Alternatives to the court system

Courts in most Australian jurisdictions are overloaded with a backlog of cases. A new theory which has emerged in recent years is the concept of diversion from custody, providing a second chance for many young people for whom a court appearance and the consequences would be counterproductive. The process of restorative justice brings together victims and offenders, and others who may have an interest in a particular offence, to deal collectively with how to resolve the impact of the offence and chart a path for the future.

Offenders are encouraged to learn new ways of acting and participating in the community, as soon as the safety concerns of the victim, community and offender are satisfied. There are many types of restorative justice practices. Diversion is the channelling of an offender away from the criminal justice process in the form of a caution or warning, resolution by some other informal procedure or by utilising alternatives to conviction or sentencing following a trial. Another restorative justice practice is family group conferencing involving the young offender, their family and the victim in the conferencing process. Those involved discuss their feelings about the offence and then seek agreement in terms of resolution and reparation. An alternative to this approach is victim-offender mediation, in which the victim and offender meet in the presence of a mediator. Family members may be present in this forum but do not participate. Diversionary programs such as these when used with young offenders and in Indigenous communities in particular show great promise.

The NSW Department of Corrective Services has a dedicated restorative justice unit and is a world leader in post-sentence conferencing.


Many crimes go undetected

Crime victimisation surveys routinely find that only about 40% of crimes are reported to the police. Rates of reporting vary widely depending on the crime, with an estimated 95% of motor vehicle theft reported and just 20% of sexual assaults coming to the attention of police.


The link between alcohol and other drugs and crime

80% of all inmates received into NSW prisons are reported to have had some sort of drug or alcohol problem during their lives. An estimated 50% of all inmates received into custody are suffering from a drug or alcohol related problem when they enter the prison system. 80% of people arrested for drug related matters are classified by the courts as 'consumers' and not suppliers of drugs.

The Australian Institute of Criminology conducts a national project entitled Drug Use Monitoring Australia (DUMA) in which researchers urine test people detained by police and conduct a drug history. The first DUMA report in 1999 revealed that of those charged with violent crime 70% tested positive to some form of drug and for those charged with property crime 86% tested positive to some form of drug.

The over-representation of Indigenous offenders in the criminal justice system

Throughout the world Indigenous people are grossly over-represented in prison populations. The Maori in New Zealand and native Americans in both Canada and the United States are but a few examples. In Australia the Indigenous population is also over-represented in the criminal justice system.

In 2001 in NSW 40% of the Indigenous male population aged 20–24 appeared before a NSW court charged with a criminal offence. Ultimately this translated into 10% of Indigenous males in NSW, aged 20–24, receiving a prison sentence that year. The Indigenous imprisonment rate is twelve times higher than the rate of imprisonment for non-Indigenous people.

A decade ago Australia’s Indigenous prisoners comprised 14% of the prison population. They now compromise 20% of the total prison population. 78% of Indigenous prisoners have previously been in prison.

The Indigenous community corrections rate is also ten times higher than the rate for non-Indigenous offenders at 2,773 per 100,000 population compared to 267 per 100,000 population. That rate has remained relatively stable for many years although it is now down slightly from a high of 2,996 per 100,000 population in 2000.

47% of the population of Australia’s juvenile correctional institutions are Indigenous. The incarceration rate for Indigenous juveniles is 13 times higher than that of non-Indigenous juveniles.


THE COURTS AND SENTENCING

Courts throughout Australia provide a range of services integral to the effective performance of the criminal justice system. The primary function of courts administration agencies (such as the NSW Attorney General’s Department) is to:

- manage court facilities and staff, including buildings, security and ancillary services such as registries, libraries and transcription services;
- provide case management services;
- enforce court orders through Sheriff’s departments.

There is a clearly defined hierarchy of criminal courts in all Australian States and Territories. The first level in the court system is the magistrates or local court. Next there is the district or county court (NB: Tasmania and the Territories do not have district/county courts). The supreme court ultimately hears disputes of the greatest seriousness. However, appellants have one more avenue of appeal after that — to the High Court.

