

JUSTICE
REFORM
INITIATIVE

JAILING
IS
FAILING



HIGHLIGHTS

THE NEED FOR ALTERNATIVES TO INCARCERATION **IN TASMANIA**

AUGUST 2023



Too many Tasmanians are trapped in a cycle of incarceration, repeatedly encountering a justice system that fails to address the causes of crime and entrenches ongoing justice system involvement.



Over-incarceration in Tasmania causes significant harm – to the children and adults who are themselves incarcerated, to the families and communities who care for people who are imprisoned, and to the broader community as a consequence of the failure of imprisonment to improve community safety. Across the country, governments on both sides of politics have regularly adopted a 'tough on crime' approach to justice policy which has resulted in increasing numbers of people in prison. Although these kinds of approaches can be politically popular, they have been monumentally ineffective in reducing cycles of incarceration, ineffective in building safer communities and extraordinarily expensive.

The imprisonment rate in Tasmania has grown significantly in the last decade and recidivism rates show us that what we are doing simply is not working. We need to take a clear-eyed and evidence-based approach to criminal justice, forming policy and practice around what *works* – not what is popular or based on kneejerk reaction.

There is currently a commitment on the part of the Tasmanian Government to build a new \$270 million prison in the north of the state. This is despite decades of evidence highlighting imprisonment's failure to reduce crime or build community safety. Meanwhile, there is extraordinarily piecemeal and limited funding for evidence-based programs that address the drivers of incarceration. The Justice Reform Initiative proposes that the \$270 million earmarked for a new prison would be far better spent on establishing a 'Breaking

the Cycle' fund to resource community led programs that have an evidence base, with a particular emphasis on building the capacity of First Nations organisations.

There is the opportunity for Tasmania to lead the country in justice reform. The small size of the jurisdiction, the recent acknowledgement of the youth justice system's failings, and the capacity of the Tasmanian parliament to work together to improve community safety is critical foundational work. There is however, the need for expanded investment by the Tasmanian Government into evidence-based programs and services run by the community sector (including First Nations-led organisations) that address the social drivers of contact with the criminal justice system and provide 'off-ramps' out of the justice system.

These programs (if properly resourced) will:

- Significantly reduce recidivism for children and adults and in turn improve community safety.
- Successfully divert children and adults who are at-risk of being involved in the criminal justice system.
- Strengthen families and communities, which are too often 'managed' in justice system settings rather than receiving the support, care and opportunities that would make a difference in the community.
- Result in significant cost-savings and substantial improvements in health and wellbeing across the community, including for victims.



THE STATE OF INCARCERATION IN TASMANIA

The most recent Productivity Commission data shows us that there are, on an average night 642 adults locked up in Tasmania's five prisons.¹ The prisoner population in Tasmania increased dramatically between 2011/12 and 2021/22, with the Productivity Commission noting an increase of more than 36% over the last decade (up from 473).² At the same time, crime rates in Tasmania have remained relatively stable. There is no causal relationship between high imprisonment rates and reduced crime. In fact, it is increasingly clear that in Tasmania, the rise in imprisonment is not driven by severity of offending, or crime, but rather by systemic failings and policy and legislative choices that end up funnelling people, mainly people who suffer disadvantage, unnecessarily into imprisonment.



More than two-thirds of people in prison in Tasmania have been in prison before – and the trend is rising.

The growth in the number of people in prison is in part associated with the increased use of remand. In 2012, the remand population in Tasmania constituted 18% of the total prison population. In 2022, 33% of people in prison in Tasmania were imprisoned on remand.³ This is important in the context of this report as there are specific supports, services, and approaches for people on bail that have strong evidence base in terms of reducing incarceration.

Although there are currently on average 642 people in prison in Tasmania, reception and release data allows a more comprehensive picture of the 'churn' of the adult prison population. In 2022, 1567 people were received into full-time custody in Tasmania,⁴ and 1537 people were released.⁵ When we are considering 'what works' to reduce the numbers of people in prison, these are the numbers we need to consider.

