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The Booming Industry continued: Australian Prisons
A 2017 update

The Booming Industry continued: Australian Prisons

A 2017 update

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Abstract

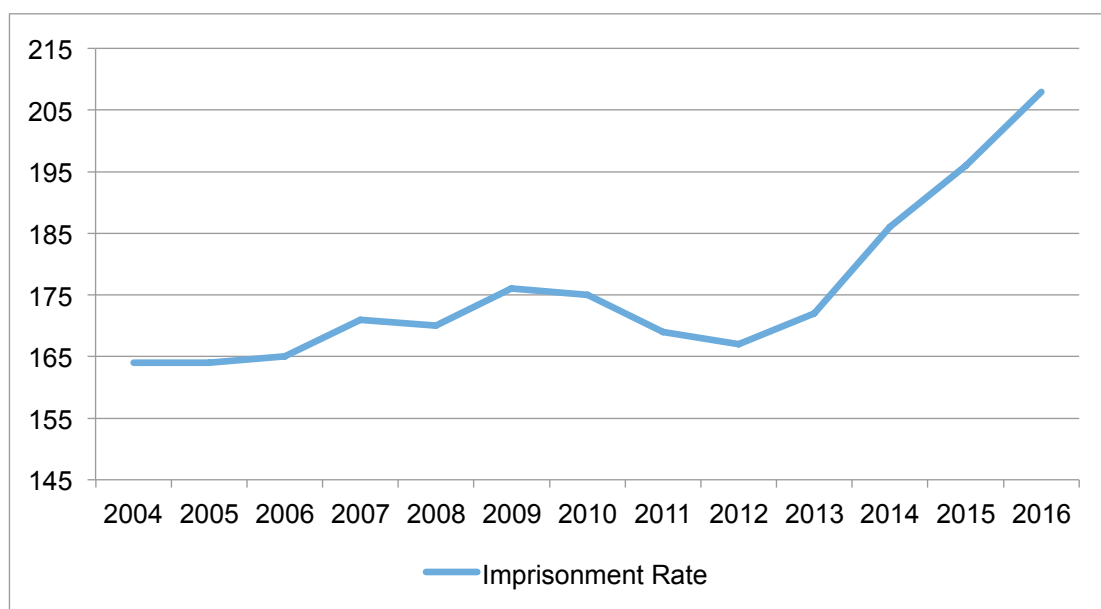
The number and rate of people imprisoned in Australia has, with some exceptions, risen rapidly over the past three decades. The largest rates of increase have been in remand, women, and Indigenous prisoners. The flow prison population over a year is close to double the numbers in the census or static population count due to the high numbers of remand and short sentence prisoners. There has been a concomitant rise in the rate and number of prisoners being released back to the community, noting that remand and short sentence prisoners make up the large majority of releasees. Many thousands of these releasees are back in prison within two years: on the prison conveyor belt cycling in and out. The majority of prisoners are from severely disadvantaged backgrounds, with serious health, mental health and disability concerns. Those with mental and cognitive disability and a history of abuse are grossly over-represented amongst the prison population, as are Indigenous Australians. The prison is tasked with a number of purposes: punishment, deterrence, protection and rehabilitation. But the legitimacy and indeed the viability of these purposes for the majority of those in prison and for the wider citizenry in the context of increasing imprisonment in Australia is challenged using social justice and community well-being analyses.

Introduction

Australian prison population

There were 38,845 full time inmates (sentenced and unsentenced) in prisons in Australia on census date 30th June 2016, a rise of 6% over the previous year (ABS 2016). The most useful method of representing and comparing the number of prisoners over time is the rate per 100,000 of the adult population. Using this representation, the rate was 208 prisoners per 100,000 in 2015 (388 per 100,000 males and 33 per 100,000 females), an increase from 30 June 2004 when it was 159 per 100,000 as shown in Graph 1. In other words proportionally the prison population has grown much faster than the general population.

