



**JUSTICE
REFORM
INITIATIVE**

**JAILING
IS
FAILING**

A Paper from the Justice Reform Initiative

STATE OF INCARCERATION
TASMANIA'S BROKEN CRIMINAL JUSTICE SYSTEM

April 2021

Executive summary

In Tasmania, the criminal justice system is broken. This report shows that successive governments have relied too heavily on incarceration as a default response to both disadvantage and offending. This has sent imprisonment rates soaring, while failing to address the underlying drivers of crime and ignoring the evidence which shows diversionary programs and effective community-based interventions deliver better outcomes, in terms of community safety.

On the eve of the 2021 election, there is continued commitment to build a new prison in the state's north at significant cost. It is time to reflect on the wisdom of current policy approaches to criminal justice, particularly the over-use of imprisonment. It is time to start thinking about how Tasmania can build a better, and different, system using an evidence-based approach to justice and social policy.

HOW JAILING IS FAILING

Tasmania's criminal justice system is not working. Past governments of both political persuasions have been responsible for an almost 40% growth in the Tasmanian jail population since 2010.

The Tasmanian imprisonment rate is 124 per 100,000 population, a rate higher than most comparable jurisdictions across Western Europe and Canada.

Two-thirds of people in prison in Tasmania have been to prison before. In addition, 58% of young people in Tasmania return to prison less than a year after being released.

Rather than the experience of prison helping people to turn their lives around, it entrenches and deepens disadvantage. Prison does not support people to build productive lives in our community. And prison does not make our communities safer. Overcrowding and lack of resources make it difficult to provide meaningful education, training and support programs to help people while they are in prison. Most people

who go to prison in Tasmania never have the opportunity to address the drivers of their offending. And, critically, an absence of housing and support on release means that people leave prison into situations which place them at high risk of reoffending and returning to prison.

The response to the increase in the prisoner population in Tasmania has largely been to spend more on a failed criminal justice model, where prison is the default response. Tasmanian taxpayers already spend almost \$94 million on prisons each year and this will only increase as the incarceration rate climbs. Other than the ACT, Tasmania has the highest per capita prison costs in the country, with each prisoner costing the state \$122,143.60 per year.

The evidence clearly shows that people from disadvantaged or marginalised groups are far more likely to come into contact with police and be imprisoned. Many of those entering the prison system are homeless and jobless, and their prospects worsen when they leave, making it all the more likely that they will return to prison.

The Aboriginal and Torres Strait Islander imprisonment rate in Tasmania is currently more than five times the non-Indigenous imprisonment rate. The Aboriginal and Torres Strait Islander prison population has increased by 97% since 2010, compared to 7% for non-Indigenous people.

These figures were recorded on the eve of the thirtieth anniversary of the Royal Commission into Aboriginal Deaths in Custody. Although governments across Australia accepted almost all of the Commission's recommendations, many have not been implemented; critically, this includes the need for imprisonment to genuinely be a 'last resort'. Governments have also failed to address the underlying systemic issues which the Royal Commission identified as the cause of the disproportionate rate of Aboriginal and Torres Strait Islander incarceration.

People with a range of different kinds of disadvantage are locked up in Tasmanian prisons. Instead of receiving supports in the community, they are 'managed' inside the justice system; 67% of people entering prison in Tasmania have a history of mental health conditions, while 62% reported living with a disability. Most 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. The children in these centres need family and community support, education and life opportunities. Locking kids up makes the problems of disadvantage and disconnection worse, not better.

Although there is no doubt that crime needs to be taken seriously, if we are serious about reducing crime, we need to look at the social drivers of justice system contact. Victims of crime quite rightly are disappointed by the existing system of justice, not because it needs to be 'tougher', but because victims' voices are so often not heard properly and it simply doesn't work to improve community safety.

Experts from across the community are adamant that a new criminal justice model is needed which does not centre on the use of more prisons.

ABOUT US

The Justice Reform Initiative is a multi-partisan alliance 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 judges, and others who have added their voices to end Australia's dangerously high reliance on jails.