Aboriginal and Torres Strait Islander adults are 6.5 times more likely to be in prison than the non-Aboriginal adult population⁶ and account for 22.7% of Tasmania's prison population⁷ despite just making up 5.4% of the general population.⁸ The incarceration rate for Aboriginal and Torres Strait Islander Tasmanians is 797 per 100,000 adults, compared to 116 per 100,000 adults for non-Indigenous Tasmanians.⁹ The number of Aboriginal and Torres Strait Islander people incarcerated has increased by 111% in Tasmania over the last decade (from 73 people to 154 people).¹⁰ Over that same period the rate of non-Indigenous people in custody has increased by 20%.¹¹

Each contact with the criminal justice system, as it currently operates, increases the likelihood of further interaction. More than two-thirds of people in prison in Tasmania have been in prison before – and this trend is rising. In fact, the known prior imprisonment rate rose from 60.7% in 2012 to 67.3% in 2022.¹² The annual operating cost of imprisonment in Tasmania in 2021/22 was over \$101 million.¹³ When capital costs are included, this increases to more than \$131 million.¹⁴ The real



direct cost per adult prisoner per day is \$432.27 or \$157,778 per year – the second highest in the country.¹⁵

The cost of the incarceration of children in Tasmania also requires attention. Although Tasmania (relative to other Australian jurisdictions) has fairly low rates of children's incarceration, the real recurrent expenditure on youth detention in Tasmania in 2021/22 was \$16.16 million.¹⁶ Every incarcerated child in Tasmania costs \$4861.32 per day (or more than \$1.8 million per year per child).¹⁷ On an average day, there were eight children in detention in Tasmania in 2021/22.¹⁸ Half of these children were Aboriginal and Torres Strait Islander.¹⁹

As is the case with the adults, the flow-through population is considerably higher than the static or average population. There were 44 children who were incarcerated in Tasmania over 2021/22.²⁰ Five of those children were aged between 10 and 13.²¹ Data from the Australian Institute of Health and Welfare notes that across Australia children have on average two receptions into custody.²² Although the data with regard to the actual number of the flow-through population of children in Tasmania is not immediately available, we can assume (as is the case with the adults) that it is significantly higher than the number of children incarcerated, given the short stays, and multiple receptions for each child, and the high rates of recidivism.

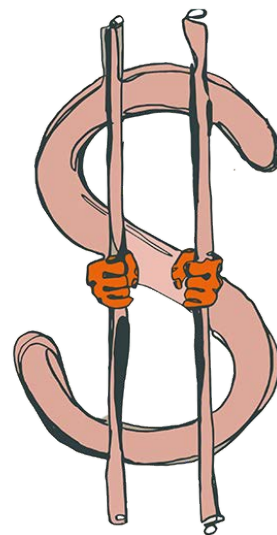
The majority of people incarcerated in Australia come from circumstances where they have experienced multiple and intersecting forms of disadvantage. The over-representation of First Nations people in our justice system both reflects and reproduces a raft of First Nations disadvantage: 30% of Adults²³ and 56% of children²⁴ incarcerated are First Nations. People with mental health conditions are significantly over-represented

(at least 40% of people in prison)²⁵ as are people with cognitive impairment.²⁶ Around 60% of people in prison have a drug and/or alcohol problem.²⁷ Half of all people in prison were homeless before entering custody²⁸ and a disproportionate amount come from a small number of 'postcodes of disadvantage' where access to education, healthcare, support, and employment are all comparatively lacking.²⁹



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The fact of disadvantage³⁰ cannot be used to discount the consequences of crime. However, it is crucial to understand the context in which most crime is committed³¹ to build and implement effective policy to reduce the numbers of people in custody and strengthen genuine alternatives to prison. Understanding the place-based nature of disadvantage when designing interventions is critical. The Dropping off the Edge Report is a useful resource in terms of identifying those postcodes of disadvantage in Tasmania. This report notes that disadvantage is geographically concentrated in Tasmania, including criminal justice system involvement.³²



EVIDENCE-BASED ALTERNATIVES

There is no single 'reform fix' to reduce prison numbers, however, there are multiple proven, cost-effective reforms that can work together to build pathways away from the justice system. Many of these reforms are already catalogued in an abundance of government and non-government reports and reviews.³³ In addition, there are clear examples and case studies from Australia and overseas that demonstrate the value of approaches led by the community and health sectors in disrupting entrenched criminal justice system trajectories.³⁴ There is also a growing body of more formal research exploring the impact of various models of support.³⁵

For instance, there are robust evaluations highlighting:

Early intervention and prevention programs that reduce crime at a population level by between 5 and 31%,³⁶ reduce offending amongst at risk populations by 50%,³⁷ significantly improve other health and wellbeing outcomes in children and families lives,³⁸ and result in significant cost savings including cost savings resulting from reduced criminal justice system contact over time.³⁹

First Nations place-based approaches that have seen significant reductions in crime, criminal justice system contact, youth justice contact and significant cost savings, as well as improvements in a range of cultural, social, health and wellbeing measures.⁴⁰