Graph 1 Australian Imprisonment Rates 2004 - 2016



(Australian Bureau of Statistics, Prisoners in Australia 2016)

In New South Wales (NSW) (the most populous of the eight Australian states and territories, and the one with the largest number of prisoners) alone, the adult prisoner population grew by 21% over the two-year period from June 2014 to June 2016 (NSW BOCSAR 2016).

These figures though are based on a census, that is, a count made on one day of the year. It does not provide the more dramatic, volatile picture of how many flow in and out of prison over a year with an average of around 1000 people admitted to and released from prisons around Australia every week. The majority of prisoners (sentenced and unsentenced) are

incarcerated for under 12 months for lesser offences, therefore the flow through number of prisoners is much higher than the census figure suggests (ABS 2015). There is no national accounting of this but the flow population over a year has been estimated to be close to double that of the census numbers (Baldry et al 2006:21).

Prisoners and disadvantage

All prisoner demographic information confirms that prisoners, as a group, are significantly more disadvantaged than the general population. The description below by John Ryan MLC, Chair of the NSW Parliamentary Inquiry into the Increase in Prisoner Population (2002) is supported by more recent analyses (Cunneen et al 2013; Australian Red Cross 2016) and still applies generally:

The prison population consists of men and women who are, on average, of lower socioeconomic status, of poorer health and of lower levels of education than the rest of the population. For example:

- 60% of inmates are not functionally literate or numerate;
- 60% did not complete year 10;
- 64% have no stable family;
- 60% of males and 70% of females had a history of illicit drug use.

Indigenous men and women and those with an intellectual disability or a mental illness are significantly over represented. The majority of prisoners who pass through the prison system each year serve sentences of less than six months.

Prisoners come from and go back to a relatively small number of disadvantaged suburbs or towns with a high proportion dependent upon social housing due to disability, unemployment, domestic violence and poverty; at least 60% were not employed when arrested and very few gain employment upon release with a majority being dependent upon government benefits (Baldry et al 2006; Vinson and Rawsthorne 2015).

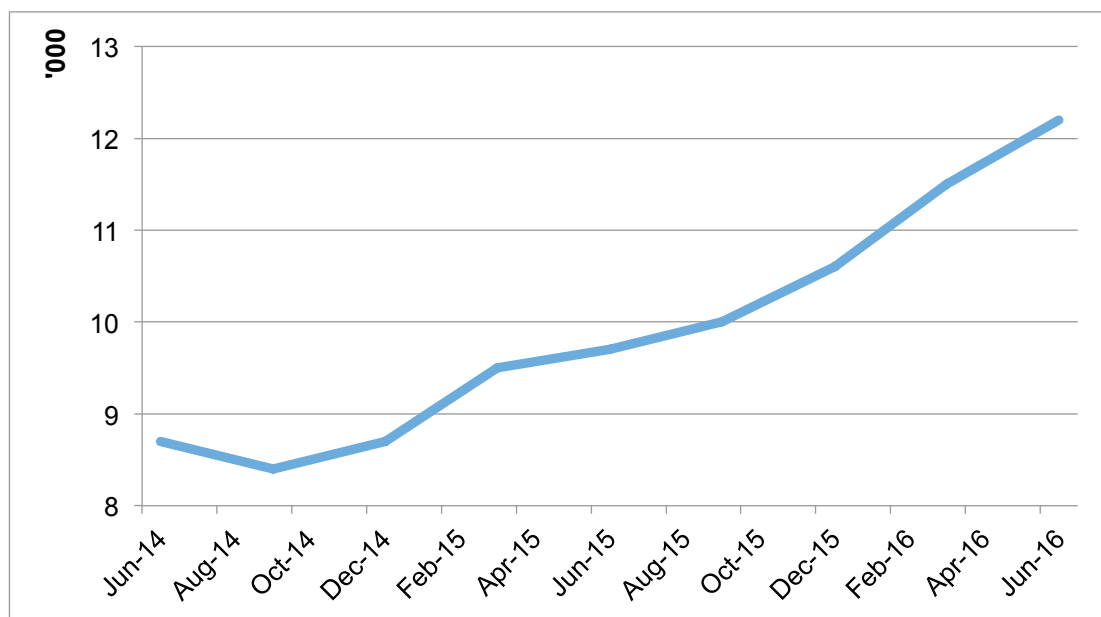
Prisoners' physical health is much worse than the general population. Prisoners in NSW for example have very poor oral health, very high levels of alcohol consumption and tobacco smoking (75% men and 80% women compared with 17% in the general population) and high

