing provision for men and women transiting from prison, should increase the stock of available housing by 20 units for dedicated use by young people on bail or exiting from remand for use by support services. For the proposed increase in the stock of housing to be effective in reducing breaches of bail and/or further offending by 'at risk' young people, the extra accommodation needs to be matched by appropriate staffing and located in places affording access to support services.

4.4 Residential drug and alcohol treatment programs

The ultimate solution to the acknowledged shortage of residential places for remandees who are drug and/or alcohol dependent is to create more beds with a commensurate increase in relevant staffing. For its part CISP makes heavy use of the Community Offenders Assessment and Treatment Services (COATS) to provide drug and alcohol assessment services and a treatment brokerage service, and from all accounts, this arrangement works well. However, the CISP evaluation report (Ross, 2009) says in relation to drug and alcohol services: "Availability of treatment places is an important constraint. This is particularly acute for residential programs where there can be lengthy waiting periods for a program place (page 82)."

³ The exception is two transitional houses in regional locations, for Indigenous women on bail.

4. Recommendations

At least as an interim measure, perhaps a more creative approach can be taken in developing individually crafted packages to respond to individuals' circumstances. Consistent with existing arrangements, some organisations can be identified to provide such packages or components of them including: admission to a residential withdrawal program and a drug and alcohol practitioner assessment of the circumstances of each young adult and her or his capacity for self-care. On that basis assignment could be made to either a residential drug and alcohol treatment program or supported accommodation with a package of needed services and supports in the community. In Victoria, YSAS is already engaged in providing this suite of services to young people and has found that only a modest investment of time and staffing is required for the different service systems to work together. YSAS could be drawn on to provide the required package or some components of it in partnership with organisations contributing other components.

RECOMMENDATION 4 Widen flexibility and scope of accommodation/treatment packages

Without detracting from the importance of increasing the number of residential places for remandees who are drug and/or alcohol dependent, as an interim measure consideration be given to widening the flexibility and scope of accommodation/treatment packages available to remandees as outlined in the preamble to this recommendation.

4.5 Cases requiring close supervision

Within the limits of their availability, a private dwelling, boarding house or community sponsored home may generally be acceptable for accommodating a person on bail. However, there are challenging cases where something more may be required before bail can be granted. The bailing of a smaller number of cases may turn on the availability of a management regime comprised of clearly defined elements of supervision and control that can be administered flexibly to meet the requirements of the court. Examples of the control conditions could include leave to attend work or vocational training, the regulation of the timing and means of travel to meet employment requirements, regulated leave for family contacts, abstaining from alcohol and drugs and observing the general house rules of the establishment. Protocols describing these control measures should be formally compiled and compliance with them reported to judicial officers. The number of residents should be no greater than ten to twelve people to afford the opportunity for close supervision. Housing and shelter programs are more costly to implement than most bail measures, but experience in the United States shows that they result in an average saving of 68.6% of the cost of detention (section 1.5).

As illustrated in earlier sections of this report, programs of the type described operate internationally under the titles 'bail house' or 'bail hostel'. Their availability in Victoria would widen the scope of bail measures available to Magistrates. The successful deployment of bail measures of the type described would require comprehensive background reports on alleged offenders. Care would need to be taken to site bail houses away from areas frequented by children and a buffer zone should exist between the bail residence and other homes. In the light of experience elsewhere, persons charged with sex offences or crimes 'against the person' should not be referred to this type of bail accommodation.

Again for reasons outlined earlier in this report it would be prudent to undertake systematic monitoring of the measures adopted to enable discernment of any tendency, should it exist, for the availability of new measures to cause 'net widening'. Data should be periodically made available to Magistrates that enables them to compare past and present handling of remand cases that are matched for the nature and seriousness of alleged offences and the histories of those involved.

RECOMMENDATION 5 Supervised bail accommodation

Supervised bail accommodation with carefully defined control conditions should be piloted in Victoria. The pilot should be confined to two residences for a trial period of two years to decide whether the project should be extended. The management of the two homes should incorporate an Advisory Committee that includes representatives of the local community, the Police and local human service agencies.

4.6 Additional bail measures

4.6.1 Availability of drug testing

If an alleged offender's drug and/or alcohol dependence is a major concern to a court weighing the 'pros' and 'cons' of granting bail then it should be available to the judicial officer to require relevant testing of the alleged offender at a specified frequency. It needs to be remembered that in the UK, Persistent Offender Programs (POPs) have delivered better outcomes, with evaluations reporting reductions in re-offending. While these programs have a strong monitoring element, they also offer strong support in those areas known to impact on likelihood of re-offending, such as housing, drug treatment, employment and education.

The objection is sometimes raised that drug testing undermines the development of trust between the parties involved in an essentially therapeutic relationship. That this outcome is not a necessary consequence is argued in some jurisdictions which emphasise that the testing is part of an endeavour to assist in overcoming a person's dependency problems. The authenticity of that claim then depends on the range and sincerity of helpful actions undertaken and the respectful treatment afforded to the offender. Arguably drug and/or alcohol testing is part of what has been termed the 'constructive use of authority.' What is being proposed here is not mandatory testing of people on bail but a selective and purposeful prescribing of the measure, particularly when it enables bail to be chosen over custodial remand. It should be readily available to the judicial officer to receive feed-back on the alleged offender's adherence to the prescribed abstinence conditions in the context of progress otherwise demonstrated and the range of assistance measures provided.

