

# **Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters**

Submission to Legislative Council Government Administration  
Committee 'B'

**17 April 2023**

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## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal of the Eora Nation.

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## Introduction

1. The ALA welcomes the opportunity to have input into the Government Administration Committee 'B' ('Committee B') inquiry into Tasmanian adult imprisonment and youth detention matters.
2. The ALA believes that as Australian imprisonment and recidivism rates continue to rise, it is increasingly important to better understand how to support "returning citizens" to adequately prepare them for post-release life. Furthermore, we endorse the submission made by the Prisoner's Legal Service to this inquiry.
3. The ALA contends that much of the rise in imprisonment rates in Tasmania and Australia at large is attributable to public policy. We strongly oppose imprisonment as a viable option for deterring crime. Studies continue to suggest that imprisonment has no effect on reoffending and that there is a slight criminogenic effect to imprisonment. This finding aligns with evidence that 46% of released prisoners are back in corrections custody and control within 2 years and 56% who come back have been there before.<sup>2</sup>
4. While reforms to the criminal justice system are essential in reducing levels of indigenous over-representation, the ALA believes that these must be complemented by broader reforms focusing on employment, education and the strengthening of Indigenous cultural and family life. Research firmly reinforces the idea that the resolution of Aboriginal disadvantage can only be achieved through empowerment and self-determination in all forms (economic, political, social and through improvements in outcomes on health, including drug and alcohol rehabilitation).

## Factors influencing increases in Tasmania's prisoner population and associated costs

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<sup>2</sup> Imprisonment and Reoffending, Daniel S Nargin, Daniel T Cullen, Cheryl Lero Jonson, Crime and Justice, Vol 38, No 1 (2009), pp. 115-200; The Effects on Re-offending of Custodial vs. Noncustodial Sanctions: An Updated Systemic Review of the State of Knowledge, Patrice Villettaz, Gwladys Gillieron & Martin Killias. Campbell Systemic Reviews (2015). DOI: 10.4073/CSR.2015.1.

## Government expenditure in the sector

5. The ALA notes that total government expenditure for the justice services (less revenue from own sources) was almost \$22.0 billion in 2021-22,<sup>3</sup> an increase of 3.4 % from the previous year. Police services were the largest contributor (64.5 %), followed by corrective services (26.2 %) and courts (9.2 %). Nationally, expenditure per person on justice services was \$854 in 2021-22.<sup>4</sup> For the 2020-21 financial year (the most recent financial year for which data are available across all sections), this represented around 6.6 % of total government expenditure covered in this Report.
6. The ALA is concerned that over the last 20 years, Australia's imprisonment rates have increased by more than 35% and our imprisonment numbers are growing faster than any other developed country. Importantly, the ALA emphasises that keeping people in prison is expensive, approximately \$330 per person, per day. The evidence suggests that many inmates are considered low risk to the community (42% non-violent offenders and 15% are low risk).<sup>5</sup> The ALA strongly believes that one major influence on having less incidents of crime yet more people in prison is a 'tough on crime' approach and policies that tighten bail laws and mandatory minimum prison sentences.
7. Given the high cost of imprisonment, the ALA contends that it is sensible to look at alternatives that can keep the community safe at a lower cost. A range of alternatives have been trailed in Australia and abroad and will be explored in this paper, including diversion strategies, rehabilitation, knowledge base, home detention/early parole, case management and system targets.
8. The ALA believes that in order to implement programs to reduce recidivism long-term, underlying structural factors that influence reoffending in society must first be recognised and addressed.<sup>6</sup> We also believe that the effective combination of criminal justice and social

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<sup>3</sup> <<https://www.pc.gov.au/ongoing/report-on-government-services/2023/justice>>

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> United Nations, Introductory Handbook on The Prevention of Recidivism and the Social Reintegration of Offenders (Final Report, December 2018) 9 <[https://www.unodc.org/documents/justice-and-prison-reform/18-02303\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf)>.

policies with local and community-orientated partnerships can create safer communities by preventing crime.

## Structural barriers

### *Socio-economic factors*

9. The ALA has long advocated for reforms that address structural barriers leading to and the social cost of imprisonment as an ineffective solution to offending behaviour. Research suggests that complex factors play into recidivism rates including:

- a. Mental illness<sup>7</sup>
- b. Housing - limited appropriate, safe and affordable accommodation options<sup>8</sup>
- c. Employment - difficulty securing employment with a history of incarceration<sup>9</sup>
- d. Financial - current rates of welfare payment are inadequate<sup>10</sup>
- e. Accessing and navigating the wider service sector including NDIS, AOD and Mental Health<sup>11</sup>
- f. Structural and systemic racism across key institutions<sup>12</sup>
- g. Managing community stigma and stereotypes<sup>13</sup>

10. Research also shows that imprisonment has a criminogenic effect on adults. In 2021-22, 14.3 % of adults discharged during 2019-20 after serving orders administered by community

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<sup>7</sup> Megan R. Klimecki, Jo Jenkinson & Linda Wilson (1994) A study of recidivism among offenders with an intellectual disability, Australia and New Zealand Journal of Developmental Disabilities, 19:3, 209-219.

<sup>8</sup> Payne J, Macgregor S & McDonald H 2015. Homelessness and housing stress among police detainees: Results from the DUMA program. Trends & issues in crime and criminal justice no. 492. Canberra: Australian Institute of Criminology <https://aic.gov.au/publications/tandi/tandi492>.

<sup>9</sup> Ibid.

<sup>10</sup> Yukhnenko D, Blackwood N, Fazel S. Risk factors for recidivism in individuals receiving community sentences: a systematic review and meta-analysis. CNS Spectr. 2020 Apr;25(2):252-263.

<sup>11</sup> Wallace D, Wang X. Does in-prison physical and mental health impact recidivism? SSM Popul Health. 2020 Mar 20;11:100569. doi: 10.1016/j.ssmph.2020.100569. PMID: 32258357; PMCID: PMC7113431.

<sup>12</sup> Cunneen, C. (2006). Racism, discrimination and the over-representation of Indigenous people in the criminal justice system: Some conceptual and explanatory issues. Current Issues in Criminal Justice, 17, 329-346.

<sup>13</sup> Mezey, G., Youngman, H., Kretschmar, I., & White, S. (2016). Stigma and discrimination in mentally disordered offender patients—A comparison with a non-forensic population. The Journal of Forensic Psychiatry & Psychology, 27(4), 517-529.

corrections returned to community corrections within two years, and 24.1 % returned to corrective services (prison or community corrections) (Figure C.3).<sup>14</sup>

Figure C.3 Adult offenders released from prison who returned to corrective services within two years of release



Data tables are referenced above by a 'CA' prefix and all data (footnotes and data sources) are available for download from above (in Excel and CSV format).

## Indigeneity

11. The ALA contends that conditions that affect people's lives and health (including housing, employment, and educational opportunities) are shaped by the distribution of power and resources which greatly overlap with identified social determinants of incarceration, disproportionately impacting Aboriginal and Torres Strait Islander peoples.<sup>15</sup>
12. The ALA notes that the number of Aboriginal people in Tasmanian prisons more than doubled over the past decade, according to the latest report on government services. In 2012-13, there were 73 Aboriginal and Torres Strait Islander people in Tasmanian prisons on an average day, and 399 non-Indigenous people. By 2021-22, there were 154 Aboriginal prisoners and 479 were non-Indigenous. This means that last financial year, about 24 % of Tasmanian prisoners were Aboriginal, compared with 15 % 10 years earlier.<sup>16</sup>

<sup>14</sup> Australian Productivity Commission, Report on Government Services 2023 (31 January 2023). Accessed at < <https://www.pc.gov.au/ongoing/report-on-government-services/2023/justice> > .

<sup>15</sup> Commission on Social Determinants of Health, Closing The Gap In A Generation: Commission On Social Determinants Of Health (Final Report 2008).

<sup>16</sup> <<https://www.abc.net.au/news/2023-01-31/tasmanian-indigenous-incarceration-rising/101907924>>.

