

Less crime? Or more punishment?

A submission to the Legislative Council Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters

ABSTRACT

For many years, Tasmania's crime rates have fallen consistently and significantly but prisoner numbers have simultaneously increased. Policies which increase incarceration seem to be a counter-intuitive response to less crime being committed.

The evidence in Tasmania and elsewhere is that increasing the length of sentences, and reducing the options of judges and magistrates to divert offenders into programs other than prison, is strongly associated with increased recidivism. It is therefore probable that crime rates would have fallen even further if these policies had not been in place.

This state provides a convenient natural experiment by which two different approaches to offenders can be compared. For adult offenders, the emphasis of policy is on punishment; for those under 18, it is on rehabilitation. Although crime rates among both groups have fallen, those among youth offenders have dropped substantially more.

Currently, doing nothing with an offender – failing to provide treatment or an environment in which rehabilitation can occur – is often the only alternative to prison. A more effective approach needs to provide those alternatives. With that consideration in mind, this submission also examines the experience in Denmark, where criminal justice is focussed securely on rehabilitation and very few offenders are sent to conventional prisons.

The criminal justice system has no stated purpose. As there is no agreed definition of its basic goals, it is hardly surprising that it fails to adequately satisfy any of the various demands placed upon it. As a step towards reconciling these demands, this submission proposes that such a stated purpose should be incorporated into legislation. The recommended wording is: "The purpose of the criminal justice system is to protect the community from harm".

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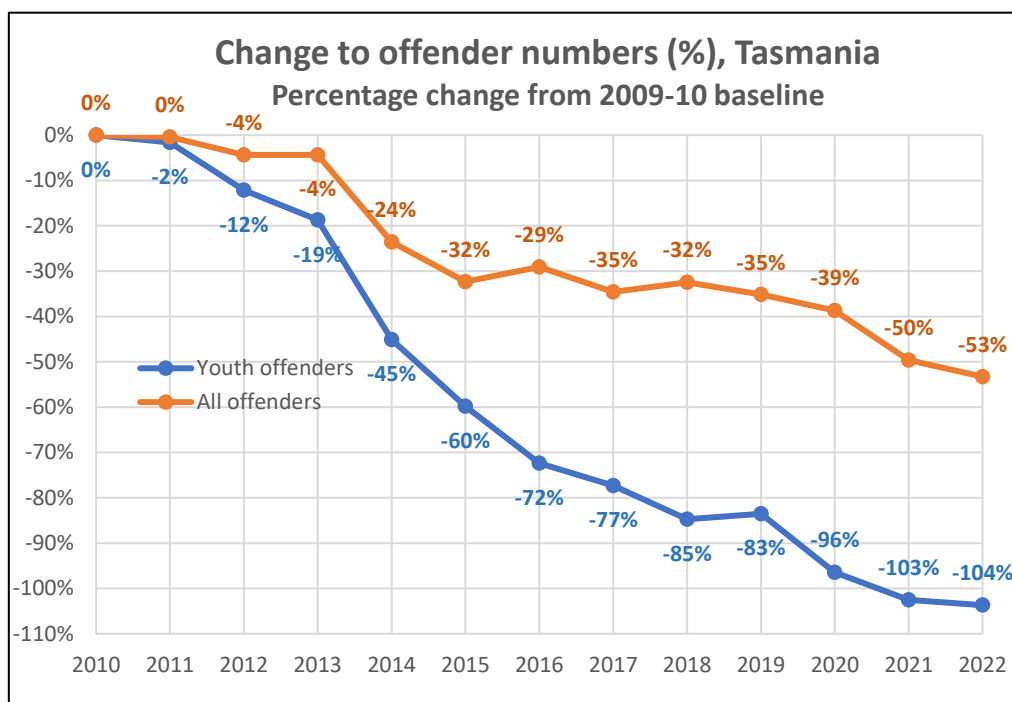
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PRISON: FIRST RESORT OR LAST?

There is now a massive body of evidence that tough-on-crime policies have the opposite effect to the one intended. Data on the differences between two groups of Tasmanian offenders – the young and the rest – provide important proof of what works and what doesn't. It's a natural experiment – a bit like a clinical trial, complete with a 'treatment' group (the young) and a 'control' group (everyone else).