levels of Hepatitis C (45% of women and 28% of men) (Indig et al 2010). This is similarly reflected in nation-wide reports on the health of prisoners in Australia (AIHW 2015), for example the Australian Institute of Health and Welfare (2015) has reported that 32% of prison entrants have ever been told they have a chronic health condition. This is particularly concerning given the vast majority of prisoners are males between 20 and 40 years of age.

Increases in remand, Indigenous and women prisoners

There has been a dramatic rise in those held in remand, that is, in those who have been charged, not been granted bail, are held in prison custody awaiting their court appearance or trial but have not yet been found guilty. Remand prisoners accounted for over a quarter (27%) of the full-time prison population in 2016, an increase of 22% from the previous year, and is the largest increase in the last decade, following increases of 11% from 2013 to 2014, and 21% from 2014 to 2015 (ABS 2016b).

Graph 2 Unsentenced prisoners in Australia, June 2014 - June 2016



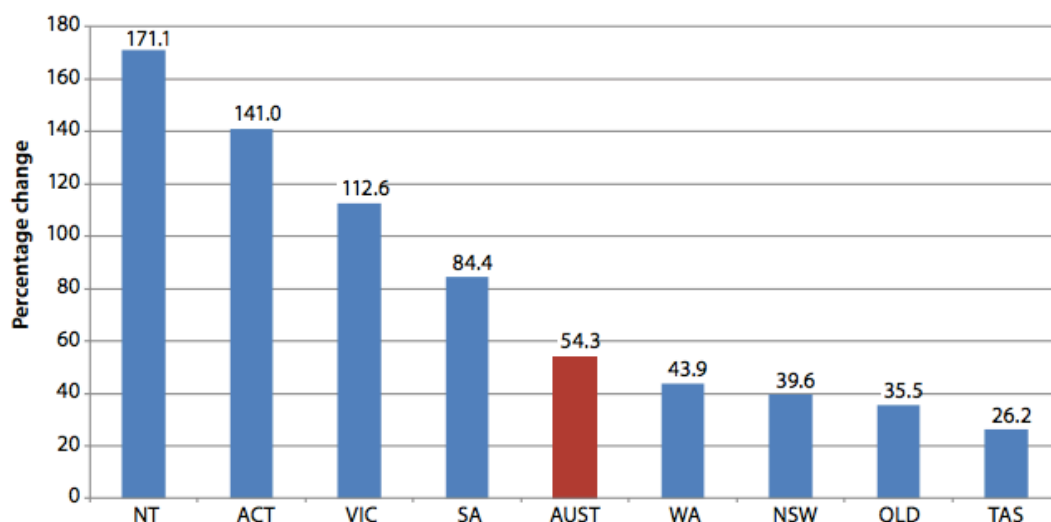
(Australian Bureau of Statistics, Corrective Services Australia, 2016)

A period in remand is not a light matter. Persons held on remand are held in full-time custody usually in the equivalent of maximum security and have little access to education or programs due to uncertainty regarding their date of release. They have usually been committed to

remand in custody straight from court with little time to arrange for matters such as care of children or to secure their housing and care of pets.

