



**JUSTICE
REFORM
INITIATIVE**

**JAILING
IS
FAILING**

A graphic element consisting of a series of vertical bars of varying heights, resembling a barcode, positioned behind the text 'JAILING IS FAILING'.

A Paper from the Justice Reform Initiative

THE STATE OF THE INCARCERATION NATION
A BRIEFING TO AUSTRALIA'S MEMBERS OF PARLIAMENT

6 September 2020

Introduction



Jailing is failing our nation on every front – it leads to more offenders committing more crimes, more disadvantage and more cost to the taxpayer.

The *Justice Reform Initiative* is supported by more than 100 of our most eminent Australians, including two former Governors-General, former Members of Parliament from all sides of politics, academics, respected Aboriginal leaders, senior former judges, including High Court justices, and those who have joined their voice to ending Australia's dangerously high reliance on jails.

A list of patrons getting behind this initiative is available [here](#). We are joining the chorus of powerful voices already advocating for change and acknowledge the longstanding efforts of many other individuals and organisations.

The Justice Reform Initiative will show how high prison numbers undermine the safety of the community. It will show that governments can improve public safety by introducing more effective alternatives to incarceration based upon real evidence.

Jailing is failing

Our criminal justice system is not working. Past Governments of both political persuasions have been responsible for more than doubling the Australian jail population over recent decades. The Australian imprisonment rate (per 100,000 of adult population) more than tripled, from 66 in 1985 to 223 in 2019. It is now time to critically examine the evidence which shows that jails are failing us all. In many parts of the United States Democrats and Republicans are learning to work together to support alternatives to incarceration.

Jailing is failing as a **deterrent**.

The evidence is that rates of reoffending are actually increasing. Only a quarter of inmates are entering adult prison for the first time and more than half return within two years. Overcrowding is making it difficult to provide proper training and support programs to help prevent people leaving jail from re-offending and can actually make them more likely to commit further crimes.

Jail is also failing the **victims of crime**.

Victims of crime tell us that they are not helped by "tough on crime" rhetoric. They say to the contrary that they are helped when they witness the introduction of programs that address the causes of offending. They approve of innovative strategies of restorative justice for the support of victims.

Jailing is failing the **most disadvantaged**.

The number of people in prison has increased by nearly 50% since 2000. Statistics show clearly that people from disadvantaged or marginalised groups are far more likely to come into contact with police. Inter-generational poverty and lack of education and opportunity cause more and more young people from these communities to turn to crime. Incarceration at such an early age is habit forming.

Jailing is failing **Indigenous Australians**.

In 2018, Aboriginal and Torres Strait Islander peoples accounted for 3% of the total population, but 28% of the adult prison population. In an even grimmer statistic, only 5% of young people (age 10–17) are Aboriginal and Torres Strait Islander people, but they represent 59% of young people in detention. It is nearly 30 years since the Royal Commission into Aboriginal Deaths in Custody. Although governments accepted almost all of the Commission's recommendations, many of them, such as imprisonment being the "last resort," have not been implemented. Governments have also failed to adequately address the underlying systemic issues which the Royal Commission identified as the cause of the disproportionate rate of Indigenous incarceration.

Jailing is failing people with **mental illness or cognitive disability**.

The proportion of offenders with a history of mental illness is over 50% and that figure is even higher for young people in custody. Almost 90% of young people

in custody have a past or present psychological disorder. The estimates of prisoners with intellectual disability or borderline intellectual disability are as high as 20%. All these people have limited access to appropriate mental health or other critical support while they are in prison and most will be released back into the community in a relatively short period of time. In NSW, for example, over 20,000 people are released from prison every year.

Jailing is failing **women**.

The fastest growing cohort of Australia's prison population is women, and a disproportionate number of those women are Aboriginal and Torres Strait Islanders. Most have committed non-violent offences, and many are themselves victims of horrific domestic abuse. One immediate consequence of incarcerating these women is that they are separated from their children, who are thereby made victims of the same systemic failure.

Jailing is failing our **young Australians**.

Sadly, most of the young people in Australia's juvenile justice system come from backgrounds where they have already often suffered from severe neglect or abuse and/or have been placed in out of home care. This was clearly demonstrated by the Royal Commission into the Don Dale Centre in the Northern Territory. The children in these centres, who can be as young as 10, have often had the hardest of young lives and need family and community support, education and life opportunities, rather than being locked up.