There are radically different approaches to offenders, depending on their ages. Those under 18 are unlikely to be incarcerated but instead to be subject to a Youth Justice Supervision Order, under which they will be assigned a caseworker. But those over 18 stand a strong chance of being sent to prison, where they will be denied adequate psychiatric care or social support, and where they are highly likely to reoffend. [Sixty per cent](#) of current Australian prisoners were released from gaol less than two years before. In Tasmania, the figure is 68%.¹

Crime rates have been falling for decades. This chart shows the numbers of offenders charged by police in Tasmania over the past 12 years. You can see how far the numbers have fallen among all (largely adult) offenders, shown in orange; and how much further youth offender statistics have declined. (There's an apparent increase right at the end of the series, but that's because of a temporary slump in crime during the Covid lockdowns.)



Sentences for various crimes vary from state to state: Tasmania has the longest average sentences for homicide in the nation but shorter sentences for robbery, unlawful entry and drug offences. Overall, Tasmanian sentences are below those in NSW, Victoria,

1. *Prisoners in Australia 2022*, Australian Bureau of Statistics.

Queensland and the ACT but above those in South Australia, Western Australia and the Northern Territory. And Tasmania is catching up with the more punitive states.

Average (mean) sentence lengths in years, by category of offence, 2022									
	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUS
Homicide and related offences	21.0	17.0	11.6	10.8	8.9	23.6	11.6	18.9	17.4
Acts intended to cause injury	3.3	3.7	3.3	4.5	2.5	3.0	1.9	4.2	3.1
Sexual assault and related offences	10.2	8.5	7.1	10.2	7.0	7.6	7.8	8.7	8.7
Dangerous/negligent acts	2.3	2.3	3.2	5.5	2.7	1.8	3.1	0.0	2.8
Abduction/harassment	6.1	5.4	4.3	8.9	2.8	0.0	4.3	3.5	5.2
Robbery/extortion	6.3	5.1	5.5	6.7	4.3	3.9	3.9	6.5	5.4
Unlawful entry with intent	3.1	4.2	3.5	4.9	2.9	0.9	2.3	5.5	3.5
Theft	1.7	2.7	1.9	2.5	2.6	1.8	1.2	1.8	2.1
Fraud/deception	3.5	4.3	3.4	5.4	3.5	2.4	3.5	3.6	3.6
Illicit drug offences	8.3	7.8	5.9	6.4	6.3	3.9	5.0	5.6	6.9
Weapons/explosives	4.0	2.7	2.9	3.4	1.8	1.4	2.1	2.0	3.2
Property damage, pollution	3.2	4.3	3.3	4.0	3.3	1.7	1.8	0.0	3.4
Public order offences	1.7	2.9	1.2	5.0	2.0	n.p.	1.3	0.0	2.4
Traffic, vehicle regulatory offences	0.9	1.0	1.2	0.6	0.8	0.4	0.7	0.0	0.9
Offences against justice	1.6	2.8	1.3	2.6	1.8	2.0	1.4	2.5	1.8
Miscellaneous offences	6.5	2.8	6.4	4.6	6.6	0.0	0.0	0.0	5.4
TOTALS	6.7	7.0	4.6	6.4	4.4	5.3	3.0	6.3	5.6
<i>Source: ABS, Prisoners in Australia, 2022</i>									

It is hard, from these data, to understand why governments around the country, including in Tasmania, have pursued policies such as mandatory sentencing and longer prison terms. Longer sentences are a main reason for the prison overcrowding. Over a decade,

Length of sentences, Tasmania, 2012-2022				
	% < 1 year	% 1 - 5 years	% 5 - 10 years	% > 10 years
2012	35.1	36.9	11.3	13.5
2013	32.0	37.6	11.1	15.0
2014	35.5	34.9	12.9	13.5
2015	35.5	36.3	10.5	14.8
2016	34.2	36.1	13.1	11.4
2017	31.9	38.0	14.3	11.3
2018	32.3	37.5	16.0	11.4
2019	29.9	38.5	18.5	13.0
2020	25.3	42.2	16.9	12.2
2021	27.9	37.4	17.0	14.3
2022	27.9	36.3	20.2	13.9
10-year change	-20.5%	-1.6%	78.8%	3.0%
<i>Source: ABS, Prisoners in Australia, 2022</i>				

the share of short sentences (those less than a year) fell from 35.1% to 27.9%, a relative decline of 20.5%; but longer sentences (five to ten years) went up from 11.3% to 20.2%, a relative increase of 78.8%.

Tough-on-crime policies began later

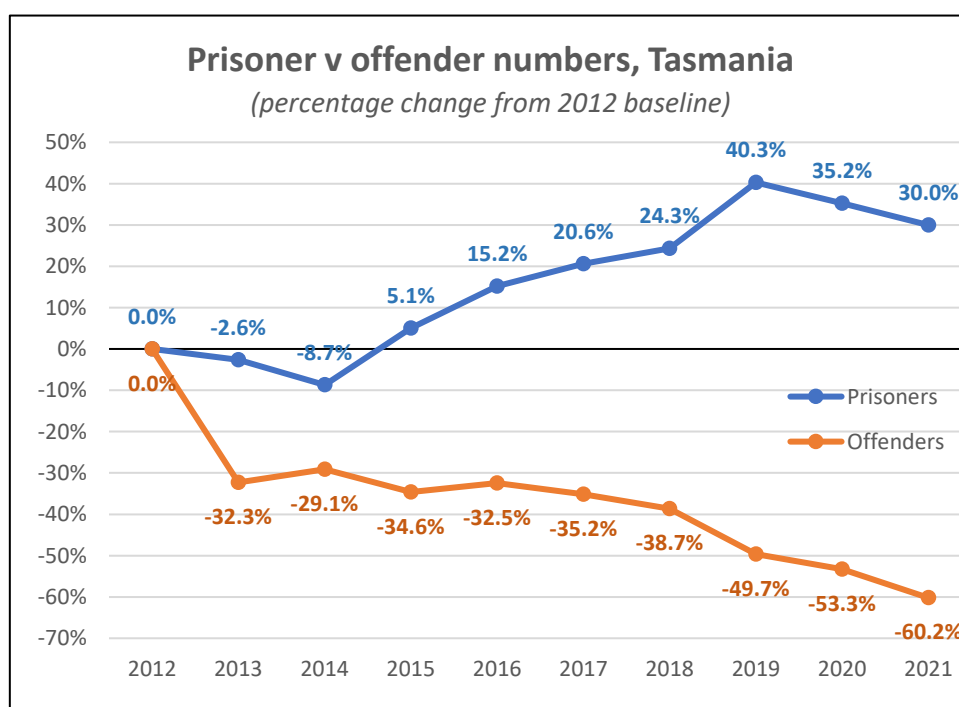
in Tasmania than in other states. In Australia as a whole, the trend to longer sentences continues but is now slowing. Tasmania is fast catching up.

Length of sentences, Australia, 2012-2022				
	% < 1 year	% 1 - 5 years	% 5 - 10 years	% > 10 years
2012	15.0	44.5	22.4	13.0
2013	15.5	46.1	21.0	12.5
2014	16.0	47.4	20.3	11.7
2015	16.2	46.8	20.5	11.8
2016	16.5	46.5	20.4	12.1
2017	15.9	47.2	20.5	12.3
2018	15.6	46.5	21.3	12.7
2019	14.9	46.1	21.7	13.4
2020	13.0	45.8	22.9	14.2
2021	13.5	44.8	23.2	14.5
2022	13.5	43.1	23.3	15.7
Relative change	-10.00%	-3.15%	4.02%	20.77%
Source: ABS, Prisoners in Australia, 2022				

Nationally, there is no sign that policy-makers are taking any real notice of the evidence that longer prison sentences are not the solution to crime but are rather a major contributor to it. The desire to punish offenders continues to trump protecting the

safety of the community reducing rates of reoffending.

If Tasmania was enduring a crime wave, increased sentences might have a rationale: but the crime wave does not exist. Despite the compelling evidence of a continuing slump in the figures for adult offenders (orange), the incarceration rate (blue) has soared.