RECOMMENDATION 6 Pilot limited, selective drug/alcohol testing

Courts determining whether alleged offenders should be granted bail or remanded in custody should have available the option of prescribing drug and/or alcohol testing at a specified frequency as a condition of bail and to receive feedback on the observance of those conditions in the context of progress otherwise demonstrated.

4.6.2 Electronic monitoring

Electronic monitoring (EM) has been gradually extended and refined as a remand alternative in a number of jurisdictions including England, Germany and the United States. While in some instances the evidence is regarded as inconclusive, the indications overall are that selective and purposeful employment of this measure, as with drug testing, can have individual and social benefits. In some reviews EM has proven effective in reinforcing home detention but there are lingering uncertainties about the impact of the measure upon others resident in the same household and compliance with conditions regarding the wearing of the electronic devices. With regard to the important goals of reducing re-offending and absconding, EM is not a 'magic bullet.' It is more effective when implemented as a component of an overall support package including bail accommodation and bail support services.

4. Recommendations

RECOMMENDATION 7 Review electronic monitoring

For the present, the utility of electronic monitoring be kept under systematic review. The efficacy of the measure and the components of support packages associated with favourable outcomes need to be identified in the light of formal studies and experience in other jurisdictions where electronic monitoring is being employed. The public credibility of the measure and its impact on confidence in the criminal justice system need to be elements of the ongoing review.

4.7 Transitional services

The scale of the challenge facing CISP and a number of clinical and support programs operating in Victorian courts needs to be acknowledged. In 2007- 2008 there were 3,756 CISP referrals averaging around 1,900 per year and encompassing people of varying ages (Ross, 2009). There is no available data on how many people aged eighteen to twenty-five years of age seek bail in Victorian courts. Nevertheless, it is thought that a substantial shortfall exists in the level of service provision that is needed to ensure equitable treatment of many young people who could benefit from a bail support program. The situation is one that requires that CISP's services be complemented by a strong community-based service with experience of the field and capable of bringing into play an additional network of community services and skills. Conscious of that need, we have incorporated into the present project an independent evaluation of the methods, scope, quality and stakeholders' appraisal of the TAILS (Transitional Assistance Information Links Service) program which, until August 2010 was provided by Jesuit Social Services through its Brosnan Youth Services program with limited funding. Because of that limited funding - equivalent to just 0.6 of a staff member - the court-based and remand institution-based bail support work undertaken by TAILS needs to be viewed as a trial of the potential contribution of a community service to this field. The consultant's evaluation report is published separately but its most salient findings and recommendations are summarised below.

Preparing people for release from prison is the aim of a comprehensive information program (the Transitional Assistance Program: TAP) provided to sentenced prisoners but eligibility for TAP does not extend to remand detainees. This is a need which over the past six years the Transitional Information Links Services program (TAILS), has attempted to meet. TAILS was designed to provide information, referral and linkage services to young men on remand in the adult correctional system. TAILS was the only support program targeting young detainees on remand and all respondents interviewed in a concurrent evaluation emphasised the need for such a program, commended its effectiveness and advocated the need for additional resources to expand delivery. There is an urgent need for a service of similar character to again be funded on a level that would enable it to meet the needs of young adult remandees.

RECOMMENDATION 8 Fund transitional remand release/discharge programs

That the funding of a community-based bail and remand program providing services of similar scope to the recently de-funded TAILS program, be renewed. To enable the reconstituted service to provide more adequate post-release assistance to discharged remand detainees and generally meet best practice requirements, the level of funding of the program should be raised from its level of 0.6 EFT to 4.0 EFT workers and accompanied by the dedicated additional housing referred to in Recommendation 3.

4.8 Early intervention and community strengthening

The analysis of data regarding the places of residence of remand detainees presented earlier in this report revealed a marked concentration of ‘last places of residence’. In some instances taking up residence in the areas identified may have occurred when people’s lives were already on a law-breaking trajectory. However, it is a logical extension of Victoria’s commitment to trying to break cycles of offending by use of therapeutic jurisprudence to attempt that goal upstream from its manifestation in young adulthood. Such action is also consistent with the state’s policy of *A Fairer Victoria* (Victoria, 2010) and with the idea of ‘justice reinvestment’ promulgated by the Australian Human Rights Commission in its 2009 Social Justice Report :

Justice reinvestment uses community wide crime prevention strategies to try and minimise imprisonment but also build the community up. We have long seen that Indigenous engagement and partnership in programs leads to more effective implementation. It also leads to other outcomes, like increased community confidence and improved governance. This becomes mutually reinforcing; crime prevention decreases imprisonment; and community engagement strengthens the community so the preconditions for crime are reduced. Engaging at a community level will also make very obvious the current shortfalls in resources that impact on offending... Justice Re-investment will argue for resources at the front end (primary prevention) rather than the back of the system (imprisonment). (AHRC, 2009: p.109-10)

This is not the place to canvass the ways and means of community strengthening but linking Corrections Victoria’s own remand data, particularly in relation to young adults, with the knowledge and experience of the Department of Planning and Community Development should give added focus to the community strengthening agenda in Victoria.

RECOMMENDATION 9 Community strengthening, crime prevention planning

The data gathered on the postcodes of remandees in Victoria should be incorporated into community strengthening planning and provide a basis for ‘whole of Government’ collaboration between the Department of Justice, the Department of Planning and Community Development, the Department of Human Services, Department of Health and the Department of Education and Early Childhood Development.

4.9 Developing an integrated data system

Victoria’s data system has consistently been criticised by academics, program evaluators and the Victorian Auditor-General alike (see section 2.2). The consequence of insufficient integration of statistics and program evaluation is that evidence-based policy making is severely restricted, and this reduces public accountability of policy makers. Improvements to Victoria’s public safety and criminal justice data system are a necessary administrative component of remand reform. Most importantly, the establishment of a Victorian bureau of crime statistics with responsibility for integrating and reporting is an essential reform which can be easily implemented on the NSW model. Consideration could also be given to the more recent Scottish reforms which improved integration and data transfer between stakeholders.

RECOMMENDATION 10 Integrated data system

An integrated crime statistics organisation modelled on the NSW Bureau of Crime Statistics and Research (BOCSAR) should be established. The objective of the organisation should be to collate and report data on public safety and the criminal justice system to inform effective and efficient evidence based policy.

4. Recommendations

4.10 Reducing Indigenous remand rates

In the literature review section it was noted that Indigenous people constituted 5.5% of Victoria's total prison population in June 2009 and 5.6% of the remand population (see 1.4.8). This over-representation is in no way peculiar to Victoria, indeed high incarceration rates for Indigenous people are a global trend. Our analysis of remand statistics (see particularly sections 3.1 and 3.3) illustrated the way that an identifier like 'Indigenous' can be interwoven with several other important environmental and personal attributes that combine to constitute a social and economic context within which offences occur. However, neither familiarity with the problem nor the fact that indigeneity is frequently embedded in multiple strands of disadvantage could justify failure on this occasion to underline the importance of linked-up initiatives to reduce the high rates of remand of Indigenous people. If there were a single direct remedy we would recommend its adoption but in the absence of such a prospect we urge the convening of a taskforce capable in terms of its composition of comprehensively reviewing ways of reducing the Indigenous remand rate. The terms of reference for the taskforce should include but not be limited to the following issues:

- Expanding the scope of alternatives to custodial remand for Indigenous people;
- Improving the participation and retention rates of Aboriginal school students;
- Strengthening the pathways from school to employment and/or further training;
- Ensuring the ready access of Indigenous children and young people to health appraisals and treatment;
- Intensive assistance for Aboriginal detainees during and post their detention in juvenile institutions; and
- Ensuring the cultural appropriateness of remand programs and their compliance with the Victorian Aboriginal Justice Agreement and the recommendations of the Royal Commission into Aboriginal Deaths in Custody (1991).

RECOMMENDATION 11 Planning reduced Indigenous remand rates

A taskforce to facilitate comprehensive, 'linked-up' prevention measures should be created to reduce Indigenous remand rates (and offence rates) in Victoria. In addition to representation from the areas outlined in the preamble to this recommendation, the taskforce should include representatives of the Aboriginal community.

5. Appendices

5.1 References

- ABS (2007). *4705.0 - Population Distribution, Aboriginal and Torres Strait Islander Australians, 2006*. Canberra, Australian Bureau of Statistics.
- AHRC (2009). *Social Justice Report 2009*. Sydney, Australian Human Rights Commission.
- Allan, Alfred, Maria M Allan, Margaret Giles, Deirdre Drake, and Irene Froyland (2005). 'An Observational Study of Bail Decision-Making.' *Psychiatry, Psychology and Law* 12(2): 319-33.
- Allard, Scott W. (2009). *Out of Reach: Place, Poverty, and the New American Welfare State*. New Haven, Yale University Press.
- Austin, Paul (2010). 'Extra Police 'Won't Cut Crime' ' *The Age*, 22 June.
- Australian Institute of Criminology (2008). *Australian Crime: Facts and Figures 2008*. Canberra, Australian Institute of Criminology.
- Baldry, Eileen, L. Dowse, P. Snoyman, M. Clarence, and I. Webster (2008). 'A Critical Perspective on Mental Health Disorders and Cognitive Disability in the Criminal Justice System.' Paper presented at the Australian and New Zealand Critical Criminology Conference, Sydney, 19-20 June.
- Bartlett, Mike (2005). 'World Correctional Population Trends and Issues.' *Corrections Criminology*, edited by Sean Eyland Simon Julian O'Toole, Leichhardt, NSW: Hawkins Press, 2005.: 8-16.
- Boyle, Katherine (2009). 'the More Things Change ...' : Bail and the Incarceration of Homeless Young People.' *Current issues in Criminal Justice* 21(1): 59-78.
- Boys, A., M. Farrell, P. Bebbington, T. Brugha, J. Coid, R. Jenkins, G. Lewis, J. Marsden, H. Meltzer, N. Singleton, and C. Taylor (2002). 'Drug Use and Initiation in Prison: Results from a National Prison Survey in England and Wales.' *Addiction* 97(12): 1551-60.
- Brignell, Georgia (2002). *Bail : An Examination of Contemporary Issues*. Sentencing Trends and Issues No 24. Sydney, Judicial Commission of New South Wales.
- Brown, Kevin, Peter Duff, and Fiona Leverick (2004). *A Preliminary Analysis of the Bail/Custody Decision in Relation to Female Accused*. Edinburgh, Scottish Executive.
- Byrne, James, and Jacob Stowell (2007). 'The Impact of the Federal Pretrial Services Act of 1982 on the Release, Supervision, and Detention of Pretrial Defendants.' *Federal Probation* 71(2): 31-38.
- Cadigan, Timothy P. (2008). 'Evidence-Based Practices in Federal Pretrial Services.' *Federal Probation* 72(2): 87-90.
- Cassidy, Davnet, Gemma Harper, and Sarah Brown (2005). *Understanding Electronic Monitoring of Juveniles on Bail or Remand to Local Authority Accommodation*. Home Office Report No 21/05. London, Home Office.
- Clark, John, and D. Alan Henry (2003). *Pretrial Services Programming at the Start of the 21st Century: A Survey of Pretrial Services Programs*. Washington, Department of Justice.
- Colvin, Mark (2010). *Study Finds Prison Does Not Stop Re-Offending* (21 September). PM, cited 22 September 2010. Available from <http://www.abc.net.au/pm/content/2010/s3018089.htm>
- Committee of Ministers (2008a). 'Commentary to the European Rules for Juvenile Offenders Subject to Sanctions or Measures.' Strasbourg, Council of Europe.