The rapid rise in the Indigenous imprisonment rate is even more dramatic. Indigenous Australians represented 27% of the prison population in 2016 (ABS 2016b), up from 24% in 2006 and 14% in 1992 (AIC 2008). Between 2001 and 2015, the rate of Indigenous Australians in NSW prisons more than doubled (Weatherburn and Ramsey 2016).

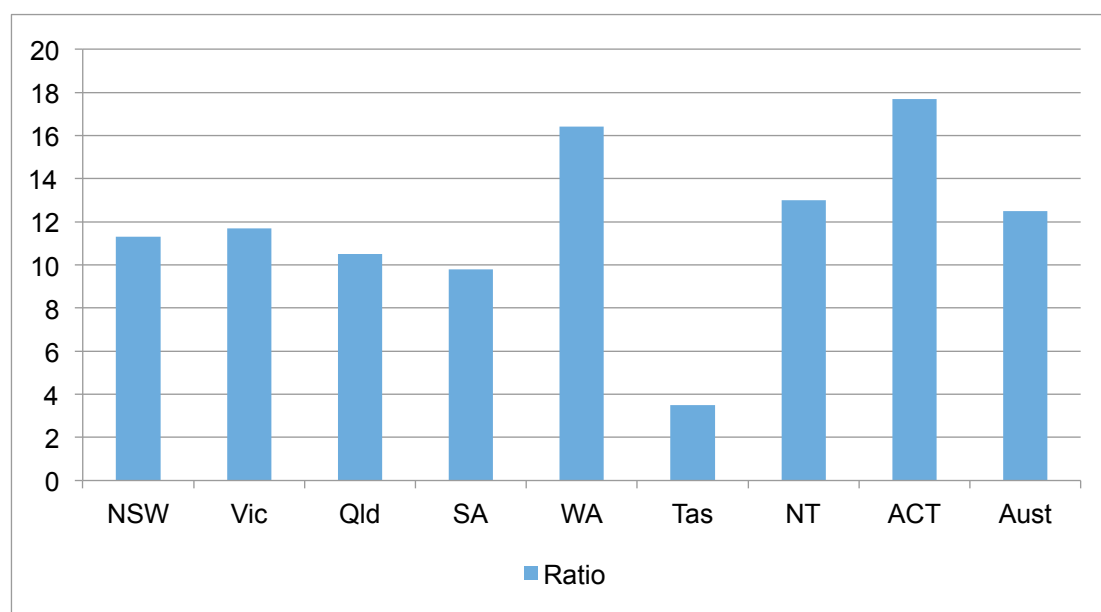
Graph 3 Percentage change in the age standardised rate of Indigenous imprisonment by jurisdiction, 2001 - 2015



(Weatherburn and Ramsey 2016)

The age standardised rate (a method of accounting for the much higher percentage of younger persons in the Indigenous as compared with the non-Indigenous population) of 2,039 per 100,000 adult Indigenous population means that Indigenous Australians are 13 times more likely to be imprisoned than non-Indigenous Australians (ABS 2016). This over-representation varies significantly across Australia, with Indigenous persons in the ACT being 17 times compared with those in South Australia being 10 times more likely to be imprisoned than non-Indigenous persons in those states as indicated in Graph 4 (ABS 2016).

Graph 4 Ratio of Indigenous to Non-Indigenous Age Standardised Imprisonment Rate, States and Territories 2016



(Australian Bureau of Statistics, Prisoners in Australia 2016)

Clearly no matter whether to a very high or lesser degree, Indigenous Australians are grossly over-represented in Australian prisons.

The third group of prisoners that is growing rapidly is women. Although they are still a very small proportion of the prison population at just over 8% this represents a significant growth over the past decade. From 2005 to 2016, the rate of women's imprisonment rose from 22 to 33 per 100,000 of adult women over the same period. The number of female prisoners increased by 8% (218 prisoners) from 2,876 prisoners at June 30 2015, to 3,094 prisoners at 30 June 2016 (ABS 2016b). By contrast, there were 35,745 male prisoners in Australian prisons, an increase of 7% (2,489 prisoners) from 33,256 prisoners at 30 June 2015 (ABS 2016b). This growth in women prisoners appears to be made up largely of Indigenous women and women on remand.