13. The ALA notes the additional barriers posed by structural and societal racism experienced by Aboriginal and Torres Strait Islander prisoners. Cunneen points out, “[t]he assumption of Aboriginal dysfunctionality underpins welfare conditionality and provides a rationale to institutional racism... The ‘problem/s’ of Indigenous peoples are understood as a deficit, rather than the institutional forms of racism which force Indigenous peoples into highly marginalized, precarious situations”.<sup>17</sup>
14. The ALA contends the perspective of Aboriginal and Torres Strait Islander peoples must be elevated and communities empowered to identify and implement ecologically and culturally informed solutions.
15. The ALA also notes sociological theories of crime which posit that criminality arises as a function of social deprivation and social disorganisation.<sup>18</sup> This reality was starkly illustrated by findings of the Royal Commission into Aboriginal Deaths in Custody (1991) which affirms that over-representation can be accounted for by underlying issues experienced by First Nations Peoples.

#### *Imprisonment as a factor*

16. Research suggests that the use of imprisonment, rather than probation, increases the likelihood of recidivism in the first three years following release by approximately 19%.<sup>19</sup> Conversely, facilities that incorporate “cognitive-behavioural programs rooted in social learning theory” are the most effective at aiding in resettlement.<sup>20</sup>
17. The ALA notes that individuals are imprisoned, they are removed from mainstream society and without the structure in their lives that comes with being part of a system that includes responsibilities around employment, family, stability and routines. The difficulty in

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<sup>17</sup> Cunneen, C. (2006). Racism, discrimination and the over-representation of Indigenous people in the criminal justice system: Some conceptual and explanatory issues. *Current Issues in Criminal Justice*, 17, 329-346;

<sup>18</sup> Broadhurst, R.G. 2002, ‘Crime and Indigenous People’, in Graycar, A. and P. Grabosky, [Eds.], *Handbook of Australian Criminology*, Cambridge University Press: Melbourne, pp 256-280

<sup>19</sup> Bronwyn Naylor, ‘The evidence is in: you can’t link imprisonment to crime rates’ *The Conversation* (Web Page, 23 April 2015) <<https://theconversation.com/the-evidence-is-in-you-cant-link-imprisonment-to-crime-rates-40074>>.

<sup>20</sup> Sterbenz, Christina, ‘Why Norway’s Prison System Is so Successful’, *Business Insider Australia* (Web Page, 12 Decembe2014) <<https://www.businessinsider.com.au/why-norways-prison-system-is-so-successful-2014-12>>.



reintegrating is compounded by the stigma of being an ex-prisoner. This observation is supported by data which shows that 11% of jobseekers in 2011 were ex-prisoners.<sup>21</sup>

## Policy: Retributive justice frameworks

### *The age of criminal responsibility*

18. Section 3 of the *Youth Justice Act 1997* defines a 'youth' as a person who is 10 or more years old at the time when the offence the person has committed (or is suspected to have committed) occurred. This makes the minimum age of criminal responsibility in Tasmania ten years of age.
19. The ALA believes that it is not appropriate for children aged between 10 and 14 to be under the supervision of the youth criminal justice system. We note that the internationally accepted minimum age of criminal responsibility is 14 years.<sup>22</sup> Significant contemporary research indicates that many children aged between 10 and 14 years of age are not at a cognitive stage of development where they are able to appropriately appreciate the nature and significance of criminal conduct and the lifelong consequences of undertaking such conduct.<sup>23</sup>
20. The ALA believes that criminalising the behaviour of children who may not be aware of the consequences and nature of their conduct, initiates a dangerous cycle of disadvantage, causing children to become entrenched in the criminal justice system. The ALA considers that raising the age of criminal responsibility is a key measure in reducing the rate of incarceration of Tasmanian young people, who should be detained only as a last resort.
21. We note that Aboriginal and Torres Strait Islander children are disproportionately affected by the status quo. Of the 588 children aged 10 to 13 years in detention in 2017–18

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<sup>21</sup> Joe Graffam, 'Disability and Employment: Improving Prospects for Ex-prisoners', *Deakin University Australia* (Powerpoint) <<http://dea.conferenceworks.com.au/wp-content/uploads/sites/20/2016/08/2.15-Jenny-Crosbie.pdf>>.

<sup>22</sup> National Children's Commissioner, Australian Human Rights Commission, *Children's Rights Report 2019 – In Their Own Right: Children's Rights in Australia* (Report, October 2019) 238.

<sup>23</sup> Kelly Richards, 'What makes juvenile offenders different from adult offenders?', *Trends & issues in crime and criminal justice* (Paper No. 409, 18 February 2011) 4; Laurence Steinberg, 'Risk taking in adolescence: new perspectives from brain and behavioural science' (2007) 16(2) *Current Directions in Psychological Science* 55, 56

throughout Australia, the majority of those children were Aboriginal and Torres Strait Islander children.<sup>24</sup>

22. Furthermore, the rate of imprisonment of Aboriginal and Torres Strait Islander peoples has continued to increase. In total, 51.5 % of released prisoners had returned to corrective services within two years in 2021-22 (either prison or community corrections) (*figure C.3*). Returns to prison and corrective services were higher in all states and territories for Aboriginal and Torres Strait Islander than non-Indigenous people.<sup>25</sup>

### *Criminalisation of personal drug-use*

23. The ALA strongly believes that drug misuse should be seen as a health issue, not a criminal justice issue. Decriminalising possession and use of most drugs will reduce the harm that they cause and take pressure off the criminal justice system. The experience of other countries has shown that this approach does not lead to an increase in drug use and often decreases the harm caused by it.
24. The ALA submits that government funding would substantially alleviate the issues surrounding drug use by redirecting investment into health, housing and social services such that underlying causes of substance abuse and the associated social problems are effectively addressed. Simply put, punishment as deterrence does not work in the area of personal drug-use because the drivers that bring users to use or abuse substances involve a number of complex factors including health needs, financial hardship, and housing issues.
25. We note there has been increasing awareness of the need to give greater recognition of the need to divert people with drug abuse problems away from the criminal justice system and towards services that can address the underlying health problems associated with addiction. The ALA believes the time has come to go further.
26. The ALA strongly encourages the Tasmanian Government to abandon policies of prohibition and criminalisation of personal substance abuse and embrace decriminalisation, with a focus

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<sup>24</sup> National Children's Commissioner, Australian Human Rights Commission, Children's Rights Report 2019 – In Their Own Right: Children's Rights in Australia (Report, October 2019) 238.

<sup>25</sup> <<https://www.pc.gov.au/ongoing/report-on-government-services/2023/justice>>

on harm minimisation, and invest in public health and social services to address drug abuse and the associated social and health effects.

27. Public investment in harm minimisation and health responses to drug consumption as opposed to policing and law enforcement of illicit substance use will result in significant savings for the criminal justice system and improved health and wellbeing for people who suffer from addiction. As more and more countries recognise the failure of criminalisation as a policy response to substance abuse, the evidence for the effectiveness of health-focused harm minimisation strategies is becoming apparent. Australian states and territories have been cautious in their approach by comparison.
28. The ALA believes that police resources should not be spent on minor matters, such as drug offences, but instead directed towards facilitating the public health outcomes that we are all working towards. Without careful consideration of a non-criminal response for possession and use of small quantities of illicit drugs, the burden of responsibility for “other drugs” remains squarely with law enforcement agencies and the Courts.
29. The significant public expenditure on law enforcement, the courts, community corrections and prisons, as well as the continuing ongoing costs associated with drug consumption, including health issues and mental illness, is not providing sufficient return to warrant its continuation. Criminalisation of drug users has proven not to be a deterrent for those who seek to access, use or those overdosing on drugs. Instead, criminalisation of those who rely on drug use has exacerbated the socioeconomic gap for those experiencing financial hardship and mental-health issues.
30. The ALA believes that criminalisation in Tasmania, and in Australia generally, of drug possession and use is futile, a concept that is starkly borne out by recent data from the AIHW which finds;

*The proportion of people who had used an illicit drug in their lifetime has been gradually increasing in Australia since 2001 (Figure HARM2). In 2019, 43% of people aged 14 and over in Australia had illicitly used a drug at some point in their lifetime and 16.4% had done so in the last 12 months.<sup>26</sup>*