Our Tasmanian patrons include:

- » Greg Barns SC, barrister, commentator and spokesperson on criminal justice for the Australian Lawyers Alliance
- » The Honourable Lara Giddings, former Premier and Attorney-General of Tasmania
- » Adjunct Associate Professor Terese Henning, former Director of the Tasmania Law Reform Institute
- » Christine Milne AO, former Senator for Tasmania, Leader of the Australian Greens and current Global Greens Ambassador
- » The Rt Honourable Lord Mayor of Hobart, Councillor Anna Reynolds
- » 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

Jailing is failing – Tasmania’s prison population is booming

- » Tasmania’s prison population has grown by 37% over the past decade.
- » Tasmania performs poorly against international rates of imprisonment.

The prison population in Tasmania has risen by nearly 40% over the last decade, from 486 to 668 people in prison.¹ While temporary policy adjustments at the start of the COVID-19 pandemic resulted in a slight dip – a side-effect of social distancing measures which was also observed in other states – the overall trend is set to continue, unless there is a dedicated effort to redirect most people entering the criminal justice system away from prison.

Tasmania has a significantly higher imprisonment rate than comparable jurisdictions across Western Europe and Canada. The state’s incarceration rate of 124 per 100,000 people is well above most of the countries in the OECD, with countries like Japan, Finland, France and Germany all imprisoning fewer than 100 per 100,000 people.²

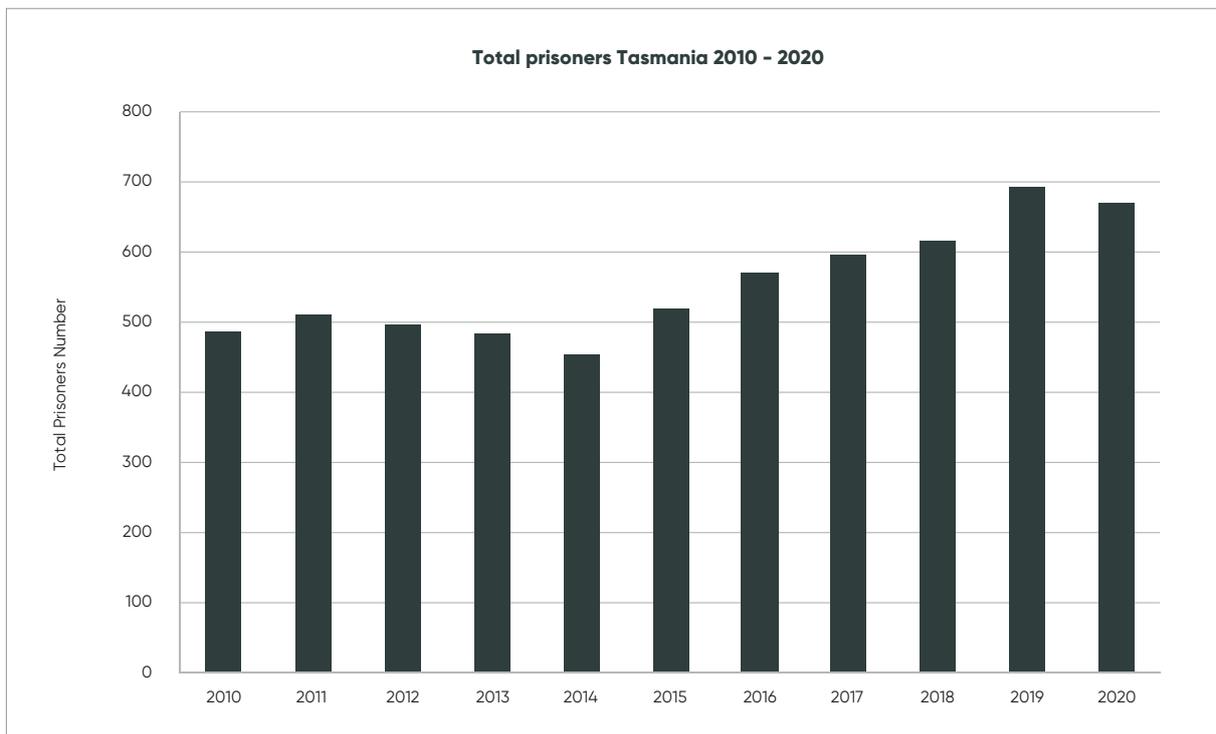


Figure 1: ABS data – Prisoners in Australia reports 2010-2020

1 Australian Bureau of Statistics (ABS) (2020), Prisoners in Australia 2020

2 Highest to Lowest – Prison Population Rate | World Prison Brief ([prisonstudies.org](https://www.prisonstudies.org)) Note: The OECD counts prison population against population, the ABS counts prison population against adults.