In 2002–03 nationally there were 860,500 defendants who appeared for individual matters in all criminal courts. The majority of these matters (96.4%) were heard in magistrates courts. 3.1% proceeded to district court and 0.5% to the supreme court.

The higher courts, which comprise the District and Supreme courts are where defendants appear who have been charged with serious or indictable offences. In 2001–02 there were 17,997 defendants who had matters finalised in the higher courts.

Over 79% of these defendants were found guilty of an offence. In just 6% of cases the defendant was acquitted.


People before the courts facing criminal charges

In reality only a very small proportion of the Australian population ever appears before court on criminal charges and an even smaller proportion actually serve a prison sentence as a result of those charges. Over a five year period 1997–2001 in NSW, 6.5% of the population aged 10 years and over appeared in court charged with a criminal offence. During the same five year period less than 0.5% of NSW adults were imprisoned.

Services. This facility caters for the most serious and difficult to manage juvenile offenders aged 16 years and older. At the time of the transfer there were 28 juveniles in this facility.

NSW Department of Juvenile Justice Annual report 2003–04.

VIOLENT CRIME AND HOMICIDE

Australia was a much less violent society at the beginning of the 21st century than it was a century ago. Violence in some form has been part of all recorded human history. The nature of crime, like the society in which we live is always changing and evolving. Alcohol was the major factor in criminal activities 100 years ago, while today it is substance abuse in general. 100 years ago the crimes of greatest concern were drunkenness, gambling and ‘opium dens’, while today we have international trafficking in drugs and terrorist activities which figure prominently.

Since 1900, throughout all Australian jurisdictions there has been a steady decline in violent and property crime undoubtedly due to improved social and living conditions.

In measuring the decrease in violent crime in society, the crime of homicide is the benchmark as it is one offence for which data is generally and consistently available. Nearly all homicides are reported and police always devote considerable resources to this crime.

Violent crime
The widespread belief that violence in Australian society has increased dramatically and consistently in recent years is unfounded.

Violent crime in Australia and in most western countries has remained stable for the past three decades and is now at much lower levels than it was 100 years ago.

Violent crime accounts for about 12% of all recorded crime in Australia. As a percentage of all recorded crime it has remained at this rate and has been relatively stable over the past decade.

In terms of international comparisons and based on our homicide rate, the Australian population experiences a moderate level of interpersonal violence.
Police recording of crime, including all forms of violent crime, has increased consistently and substantially over the last 40 years. However, both the homicide figures and the assault victimisation figures suggest a period of stability over the past 30 years.


**Homicide rates**

Australia's current rate of homicide has remained relatively unchanged since the 1950s at around 1.8 per 100,000 population. As a nation we have a similar rate to Canada (1.8), New Zealand (2.2) and Northern Europe (1.5). The United States (6) has a rate three times higher than Australia. Countries such as Mexico (17), Russia (21) and South Africa (54) have the world's highest rates of homicide.

During the first hundred years of settlement, homicide levels in Australia were much higher than they are today. The rate only fell to 'modern' levels in about the 1880s. The homicide rate in Australia today is almost identical to that in the early 1900s. The rate has actually trended down in the past 10 years. (2.3 homicides per 100,000 population in 1920 to 2.0 homicides per 100,000 in 2003)


**JUVENILE CRIME**

The juvenile justice system in Australia is responsible for dealing with young people aged 10–17 years who have committed an offence while considered by law to be a juvenile.

The majority of young people are diverted from detention through a range of mechanisms such as police caution, conferences and unsupervised orders. Informal warnings, police cautions and community, family or youth justice conferences are now part of the spectrum of legislated responses to juvenile crime.

Nationally, the average daily number of juveniles in detention fell from 748 in 1997–98 to 609 in 2001–02. The rate of detention fell by one fifth in the last five years.

Juvenile rates of offending have fallen by about one third over the past 5 years. The rates of juveniles being detained in juvenile correctional facilities declined on average 4 to 5% each year over the past 20 years.

At 30 June 2004 there were 1,352 young people were detained in juvenile detention facilities. At 30 June 2003 only 640 young people were in detention facilities.

The incarceration rates for male juveniles is nine times higher than the rate for females.