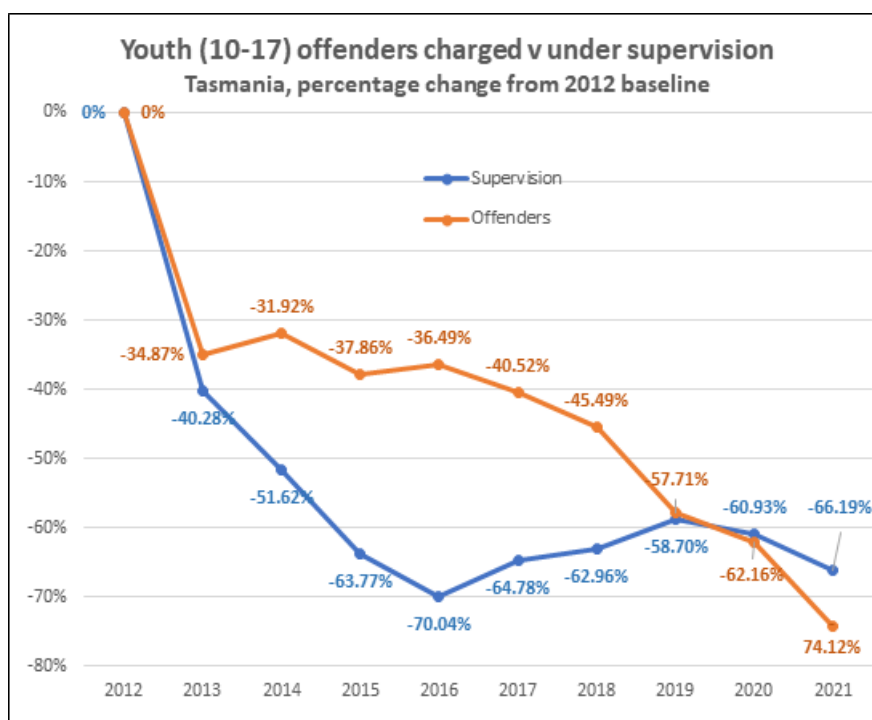
If a harsh prison policy works, one would expect its opposite – counselling, diversion programs, addiction treatment and so on – to fail. But they don't fail.

Young people who are charged and found guilty of an offence are seldom locked up. Instead, they're likely to be subject to youth justice supervision orders, and assigned a caseworker.

Youth Justice NSW² [describes](#) how its youth justice caseworkers intervene:

- Supporting young people who are detained in custody and are having difficulty being granted bail.
- Delivering intervention programs that target young people's offending behaviour.
- Arranging specialised services from psychologists, such as psychological assessments and counselling.
- Linking young people to services in their local community including drug and alcohol, mental health, mentoring services, social and sporting programs.
- Helping young people remain in school or start other education courses, such as TAFE courses.
- Helping young people find employment using local employment services.
- Finding accommodation for young people experiencing homelessness or family breakdown.
- Connecting with a young person's cultural background and local community.

"Youth Justice caseworkers can also help young people by referring them to take part in offence-focused intervention programs," says the department's website. "These programs



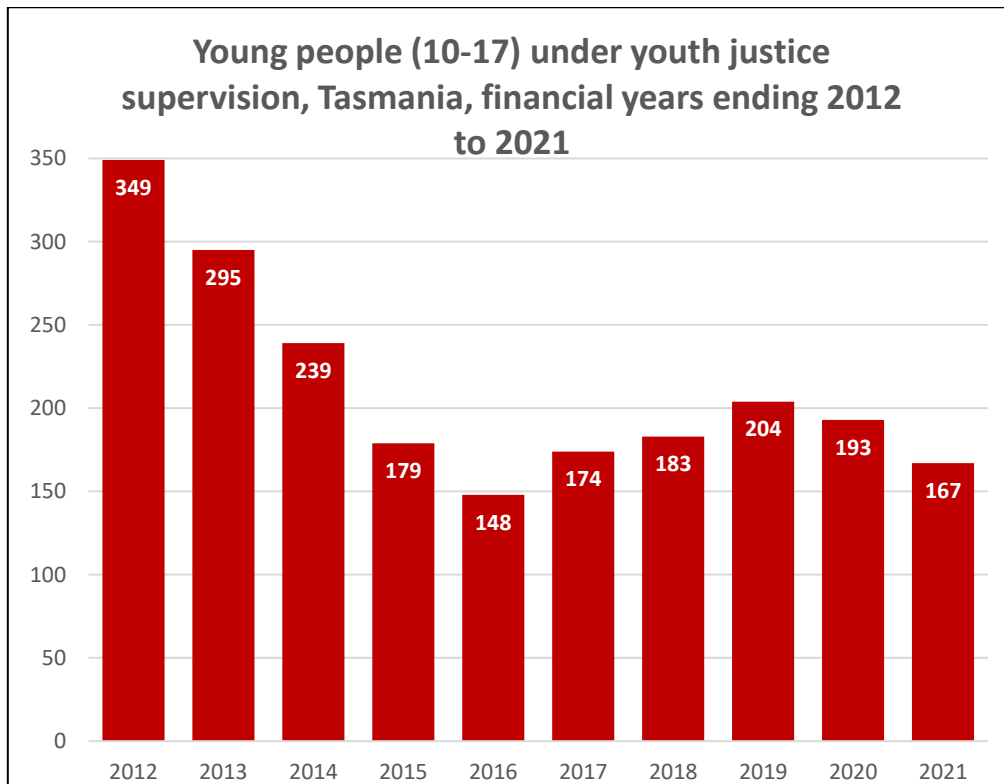
help young people address underlying issues related to offending behaviour, such as alcohol and drugs, anger management, stress management, and trauma."