Jail is failing in terms of **rehabilitation**: it is in the interests of everybody in the community that repeat offending be radically reduced by transformational community programs which improve pathways for people as they leave prison, including through access to education, training, genuine work opportunities and by addressing homelessness. Sadly, under current arrangements, in every part of Australia, these critical community and support programs are not operating effectively, if at all. One Corrective Services Commissioner has confirmed that 70% of the prison population is functionally illiterate. Short-term prisoners (including those on remand) are mostly not eligible for any such programs in any event.

Jailing is failing **Australian taxpayers**.

Australia now imprisons more people than at any time since 1900, in both total number and per capita, at a cost exceeding \$3.6 billion annually or \$110, 000 per prisoner per year. Our incarceration rate is above all Western European countries and Canada, among many others. Sadly, instead of reducing crime it has only led to higher rates of reoffending.

Successful bipartisan reform initiatives internationally show us there is another way. It's time for governments to listen and accept the evidence for reform.

It's time to admit it – jailing is failing.

Our prison population has swollen to record levels

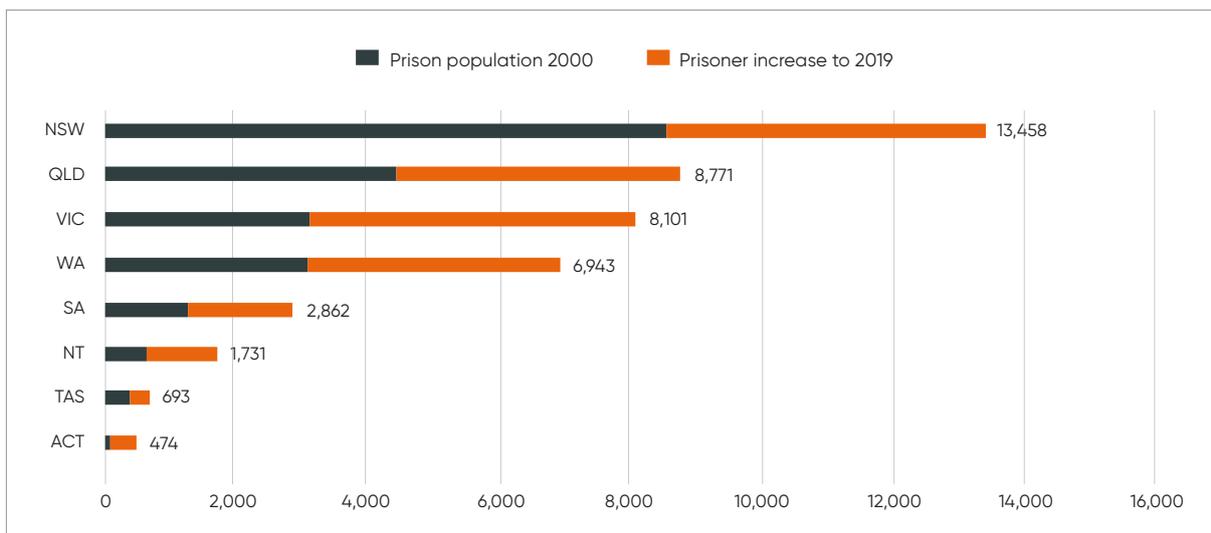


Our prison population has swollen to more than 43,000 – up from under 30,000 only eight years ago and this comes with a \$3.6 billion annual price tag to the Australian taxpayer.

Australia's incarceration rate is higher than at any time since 1900, in both total numbers and per capita.

The following statistical summary demonstrates the extent to which Australia's overreliance on prisons has got out of control.