The total number of Indigenous people in juvenile detention on 30 June 2003 was 243 or 47% of the total number detained.

In NSW there were 298 young people in detention at 30 June 2004. 94% of those in detention were male. 132 young people or 44% of the detention population were indigenous. At 30 June 2004 in NSW a total of 2,836 young people were being supervised in the community.

In late 2004 the management of the high security juvenile detention facility at Karinga was transferred from the Department of Juvenile Justice to the NSW Department of Corrective
Life sentences in NSW

A life sentence in NSW means life — never again will any offender serving life enjoy total freedom. Although some inmates who received life sentences (prior to the ‘truth in sentencing’ laws in 1989) may not serve their entire sentence in prison (ie they may eventually be paroled), they will always remain subject to strict conditions and supervision. Should they breach these conditions or engage in behaviour that gives the Parole Board cause for concern, they may be returned to prison at any time.

Since the advent of ‘truth in sentencing’ laws in NSW, 32 (at January 2004) offenders have received a life sentence where they will serve the remainder of their lives in prison with no prospect of release.


What can be done to reduce the rate of violent crime and homicide?

A study of the crime of homicide around the world found that measures such as; expanding police numbers, better police technology and forensic detection methods, increasing prison sentences and imposing or abolishing the death penalty, had no effect on homicide rates — which remain fairly constant over time in most countries.

Males are most likely to be killed by a friend or acquaintance and females are most likely to be killed by an intimate partner. 93% of females and 76% of male victims of homicide knew the offender. The majority of homicides (56%) are committed in a residential setting.


Is the death penalty an effective deterrent?

In the United States, the States that do not impose the death penalty for murder actually experience a lower murder rate than those that do.


Guns and violent crime

In 2003, 25% of homicides were committed using physical force, 35% were committed using a knife, 13% were committed using firearms and 11% were committed using blunt instruments. The use of firearms in the crime of homicide has been a declining trend since the 1960s.

Source: Australian Crime Facts and Figures (2003), Australian Institute of Criminology.
Senior citizens and violent crime
Seniors are at the lowest risk of violent crime when compared to all age groups in the community. People aged between 15 and 24 are at the greatest risk of violent crime.


Women and the risk of sexual assault
Two thirds of sexual assaults against women are committed by family members or persons known to the victim. This in no way diminishes the seriousness of the crime but it does highlight the fact that assault by a predatory stranger is rare. Only 11% of sexual assaults involve strangers.

A national survey on violence against women conducted in 1996 put the annual risk of sexual assault among women over 18 at 1.5%.


Parole
All offenders released on parole in NSW within boundaries prescribed by the NSW Department of Corrective Services, must be of good behaviour and obey the law, report to a parole officer as required, keep their parole officer informed of changes to their residential or employment status and avoid criminal associations and contacts. If deemed necessary, special conditions may also be imposed. The Parole Board could, for example, require an offender to refrain from the use of alcohol and/or non-prescribed drugs, or to attend a treatment or training program, which would assist in reducing their risk of re-offending. If offenders breach any condition of their parole, the Parole Board has the power to revoke the parole and return the offender to prison.

Parole does not reduce the sentence imposed by the courts — it only affects the way in which the sentence will be served. Prisoners released on parole serve the remainder of their sentence in the community, under supervision. Under no circumstances are parolees granted unconditional freedom.

The size of the NSW prison population is not a factor considered by the Parole Board when reviewing a prisoner's application for parole. The key factor is whether the offender, if paroled, would represent a manageable risk in the community.

When is parole granted?
When a prisoner becomes eligible for parole their conditional release may not automatically be granted. Members of the Parole Board are under no obligation to release a prisoner to parole at any time. The law gives the Parole Board absolute discretion to grant or deny parole. The Parole Board's ultimate decision accounts for the risk that the offender may present to the community.

Some parole orders may be issued by the courts at the time of sentencing, which means the offender will be released to parole automatically when the custodial part of their sentence is completed.