Committee of Ministers (2008b). 'Recommendation Cm/Rec(2008)11 of the Committee of Ministers to Member States on the European Rules for Juvenile Offenders Subject to Sanctions or Measures.' Strasbourg, Council of Europe.

Corrections Victoria (2009). *Statistical Profile of the Victorian Prison System 2004-05 to 2008-09*. Melbourne, Department of Justice - Corrections Victoria.

Cottrell, Allin, and Riccardo 'Jack' Lucchetti (2010). *Gretl User's Guide*. Winston-Salem, Wake Forest University.

Crocker, Anne G., Gilles Cote, Jean Toupin, and Bernard St-Onge (2007). 'Rate and Characteristics of Men with an Intellectual Disability in Pre-Trial Detention.' *Journal of Intellectual & Developmental Disability* 32(2): 143-52

Dandenong Drug Court (2009). *Dandenong Drug Court*. Dandenong, Magistrates' Court of Victoria.

DEECD and DPCD (2008). *The State of Victoria's Young People: A Report on How Victorian Young People Aged 12-24 Are Faring*. Melbourne, Department of Education and Early Childhood Development and the Department of Planning and Community Development.

Demuth, Stephen, and Darrell Steffensmeier (2004). 'The Impact of Gender and Race-Ethnicity in the Pretrial Release Process.' *Social Problems* 51(2): 222-42.

Denning-Cotter, Gabrielle (2008). *Bail Support in Australia*. Indigenous Justice Clearinghouse Research Briefs No 2/2008. Sydney, Attorney General's Department and Australian Institute of Criminology.

Dennison, Susan, Anna Stewart, and Emily Hurren (2006). *Police Cautioning in Queensland: The Impact on Juvenile Offending Pathways*. Trends & issues in crime and criminal justice No 306. Canberra, Australian Institute of Criminology.

Dhami, Mandeep K. (2004). 'Conditional Bail Decision Making in the Magistrates' Court.' *Howard Journal of Criminal Justice* 43(1): 27-46.

DOJ (2010). *Court Integrated Services Program: Tackling the Causes of Crime: Executive Summary Evaluation Report*. Melbourne, Department of Justice.

Dolowitz, David P. (2003). 'A Policy-Maker's Guide to Policy Transfer.' *The Political Quarterly* 74(1): 101-08.

Dowse, L. , E. Baldry, and Snoyman P. (2009). 'Disabling Criminology: Conceptualizing the Intersections of Critical Disability Studies and Critical Criminology for People with Mental Health and Cognitive Disabilities in the Criminal Justice System.' *Australian Journal of Human Rights* 15(1): 29-46.

Dünkel, Frieder, and Ineke Pruin (2010). 'Young Adult Offenders in the Criminal Justice Systems of European Countries.' *Juvenile Justice Systems in Europe-Current Situation, Reform Developments and Good Practices*, edited by Frieder Dünkel, Joanna Grzywa and Ineke Pruin. Mönchengladbach, Forum Verlag: 1557-80.

Edwards, Julie (2010). 'Bidding War on Law and Order Will Create More Criminals, Not Solve Crime ' *The Age*, 7 April.

Everitt, Brian (2006). *The Cambridge Dictionary of Statistics*. 3rd ed. Cambridge, Cambridge University Press.

Freeman, Sinead (2008). 'The Experience of Young People Remanded in Custody: A Case for Bail Support and Supervision Schemes.' *Irish Probation Journal* 5: 91-102.

Freeman, Sinead (2009). 'Surviving on Remand: A Study of How Young People Cope in Remand Custody in Ireland.' PhD thesis. Dublin, Dublin Institute of Technology.