- » The number of adult prisoners is currently 43,028¹. This number has almost doubled since 2000.
- » The national imprisonment rate is 223 persons per 100,000 adult population (or 169 per 100,000 people, including children),² up 24% in a decade. This rate has more than tripled since 1984.
- » Two in three prisoners, 67% or 28,721 people, were sentenced, whilst 33% were unsentenced.³
- » Among sentenced prisoners, there has been a growth rate of over 25% since 2009, up from 22,923.⁴
- » Unsentenced prisoners have grown from 6,391 to 14,210 over the same period – a 122% increase.
- » 12.8% of unsentenced prisoners have been in prison for a year or longer.
- » There have been especially large increases in remand in Victoria (264%) and the ACT (258%) over the past decade.
- » Of those entering prison, a staggering 78% were unsentenced.⁵
- » The number of female prisoners grew by 64% across the decade to 2019, from 2,127 to 3,494, and women make up an increasing proportion of prisoners, up from 6.4% in 2000 to 8.1% in 2019.
- » 38% of people entering prison had children who depended on them for their basic needs, including 54% of women.⁶



ABS Paper 4517.0 - Prisoners in Australia data, 2000 & 2019

1 Australian Bureau of Statistics (ABS) (2019). *4517.0 - Prisoners in Australia, 2019*.
 2 Ibid.
 3 Ibid.
 4 Ibid.
 5 ABS (2020). *4512.0 - Corrective Services, Australia, March Quarter 2020*.
 6 Australian Institute of Health and Welfare (AIHW) (2019). *The Health of Australia's Prisoners, 2018*.

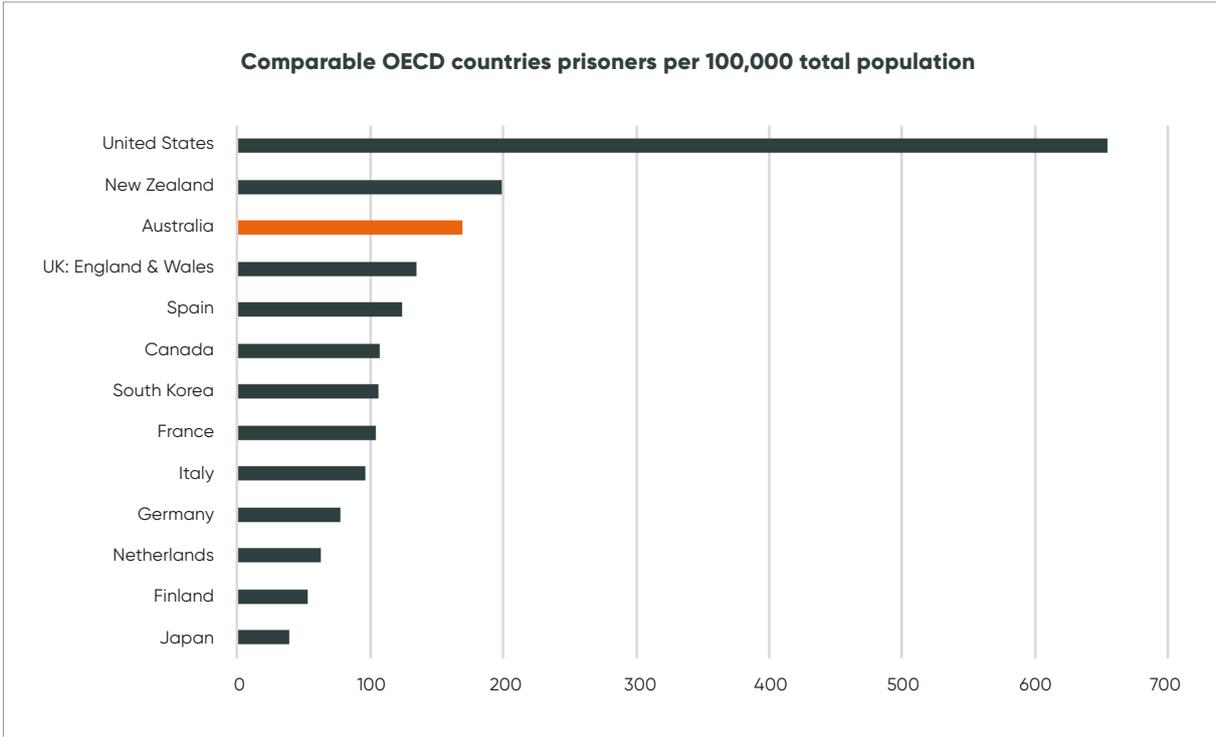
Our prison population compares poorly to OECD nations and is ahead of all Western European countries

“ The Netherlands by contrast to Australia have massively reduced their prison spending, largely by closing jails, and reinvested in evidence-based alternatives to incarceration. As a result, their rate of reoffending has been declining for a decade.