Bail support programs that significantly reduce reoffending (by 33%) and increase compliance with bail conditions (by 95%),⁴¹ and that improve a range of other social and health wellbeing measures relevant to the drivers of criminal justice system contact⁴² as well as achieving cost savings when compared to an absence of bail support.⁴³

Post-release and diversionary community-led programs that have found dramatic decreases in recidivism, including:

- Intensive post-release support programs focusing on people experiencing problematic alcohol and other drug use and other complex needs (across 483 participants there were reductions in custody days (by 65.8%), reductions in new custody episodes (by 62.6%), and reductions in proven offences (62.1%) measured two years post-referral).⁴⁴
- First Nations-led post-release service achieving recidivism rates of 4.1% (compared to 57.3% for a comparable cohort).⁴⁵
- Place-based and intensive support for children at risk of criminal justice system involvement that dramatically increases the number of children engaging with education and/or employment (85%), and lead to significant reductions in crime (35%) in the surrounding community.⁴⁶



Alternative policing and alternative first-responder models that reduce criminal justice system involvement and lessen likelihood of arrest by 58%,⁴⁷ that halve the rate of crime and justice system involvement,⁴⁸ that significantly reduce levels of specific crime, that improve health and wellbeing (especially for people with mental health conditions),⁴⁹ and that address the social drivers of incarceration while avoiding contact with police.⁵⁰

Alternative and specialist court processes that reduce contact with the justice system including:

- In court diversionary programs that reduce reoffending, increase health and wellbeing, and address the drivers of incarceration.⁵¹
- Community and Neighbourhood Justice Courts with reoffending rates 25% lower than mainstream courts.⁵²
- Restorative justice processes that significantly reduce the likelihood of reoffending,⁵³ that work to support people to connect with services and programs in the community⁵⁴ (as well as provide support to victims of crime),⁵⁵ and that are extraordinarily cost-effective.⁵⁶
- Drug courts that reduce the likelihood of reoffending and improve access to alcohol and other drug treatment.⁵⁷
- Mental health courts that reduce reoffending and facilitate access to mental health treatment as well as improve other health and wellbeing measures.⁵⁸
- First Nations courts that reduce reoffending, empower First Nations communities, increase the likelihood of court attendance, and improve access to other supports and services.⁵⁹

Alternative detention models with extraordinarily low rates of recidivism including:

- International therapeutic residential models for children (outside of detention centre settings) that result in recidivism rates as low as 13.6%.⁶⁰
- Rehabilitation and therapeutic incarceration models with a focus on alcohol and other drug treatment that have recidivism rates as low as 2%.⁶¹



TURNING EVIDENCE INTO POLICY AND PRACTICE: A BREAKING THE CYCLE FUND

There are opportunities to build pathways *out* of the justice system and improve our service delivery response at every contact point in the criminal justice system. There is the need to significantly scale up programs in the community and expand the capacity of the community sector to enable people who are caught in the justice system with a range of opportunities to genuinely rebuild their lives. Instead of committing to additional expensive prison beds, there is an opportunity for the Tasmanian government to focus attention and resources on evidence-based programs that work to reduce incarceration and decrease recidivism. Over-incarceration is preventable. We need however to focus on the evidence and the resourcing of evidence-based alternatives.

The promotion of evidence-based and evidence-informed alternatives to imprisonment should not be mistaken as a 'soft on crime' approach. Taking crime seriously requires taking the drivers of crime seriously and looking outside of the justice system to develop evidence-led solutions.

Building alternatives is not about excusing crime, or minimising its impact, but building responses that will genuinely disrupt its re-occurrence. Although imprisonment 'protects the community' for the period of time that someone is incarcerated (especially if someone has been offending prolifically), it

does not address the root causes of crime. We know that in the medium and long-term, imprisonment makes reoffending much more likely.

Alongside investing in evidence-based alternatives to incarceration, there is a concurrent need to continue to build and improve the evidence base in Tasmania, particularly for community-led programs. The community sector has not historically had the resources or opportunity to evaluate the efficacy of its work in a manner that can easily contribute to the growing body of research in this area. There is the need to ensure community-led organisations are funded adequately to both deliver services *and* have access to independent and transparent evaluation that generates high-quality data. There is an opportunity for the Tasmanian Government to build genuine partnerships with researchers, service providers, First Nations communities and other experts in the sector to continue to build the evidence base of what works in Tasmania.