Young People On Remand In Victoria

- Freiberg, Arie, and W. G. Carson (2010). 'The Limits to Evidence-Based Policy: Evidence, Emotion and Criminal Justice.' *Australian Journal of Public Administration* 69(2): 152-64.
- Gartner, Rosemary, Cheryl Marie Webster, and Anthony N. Doob (2009). 'Trends in the Imprisonment of Women in Canada.' *Canadian Journal of Criminology and Criminal Justice* 51(2): 169-98.
- Goldson, Barry, and Janet Jamieson (2002). 'Community Bail or Penal Remand? A Critical Analysis of Recent Policy Developments in Relation to Unconvicted and/or Unsented Juveniles.' *British Journal of Community Justice* 1(2): 63-76.
- Gostin, Lawrence O. (2008). "Old' and 'New' Institutions for Persons with Mental Illness: Treatment, Punishment or Preventive Confinement?" *Public Health* 122(9): 906-13.
- Haverkamp, Rita, Markus Mayer, and René Lévy (2004). 'Electronic Monitoring in Europe.' *European Journal of Crime, Criminal Law and Criminal Justice* 12(1): 36-45.
- Healthy City (2006). 'An Even Playing Field: Support for Foster and Probation Youth' *The Healthy City Project Newsletter*.
- Holland, Shasta, and Peter Persson (2010). 'Intellectual Disability in the Victorian Prison System: Characteristics of Prisoners with an Intellectual Disability Released from Prison in 2003-2006.' *Psychology, Crime & Law*: in press, DOI: 10.1080/10683160903392285.
- Holland, Shasta, Peter Persson, Megan McClelland, and Robyn Berends (2007). *Intellectual Disability in the Victorian Prison System: Characteristics of Prisoners with an Intellectual Disability Released from Prison in 2003-2006*. Corrections research paper series No 2. Melbourne, Department of Justice.
- Hucklesby, Anthea (2008). 'Vehicles of Desistance? The Impact of Electronically Monitored Curfew Orders.' *Criminology and Criminal Justice* 8(1): 51-71.
- Hucklesby, Anthea (2009). 'Keeping the Lid on the Prison Remand Population: The Experience in England and Wales' *Current Issues in Criminal Justice* 21(1): 3-23.
- Hucklesby, Anthea, and Tina Goodwin (2004). *Pre-Trial Accommodation for Young People*. London, Youth Justice Board.
- Hucklesby, Anthea, and Rick Sarre (2009). 'Bail in Australia, the United Kingdom and Canada: Introduction.' *Current Issues in Criminal Justice* 21(1): [1]-2.
- Human Rights Commission (2010). *Economics of Equality*. Melbourne, Victorian Equal Opportunity and Human Rights Commission.
- Junger-Tas, Josine, and Frieder Dünkel (2009). 'Reforming Juvenile Justice: European Perspectives.' *Reforming Juvenile Justice: European Perspectives*, edited by Josine Junger-Tas and Frieder Dünkel. New York, Springer: 215-33.
- King, Sue, David Bamford, and Rick Sarre (2005). *Factors That Influence Remand in Custody: Final Report to the Criminology Research Council*. Criminology Research Council commissioned report. Canberra, Criminology Research Council.
- King, Sue, David Bamford, and Rick Sarre (2008). 'The Remand Strategy: Assessing Outcomes.' *Current Issues in Criminal Justice* 19(3): 327-44.
- King, Sue, David Bamford, and Rick Sarre (2009). 'Discretionary Decision-Making in a Dynamic Context: The Influences on Remand Decision-Makers in Two Australian Jurisdictions.' *Current issues in criminal justice* 21(1): 24-40.
- Kirkwood, Steve, and Donald Dickie (2008). 'The Case for Bail Supervision.' *Scottish Criminal Law*: 264-67.
- Krieg, Anthea S (2006). 'Aboriginal Incarceration: Health and Social Impacts.' *Medical Journal of Australia* 184(10): 534.