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<sup>26</sup> Australian Government, ‘Alcohol, tobacco and other drugs in Australia’, *Australian Institute of Health and Welfare* (Web Page, April 2022) <<https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugsaustralia/contents/harm-minimisation/demand-reduction>> Accessed 21 July 2022

31. The ALA contends that this case is not surprising because no matter how many billions of dollars is spent on law enforcement, when a product is prohibited demand and supply will rise or remain constant. It is also critical to note that judicial officers and lawyers do not believe that criminalising the use of drugs is an effective general or personal deterrent.
32. A recent study from the Australian Institute of Criminology<sup>27</sup>, which included interviews with judicial officers, found that;

*At best, according to our analysis, they appreciated the potential symbolic significance of the principle of general deterrence—that is, that its expression in sentencing could have a broader denunciatory value. There was some optimism that personal or specific deterrence as a direct punishment could work with some—but generally not drug dependent—offenders at the individual level. A number of participants were ‘sceptical’ about general deterrence in the context of responding to and preventing drug trafficking more broadly, giving the impression that the inclusion of this objective in sentencing remarks was more mechanical than meaningful.*

*Others expressed much more negative views, describing it as a ‘bogus mantra’. In the context of social supply, general deterrence was seen as ineffective because offenders were unaware of the seriousness of their behaviour and its potential legal consequences (Coomber et al. 2018). It was thought that specific deterrence had some meaning for this group but ought to be weighed against the lifelong negative effects of a criminal conviction on an otherwise law-abiding group. Both general and specific deterrence were considered ineffectual when it came to minimally commercial supply that involved dependent drug users. This is a point often reflected in academic research.*

## **The use of evidence-based strategies (‘EBS’) to reduce contact with the justice system and recidivism;**

33. In 2011, a ten-year strategic plan was announced by the Tasmanian Corrective Services for all Corrective Services in Tasmania (including the Tasmania Prison Service and Community Corrections). The plan, outlined in “*Breaking the Cycle: A Strategic Plan for Tasmanian Corrections 2011-2020*” had 7 goals including “to reduce re-offending by providing

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<sup>27</sup> Bull M et al. 2021. Sentencing for social supply of illicit drugs in Australia. Trends & issues in crime and criminal justice no.638. Canberra: Australian Institute of Criminology, p.12.

rehabilitation and reintegration services to address issues which contribute to offending.”<sup>28</sup>  
Despite this, the rate of returning to prison within 2 years jumped from 39.9% in 2014-2015 to 47.1% in 2019-2020.<sup>29</sup>

34. Conversely, a 2019 systematic review found that Norway had the lowest two-year reconviction rate at 20%, while Denmark had the highest at 63%.<sup>30</sup> Also, Oregon (USA) had the lowest two-year recidivism rate at 14%, while Australia had the highest at 45%.<sup>31</sup>
35. The ALA believes that the current failures in Australia’s criminal justice system suggests we look to other jurisdictions for promising practices on rehabilitation and reintegration.

### Best Practice; Reducing Recidivism

36. The ALA has long called for cost-effective alternatives to prison and more effective strategies to be implemented with the goal of diverting individuals from crime, rather than simply locking them up. Alternative procedures need to be established to help prevent young people in particular from re-offending.
37. The ALA notes that effective pursuit of risk-reduction sentencing strategies requires coordination between the court and other criminal justice agencies, especially prosecution, probation, and program providers.<sup>32</sup>
38. The ALA also recognises the need for more social support to be provided to ex-prisoners upon their release to reduce recidivism and that positive reintegration outcomes are more likely where programs are holistic and continue in and outside prison, addressing the specifically social and physical needs of offenders.<sup>33</sup>

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<sup>28</sup> <<https://stors.tas.gov.au/au-7-0092-00738>>

<sup>29</sup> <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/justice>>

<sup>30</sup> Denis Yuhkenko, Shivpriya Sridhar and Seena Fazel, ‘A systematic review of criminal recidivism rates worldwide: 3-year update’ (2019) 4(28) *Wellcome Open Research*, 1.

<sup>31</sup> Ibid.

<sup>32</sup> <https://s3.amazonaws.com/static.nicic.gov/Library/023358.pdf>

<sup>33</sup> United Nations, *Introductory Handbook on The Prevention of Recidivism and the Social Reintegration of Offenders* (Final Report, December 2018) 9.

39. Furthermore, we note the importance of social support programs across government and its agencies including in health, education, prison administration and law enforcement, in addition to other community services. Also, we draw attention to the importance of vocational education training (VET) in facilitating prisoner education, encouraging future employment and accompanying prisoners on a path towards becoming contributing members of society and decreasing the likelihood of reoffending.<sup>34</sup>
40. VET provides prisoners with workplace experiences, employment stability and increased community trust and safety by building rapport, giving prisoners access to a greater range of services they might not otherwise appreciate are available to them or have access to them.<sup>35</sup> Such services take a preventative approach to recidivism by equipping prisoners with the necessary resources to be able to cultivate new habits, experiences and understanding of the skills necessary to evolve away from the criminal justice system.<sup>36</sup>
41. The ALA believes that to reduce recidivism rates, programs must be implemented to empower communities in developing a relevant knowledge base about the causes of, and potential solutions for, recidivism; informed by the specific circumstances of the local community.<sup>37</sup>
42. We believe that individual responsibility for crime and empowered change can be simultaneously accomplished through innovative, rehabilitative programs that harness creativity.<sup>38</sup> Such programs provide therapeutic benefits that allow prisoners to explore their capabilities, talents and knowledge; leading to future employment opportunities.<sup>39</sup>

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<sup>34</sup> Susanne Bahn, 'Community safety and recidivism in Australia: Breaking the cycle of reoffending to produce safer communities through vocational training' (2011) 9(3) *International Journal of Training Research* 261, 266.

<sup>35</sup> Samantha Battams, et al, 'Reducing Incarceration Rates In Australia Through Primary, Secondary, And Tertiary Crime Prevention' (2021) 32(6) *Criminal Justice Policy Review*

<sup>36</sup> Samantha Battams, et al, 'Reducing Incarceration Rates In Australia Through Primary, Secondary, And Tertiary Crime Prevention' (2021) 32(6) *Criminal Justice Policy Review*

<sup>37</sup> Australian Institute of Criminology, *Justice Reinvestment in Australia: A review of the literature* (Research Report 2018), [https://www.aic.gov.au/sites/default/files/2020-05/rr09\\_justice\\_reinvestment\\_in\\_australia\\_160518\\_0.pdf](https://www.aic.gov.au/sites/default/files/2020-05/rr09_justice_reinvestment_in_australia_160518_0.pdf)

<sup>38</sup> Ibid.

<sup>39</sup> 9 Hannah Graham and Rob White, 'Analysing Innovation' in *Innovative Justice* (Routledge 2014) 3.

## **Innovations and improvements to the management and delivery of corrective services that may be applied in Tasmania, including to future prison/detention centre design;**

43. The ALA notes that Australian governments tend to focus on prevention of recidivism at this late stage, rather than primary crime prevention that would address the underlying social and situational causes of offending mentioned above<sup>40</sup>. This has largely been due to the political rhetoric of a ‘tough-on-crime’ approach to criminal justice which has led to increased spending on prisons rather than early intervention and social support programs that could prevent offending in the first instance.
44. The ALA draws attention to evidence that crime prevention programs aiming to divert current offenders away from imprisonment has consistently promising results.<sup>41</sup> We encourage the Tasmanian Government to heed the empirical data when it comes to actively reducing numbers in the recidivist population; with particular reference to best practices abroad.

### *Europe*

45. Many countries differ from Australia in actively fostering ‘normalised’ custodial environments that are as similar to the general community as reasonably possible, with principles of resocialisation and rehabilitation at the core of prison design.<sup>42</sup>
46. For example, German and Dutch prisoners wear their own clothes and prepare their own meals, are allowed individual expression in their living environments and given the capacity to exercise a substantial amount of control over their daily lives. In both countries, prisoners retain their rights to vote and often receive social welfare benefits.

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<sup>40</sup> Samantha Battams, et al, ‘Reducing Incarceration Rates In Australia Through Primary, Secondary, And Tertiary Crime Prevention’ (2021) 32(6) Criminal Justice Policy Review.