The table below shows how Tasmania and Australia stand out against similar countries such as Canada and Germany, which have recognised that diverting people away from prison delivers greater community benefits with lower long-term expense.

While the United States still stands as an international outlier, due to years of policies such as the 'war on drugs' driving growth of an enormous prison system, lawmakers in states such as Texas, Mississippi and Michigan are reversing the incarceration trend, and the overall prison population is falling.³

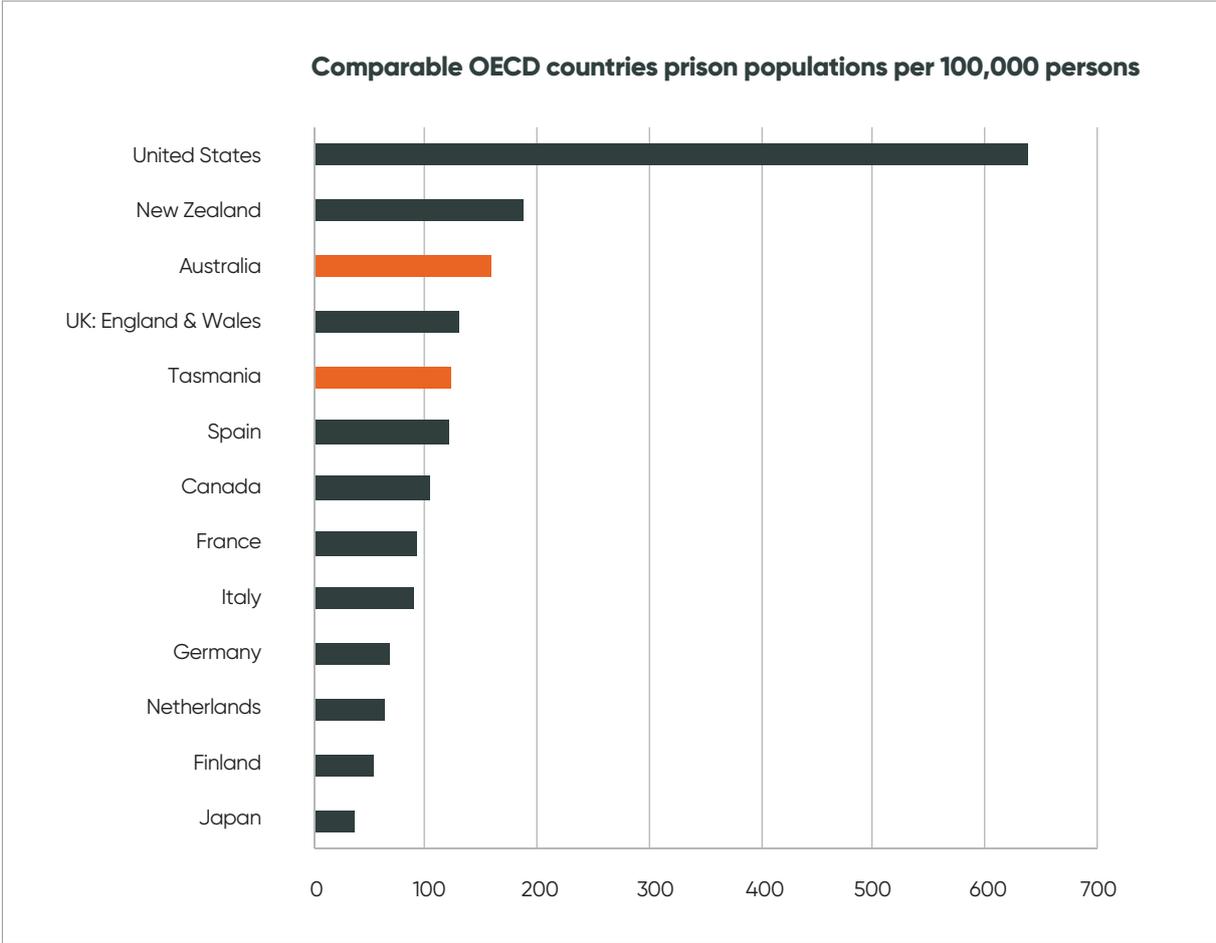


Figure 2: World Prison Brief Data, 2021

³ [Tasmania | World Prison Brief \(prisonstudies.org\); Highest to Lowest - Prison Population Rate | World Prison Brief \(prisonstudies.org\)](#)

Jailing is failing as a deterrent - Tasmanians keep returning to prison

- » 66.5% of people in Tasmania's prisons have been in prison before, the highest rate in a decade.
- » 52% of people entering prison have been in prison in the last 12 months.

By relying so heavily on imprisonment as the default response, our criminal justice system is operating like a revolving door. The evidence shows that each contact with the criminal justice system significantly increases the risk of further contact. From the first time a person is sent to prison, they become much more likely to return.

In fact, prior imprisonment rates in Tasmania are at their highest level in more than a decade, rising from 60.9% of people in prison who have been in prison before in 2015 to 66.5% in 2020. This is above the national rate of 59.5%.⁴

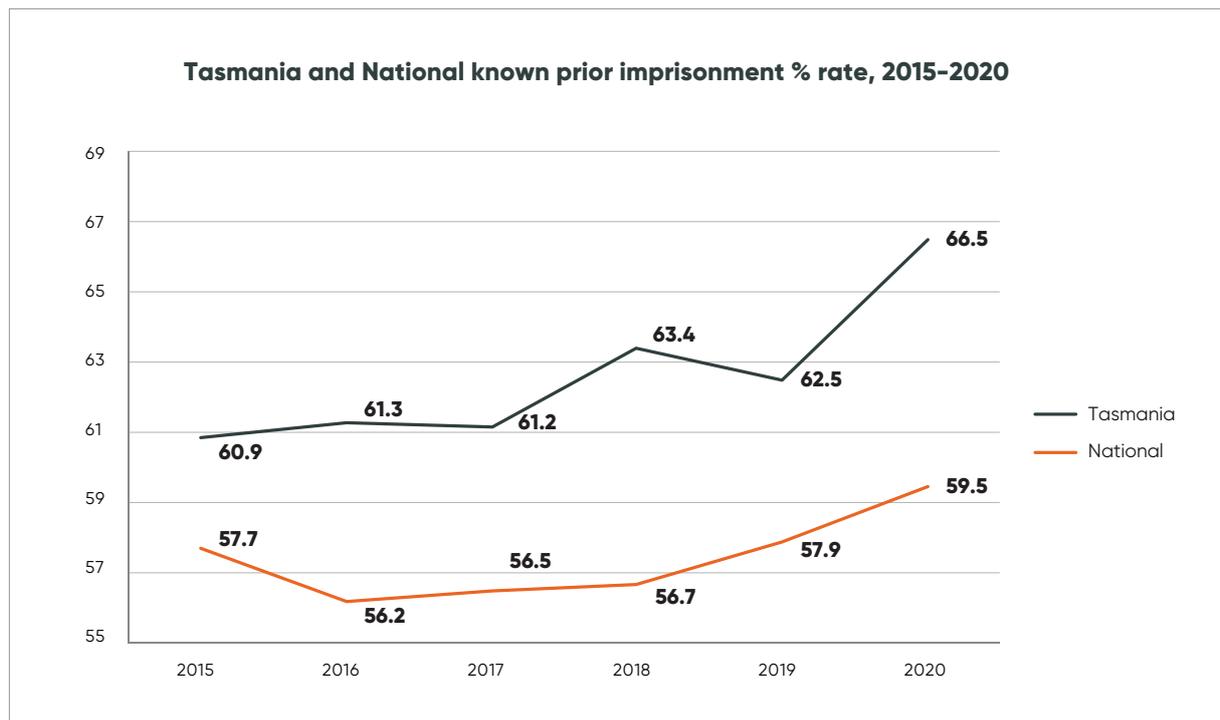


Figure 3: ABS, Prisoners in Australia 2020, Table 15

4 ABS, Prisoners in Australia 2020, Table 15

Figures released this year show Tasmania recording the highest growth in the proportion of adults returning to prison, with 47% of those released returning to prison within two years, up from 39% five years ago.⁵

In 2018, researchers surveyed a group of 42 people entering Tasmania's prisons. This revealed that:⁶

17% 
had a history of juvenile detention

74% 
had previously been in prison

52% 
had been in prison in the last 12 months

81% 
were currently on remand

The cycle of people returning to prison is endemic. Incarceration, unemployment and homelessness go hand in hand, further entrenching the cycle of disadvantage and making reoffending more likely.