Reports have found women's prisons are becoming increasingly overcrowded. The Queensland Ombudsman (2016) reported that two prisoners sometimes share a cell designed for one at the Brisbane Women's Correctional Centre, which means one prisoner sleeps on the floor with their head close to an exposed toilet and shower. Overcrowding raises concerns around privacy, dignity and hygiene, and also affects the delivery of health services and

education and therapeutic programs. The Red Cross has reported that the rate of prison occupancy is high in all Australian jurisdictions, reaching approximately 104.4% in 2013-14 (Australian Red Cross 2016). It is therefore not surprising that concerns have emerged also around overcrowding at men's prisons in other states and territories (see Naylor 2015).

This very brief overview of the Australian prisoner population and its growth provides a context for an analysis of this growth and a discussion of particular aspects of the penal estate.

Recidivism

Recidivism occurs when persons convicted by the courts return to prison or receive a community corrections order. (The Audit Office of NSW, 2006:83)

One stated purpose of prison is to rehabilitate by both providing the prisoner with an incentive never to return to prison and with programs that assist in changing behaviour and lifestyle to assist that to happen; every Corrective Service in Australia has reducing recidivism as an aim. The crudest measure of the success of this venture is the rate of recidivism. For the purposes of this paper return to prison, excluding re-arrest and being given a community order, will be used. Most Australian agencies use return to prison within two years of release as a common measure. This rate sits at 44% (Productivity Commission 2016). So, almost half of those released will be re-imprisoned within two years. But 'whenever having served a sentence before' is used over half the prisoners in all states and territories (except South Australia where the rate sits at 49%) have been in prison before (ABS 2015). Again this is variable, depending upon the jurisdiction. For example the Australian Capital Territory has the highest known prior imprisonment rate at 75% of its census prisoners, followed by the Northern Territory at 72% (ABS 2015). This must be understood in the context of the explanation given earlier of the flow, as opposed to the census population in prison. A higher percentage of the flow through population has been in prison before as compared with the census population that is skewed by those in prison on long sentences for serious crimes, like murder, and who are not on the whole recidivists. So if recidivism were to be measured for the flow through population it would be higher than it appears using the census population.

So prison does not appear to reform nor deter the majority of those who have been there before.

Prison: the new therapeutic community?

Politicians and society, in the ‘Western world’ at least, have been trying to use prison as a solution to multi-layered and complicated social disadvantages. This is not a new phenomenon. But it has re-intensified in Australia over the past three decades with the rapid increase in the growth of imprisonment of those with mental, cognitive and multiple disabilities, the homeless and Indigenous persons.

Mental health disorders

Prisoners have much higher rates of mental health problems than the general community. National and State reports from the Human Rights and Equal Opportunity Commission (1993) report (The Burdekin report) onwards have drawn attention to the growing social inequity of the increasing numbers of people with mental disorders caught in criminal justice systems (see for example Karras et al 2006; Parliament of Australia Senate Select Committee on Mental Health 2006; NSW Parliament Legislative Council Select Committee on Mental Health 2002; Butler et al 2006; Australian Human Rights Commission 2008; NSW Law Reform Commission 2012a; Australian Institute of Health and Welfare 2015).