Our incarceration rate in Australia (per 100,000 population) is above all countries in Western Europe and Canada.⁷

It is also well above most of the countries in the OECD. For comparison, countries like Japan, Iceland, Finland, Ireland and Germany are all below 100 prisoners per 100,000 people – well below Australia’s 169 per 100,000 people.

The Northern Territory imprisons people at a higher rate⁸ than the United States,⁹ which is itself a global outlier, especially amongst OECD countries. Many other Australian jurisdictions do not fare much better, with our national incarceration rate above the global average in every jurisdiction except the ACT.



Source: <https://www.statista.com/statistics/300986/incarceration-rates-in-oecd-countries/>

⁷ Statista (2020). *Incarceration Rate in Selected European Countries in 2019*. <https://www.statista.com/statistics/957501/incarceration-rate-in-europe/>.
⁸ ABS (2019). *45170 – Prisoners in Australia*.
⁹ Statista (2020). *Incarceration rates in OECD countries*. <https://www.statista.com/statistics/300986/incarceration-rates-in-oecd-countries/>.

Prison leads to more crime and we are setting up a proven pathway back to prison



Far from being tough on crime, the default to jail sentence leads to more recidivism, more crime, more victims and human suffering

Recidivism rates are on the rise across the country; this makes sense, given that:

- » Almost 3 in 4 (73%) prison entrants reported they had previously been in an adult prison;
- » Almost one-third (32%) had been in prison at least five times before;¹⁰
- » Only a quarter were entering the prison system for the first time; and
- » Once exiting prison, 55% of prisoners will return to corrective services within two years,¹¹ up from less than 50% in 2012–13.¹²

The situation is even worse for Aboriginal and Torres Strait Islander people, with 44% of prisoners having been in prison at least five times before, compared with 25% of non-Indigenous people.

Only 16% of Aboriginal and Torres Strait Islanders entering prison had never been in prison before. Similar dire results are seen in juvenile detention, with 8% of non-Aboriginal and Torres Strait Islander entrants having been in detention before, compared to 21% of Aboriginal and Torres Strait Islander entrants.¹³

Simple solutions of over-relying on imprisonment are creating complex problems, and we are all paying the price, repeatedly.

¹⁰ AIHW (2019). *The Health of Australia's Prisoners, 2018*.

¹¹ Australian Productivity Commission (2020). *Report on Government Services. Table CA.4*.

¹² Queensland Productivity Commission (2018). *Imprisonment and Recidivism: Issues Paper*.

¹³ AIHW (2019). *The Health of Australia's Prisoners, 2018*.

Prison is particularly failing Aboriginal and Torres Strait Islander people and other disadvantaged Australians



The revolving prison door is bad for families and communities and entrenches disadvantage. It wastes human potential and is scandalously wasteful of public money that could be spent on enhancing the wellbeing and productivity of communities.

Aboriginal and Torres Strait Islanders, people with mental health issues or intellectual disability, amongst others, are all poorly served by an over-reliance on our prison system.

Aboriginal and Torres Strait Islanders

Aboriginal and Torres Strait Islander people make up only 3% of the wider Australian population, but represent 28% of prisoners,¹⁴ up from 19% in 2000.¹⁵ Aboriginal and Torres Strait Islanders women make up 33% of the female prison population.¹⁶

Shockingly, almost 1 in 20 Aboriginal and Torres Strait Islander males are in prison right now, with an imprisonment rate of 4,719 per 100,000 adult males in March 2020.¹⁷ It is difficult to comprehend that, at any given point in time, just under 5% of male adults are imprisoned. Overall, there were 2,606 Aboriginal

and Torres Strait Islander adults in prison per 100,000 of population.¹⁸ This is more than 10 times the population rate for Australians generally and at a rate more than three times that of the United States, the most imprisoned nation on earth. No state of Australia has fewer Aboriginal and Torres Strait Islander people in prison than the United States average.¹⁹

Seventy-eight percent of Aboriginal and Torres Strait Islander prisoners had been imprisoned under sentence previously.²⁰

The over representation of Indigenous people is particularly reflected in youth detention facilities. Only 6% of 10–17 year olds are Aboriginal and/or Torres Strait Islander, compared with 58% of young people in detention.²¹

¹⁴ ABS (2019). 45170 – Prisoners in Australia, 2019.