The protection of society is the most important consideration in any conditional release to parole.
The changing role of the correctional officer

As recently as the 1980s the primary considerations in recruiting prison officers were physical fitness, size and strength. That situation has changed dramatically in recent years as the job profile has changed. Women now have equal opportunities within the industry and their numbers are growing, while the physical attributes that were once prized are now not as important as cognitive skills and the right psychological profile.

New technologies, increasing sophistication in reporting procedures, greater legal demands, the introduction of case management and the maintenance of safety and security of the correctional institution have transformed the prison officer's role. The ability to effectively communicate with inmates, colleagues and supervisors as well as the myriad of professionals who work in and around the system is now fundamental to the role. A good officer today is probably one who can stop a minor incident turning into a major disturbance or riot. They are the primary agent for the promotion of health, welfare, security and safety and are the single most important influence on the rehabilitation of the inmate.

For many years now a comprehensive national training package has existed for all corrections staff. Upon entry to the occupation both prison officers and community corrections workers receive extensive training which 12 months later results in a nationally accredited qualification. Most of the larger Australian States have now formed educational partnerships with universities with no fewer than 12 universities offering a combined total of more than 40 courses with a corrections component.


CORRECTIONS

In 2002–03 there were a total of 124 corrective services operated custodial facilities throughout Australia. This comprised 81 government operated prisons, seven privately operated prisons, four government operated community custodial facilities (including two transitional centres) and five privately operated community custodial facilities, 12 periodic detention centres and 15–24 hour court cell complexes.

In 2002–03 on average 22,232 people per day (excluding periodic detainees) were held in Australian prisons — an increase of 2.6% from the previous year. On average 946 people per day were serving periodic detention orders — a decline of 10.2% on the previous year.

72.7% of all Australian prisoners are held in secure facilities and 27.3% are housed in low security open facilities. A daily average of 4,171 prisoners (18.8%) were held in privately operated prisons. 93% of Australian prisoners are male. 64% of prisoners are under 35 years of age.

There are 8.75 million people held in penal institutions worldwide, mostly as pre-trial detainees (remand prisoners) or having been convicted or sentenced. About half of all prisoners in the world are housed in the United States, Russia and China. The United States has the greatest number of prisoners at over 2 million.

The rate of incarceration in Australia

Australia’s incarceration rate is relatively high by international standards. In 2003, the incarceration rate in Australia was 116 prisoners per 100,000 of population. While Australia’s incarceration rate is exceeded by the United States (686 per 100,000), it is higher than Canada (102) and most Western European countries such as France (85), Switzerland (69), Finland (59) and Norway (59).

Prisoner involvement in programs

Research indicates that offenders who participate in treatment programs that target individual criminogenic needs (e.g., cognitive skills deficits, substance abuse, anger management, sexual deviancy, etc.) are less likely to re-offend upon release than offenders who do not participate in such programs. Cognitive-behavioural treatment programs that target the criminogenic needs of higher risk offenders are associated with 30 to 60% reductions in recidivism.


Prisoner Involvement in education and training

In 2002–03 about 40% of Australian prisoners participated in accredited education and training courses under the Australian Qualifications Framework. NSW reported Australia's highest rate of prisoner involvement (31%) in secondary school courses in 2002–03. All prisoners are also encouraged to participate in a wide range of personal development programs designed to address drug and alcohol addiction, violent impulses, and psychological needs. These programs are all designed to address key factors associated with their criminal behaviour.


Increases in the prison population

A major argument about the increase in prisoner numbers in recent years is that changes to our mental health system, in particular deinstitutionalisation, have put onto the streets many who would otherwise not be at risk of minor offending and victimisation. This situation mirrors the higher imprisonment rates of the early 20th century where many of the prison population were incarcerated principally as a result of their mental state.

Another reason for increases in prisoner numbers could be the changing "law and order" emphasis of governments throughout the country over the past decade.

The United States has the highest rate of incarceration of its citizens of all countries (686 prisoners per 100,000 of population). It has 5% of the world's population and 25% of the world's prisoners. More than 6.5 million Americans or 3% of the entire U.S. population are either in prison or on some form of parole or community order. Since 1995, the U.S. prison population has grown 4% annually.