In NSW a 2001 survey of prisoners (Butler & Allnutt 2003) found a 12 month occurrence of any psychiatric disorder (psychosis, anxiety disorder, affective disorder, substance use disorder, personality disorder) of 74% amongst prisoners (86% for females; 72% for males) compared to 22% in the general population. When alcohol and other drug disorders as the only disorder were removed, 50% of reception inmates and 30% of sentenced inmates had mental health disorders: specifically, 9% of prisoners Vs 0.42% general population suffered psychosis; 22% Vs 6% suffered affective disorder; and 43% Vs 10% had suffered anxiety disorder in the 12 months prior to the survey. So although these persons had committed a crime or crimes they also suffered mental disorders at a much higher rate than the rest of the population. A 2009 survey of prisoners in NSW (Indig et al 2010) found an increase in the proportion of prisoners who have ever been assessed or treated by a doctor or psychiatrist “for an emotional or mental problem” from 39% in 1996 to 43% in 2001 to 49% in 2009. The

Australian Institute of Health and Welfare (2015) reported that almost half (49%) of prison entrants in 2015 reported ever being diagnosed with a mental health disorder (including alcohol or other drug disorder).

These findings are supported in international studies (Prins 2014; Reed & Lyne 2000; Fazel and Seewald 2012) as well as other Australian studies. In NSW, the Australians with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System Project (<http://www.mhdcd.unsw.edu.au>) found that people with mental health disorders and cognitive disabilities:

- Experience low rates of court diversion and higher rates of Juvenile Justice contact;
- Face higher rates of convictions with higher rates of low level offences;
- Are likely to have experienced earlier and more frequent contact with police;
- Experience higher rates of imprisonment (particularly remand) from an earlier age, with shorter and more frequent prison episodes and higher continuing lifelong episodes within the criminal justice system;
- Have poorer physical as well as mental health, and higher rates of alcohol and other drug use problems than those without these diagnoses;
- Have experienced very poor school education and low disability service recognition and support; and
- Those with complex support needs (both mental health and cognitive disability with other disadvantages) have higher levels of ongoing life-long criminal justice involvement than those with single or no diagnosis (Baldry 2011).

The continuum from juvenile detention to adult prison (Chen et al 2005) in which significant numbers of juvenile detainees progress to adult prison, is also seen in the exceptionally high rates of potential mental health disorders amongst that population of young people. NSW Justice Health and Juvenile Justice (2016) reported that 83% of the young people in custody have a psychological disorder. These included 78% having symptoms consistent with a behavioural disorder and 64.5% with substance use disorder. In addition to this, 70% were found to have experienced abuse and 30% had experienced 'severe' abuse (NSW Justice Health and Juvenile Justice 2016).

Cognitive Disability

Internationally and in Australia the level of cognitive functioning amongst prisoners is much lower than in the general population. The disabilities range from intellectual disability (with a formal assessment before the age of 18 of under 70 IQ plus low social adaptive functioning) to foetal alcohol spectrum disorder, acquired brain injury resulting in poor cognitive capacity and borderline intellectual disability (between 70 and 80 IQ). In fact one study in the UK revealed the extent of poor cognitive functioning of the prison population with 45% of a sample of prisoners in a major British prison having borderline or full intellectual disability (Hayes et al 2007). Other studies from the UK have similarly found high levels of neurodevelopmental disorders in male prisoner populations (McCarthy et al 2016).

A NSW study revealed the extreme disadvantages suffered by prisoners with intellectual disability and the over-representation of Aboriginal and Torres Strait Islander Australians amongst those in contact with the criminal justice system (Baldry et al 2015). Another study found that 10% of young male prisoners had an IQ composite of 69 or below, indicating intellectual disability (Herrington 2009). In NSW the high representation of people with an intellectual disability in the criminal justice system has been well recognised (Department of Family and Community Services 1988; NSW Legislative Council Inquiry into the Increase in Prisoner Population 2001; Simpson et al 2001; NSW Law Reform Commission 2012a; Baldry et al 2015). In a survey of juvenile offenders in NSW, 18% had cognitive functioning scores consistent with a possible intellectual disability, compared with less than 3% of the general population (ABS 2014); and 39% had cognitive functioning scores consistent with borderline intellectual disability (NSW Health and NSW Justice 2016). In addition to this, 51% had severe difficulties in core language skills, and 79% had severe difficulties in reading and comprehension (NSW Health and NSW Justice 2016).