There are multiple points of intervention that can make a difference, and there are many examples of programs that work in Tasmania. They are, however, currently operating on a scale that is too small to make a systemic difference when it comes to reducing recidivism and reducing criminal justice system contact.



Recommendations

1. The Tasmanian Government should commit to funding a Breaking the Cycle Fund with initial funding commitment of \$270 million over four years. This figure is based on the proposed cost of a new prison, and preliminary costings of what would be required in Tasmania to boost existing community sector organisations so that they are able to meet the demand for their services, as well as costing the capacity-building requirements of new services and supports. This funding should be scaled up from year one. The Fund will support evidence-based, community-led programs that will break the cycle of incarceration and recidivism, such as those identified in this report.
2. At least 30% of all funds should be dedicated to First Nations-led organisations in recognition of the challenges and overrepresentation of First Nations people in the justice system. This is in line with the aspirations of the state's Closing the Gap Implementation Plan.^{62 63} We recommend that the Breaking the Cycle Fund allocations be focused on the critical touch points of the justice system for both adults and children. This includes diversionary programs (at all justice contact points prior to incarceration) and post-release support for both adults and children leaving custody. There is significant evidence focused on the positive impact of post-release support in terms of reducing recidivism and saving costs.
3. Breaking the cycle of justice system involvement is a whole-of-government responsibility and delivers whole-of-government outcomes including in health, housing, and economic engagement. It is recommended that the Breaking the Cycle Fund be administered in the Department of Premier and Cabinet.
4. We note, that in addition to the Breaking the Cycle Fund, there is also a need for substantial regional expenditure in areas such as alcohol and other drug rehabilitation centres and mental health support. While the Fund is intended to enhance the capacity of services to better meet the needs of people at risk of justice system involvement (including people leaving prison), the substantial focus of the Fund is on the provision of outreach support and casework in the community.
5. The Breaking the Cycle Fund should support a diverse suite of community-led organisations and groups to deliver programs and support that are based on the evidence-based principles in service delivery (noted in Appendix A). This includes the provision of long-term, relational, flexible, holistic, intensive outreach case-work support.
6. Within those principles, the Breaking the Cycle Fund should allow flexibility and the capacity to ensure that programs and projects for people at risk of justice system involvement are genuinely responsive to the specific geographic and demographic needs of the populations for whom they are intended. This includes Aboriginal and Torres Strait Islander-led programs that focus on outcomes for Aboriginal and Torres Strait Islander populations. It also means ensuring that programs for children and young people are developmentally and culturally meaningful.
7. It is anticipated that experienced organisations may expand their operations, but also provide support and guidance to other organisations who are less experienced in the delivery of specific 'breaking the cycle' services. This mentoring and capacity building work should be resourced from the Fund.
8. We recommend that alongside the funding of programs, supports, and services, the Breaking the Cycle Fund should also fund independent and transparent evaluation capability so that outcomes and impact are able to be measured.



There is no single 'reform fix' to reduce prison numbers in Tasmania. There are multiple proven, cost-effective alternatives that can both effectively reduce incarceration and improve community-level outcomes. Prison does not work to deter, to rehabilitate, or to make communities safer. We need recognition that our over-reliance on prison for both adults and children has been a policy failure in Tasmania, and a commitment to significant investment in community-led alternatives.

There are several promising programs being delivered in Tasmania, but piecemeal resourcing and service silos are preventing these best-practice approaches from having a wide impact and reach in Tasmania. Both mainstream and specialist services must be accessible and fit-for-purpose in terms of providing effective support to individuals in contact with the justice system. They must be based on the community-led and holistic approaches that we know will work to reduce contact with the system and break the cycle.

Community-led services and place-based responses should be funded in ways that genuinely build sustainable long-term service delivery capacity. This includes the capacity to adequately pay staff and develop a professionalised workforce. Short-term and pilot projects, and inadequate funding for staff, alongside overly onerous reporting requirements, can make the core business of quality service delivery, together with staff retention, more difficult than it needs to be.

A Breaking the Cycle Fund for Tasmania will be able to provide a funding environment where community-led approaches can sustainably thrive. Limited resourcing for evaluation makes measurement of success extraordinarily difficult. The lack of transparency in terms of program evaluations in Tasmania compounds this issue, with very little publicly available

evaluation data limiting knowledge-sharing between providers and across sectors on what works.

A breaking the cycle fund will be able to provide a funding environment where community-led approaches can sustainably thrive.