Australia has 22,492 persons in custody at a rate of 116 prisoners per 1000,000 of population. The demographics of the Australian and United States prison populations are very similar when we break down by percentage the offence types — particularly in the majority of offences such as non-violent crime. Approximately half of both prison populations contain offenders who have been incarcerated for non-violent offences. However, despite the much greater numbers of violent criminals in the U.S. prisons and the massive growth in the U.S. prison population over the past decade, the homicide rate in the United States remains three times higher than the homicide rate in Australia.

Federal Bureau of Investigations Uniform Crime Reports, Summarised by the US Department of Justice.
U.S. Bureau of prizes website: www.bop.gov
Ethnic influences on crime
The link between ethnicity and crime is by nature very complex and subject to great controversy. Prisoners born in Australia dominate the Australian prison population. Relative to the total prison population, the contribution of countries other than Australia is negligible. Furthermore, the rate of imprisonment for those born in other countries to the rate of those born in Australia has declined in the past decade.

Prisoners born in Australia, New Zealand and the United Kingdom are more commonly remanded or sentenced for violent offences. A significant proportion of prisoners born in other countries (in particular Vietnam and other Asian countries) are serving sentences for drug offences. Property offences account for about 20% of prisoners regardless of birthplace. These findings are really not conclusive that people born in any country are at high risk of engaging in criminal activities.


Prisoner employment programs
In 2002–03 on average, nearly 80% of Australia’s prisoners were engaged in employment while incarcerated. The employment rate among all eligible prisoners in all Australian States was lowest at 67.6% in Tasmania and highest at 92.4% in Western Australia. In NSW the rate was just below 80%. The employment rate among periodic detainees in NSW was 66%.

These rates compare very favourably with figures released by the United States Federal Bureau of Prisons which reported that in 2002–03 only 26% of eligible federal inmates were employed in the government owned prison work corporation UNICOR which operated 112 factories in 71 prisons.

In NSW, Corrective Services Industries is a fully modernised, profitable, quality assured commercial corporate entity. The various business units include textiles, manufacture of a range of school and office furniture, the design and fabrication of metal products, offset printing and binding, hi-tech agriculture including dairy and nursery products……and an expanding list of partnerships with private industry. Prisoners are also employed by correctional centres in catering, laundry, cleaning, building maintenance and construction.

Corrective Services Industries has a focus on preparing inmates for work when they are released into the community. This includes not only the technical aspects of work but also work skills such as teamwork, time management, delegation and responding to supervision.

U.S. Bureau of Prisons website: www.bop.gov/fugp/loc.html
CSI in Focus (2002), NSW Department of Corrective Services.
Community corrections
Seven out of ten offenders (more than 50,000 people) managed by corrective services authorities in Australia are placed on community based programs. Community Corrections comprises a variety of non-custodial and diversionary programs which vary the nature and extent of supervision (ie, home detention, fines, community service orders). They also include post-custodial options for re-integrating prisoners into the community under supervision (ie, parole). On average 70% of all community corrections orders are successfully completed.

These alternatives are also very cost effective. The cost of sending an offender to prison is 20 times higher than having them supervised in the community*. It costs $155 per day per prisoner ($56,539 per year) but just $8 per day ($3,066 per year) for someone sentenced to community corrections. The cost of home detention in NSW is $55 per offender per day ($20,020 per year).

* These figures only include those Australian States that have all community corrections options.


Rehabilitation and recidivism
A number of studies on recidivism or re-offending were conducted throughout the world in the mid 1990's. At this time, the studies conducted in three Australian States revealed an average recidivism rate of 38%. This referred to prisoners returning to prison within two years after release. This figure compares very favourably with similar studies conducted in Denmark (45%), New Zealand (49%), Canada (42%), the United States (41%), England and Wales (36%) and Scotland (47%).

* The measure of recidivism is always subject to definitional variation. The quoted figures refer to inmates who have returned to custody within a two year period following release. There is a variation with some countries not counting a breach of parole in their figures. Additionally, recidivism rates can reflect a change in policing policy rather than re-offending so statistics need to be assessed against this possibility.

Sources: