



## **States of Justice: Criminal justice trends across Australia**

### **Position paper**

In Australia today the crime rate is down, but the number of people in prison is up; the people who commit crime (and are increasingly likely to go to prison for it) are also likely to commit *more* crimes than was the case five years ago; we have been increasing our spending on prisons twice as fast as we have been increasing our spending on education; and the people we put in prison are often among the most disadvantaged and vulnerable among us. What's wrong with this picture?

We acknowledge there is a place for prison – especially for those who commit serious, violent crimes. We all want to feel safe. We want those who commit crimes to be held to account. But our current approach to criminal justice is not making us safer—in fact, the opposite seems to be true. The evidence strongly suggests that the ever-increasing amounts of money we spend on prisons are not making us safer and could, at a time of tightening government budgets and restrictions on public spending, be put to much better use.

For the first time, Jesuit Social Services' *States of Justice* Report has drawn together data from around Australia to provide a fuller picture of how Australia's criminal justice system is trending. It offers a chance to delve into the reality of crime and punishment in Australia: that we are becoming more punitive but to less effect. This position paper gives a brief snapshot of the current situation as well as a number of suggestions, based on Jesuit Social Services' long experience over four decades in working with both offenders and victims, on how we might better prevent people from committing crimes, and respond to them more effectively when they do.

### **Who is in prison today?**

It's important to remember that behind every statistic in *States of Justice* stands a person—someone with a past and, if our criminal justice system can be made to work well, a more positive future. *States of Justice* offers a profile of the typical prisoner in Australia today.

This person is most likely to be male (92 per cent of prisoners are) and to have been born in Australia. He is, on average, 34 years old. He is very unlikely to have finished high school – only about 16 per cent have – and has an almost 50 per cent chance of having been unemployed before entering prison (this figure is significantly higher for female prisoners). Almost half of male prisoners, and over 60 per cent of females, have a history of mental illness. Family violence is experienced in the childhood and early years of many women in prison. There's a very good chance our prisoner has used illicit drugs, often methamphetamine. And once he (or she) leaves prison, he has a 43 per cent chance of being homeless, and a 79 per cent chance of relying on Centrelink payments to survive. He (or she) is also disproportionately likely to be Aboriginal or Torres Strait Islander (ATSI) – in 2015 the imprisonment rate for ATSI prisoners was 13 times higher than the rate for non-ATSI prisoners.

This is the Australian prisoner today—and there are more than ever before.

### **Trends in crime**

Good policy is based on evidence. Nationally consistent data on criminal offending can be hard to find, but *States of Justice* has collated figures from the Australian Bureau of Statistics and other national agencies, as well as State and Territory sources. It reveals some clear trends.

Since 2010, the number of people committing crimes in Australia has remained essentially the same (the offender rate has risen just 1% in that time). The rate of *offences* has increased by just six per cent nationally—and has actually reduced in three of the eight jurisdictions.

The number of people whose principal offence involved illicit drugs has increased every year since national records started being kept in 2008. And importantly, the number of *victims* of crime has fallen since 2010—from 3.1 million to a total of 2.7 million in the last 12 months.

### **Trends in sentencing**

It would be wrong, based on the above figures, to say that our nation is experiencing a crime wave. But you might draw that wrong conclusion if you look only at sentencing trends or the front pages of our newspapers. While the offender rate has remained relatively unchanged, our national imprisonment rate has risen by 25 per cent since 2012.

In 2016, for every 100,000 Australians, 208 of us are in prison. That compares with a figure of 196 just one year earlier. Our imprisonment rate might look good in

comparison with the USA rate of 693, but it does not compare well with many other countries, such as Denmark and Sweden which have imprisonment rates in the 50s. And we must remember that not everyone involved in the criminal justice system is in prison: many more, the vast majority of the corrective services population, are serving sentences in the community.

While some people present a real risk to the community and a period of incarceration is an appropriate response to the crimes they have committed, the pendulum has swung too far. Disturbingly, in just the last year (2015), the number of prisoners across Australia being held without sentence increased by 22 per cent – more than 12,000 prisoners are on remand in Australian prisons. This is due to a more risk-averse attitude to bail applications, as well as a number of legislative changes. In some cases remand is justified, however we must remember that it involves the imprisoning of people who have not been convicted of a crime. It should therefore be the option of last resort.