5. Appendices

- Kuehn, Bridget M. (2007). 'Mental Health Courts Show Promise.' *JAMA* 297(15): 1641-43.
- Law Reform Commission (WA) (2006). *Aboriginal Customary Law and the Criminal Justice System: The Interaction of Wa Law with Aboriginal Law and Culture* Perth, Law Reform Commission of Western Australia.
- Lo, Lucia, Paul Anisef, Ranu Basu, Valerie Preston, and Shuguang Wang (2009). *Infrastructure in York Region: Analysis of Human Services*. York, York University.
- Lynch, Mark, Julianne Buckman, and Leigh Krenske (2003). *Youth Justice: Criminal Trajectories*. Trends & issues in crime and criminal justice No 265. Canberra, Australian Institute of Criminology.
- Machin, Stephen, Olivier Marie, and Suncica Vujic (2010). *The Crime Reducing Effect of Education*. Centre for Economic Performance Discussion paper. London, London School of Economics and Political Science.
- Magistrates' Court of Victoria (2010). *Court Integrated Services Program* [Brochure, Circa 2010]. Melbourne, Magistrates' Court of Victoria.
- Mahoney, Barry, Bruce D. Beaudin, John A. Carver, Daniel B. Ryan, and Richard B. Hoffman (2001). *Pretrial Services Programs: Responsibilities and Potential*. Issues and Practices in Criminal Justice No NCJ 181939. Washington, National Institute of Justice
- Marshall, Jayne, Nichole Hunter, and Amy Marshall (2004). *A Profile of Remandees in Custody in South Australia on 30 June 2002*. Information Bulletin No 37. Adelaide, Office of Crime Statistics and Research.
- Mather, Steve (2008). 'Bail Supervision and Young People: Pathway or Freeway?' *Flinders Journal of Law Reform* 10: 675-91.
- Mazerolle, Paul, and Jennifer Sanderson (2008). *Understanding Remand in the Juvenile Justice System in Queensland*. Brisbane, Department of Communities.
- Milovanovic, Selma (2010). 'Pre-Trial Program Cuts Reoffending.' *The Age*, 28 June.
- MoJ (2009). *Story of the Prison Population 1995-2009: England and Wales*. London, Ministry of Justice
- Morgenstern, Christine (2009). 'Pre-Trial/Remand Detention in Europe: Facts and Figures and the Need for Common Minimum Standards.' *ERA-Forum* 9(4): 527-42.
- Nellis, Mike (2005). 'Out of This World: The Advent of the Satellite Tracking of Offenders in England and Wales.' *The Howard Journal of Criminal Justice* 44(2): 125-50.
- Newmark, Adam J. (2002). 'An Integrated Approach to Policy Transfer and Diffusion.' *Review of Policy Research* 19(2): 151-78.
- Ogloff, James R. P. (2002). 'Identifying and Accommodating the Needs of Mentally Ill People in Gaols and Prisons.' *Psychiatry, Psychology and Law* 9(1): 1-33.
- OICS (2009). *Remodelling Corrections for Juveniles and Young Men*. Issues Papers. Perth, Office of the Inspector of Custodial Services.
- Padgett, Kathy G., William D. Bales, and Thomas G. Blomberg (2006). 'Under Surveillance: An Empirical Test of the Effectiveness and Consequences of Electronic Monitoring.' *Criminology & Public Policy* 5(1): 61-91.
- Parton, Felicity, Andrew Day, and Jack White (2004). 'An Empirical Study on the Relationship between Intellectual Ability and an Understanding of the Legal Process in Male Remand Prisoners.' *Psychiatry, Psychology and Law* 11(1): 96-109.
- Passey, Megan, Jane Bolitho, John Scantleton, and Bruce Flaherty (2007). 'The Magistrates Early Referral into Treatment (Merit) Pilot Program: Court Outcomes and Recidivism.' *Australian and New Zealand Journal of Criminology* 40(2): 199-217

Young People On Remand In Victoria

- Passey, Megan, Bruce Flaherty, and Peter Didcott (2006). 'The Magistrates Early Referral into Treatment (Merit) Pilot Program: A Descriptive Analysis of a Court Diversion Program in Rural Australia.' *Journal of Psychoactive Drugs* 38(4): 521-29.
- Player, Elaine (2007). 'Remanding Women in Custody: Concerns for Human Rights.' *Modern Law Review* 70(3): 402-26.
- PwC (2009). *Economic Evaluation of the Court Integrated Services Program (Cisp): Final Report on Economic Impacts of Cisp*. Melbourne, Department of Justice, PricewaterhouseCoopers.
- Raes, An, and Sonja Snacken (2004). 'The Future of Remand Custody and Its Alternatives in Belgium.' *Howard Journal of Criminal Justice* 43(5): 506-17.
- Renzema, Marc, and Evan Mayo-Wilson (2005). 'Can Electronic Monitoring Reduce Crime for Moderate to High-Risk Offenders?' *Journal of Experimental Criminology* 1(2): 215-37.
- Riches, Vivienne Catherine, Trevor Reginald Parmenter, Michele Wiese, and Roger James Stancliffe (2006). 'Intellectual Disability and Mental Illness in the Nsw Criminal Justice System.' *International Journal of Law and Psychiatry* 29(5): 386-96.
- Roberts, Lynne, and David Indermaur (2009). *What Australians Think About Crime and Justice: Results from the 2007 Survey of Social Attitudes*. Research and public policy series No 101. Canberra, Australian Institute of Criminology.
- Ross, Stuart (2009). *Evaluation of the Court Integrated Services Program*. Melbourne, University of Melbourne.
- Rutherford, M., and S. Duggan (2009). 'Meeting Complex Health Needs in Prisons.' *Public Health* 123(6): 415-18.
- Sarre, Rick, Sue King, and David Bamford (2006). *Remand in Custody: Critical Factors and Key Issues*. Trends & issues in crime and criminal justice No 310. Canberra, Australian Institute of Criminology.
- Schönteich, Martin (2008). 'The Scale and Consequences of Pretrial Detention around the World.' *Justice Initiatives* Spring: 11-43.
- Scottish Executive (2005). *Smarter Justice, Safer Communities: Summary Justice Reform - Next Steps*. Edinburgh, Scottish Executive.
- Scottish Government (2005). *Bail and Remand: The Scottish Executive Action Plan*. Edinburgh, Scottish Executive.
- Scottish Prisons Commission (2008). *Scotland's Choice: Report of the Scottish Prisons Commission*. Edinburgh, Scottish Prisons Commission.
- SCRGSP (2010). *Report on Government Services 2010*. Melbourne, Productivity Commission.
- Sentencing Commission for Scotland (2005). *Report on the Use of Bail and Remand*. Edinburgh, Sentencing Commission for Scotland.
- Shaw, Mark (2008). 'Reducing the Excessive Use of Pretrial Detention.' *Justice Initiatives* Spring: 1-3.
- Sirotych, Frank (2009). 'The Criminal Justice Outcomes of Jail Diversion Programs for Persons with Mental Illness: A Review of the Evidence.' *Journal of the American Academy of Psychiatry and the Law* 37(4): 461-72.
- Slack, James (2009). 'Private Bail Hostels 'Can't Keep Public Safe' as Hundreds of Criminals Housed in Residential Streets Reoffend.' 7 April.
- Snowball, Lucy (2008a). *Diversion of Indigenous Juvenile Offenders*. Trends & issues in crime and criminal justice No 355. Canberra, Australian Institute of Criminology.
- Snowball, Lucy (2008b). *Juvenile Diversion and Indigenous Offenders: A Study Examining Juvenile Offenders in Western Australia, South Australia and New South Wales*. Criminology Research Council consultancy report No C02/06-07. Canberra, Criminology Research Council.