The NSW Sentencing Council (2004) outlined the serious consequences of imprisonment for people with cognitive disabilities:

- Entrenchment within a culture of criminality due to the tendency of those with intellectual disabilities to want to be accepted by their peer group.
- Readjustment problems post-release as people with intellectual disabilities inherently have impaired adaptive skills.

- Vulnerability to being assaulted and mistreated in the mainstream prison environment.

There is a high rate of complex support needs (dual and multiple diagnoses) amongst those with cognitive disability with a high number having a mental health disorder and drug or alcohol use problem as well (Baldry et al 2013; Bhandari et al 2015). This group of people's disability related behavior is frequently criminalised, often when they are young, leading to their management by criminal justice agencies rather than disability, social and health service support (Baldry 2014).

Prison as a care institution

Prison does not rehabilitate offenders with these disabilities because it is not and cannot be, a therapeutic community; it cannot serve both punishment and therapeutic purposes because they are antithetical and prison's primary focus is security not therapy. This does not mean prisons cannot provide therapeutic programs and services, they should, but prisons are not fundamentally therapeutic spaces. Prison by its very nature, excludes normal society, promotes prison living skills and actively erodes community living skills, the very skills the de-institutionalisation movement aimed to restore to those with mental health disorders. Most of these persons need long-term social and health assistance and support, which are not achievable whilst cycling in and out of prison.

The argument that at least persons with these disorders and disabilities are being cared for in prison and receiving health care that they do not receive in the community is spurious. Of course inmates should receive good health and social care but imprisoning a person is an extremely serious step because it has so many negative implications. Even if prison services provide the best programs and health care possible, going to prison and having a criminal record disadvantages the already disadvantaged. It makes a person a target for re-arrest and re-imprisonment; it disrupts social connections and locks people into serial institutionalisation, does not guarantee good or appropriate treatment and often any treatment started is not continued in the community upon release; it makes homelessness more likely, re-criminalises and creates connections with criminal culture, ensures the learning of prison culture to survive and often leads to self-harm and depression (Stern 2006; Baldry et al 2006; Willis et al 2016).

Indigenous Australians

The unconscionably high rate of Indigenous Australians in prison has been argued to be associated mainly with higher serious offending levels especially related to violence and alcohol abuse (for example see Weatherburn et al 2003) rather than bias in the criminal justice system. Others such as Cunneen (2006; Cunneen et al 2013), whilst not resiling from the recognition of high offending rates, argue that also the range of Aboriginal Australians' experiences of removal, dispossession, exclusion from education and employment, as well as institutional discrimination must be considered as having a part in Indigenous offending rates and over-representation in prison. Blagg (2008) and others (see for example Baldry et al 2015) argue for Indigenous Australians to have greater ownership and control over criminal justice processes to overcome the continuing colonising effects of current criminal justice approaches.

Costs

Prison is an expensive business with the taxpayer footing the total bill. Both the financial and social costs of locking up more people are, not surprisingly, increasing. Expenditure on prisons alone in Australia in 2014/2015 was \$2.9 billion (Productivity Commission 2016: 8.3). From 2007-2008 to 2012-2013, criminal justice (all criminal justice agencies) expenditure increased by 24% overall and by an average of 5% each year (AIC 2014). All jurisdictions are building more prisons or expanding current prisons to accommodate the growing numbers. The costs of building prisons are high but higher still are the recurrent costs of maintaining and running them (NSW Legislative Council Inquiry into the Increase in Prisoner Population 2001; Productivity Commission 2016:8.4). The total average cost (including capital and recurrent costs) per prisoner per day in Australia in 2014-2015 was \$301 (Productivity Commission 2016:8.22). This varied across states and territories and was the highest in the Australian Capital Territory (\$421 per prisoner per day) and in Tasmania (\$420 per prisoner per day) (Productivity Commission 2016). In 2016, the NSW Government announced it would spend a further \$3.8 billion dollars on the expansion of the prison estate in NSW, in order to increase current prison capacity by 7,000 beds (NSW Government 2016).