<sup>41</sup> Martin Andresen and Greg Jenion, ‘Crime Prevention and the Science of Where People Are’ (Research Report, Criminal Justice Policy Review, June 2008) 2.

<sup>42</sup> Subramanian R & Shames A 2013. *Sentencing and prison practices in Germany and the Netherlands: Implications for the United States*. New York: Vera Institute of Justice, Center on Sentencing and Corrections.

47. It is common for German and Dutch prisoners to spend time out of prison, including spending weekends with families, working on their relationships and practicing what they have learned in rehabilitative programs.<sup>43</sup> Short-term or extended home leave to visit family or search for work and accommodation is routinely granted. Notably, the proportion of prisoners failing to return to prison from this leave is in the order of one percent.<sup>44</sup>
48. The ALA encourages the Tasmanian Government to consider creative solutions and similar practices of normalisation which have been found to leave little need for the provision of housing services for released prisoners.<sup>45</sup> In this regard, German and Dutch prisoners are given the opportunity to maintain pre-incarceration accommodation and relationships in preparation for their release. The ALA views such practices as preventative by increasing the likelihood of prisoners leaving with the life skills needed to maintain stable housing.
49. Another example to draw from is Prison SMART, a holistic program that prioritises rehabilitation, with a focused effort on reducing violence and aggression, improved physical and mental health, better relationships and reduced substance abuse. It aims to transform valuable human resources and strengthen these for the well-being of the individual and society through rehabilitation that focuses on mindsets, attitudes and behaviours of offenders.<sup>46</sup> It also supports professional excellence and stress management in correctional staff.
50. The ALA encourages the Tasmanian Government to consider the implementation of such programs in the design of prisons.

## Norway

51. In the early 1990s, Norway implemented a unique approach to prison design with a particular emphasis on rehabilitation and principles of comfort, healing and inclusivity at the core.<sup>47</sup> Prison time is used to equip prisoners with the necessary skills to contribute to

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<sup>43</sup> Subramanian R & Shames A 2013. *Sentencing and prison practices in Germany and the Netherlands: Implications for the United States*. New York: Vera Institute of Justice, Center on Sentencing and Corrections

<sup>44</sup> Ibid.

<sup>45</sup> Australian Institute of Criminology, Mathew Willis, 'Supported housing for prisoners returning to the community: A review of the literature', Research Report 07 (2018).

<sup>46</sup> Prison SMART Europe, *Stress Management and Rehabilitation Training For prisoners and prison personnel* <<https://iahv.dk/documents/prisonsmart.pdf>> 15.

<sup>47</sup> Ibid.



business and other spheres of human endeavour such as gaining qualifications in a variety of fields (many walking away as qualified mechanics, chefs and carpenters<sup>48</sup>).

52. Notably, the training requirements for correctional staff are more stringent in Norway with officers taking 2-3 years to become qualified prison officers given that the training involves becoming a personal support, mentor and role model who will spend time nurturing friendships that will motivate and encourage prisoners onto a new path.<sup>49</sup>
53. Adoption of these principles has proven fruitful in systems that follow a strict retributive punishment model. For example, in North Dakota, the Department of Corrections and Rehabilitation adopted principles of personal choice and humane treatment which led to a significant reduction of violence there.<sup>50</sup>

## Canada

54. Cognitive behavioural therapy (CBT) is the best example of the treatment-based approach, as it directly uses theoretical methods of implementation taken from psychology, which have yielded positive results on a broad spectrum of patients. The Counter-Point Program, which is delivered to released offenders in Canada, uses cognitive-behavioural principles of intervention through altering antisocial attitudes.
55. The program uses techniques including self-monitoring, self-management, perspective-taking, generic problem-solving skills, sequential and structured learning, prosocial modelling, role play, rehearsal, and effective reinforcement and disapproval. Participants are given homework at the end of each session to apply the skills learned to “real life” events and situations.<sup>51</sup>

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<sup>48</sup> Emma Jane Kirby, ‘How Norway turns criminals into good neighbours’, BBC (online, 7 July 2019) <<https://www.bbc.com/news/stories-48885846>>

<sup>49</sup> Emma Jane Kirby, ‘How Norway turns criminals into good neighbours’, BBC (online, 7 July 2019) <<https://www.bbc.com/news/stories-48885846>>

<sup>50</sup> Cinnamon Janzer, ‘North Dakota Reforms its Prisons, Norwegian Style’, *US News* (online, 22 February 2019) <<https://www.usnews.com/news/best-states/articles/2019-02-22/inspired-by-norways-approach-north-dakota-reforms-its-prisons>>

<sup>51</sup> Australian Institute of Criminology, Mathew Willis, ‘Supported housing for prisoners returning to the community: A review of the literature’, Research Report 07 (2018).