One way to measure the effectiveness of a criminal justice system is to look at recidivism: how many people return to prison after they leave? By this measure, we're going backwards. Forty four per cent of prisoners in Australia today have returned to prison less than two years after release. That's up from 39.9 per cent just five years earlier. This indicates that in many cases prison does not prevent crime—it may well nurture it.

### **What it costs**

From 2011 to 2015 the cost of imprisonment in Australia rose 26 per cent, from \$3 billion to \$3.8 billion. In a similar five-year period from 2010 to 2014, spending on education rose by just 10 per cent. As we've seen, our prisons are full of people who haven't completed school; what should Australians think about the fact that we increase our investment in locking people up much faster than our investment in educating them?

The picture becomes more stark when we examine the annual financial cost per prisoner in Australia. In the case of an adult, it is \$224 per prisoner, per day. It costs about a tenth of that to supervise an offender in the community. When we look at young offenders, the financial outlay is much greater: it costs more than \$1,300 per offender, per day to keep a young person in detention (versus \$113 for community-based supervision).

If you can think of a more effective use of these dollars, you're not alone. A Jesuit Social Services study in 2014 showed that by reducing reoffending rates in Victoria by 15 per cent, the state government could save up to \$23 million per year. This would be better spent addressing some of the underlying factors of crime, such as family violence, alcohol and drug misuse, mental illness, homelessness and entrenched disadvantage.

## **Spotlight on Young People**

*States of Justice* shines two ‘spotlights’ on sections of our population that warrant closer attention when it comes to their overrepresentation within the criminal justice system.

The first is young people. Many Australians were rightly shocked at the vision of young people at the Don Dale detention centre in the Northern Territory being stripped, hooded, and thrown into cells. But we must not forget that even best-practice youth detention should, according to the United Nations Convention on the Rights of the Child, be used only as a last resort and ‘for the shortest appropriate period of time.’

The good news is that youth offending in Australia has decreased, and so has the overall number of young people in detention or under community supervision. But there are still serious questions to be asked. Across Australia, when a young person reaches the age of ten years he or she can be charged with a criminal offence. This puts us behind many countries, including Canada (12), France (13), Germany (14) and China (14).

Those most likely to be charged are the most vulnerable children in society. In 2015, 64 per cent of children in detention in Victoria had current or previous involvement with Child Protection – up from 51 per cent in 2010. A similar percentage had been victims of abuse, trauma or neglect. A third had mental health issues; one in five had self-harmed or thought about suicide; and two thirds had a history of alcohol or drug abuse.

Prison rarely helps these children. In fact, it often increases their likelihood of re-offending. It interrupts their education, and introduces them to peers who are likely to influence them in the wrong direction. And it makes the thought of prison *less* of a deterrent in the future.

It’s also worth noting that young adults are over-represented in Australian prisons. Developmental psychologists now identify the period between 18 and 25—‘emerging adulthood’—as an important life stage that can determine future wellbeing. Unfortunately, too many young Australians spend this period of their lives behind bars: emerging adults represent 10 per cent of the general population, but 16 per cent of the prison population.

## **Spotlight on Aboriginal and Torres Strait Islanders (ATSI)**

Over-representation is an even worse problem among Aboriginal and Torres Strait Islander Australians. This group makes up just three per cent of the Australian population, but 27 per cent of prisoners. The problem has escalated drastically over the last 15 years: in that time, the ATSI adult imprisonment rate has risen by 77 per cent.

The welcome reduction in the detention of young people in recent years has not been replicated among ATSI youth, who are imprisoned at 24 times the rate of their non-ATSI counterparts. And recidivism, too, is amplified within this community. Last year, 77 per cent of ATSI people who were in prison had been there at least once before. This is only true of half of the non-ATSI prison population.

Twenty five years ago the report of the Royal Commission into Aboriginal Deaths in Custody was tabled in the Federal Parliament. It prompted cries of shame and promises to do better. Since that day, the number of ATSI people in custody has doubled. This recently led Senator Pat Dodson to ‘wonder what has happened to the principle of last resort.’ The data presented in *States of Justice* should prompt the same question.

### **Asking why—the social determinants of justice**

There is a place for incarceration in society, but there’s no doubt that prison is a place where the poor and marginalised are more likely to end up compared with other Australians. The more disadvantaged you are, whether it be in education, or health, or mental health, family violence or trauma, the more likely you are to enter the justice system.