It seems to work. The decline in those being charged with an offence has not been matched with an increase in action taken against them: just the opposite.³

And the next chart shows the year-by-year numbers for young people under supervision in Tasmania. They fell and have stayed low, despite the apparently lenient treatment given to young offenders.

2. Youth Justice NSW, *What happens during supervision with Youth Justice?* <https://www.nsw.gov.au/legal-and-justice/youth-justice/parents-guardians-carers/what-happens-during-supervision> (accessed 6 March 2023).

3. ABS, *Prisoners in Australia* 2022.



Between 2009 and 2022 there were massive decreases in almost every category for both youth and overall offending. The top six offences overall, which in 2022 accounted for two-thirds of the total, all fell sharply.

Top six offences, all ages: % change	
Offence	Decline
Public order offences	71%
Acts intended to cause injury	12%
Miscellaneous offences	66%
Illicit drug offences	50%
Theft	44%
Offences against justice	37%
Overall	47%

Once again, the results for the leniently-treated young offenders were even more impressive. The top six categories, which account for over three-quarters of all offences, fell by between 39% (assault) and 91% (public order) over the period.

Top six offences, youth: % change	
Offence	Decline
Public order offences	91%
Theft	64%
Acts intended to cause injury	39%
Property damage	59%
Unlawful entry with intent	78%
Illicit drug offences	51%
Overall	66%

Keeping people in prison is not only largely counterproductive; it's also expensive. A research report by the Productivity Commission calculated that it cost between \$107,000 (NSW) and \$204,000 (ACT) to keep someone in prison for 12 months. And those costs have been rising at around 4.2% a year.⁴

The high cost of imprisonment								
Expenditure per prisoner per day and per year, 2019-20								
(\$ per prisoner per day)	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
Net operating expenditure	218	323	206	236	259	335	229	421
Capital costs	76	97	98	76	64	53	110	139
Total expenditure	294	421	304	313	322	387	338	559
Total cost per prisoner per year (\$'000)	107	154	111	114	118	141	124	204
Source: Productivity Commission research paper, 'Australia's prison dilemma', 2021								

The Productivity Commission report found that community correction orders and diversion programs – a similar approach to that which is already routine in youth justice – is far cheaper, greatly decreases recidivism, provides far better rehabilitation and requires fewer staff.

As the report said, this approach is not suitable to all prisoners, particularly for violent offenders. But most people sent to gaol do not pose any significant risk to the community's safety. People imprisoned for offences such as fraud, theft, drugs, public order and traffic violations account for half of all people in Australian prisons on an average day. And because more serious offenders – guilty of crimes like homicide, serious assault and abduction – receive much longer sentences, the figure under-estimates the number being imprisoned for less serious offences.

“More generally, said the report, “the majority of prisoners (70 per cent) serving short sentences are in prison for non-violent offences, such as theft and drug offences. These offences often have their root causes in poverty, drug addiction, homelessness and poor mental health.