56. The advantage of an intervention program such as this is that it requires first identifying behaviours that are highly correlated with criminal conduct and addressing these delinquent behaviours directly through treatment that can be administered both inside and outside of prison (e.g. while offenders are on parole, or conditional release), in order to gradually deter the offender from an environment that is inherently criminogenic.

#### *Switzerland*

57. Switzerland provides a good example of the effectiveness of drug treatment programs in the pursuit of crime prevention. There, a heroin assisted treatment program demonstrates effective drug treatment as a crime prevention measure itself, having important implications for policies aiming to reduce recidivism. A multi-year trial of the program led to a 90% reduction in property crime in the region, demonstrating the effectiveness of heroin treatment as a measure of crime prevention.<sup>52</sup> At the beginning of the trial, 69.9% of participants had been involved in crime in the last 30 days, which dropped to 23.4% after 12 months.<sup>53</sup>

#### *Example of Possible Support Program*

58. The NSW Post Release Support Program (PRSP) is favourably recognised for its impact with qualitative interviews among staff and offenders ‘overwhelmingly positive’. The diversion programs were also recognised as ‘invaluable for enabling youths to gain insight into their behaviour through meeting face-to-face with their victims and admitting their errors to their community’. The return of adults to detention that were in detention as youths demonstrated ‘the acute need for effective rehabilitation programs’, like the Te Whare Wakaahuru residential diversionary programs in New Zealand and Baund-a near the Clarence River in NSW.<sup>54</sup>

59. Peer Mentoring programs such as the Youth Justice Mentoring Scheme (YJMS) began by sending volunteers one day a week to Juniperina Juvenile Justice Centre in Lidcombe to run recreational activities with the all-female residents at the centre. The service provides

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<sup>52</sup> Uwe Verthein et al, ‘Long-term effects of heroin-assisted treatment in Germany’ (2008) 103(6) *Addiction* 960, 960–966.

<sup>53</sup> Ibid.

<sup>54</sup> <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Committees\\_Exposed/atsia/sentencing/report/chapter7](https://www.aph.gov.au/Parliamentary_Business/Committees/Committees_Exposed/atsia/sentencing/report/chapter7)>

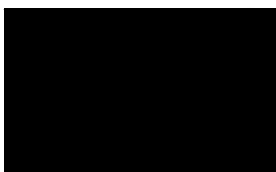
opportunities for young people in custody to redefine and develop their own positive and unique identities separate from the label of a juvenile prisoner.<sup>55</sup>

60. Australia has experimented with Youth Justice Conferencing to reduce youth reoffending with participants including the convenor, a police officer (either the arresting officer or a representative), the offender (who, as a condition of attending, must admit to the offence), the victim(s), and supporters for the offender(s) and victim(s). The offender's supporters are typically parents, while victim supporters may be parents or partners. The process usually goes through an introduction, storytelling and agreement negotiation phase, which can include an apology and reparations. These processes usually utilise the emotions of the offender to encourage them to take accountability for their actions and show remorse. This allows "for the resumption of normal social relations".<sup>56</sup>

61. The ALA believes that such initiatives can have a large impact on a young person and their decision to reoffend in the future.

## **Conclusion**

62. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.



**Rowena Macdonald**

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**Australian Lawyers Alliance**

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<sup>55</sup> Sydney University Law Society. *Youth Justice Mentoring Scheme*.

<sup>56</sup> Hennessey Hayes (2006) Apologies and Accounts in Youth Justice Conferencing: Reinterpreting Research Outcomes , Contemporary Justice Review, 9:4, 369-385.