The failure of the prison system to deter is matched by our failure of imagination to learn from what hasn't worked and do things differently. The economic and human costs associated with imprisonment are substantial, especially when we know that building safer communities means responding in real ways to the causes of crime, not just throwing people in prison. Successive governments on both sides of politics have engaged in a 'law and order auction' in the race for electoral advantage, promising to be 'tough' on crime. We need instead to start pursuing evidence-based strategies that reduce disadvantage and the drivers of crime.

⁵ Productivity Commission, Report on Government Services 2021, Table CA.4

⁶ Australian Institute of Health and Welfare, The Health of Tasmanian Prisoners 2018

Jailing is failing Tasmanian taxpayers - more prisons and more people in prisons are not the answer

- » Over \$93.9m is spent on prisons each year in Tasmania – this is money which could be better spent.⁷
- » The real cost per person in prison per day is \$334.64 or \$122,143.60 per year, the second highest cost nationally.
- » The push for the northern prison is misplaced.

The cost of running our prisons is rapidly escalating, consuming taxpayer dollars without yielding corresponding results in reducing recidivism. Policymakers are throwing money at prison expansion, in an attempt to patch a broken system by building more cells. Instead, a change in direction is required.

Each prisoner cost Tasmanians \$334.64 per day or \$122,143.60 per year.⁸ Tasmania spends the highest amount per prisoner, after the ACT. Considering most prisoners end up back in prison, it is time to start asking serious questions as to the utility of this approach.

Imprisonment is an expensive model that increases the likelihood of ongoing criminal justice system contact. While there is the need to respond to the drivers of crime, investing in housing, social support, access to drug and alcohol treatment, mental health and disability support, and community development would be a much smarter way to reduce crime. There are significant long-term savings to be made by pursuing approaches which do not rely on imprisonment, and are much more likely to reduce recidivism.

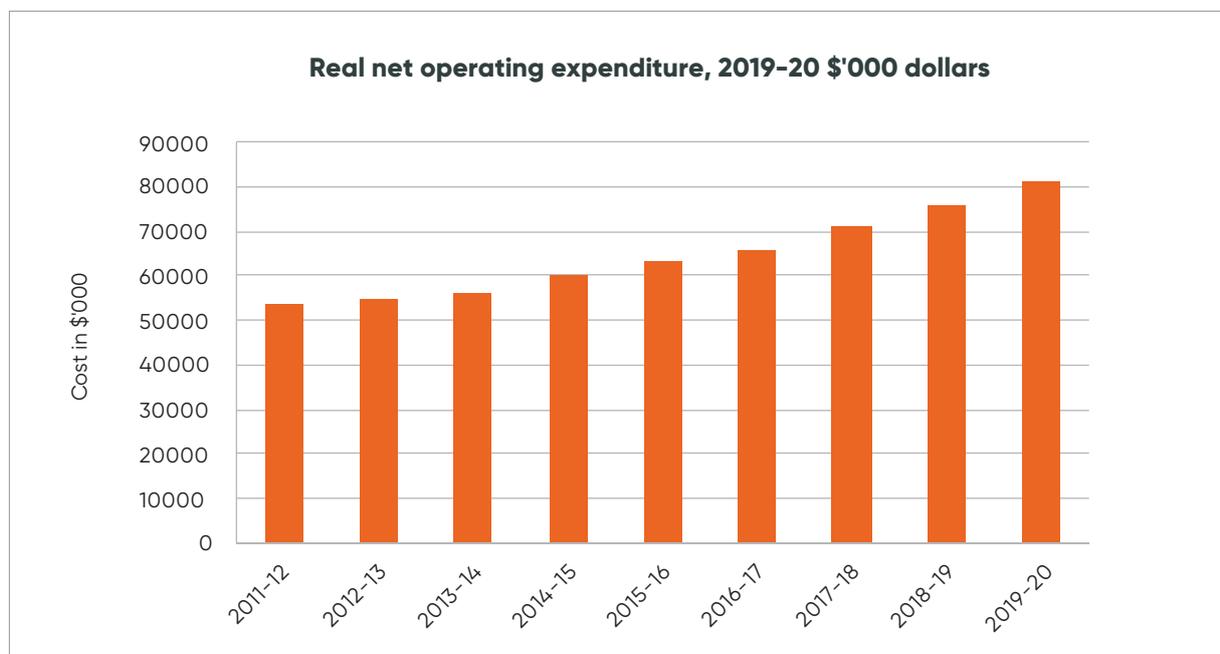


Figure 4: Productivity Commission, Report on Government Services 2021 Table 8A.2

⁷ Productivity Commission, Report on Government Services 2021 Table 8A.1
⁸ Productivity Commission, Report on Government Services 2021 Table 8A.20

Jailing is failing Tasmania's most disadvantaged

- » **43% of people entering prison were homeless prior to entering custody and 50% leaving prison expected to be homeless on release.**
- » **Around 79% of people entering prison were not recently employed, and 7 out of 8 people leaving prison did not have a job to go to after release.**
- » **67% entering prison had a mental health condition.**
- » **62% of people in prison in Tasmania reported living with a disability.**

Our criminal justice system disproportionately punishes those who are struggling to break the cycle of disadvantage. Intergenerational unemployment, economic instability, lack of housing and poor health are key factors filling Tasmania's prisons with vulnerable people, who need targeted diversion and effective support programs instead of a cell.

Research shows the strong link between housing instability and incarceration – in one study, nearly half of the people entering Tasmania's prisons had been homeless prior to their incarceration.⁹ The homelessness services provided to those people who leave prison are extremely limited, with only 12 properties state-wide supported for people exiting prison under the Rapid Rehousing program. With more than 750 people leaving prison per year, and 50% of those leaving expecting to be homeless on release, there is a huge gap in this service.¹⁰ This is a critical gap to fill if policymakers want to break the cycle and reduce recidivism.

Employment prospects for people leaving prison are equally grim. Around 4 in every 5 people (79%) entering Tasmania's prisons are not recently employed, and only 1 in 8 (13%) of people leaving prison had paid employment organised to start after release.¹¹ Tasmania's prisons also offer fewer chances for

education and training, with only 1 in 5 eligible people accessing these programs.¹² The state also has the lowest proportion of eligible people in prison in employment, at just 53%, compared to 81% nationally.¹³

Our prisons are disproportionately filled with people who need support from health workers and support professionals, but they have often spent their lives without these critical services. 67% of people entering prison have had a mental health condition. 55% of people entering prison had high, or very high levels of psychological distress. 25% of people in prison had accessed a mental health nurse during their time in custody. 62% of people in Tasmanian prisons report having some form of disability.¹⁴

This situation reflects a perfect storm of disadvantage: people trapped in our criminal justice system arrive from circumstances of homelessness, unemployment, poor mental health, and are often living with a disability. The disproportionate numbers of people inside our prisons with multiple and complex disadvantage requires a social service response that moves beyond punishment and instead addresses the fact that our prisons house our most disadvantaged citizens. We need to stop punishing people for their disadvantage, and instead find ways to support them out of it.

⁹ AIHW, The Health of Tasmania's Prisoners 2018

¹⁰ Department of Communities Tasmania, https://www.communities.tas.gov.au/housing/tasmanian_affordable_housing_strategy/key-projects/rapid-rehousing/fact-sheet-prisoner-rapid-rehousing

¹¹ AIHW, The Health of Tasmania's Prisoners 2018

¹² Productivity Commission, Report on Government Services 2021, Table 8A.11

¹³ Productivity Commission, Report on Government Services 2021, Table 8A.12

¹⁴ AIHW, The Health of Tasmania's Prisoners 2018

Jailing is failing Aboriginal and Torres Strait Islander people

- » Aboriginal and Torres Strait Islanders comprise 21% of the Tasmanian adult prison population.
- » The Aboriginal and Torres Strait Islander age standardised imprisonment rate is four times the non-Indigenous age standardised imprisonment rate.
- » The Aboriginal and Torres Strait Islander prison population has increased by 97% since 2010, compared to 7% growth for non-Indigenous people.

The rate of increase of Aboriginal and Torres Strait Islander people in prisons over the past decade has been substantially higher than the broader Tasmanian population. Only the ACT and Victoria have increased the incarceration of Aboriginal and Torres Strait Islanders at a greater rate.¹⁵

Since 2010–2011, Tasmania has recorded a 97% increase in the number of Aboriginal and Torres Strait Islander people in prisons, from 69 to 136. Over the same time, the number of non-Aboriginal and Torres Strait Islanders increased by 7%.¹⁶ This disproportionate growth points to an opportunity to invest in solutions which support this specific population.

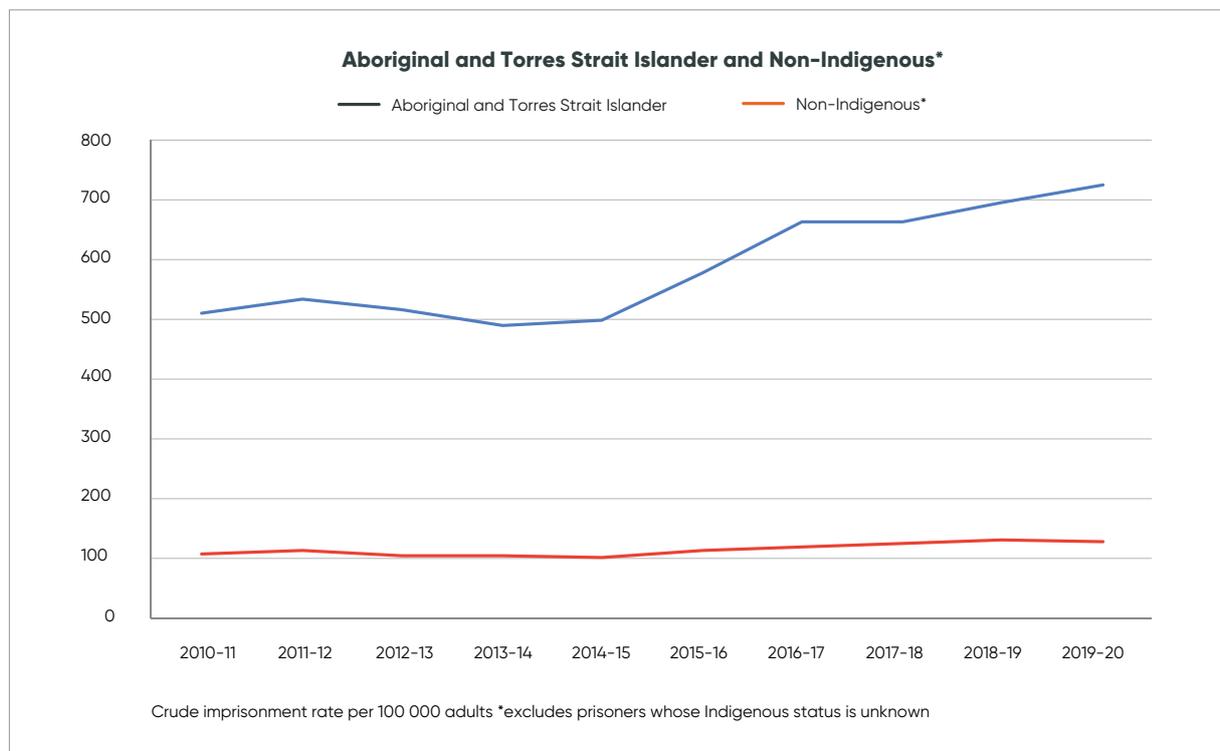


Figure 5: Productivity Commission, Report on Government Services 2021, Table 8A.6

¹⁵ Australian Bureau of Statistics (ABS) (2020), Prisoners in Australia 2020
¹⁶ Productivity Commission, Report on Government Services 2021, Table 8A.6

- » Over half of Tasmania's youth in detention are Aboriginal and/or Torres Strait Islanders
- » Tasmania spent more than \$15 million on youth detention last year

The problems plaguing the Tasmanian youth justice system are deep-rooted and representative of a failed approach to youth offending.