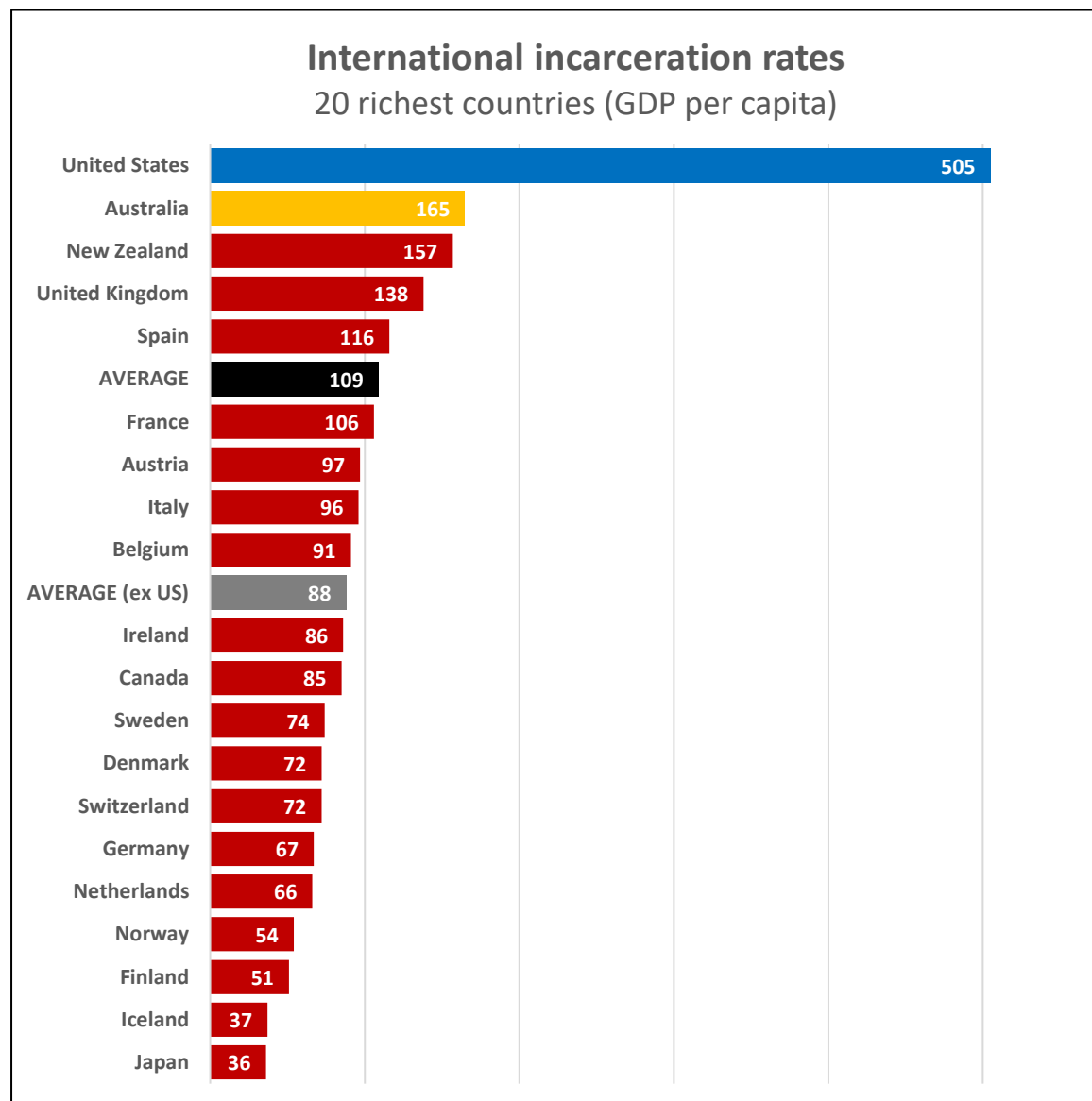
4. Productivity Commission, *Report on Government Services 2022: Justice*.

“Short prison sentences for these types of offences disrupt family ties, housing, employment and treatment programs but are likely to offer little in terms of deterrence and rehabilitation.”