Services also need to be resourced to improve their capacity to be accessible and available to all people at every point in the justice system. Too often, people are not able to access services because there are explicit and implicit exclusion criteria. For instance, many people on remand cannot access services in prison. Programs and services are often not available for people in both remote and regional areas.



Additionally, many people are excluded from services because they have multiple and co-existing support needs: for instance, alcohol and other drug dependence and a mental health condition. Services and programs are frequently not supported or resourced to provide the long-term, intensive, holistic, wrap-around support that the research makes clear is extraordinarily effective at reducing justice system involvement.

Investing in evidence-based services instead of incarceration will break entrenched cycles of engagement with the criminal justice system and recidivism. In addition to creating substantial cost-savings to government, this approach will have enormous benefits for populations who have too often been 'managed' in justice systems, rather than being supported in the community.

'Tough on crime' rhetoric does not make the community safer, nor does our current over-use of imprisonment. If we genuinely want to build a safer, more cohesive community, we need to invest in community-led programs that address the drivers of crime and incarceration.

We need programs that provide opportunities for people that are trapped in the cycle of incarceration to rebuild their lives in the community. We need to embrace a criminal justice model that genuinely relegates prisons to a position of last resort, and instead centres community-led interventions that really work to break cycles of disadvantage, reduce reoffending, and build safer communities.



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ABOUT THE JUSTICE REFORM INITIATIVE

The Justice Reform Initiative was established in September 2020 with a goal to reduce Australia's harmful and costly reliance on incarceration. We seek to reduce incarceration in Australia by 50% by 2030 and build a community in which disadvantage is no longer met with a default criminal justice system response.

Our growing list of patrons includes 120 eminent Australians, including two former Governors-General, former Members of Parliament from all sides of politics, academics, respected Aboriginal and Torres Strait Islander leaders, senior former judges, including High Court judges, and many other community leaders who have added their voices to the movement to end the cycle of incarceration in Australia. We also have more than 120 supporter organisations who have joined the movement to reduce incarceration. This includes the Australian Medical Association; The Law Council of Australia; Federation of Ethnic Community Councils; the Australian Council of Churches; the Australian Catholic Bishops Conference, and multiple First Nations led organisations and service delivery organisations who have expertise working with people who have been impacted by the justice system.

The Justice Reform Initiative seeks to work with parliamentarians from all sides of politics, policy makers, people with experience of the justice system, and people of good-will across the country to embrace evidence-based criminal justice policy in order to reduce crime, reduce recidivism, and build safer communities. We are working to shift the

public conversation and public policy away from building more prisons as the primary response of the criminal justice system and move instead to proven alternative evidence based approaches that break the cycle of incarceration.

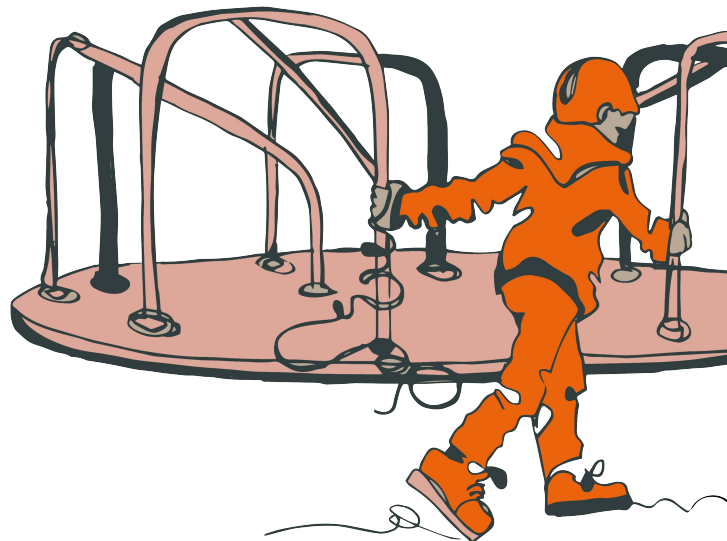
We are committed to elevating approaches that seek to address the causes and drivers of contact with the criminal justice system. We are also committed to elevating approaches that see Aboriginal and Torres Strait Islander-led organisations being resourced and supported to provide appropriate support to Aboriginal and Torres Strait Islander people who are impacted by the justice system.