¹⁵ ABS (2009). 45170 – Prisoners in Australia, 2009.

¹⁶ ABS (2019). 45170 – Prisoners in Australia, 2019.

¹⁷ ABS (2020). 4512.0 – Corrective Services, Australia, March Quarter 2020.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ ABS (2019). 45170 – Prisoners in Australia, 2019.

²¹ AIHW (2019). Youth Justice in Australia, 2018–19.

Mental Health

The key findings of the Australian Institute of Health and Welfare's report, *The Health of Australia's Prisoners, 2018*, regarding mental health were:

- » A total of 2 in 5 (40%) prison entrants reported being told they had a mental health condition at some stage in their life.
- » Female prison entrants (65%) were more likely than male prison entrants (36%) to report a history of a mental health condition.
- » One-quarter (26%) of prison entrants had a high or very high level of psychological distress score on the Kessler 10 scale.
- » Almost one-quarter (23%) of prison entrants reported currently taking medication for a mental health condition.
- » About 1 in 6 (16%) people in custody received mental health-related medication.
- » Women in custody (28%) were almost twice as likely as men (15%) to receive mental health-related medication
- » Almost 1 in 5 (18%) prison entrants were referred to mental health services for observation and further assessment when they arrived in prison.²²

Whilst a lot less is known about intellectual disabilities in prison, "several studies have found that 25%–30% of people in prison have borderline intellectual disability, and 10% have a mild intellectual disability".²³

Other Vulnerable People

There are of course many other vulnerable members of our community who are significantly disproportionately represented in our prisons. The evidence shows that, of those entering prison, one in three is homeless during the four weeks before prison and more than half (54%) report being unemployed in the 30 days before entering prison. Of those exiting prison, over half expect to be homeless on discharge and less than one quarter had employment organised on release.²⁴

The evidence also shows that the 'postcodes of disadvantage' identified by the late Professor Tony Vinson in the *Dropping off the Edge* reports²⁵ are also massively disproportionately represented in the prison population. Most of these communities have experienced long-term intergenerational poverty, with a significant statistical likelihood that people will come into contact with the criminal justice system.

The time has come to see long-term intergovernmental coordination and substantial investment in these communities, to break the cycle of poverty and disadvantage. This goal is worthy of the support of all political parties, as are the ideas of justice reinvestment. The issues also overlap with the Closing the Gap commitments of all our governments to Aboriginal people and communities. It was indeed these underlying issues which the Royal Commission into Aboriginal Deaths in Custody recognised as giving rise to the disproportionate rate of Aboriginal incarceration.

²² AIHW (2019). *The Health of Australia's Prisoners, 2018*.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Tony Vinson et al, *Dropping off the Edge, 2007 and Dropping off the Edge, 2015*. <https://dote.org.au/findings/full-report/>.

Prisons are a poor use of taxpayer dollars

“ Increasingly, both the left and the right are reaching the conclusion that that we are not getting value for money from our prisons. The Institute of Public Affairs, for example, concluded in its 2017 Justice Project that Australia has the fifth most expensive prisons in the OECD and the seventh fastest prison spending growth in the OECD. No area of government expenditure should be immune from rigorous public and parliamentary examination to assess whether this massive expenditure is meeting its objectives. Clearly, on the evidence, jailing is failing us all.

Australia's net operating expenditure on prisons and community corrections in 2018-19 was \$3.6 billion,²⁶ compared with \$2.5 billion on public health activities and services.²⁷ The total expenditure on the justice system is over 18 billion per annum, according to the Productivity Commission.

The average annual recurrent expenditure per prisoner in Australia is around \$110,000.²⁸