5. Appendices

- Social Exclusion Unit (2001). *A New Commitment to Neighbourhood Renewal: National Strategy Action Plan*. London, Cabinet Office.
- SPSS (2010). *PASW Statistics 18 Core System User's Guide*. Chicago, SPSS Inc.
- Steel, Alex (2009). 'Bail in Australia: Legislative Introduction and Amendment since 1970.' *Australia & New Zealand Critical Criminology Conference 2009: Conference Proceedings*, edited by Marie Segrave. Melbourne, School of Political & Social Inquiry, Monash University: 228-43.
- Stevens, Lonke (2009). 'Pre-Trial Detention: The Presumption of Innocence and Article 5 of the European Convention on Human Rights Cannot and Does Not Limit Its Increasing Use.' *European Journal of Crime, Criminal Law and Criminal Justice* 17(2): 165-80.
- Stubbs, Julie (2009). 'Critical Reflections on Bail and Remand for Young People in Nsw.' *Australia & New Zealand Critical Criminology Conference 2009: Conference Proceedings*, edited by Marie Segrave. Melbourne, School of Political & Social Inquiry, Monash University: 244-57.
- Tak, P.J.P. (2003). *The Dutch Criminal Justice System: Organization and Operation*. Onderzoek en beleid No 205. The Hague, WODC.
- Tanner, Melinda, Dillon Wyatt, and Douglas L Yearwood. (2008). 'Evaluating Pretrial Services Programs in North Carolina.' *Federal Probation* 72(1): 18-27.
- Terlouw, G.J., and P.A. Kamphorst (2002). *From Fixed to Mobile: An Evaluation of an Experiment with Electronic Monitoring for Minors as an Alternative for Preventive Custody*. Onderzoek en beleid No 195. The Hague, WODC.
- The Scottish Government (2005). 'Tougher Rules for Bail.' *News Release*, 26 September.
- Thomas, Sue (2005). 'National Evaluation of the Bail Supervision and Support Schemes Funded by the Youth Justice Board for England and Wales from April 1999 to March 2002.' London, Youth Justice Board for England and Wales.
- Thompson, Barbara (2001). *Remand Inmates in Nsw: Some Statistics*. Research Bulletin No 20. Sydney, Department of Corrective Services.
- Townhead, Laurel (2007). *Pre-Trial Detention of Women and Its Impact on Their Children, Women in Prison and Children of Imprisoned Mothers Series*. Geneva, Quaker United Nations Office.
- Tye, Deborah (2009). *Children and Young People in Custody 2008-2009: An Analysis of the Experiences of 15-18-Year-Olds in Prison*. London, Her Majesty's Inspectorate of Prisons - Youth Justice Board.
- United Nations General Assembly (1985), *Standard Minimum Rules for the Administration of Juvenile Justice ('the Beijing Rules')*. Adopted by resolution 40/33, 29 November.
- van Kalmthout, Anton M., Marije M. Knapen, and Christine Morgenstern, eds (2009). *Pre-Trial Detention in the European Union*. Nijmegen, Wolf Legal.
- Van Nostrand, Marie, and Gena Keebler (2009). *Pretrial Risk Assessment in the Federal Court: For the Purpose of Expanding the Use of Alternatives to Detention*. Washington, Department of Justice, Office of the Federal Detention Trustee.
- Varenik, Robert O. (2008). 'Mixing Politics, Data, and Detention: Reflections on Reform Efforts.' *Justice Initiatives* Spring: 172-83.
- VCOSS (2010). *Cause Not Consequence: A Platform for Smart Government*. Melbourne, Victorian Council of Social Service.
- Victoria (2010). *A Fairer Victoria 2010: Real Support – Real Gains*. Melbourne, Department of Planning and Community Development.
- Victorian Auditor-General (2008). *Services to Young Offenders*. Melbourne, Victorian Auditor-General's Office.

Young People On Remand In Victoria

Vinson, Tony (2004). *Community Adversity and Resilience: The Distribution of Social Disadvantage in Victoria and New South Wales and the Mediating Role of Social Cohesion*. Melbourne, Jesuit Social Services.

Vinson, Tony (2007). *Dropping Off the Edge: The Distribution of Disadvantage in Australia*. Melbourne and Canberra, Jesuit Social Services and Catholic Social Services Australia.

Vinson, Tony (2009). *Social Inclusion and Early Childhood Development*. Canberra, Department of Education, Employment and Workplace Relations.