Our Tasmanian Patrons are noted below:

- **Greg Barns SC**, barrister, commentator and spokesperson on criminal justice for the Australian Lawyers Alliance.
- **Rodney Dillon**, Advocate for Change.
- **The Honourable Lara Giddings**, former Premier and Attorney General of Tasmania.
- **Adjunct Associate Professor Terese Henning**, Former Director of the Tasmania Law Reform Institute.
- **Michael Hill**, former Chief Magistrate of Tasmania and Former Acting Justice of the Supreme Court of Tasmania. Currently Adjunct Professor within the Faculty of Law at the University of Tasmania and Chair of the Just Deserts Drug Court Support Group.



- **The Rt Revd Dr Chris Jones**, Vicar General and Assistant Bishop Anglican Diocese of Tasmania and CEO of Anglicare Tasmania.
- **Christine Milne AO**, former Senator for Tasmania and leader of the Australian Greens and current Global Greens Ambassador.
- The Rt Honourable Lord Mayor of Hobart, Councillor **Anna Reynolds**.
- **The Honourable Denise Swan**, Former Minister (Community Development, Status of Women, Aboriginal Affairs, Multicultural and Ethnic Affairs, and Local Government) and Member of the Tasmanian House of Assembly.
- **Professor the Honourable Kate Warner AC**, *Head Patron*, former Governor of Tasmania.
- **Professor Rob White FASSA FANZSOC**, Distinguished Professor of Criminology, School of Social Sciences, University of Tasmania.
- **The Honourable Jim Wilkinson**, former President Tasmanian Legislative Council, President of the Tasmanian Football Board and former partner of the law firm Wallace Wilkinson & Webster.



ENDNOTES

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- ² Productivity Commission (2023). *Report on government services 2023*, table 8A.4.
- ³ Australian Bureau of Statistics (2022). *Prisoners in Australia 2021*, table 15.
- ⁴ Australian Bureau of Statistics (2023). *Corrective services, Australia: Prisoner receptions and prisoner releases, December Quarter 2022*, table 19.
- ⁵ Australian Bureau of Statistics (2023). *Corrective services, Australia: Prisoner receptions and prisoner releases, December Quarter 2022*, table 24.
- ⁶ Australian Bureau of Statistics (2023). *Prisoners in Australia 2022*, table 17.
- ⁷ Australian Bureau of Statistics (2023). *Prisoners in Australia 2022*, table 17.
- ⁸ Australian Bureau of Statistics (2022). *Tasmania: Aboriginal and Torres Strait Islander population summary*. Census, 2021. <https://www.abs.gov.au/articles/tasmania-aboriginal-and-torres-strait-islander-population-summary>.
- ⁹ Productivity Commission (2023). *Report on government services 2023*, table 8A.5.
- ¹⁰ Productivity Commission (2023). *Report on government services 2023*, table 8A.6.
- ¹¹ Productivity Commission (2023). *Report on government services 2023*, table 8A.6.
- ¹² Australian Bureau of Statistics (2023). *Prisoners in Australia 2022*, table 15.
- ¹³ Productivity Commission (2023). *Report on government services 2023*, table 8A.1.
- ¹⁴ Productivity Commission (2023). *Report on government services 2023*, table 8A.1.
- ¹⁵ Productivity Commission (2023). *Report on government services 2023*, table 8A.20.
- ¹⁶ Productivity Commission (2023). *Report on government services 2023*, table 17A.10.
- ¹⁷ Productivity Commission (2023). *Report on government services 2023*, table 17A.21.
- ¹⁸ Productivity Commission (2023). *Report on government services 2023*, table 17A.1.
- ¹⁹ Productivity Commission (2023). *Report on government services 2023*, table 17A.5.
- ²⁰ Productivity Commission (2023). *Report on government services 2023*, table 17A.9.
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- ²⁹ Tanton, R., Dare, L., Miranti, R., Vidyattama, Y., Yule, A. and McCabe, M. (2021). *Dropping Off the Edge 2021: Persistent and multilayered disadvantage in Australia*. Jesuit Social Services, Melbourne. <https://www.dote.org.au/full-report>.
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The Justice Reform Initiative is an alliance of people who share long-standing professional experience, lived experience and/or expert knowledge of the justice system, who are further supported by a movement of Australians of good-will from across the country who all believe jailing is failing, and that there is an urgent need to reduce the number of people in Australian prisons.

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The Initiative respectfully acknowledges and supports the current and longstanding efforts of Aboriginal and Torres Strait Islander people to reduce the numbers of Indigenous people incarcerated in Australia and, importantly, the leadership role which Indigenous-led organisations continue to play on this issue. We also acknowledge the work of many other individuals and organisations seeking change, such as those focused on the rate of imprisonment for women, people with mental health issues, people with disability and others.

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