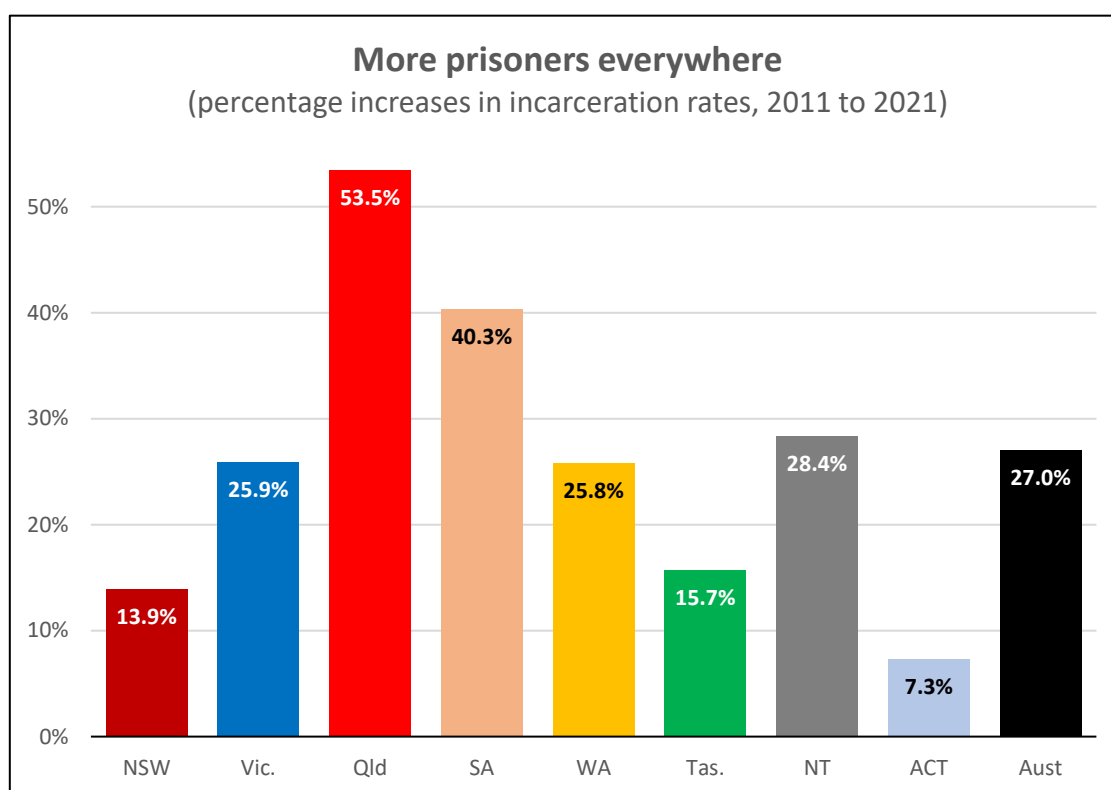
THE EUROPEAN ALTERNATIVE

Australia’s incarceration rate compares badly with those of most other rich countries. Among the 20 richest countries (measured by GDP per capita) OECD data show that only the US locks up more of its population than Australia. New Zealand and Britain, countries with similar attitudes to crime and punishment, are not far behind.

Taking the main outlier, the US, out of the equation, the average rate is 88 out of every 100,000 people. Australia’s rate is almost double that.



Productivity Commission figures⁵ show that in every state and territory, incarceration rates have continued to rise. Over a decade, the national rate – already high by global standards – rose by a further 27%.



The nations of northern Europe do things differently. Denmark has an incarceration rate that is 56% lower than Australia's and a recidivism rate that is half ours – 32%⁶ for them, 60%⁷ for Tasmania.

The rates in Denmark have been pushed up in the past decade following the influx of large numbers of migrants from the Middle East and Africa. Many of these people have suffered trauma and social dislocation: their share of criminal convictions is almost twice the level that would be suggested by their population share.

Crime shares, Denmark		
	% of population	% of convictions
Danish citizens	84.64%	76.08%
Migrants from western countries	5.59%	5.67%
Migrants from non-western countries	9.77%	18.25%
Source: Statistics Denmark		

When offenders in Denmark are sent to gaol, it's a very different experience. Almost all Australia's prisoners are in closed, traditional gaols with high walls and barbed wire. In

5. Productivity Commission, *Report on Government Services*, 2022.

6. Statistics Denmark, *Criminal offences: Recidivism*, 2020.

7. Productivity Commission, *ibid*.

Denmark, that's reserved for the worst of the worst – psychopaths, terrorists, or those who have previously attempted to escape.