The social costs are immense. Quilty et al (2004) taking NSW as an example, estimated large numbers of children, some 60,000, suffer the imprisonment of a parent at some time in their

childhood. Taking into consideration the enormous expansion of the prison system over the past decade, the number of children across Australia today would be significantly higher. Children of women prisoners experience loss of their mother and are often placed in out of home care or in the informal care of extended family and children of prisoners in general experience disrupted schooling and greater poverty and are more open to abuse and the likelihood of themselves ending up in prison (NSW Department of Juvenile Justice 2005; Murray 2007; Commonwealth of Australia 2013). Other family members are affected with partners and parents of prisoners experiencing upheaval, loss of income, difficulties of visiting and stigma (Cunningham 2001; Dennison et al 2005).

Prisoners lose housing and jobs (if they had any), become more indebted and lose social capacity during imprisonment. Upon release they are usually worse off than when they were incarcerated with around a half being homeless and the rest being in unstable or unsuitable housing and over 75% being unemployed (Baldry et al 2006). The financial and social costs affect those with complex support needs, Indigenous Australians and women to a greater degree than others. For example some Aboriginal families and communities and particular highly disadvantage suburbs are decimated by incarceration and do not have the financial or social resilience to support those returning from prison, thus continuing the imprisonment cycle. Post-release life is made even more difficult by ex-prisoners being discriminated against in employment and the rental market (NSW Legislative Council Inquiry into the Increase in Prisoner Population 2001; Walsh 2006). Prisoners with a history of mental health disorder face additional challenges on release from custody; with studies showing they experience poorer outcomes (Cutcher et al 2014).

Prison is criminogenic

Jones et al (2006) point out that a significant number of parolees are re-arrested or are breached for parole violations and returned to prison but given that there are such large numbers of prisoners with disorders and disabilities, it is not surprising that many cannot manage to meet parole requirements.

Having a higher chance of returning to prison applies to remandees, not just those who have been on sentence. Large numbers on remand are released without having to serve further time in prison because they are found not guilty, given a community order or it is deemed that

their time on remand (usually a period of weeks or a month) equals their sentence (NSW Law Reform Commission 2012b). For example, the NSW Law Reform Commission reported that of the 10,342 people who were held on remand during 2010 in NSW, 5,218 or 55% were released as ‘unconvicted’ or were not subject to a further custodial sentence (2012b: 51).

This hardly represents the dangerous criminal profile politicians argue tighter bail laws are meant to corral on remand. In the current policy and legislative climate of building more prisons to manage risk and therefore to deal with difficult social problems and an era of reduced systemic support for those with such needs, more people with little capacity to negotiate the criminal justice system will be imprisoned and the more persons imprisoned, the more will re-offend and return to prison; so prison itself is criminogenic, that is it causes crime (Haney 2005; Tonry & Petersilia 1999; Weiman 2007; Weatherburn 2010).

Conclusion

When the current use of prison is subjected to a critical social justice analysis, as has been done in this article, a number of things become clear.

- The facts that increasing numbers of people with poor educational backgrounds, mental and cognitive disabilities and very low financial capacity find themselves imprisoned, and when released have even less capacity to negotiate their way around society successfully and are quickly returned to prison are evidence of criminalisation of socially disadvantaged persons and systemic failures of social and human services and of increasing inequity.
- There is an imperative to reduce the number and rate of Indigenous Australians’ imprisonment.
- Australian society is diminished by the increasing use of prison to address multi-layered social disadvantage and difficulties.

A fairer and safer society with lower rates of offending is likely to be achieved not by criminalising greater numbers of persons with less social capacity but rather by improving society’s capacity to support their most vulnerable members, early educational, family, social and health support and reducing inequity in the community.

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