Despite the fact that the average cost per day of keeping a young Tasmanian in detention is one of the highest in Australia¹⁷, more than half of all young people released from detention in Tasmania are back within 12 months.¹⁸

If you are a young Tasmanian in detention, the revolving door of incarceration is becoming increasingly difficult to escape. The most recent data shows that more than 58% of young Tasmanians released from detention return within a year – double the rate in 2013-14 (29%) and the largest jump recorded nationally.¹⁹

This indicates both a lack of effective programs during detention and a failure of community support once young people are released into the community. Tasmania must do more to reach young people at their earliest stages of their contact with the justice system and provide the critical community supports to stop them entering the adult prison system.

The evidence shows Tasmania's youth detention system, centred at the Ashley Youth Detention Centre, is not fit for purpose. Amid poor data keeping and incomplete reporting, it appears that the rates of injury due to assault and self-harm are much higher than in other states.²⁰

The most recent figures also reveal that three-quarters of young people at the Ashley Youth Detention Centre are there on remand.²¹ These young people need an off-ramp from criminal justice into effective social services intervention and support, to engage them in meaningful activities and address the underlying drivers of crime, not a passport to a lifetime of offending, incarceration and other problems.

17 Productivity Commission, Report on Government Services 2021, Table 17A.20

18 Productivity Commission, Report on Government Services 2021, Table 17A.25

19 Productivity Commission, Report on Government Services 2021, Table 17A.25

20 Productivity Commission, Report on Government Services 2021, Tables 17.2 and 17.4

21 Office of the Custodial Inspector, Inspection of Youth Custodial Services in Tasmania 2019, p8

Can Tasmania's leaders take the lead?

Tasmania famously began its modern existence as a penal colony, with Van Diemen's Land becoming synonymous with cruelty, oppression and extreme isolation.

In 2021, the island has shaken off its colonial past, to become a world leader in many respects – but its criminal justice system maintains an antiquated, ineffective and increasing overreliance on incarceration, despite overwhelming evidence which shows that jailing is failing.

The COVID-19 pandemic forced our policymakers to step back, assess the situation and take urgent action to protect the community as a whole and particularly the most vulnerable.

We need to take the same action now to reform the criminal justice system.

The Australian addiction to incarceration as the default approach to justice has filled our prisons to bursting point, at a cost of billions of dollars each year. The reality is that most people in prison need support and assistance in the community, not further punishment. Funding of services and supports in the community is required, so that people at risk of entering the justice system because of their disadvantage, or people leaving prison into homelessness and unemployment, are able to genuinely have the opportunity to build healthy lives in the community and pathways out of crime.

We should be learning from the experiences of jurisdictions that are closing prisons down (like Texas) or countries with incredibly low recidivism rates

(like Norway). There are also multiple examples of programs that are demonstrably 'working' in Australia to reduce contact with the justice system (for instance Aboriginal-led community development programs; small scale but highly successful community led post-release and reintegration programs; successful diversionary schemes and specialist courts) and from governments adopting policies designed to reduce prisoner numbers (like the ACT). Policy should be based on evidence, not law-and-order ideology.

Tasmania has an opportunity to lead the country, by adopting evidence-based reforms to create a criminal justice system which protects and supports Tasmanians with effective interventions and services.

While the Justice Reform Initiative recognises that the policies of past governments of both political persuasions have led to the current poor outcomes from the criminal justice system, we are optimistic that the new parliament offers the opportunity for a fresh start in criminal justice public policy by all political parties represented in the Tasmanian parliament.

We note that the shift to evidence-based policy we are advocating has been achieved with cross party support in many countries around the world, including in many states of the USA with the support of both Republicans and Democrats.

We call on all political parties in Tasmania to strive for cross party co-operation in shaping future evidence-based criminal justice policies which will demonstrate Tasmanian leadership to other Australian states and to the Commonwealth Government.



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.*

www.jailingsfailing.org.au

info@justicereforminitiative.org.au

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