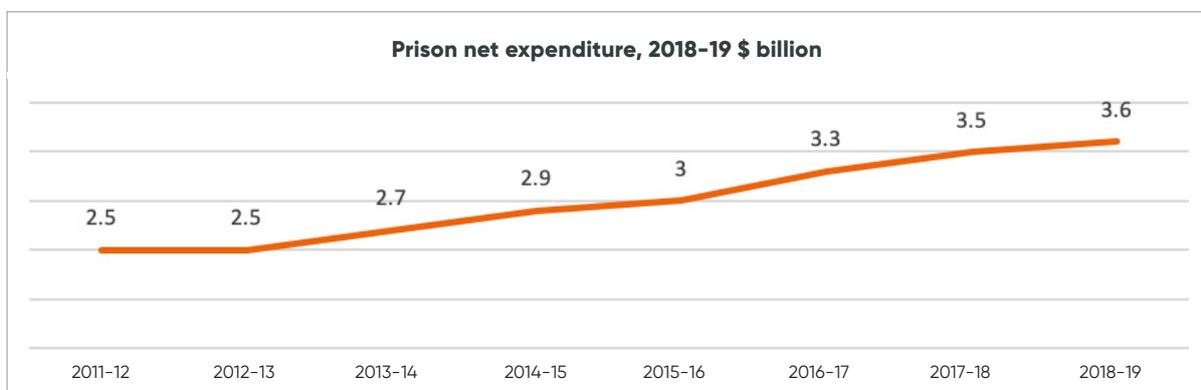
This money could be better spent, especially when almost half of the prison population will return to prison within two years of release. Of course, this does not take away from the fact that we need prisons, especially for the most violent offenders who display no remorse, but an increasing proportion of people are in prison for non-violent offences.

A range of more effective, well-researched, lower-cost alternatives to incarceration exist, particularly for offenders with complex needs, those on remand and minor offenders who currently receive short sentences.

The most incarcerated nation on Earth is starting to change their thinking on prison, understanding that it is not effectively reducing repeat incarceration and is simply too big a strain on public finances. We must also do so.

“ Reforms in Texas since 2007 have seen the state close four prisons, saving an estimated US\$3 billion. The American example shows that it is possible to cut both crime rates and costly incarceration rates - over the past ten years, seven states have done it.

COVID-19 is an opportunity to rethink how taxpayer money is spent and what it is invested in. Do prison sentences, especially for minor crimes, result in fewer prisoners over time? And are prison sentences the best approach to support community safety? Not according to the research - prisons just result in more crime and more human and economic cost to the community.



Source: Productivity Commission (2020). Report on Government Services 2020, Table 8A.2.

26 Productivity Commission. (2020). Report on Government Services 2020, Chapter 8: Justice. Table 8A.17.

27 Ibid, Chapter 4: Education. Table 4A.14. This figure includes user cost of capital for government schools and is reported in 2016-2017 dollars.

28 Ibid, Chapter 8: Justice. Table 8A.17.

Public opinion on crime shows clear support for alternatives to prison

Although there may be a common perception that the public is 'tough on crime', there is clear evidence that the public in fact supports alternatives to imprisonment in appropriate circumstances. For example, recent unreported data from the Australian National University's national poll indicates that 70% of respondents agreed with the statement that, instead of going to prison, non-violent offenders should be given a community based-order. There was even stronger support for the proposition that, instead of prison,

- » Young offenders should have to take part in programs that teach job skills, moral value, and self-esteem (91%);
- » Mentally ill offenders should receive treatment in mental health facilities (89%); and
- » Drug-addicted offenders should be put on an intensive program of rehabilitation and counselling (87%).

The same poll indicates that 49% of respondents are not confident that the courts have regard for victims' rights. Worse still, only 22% were confident in prisons' ability to rehabilitate prisoners and 20% were confident that they deter future offending.

Parliamentarians can play an important role to educate the community on the need to shift our criminal justice focus away from primary reliance on prisons to evidence-based alternatives which will keep our communities safer, better look after the victims of crime and reduce repeat offending.

In our future communications to parliaments, we will be increasingly outlining the evidence-based alternatives, which we will be championing and urging be introduced across Australia with the cross-party support they deserve.

We will be urging men and women of good will in the community from across the political spectrum to become active in our advocacy for change to help send a powerful message to our political leaders that jailing is failing and that, as a community, we deserve better.



The Justice Reform Initiative is backed by eminent patrons, including former Governors-General Dame Quentin Bryce AD CVO and Sir William Deane AC KBE as patrons-in-chief.

The list includes former justices of the High Court, a former state Chief Justice and judges from other courts; respected Aboriginal leaders; a former Federal Police Commissioner, Director of Public Prosecutions, former Australians of the year and numerous former Federal and state Ministers from both sides of politics. A list is available [here](#).

The Justice Reform Initiative deeply appreciates the support of the Paul Ramsay Foundation.

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 such as [Change the Record](#) 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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