The others are referred to as “detainees”, not as “prisoners”. Denmark’s open prisons minimise disruption to the lives of inmates, lessening the difficulty of returning to the community after release. They are allowed to leave during the day but must observe a curfew. They can attend classes, continue in their usual jobs, and do their

own cooking and cleaning. Married couples with children under three are often allowed to live together. If detainees break too many rules, they can expect to spend time in a closed prison.

Corrections officers also feel the benefit. In Australia, the psychological and physical burdens of their job can be shattering. Those burdens exist in Denmark too, but at vastly lower levels.

The difference between the two systems is based on their different aims. Australia’s system is based primarily on punishment and retribution. Denmark’s is centred on rehabilitation, though community concerns about the increase in migrant-related crime and the election of conservative governments has led to an increasing trend toward punishment.

Corrections officers are in the lead in pushing back against this punitive approach, with the head of their union, Bo Yde Sørensen, defending the original “humane objectives” of the service and the “vision of making a difference in society”. Danish prison officers, Sørensen says, are not meant to “simply lock and unlock doors”. He believes the purpose of prison is at stake: should it be a place to store offenders or one that benefits society?⁸

8. Dorina Damsa, ‘This is not what I signed up for’ – Danish prison officers’ attitudes towards more punitive penal policies, *Punishment and Society*, 23 December 2021.

LESS CRIME OR MORE PUNISHMENT? RESOLVING THE DILEMMA

Civil society has two demands of the criminal justice system: to punish offenders and to reduce crime. If the prisons system worked as it was intended to work, offenders would be punished and rehabilitated at the same time. As we have seen, this is not what happens. Because prison can only be relied upon to deliver punishment at the expense of increasing future crime levels, these two demands cannot be adequately reconciled. We are faced with a choice: do we base our criminal justice system on the understandable desire for vengeance by the community and the victims of crime, or do we place a higher value on the minimisation of future crime?

There is a way of resolving the dilemma. Criminal justice operates in the absence of any clear statement about what it is for. The result is that a wide range of people with greatly divergent views expect the system to satisfy all of those demands at the same time. In the absence of clear goals, it is not surprising that the system fails to satisfy anyone.

The first step to reform is to agree on a legislated overall statement of purpose. This submission suggests this wording:

“The purpose of criminal justice is to protect the community from harm.”

Retribution and rehabilitation are essentially incompatible, and there is massive evidence that giving priority to punishment leads to more future crime, putting the community at risk. When there is a conflict of priorities, community protection and crime reduction should prevail.

Reformers must recognise that there are some offenders from whom the public needs to be protected. For these people – the worst of the worst – prison or some other equally secure detention is perhaps the only answer. But, however dangerous they may be, there are not large numbers of these people.

But there are large numbers of others whose offending is associated with potentially treatable conditions such as mental health problems, addictions, problems of socialisation, acquired brain injury, or plain stupidity. These issues are not addressed by our prisons as they are now constituted. Rather, many of these problems are likely to be aggravated by imprisonment. And it is now almost a truism that prison is a training college for criminals. If they were not habitual criminals when they entered gaol, there is a good chance that they will be when they leave.

Moving towards a system of criminal justice that better protects the community from harm by reducing recidivism and criminality will require a shift in resources from conventional facilities, such as Risdon Prison, to open detention and a vast improvement

in rehabilitation services. Caseworkers will have to be assigned to each offender, forensic mental health services and general healthcare must be increased, addiction treatments instituted, and education facilities made much more available.

A very large body of evidence from around the world shows that this will, in the medium to long term, save money but a temporary increase in spending will be incurred during the transition period. Also, the community must be brought on board. There is a choice: continuing with a system that puts them at avoidable risk, or another well-tried approach that will far better protect them.

Tasmania is paying a high price for its insistence on retributive justice. There is far more crime than there needs to be; far more lives are destroyed; much more public money is spent that could be used for other things. The populist appeal of law-and-order feeds a public view that prison is the best answer to crime, and it has been a reliable election winner. As long as that continues, nothing much is likely to change.