As demonstrated in our *Dropping Off The Edge 2015* report, each state in Australia has a small number of postcodes in which the disadvantage experienced by residents is complex, entrenched, and far worse than in other places. In Victoria, for example, if you live in one of the three per cent most disadvantaged postcodes, you are three times more likely to be unemployed for the long term; two and a half times more likely to experience domestic violence; and *twice* as likely to have a criminal conviction. In fact, 50 per cent of Victorian prisoners come from just six per cent of postcodes.

*States of Justice* examines the social factors that lead to involvement in the criminal justice system. A 2015 report found that one third of people entered prison with a chronic health condition. In 2012, around a third of prisoners reported having a mental health condition; currently half now do. Meanwhile, sixty seven per cent of prisoners report using illicit drugs in the year before entering prison, and research shows that 60-90 per cent of the women who end up in prison in Australia have experienced violence, trauma, child abuse or sexual abuse in their past. A quarter of prisoners report being homeless before entering prison; 43 per cent are homeless when they leave and many are at risk of remaining so. Half are unemployed when they go in and most find it extremely difficult to secure a job when they come out. Only 16 per cent of prisoners in Australia have completed Year 12; just under a third have completed Year 10.

## Better approaches

So what can be done? *States of Justice* is designed to help policy-makers base decisions on hard evidence, rather than be driven to make sweeping changes on the back of the small number of high profile, serious and disturbing incidents and accompanying media campaigns. We must have a strong, targeted response to deal with serious, violent offenders. But if higher rates of imprisonment damage those imprisoned, cost large amounts of public money that could be better spent on schools and hospitals, and fail to make the community safer, then it makes sense to look at alternatives for prisoners who fall outside this category. Over 40 years Jesuit Social Services has witnessed first-hand the damage wrought on already disadvantaged Australians by a 'prison first' mentality; but we have also participated in alternative criminal justice responses that have transformed the lives of people who have offended, brought greater healing to victims, and provided a net social and financial benefit to the wider community.

Jesuit Social Services believes a strong society invests its efforts first and foremost in addressing underlying factors of crime such as (disadvantage, low education, unemployment), investing in prevention, early intervention (especially early childhood services) and diversion, and adopting a restorative justice approach to young offenders and victims.

Once someone is going off track, we must take steps to divert them from the criminal justice system or rehabilitate them through appropriate supports and programs that extend to their cultural context, family, peers and community environment. Programs such as Youth Justice Group Conferencing have proven very successful in this regard. In a group conference, the offender is brought face to face with the victims of his or her crime. This forces young people to confront the reality of what they have done, and can lead to profound remorse. Participants in these programs have lower re-offending rates after two years, compared with young people in detention. For every dollar invested in Group Conferencing, the government saves \$1.21 in the short term, and even more in the long term. We believe a restorative justice approach has the potential to reduce prison numbers and greatly improve community safety.

We call on all governments across Australia to:

- Prioritise basic services as government budgets tighten—especially those services that build stronger communities—and invest in long-term, place-based responses in locations where there is entrenched disadvantage. There should be a particular emphasis on early childhood interventions and increasing participation in education and employment.

- Work intensively with police, statutory services, schools and communities to identify at-risk young people and offer them genuine pathways to purposeful activity such as education or employment.
- In line with international standards and the UN Committee on the Rights of the Child, raise the age of criminal responsibility from ten to (at least) 12. The earlier a child has contact with the criminal justice system, the more likely he or she is to resume that contact again and again throughout life.
- Maintain – and strengthen – separate youth justice systems that provide age-appropriate responses based on the unique needs and potential of children and young people.
- Expand investment in restorative justice approaches to promote insight on the part of offenders, and meaningful participation of victims.
- Implement measures to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.
- Introduce recidivism targets to drive accountability and improve systemic responses to those at risk of reoffending.
- Provide more intensive transition support for highly vulnerable people leaving prison, with the aim of breaking the cycle of recidivism and making the community safer – including access to housing and support.
- Finally, make a combined effort to collect nationally consistent data on crime rates, family violence and recidivism, and ensure that policy is based on clear evidence.

The data collected in *States of Justice* tells a story of more money being spent on crime and punishment, for worse results. If we truly commit to the above alternative approaches, we believe that we will be able to tell a better story in future reports. We commend this report to everyone who is interested in assessing the purpose, effectiveness, and public value of Australia’s criminal justice system.