Weatherburn, Don (2010). *The Effect of Prison on Adult Re-Offending*. Contemporary Issues in Crime and Justice No 143. Sydney, Bureau of Crime Statistics and Research.

Webster, Cheryl Marie, Anthony N. Doob, and Nicole M. Myers (2009). 'The Parable of Ms Baker: Understanding Pre-Trial Detention in Canada.' *Current Issues in Criminal Justice* 21(1): 79-102.

White, P., D. Chant, and H. Whiteford (2006). 'A Comparison of Australian Men with Psychotic Disorders Remanded for Criminal Offences and a Community Group of Psychotic Men Who Have Not Offended.' *Australian and New Zealand Journal of Psychiatry* 40(3): 260-65.

Wilson, Lauren (2010). 'Urgent Need' for Bail Hostels.' *The Australian*, 4 March.

Wolman, Harold (1992). 'Understanding Cross National Policy Transfers: The Case of Britain and the Us.' *Governance* 5(1): 27-45.

Wundersitz, Joy (2007). *Criminal Justice Responses to Drug and Drug-Related Offending: Are They Working?* Technical and background papers No 25. Canberra, Australian Institute of Criminology.

Wyndham Inquiry (1957). *Report of the Committee Appointed to Survey Secondary Education in New South Wales*. Sydney, A. H. Pettifer, Government Printer.

5.2 Acronyms and abbreviations

ABI: acquired brain injury
ABS: Australian Bureau of Statistics
BASP: Bail Advocacy and Support Programme
BASS: Bail Accommodation Support Scheme
BOCSAR: Bureau of Crime Statistics and Research
BSS: bail support services / Bail Support and Supervision
CISP: Court Integrated Services Program
CJPG: Criminal Justice Policy Group
CPT: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CREDIT: Court Referral and Evaluation for Drug intervention and Treatment
DEECD: Department of Education and Early Childhood Development
DOJ: Department of Justice
DPCD: Department of Planning and Community Development
DTTO: Drug Treatment and Testing Orders
EM: electronic monitoring
EU: European Union
GPS: global positioning system
JHSP: Justice Housing Support Program
JSS: Jesuit Social Services
MoJ: Ministry of Justice
MSC: most serious charge
NSW: New South Wales
NT: Northern Territory
OICS: Office of the Inspector of Custodial Services
POPs: Persistent Offender Programs
PwC: PricewaterhouseCoopers
QLD: Queensland
RF: radio frequency
SA: South Australia
SAAP: Supported Accommodation Assistance Program
SOU: Sentencing and Offences Unit
TAILS: Transitional Information Links Services program
TAS: Tasmania
UK: United Kingdom
VCSS: Victorian Council of Social Service
VIC: Victoria
WA: Western Australia
YJB: Youth Justice Board
YJ-CAS: Youth Justice Court Advice Service
YOTs: Youth offending teams
YSAS: Youth Substance Abuse Service
YTC: Youth Training Centre

YOUNG PEOPLE ON REMAND IN VICTORIA:

**GUILT YET TO BE
DETERMINED**

BALANCING INDIVIDUAL AND COMMUNITY INTERESTS

This comprehensive report analyses current Australian and international trends in evidence-based prison policy in Australia and overseas. This includes a review of remand and its place within the criminal justice system. The report includes a statistical analysis of more than eleven thousand Victorian remandees incarcerated while awaiting trial between 2008 and 2010, with particular attention to the socio-economic background of remandees by age, gender and Indigenous status. The analysis highlights the accumulated disadvantage of young people involved in the criminal justice system, including high rates of unemployment and low levels of educational attainment. This landmark report concludes with recommendations for remand reform that promote social inclusion and community safety, and the health and wellbeing of disadvantaged young people, families and communities.

Dr Matthew Ericson
Researcher, Jesuit Social Services

BEd (Hons), MPP (Hons) Sydney, PhD Monash
Matthew Ericson is a staff researcher at Brosnan Youth Services, a Jesuit Social Services program providing support and advocacy services for young people making the transition from custody to the community. Matthew Ericson is a quantitative public policy specialist, and a member of the Economics Society of Australia and the Public Health Association of Australia. He has worked in teaching, research and administration roles within the government, academic and non-profit sectors in Australia and Asia.

Professor Tony Vinson
Project Consultant, University of Sydney/Jesuit Social Services

Tony Vinson is an Emeritus Professor at the University of New South Wales and an Honorary Professor in the Faculty of Education and Social Work at Sydney University. His career spans the disciplines of social work, social policy, psychology, education, public administration and social research. He was appointed Foundation Director of the NSW Bureau of Crime Statistics and Research in 1970 and in the mid seventies was Professor of Behavioral Science in the Faculty of Medicine at the University of Newcastle. Following a revelatory Royal Commission into the NSW prison system, for three years (1979-1981) Tony Vinson headed the Department of Corrective Services during a period of intense reform. Professor Vinson has been published widely including the groundbreaking national study Dropping off the Edge: the distribution of disadvantage in Australia (2007), commissioned by Jesuit Social Services and Catholic Social Services Australia and Moving from the Edge: stories of achieving social inclusion (2010), commissioned by Jesuit Social Services.

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged young people, families and communities.

ISBN 978-0-9807366-4-9
Jesuit Social Services 2010
www.jss.org.au



Legal Services **BOARD**
Funded through the Legal Services Board Grants Program