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COVID-19 and Corrections in Australia: A Summary Review of the Available Data and Literature

Jason L. Payne  and Natalia Hanley

ABSTRACT

In March 2020, COVID-19 was declared a global pandemic and at the time of writing, there were more than 13 million known cases and more than 500,000 deaths. Not since the Spanish Flu of 1918 has the world needed to respond to the potential threat of a communicable disease with such a high rate of infection and fatality. Using publicly available data, media sources, and literature, this paper maps Australian corrective services' responses to COVID-19. We find evidence of a concerted effort to reduce prison population numbers, as well as to recalibrate corrections practice in an effort to meet new social-distancing rules and regulations. Our analysis is motivated by the knowledge that prior to COVID-19, Australia had a rising prison population, a disproportionate growth in female and remand populations, and significant Indigenous overrepresentation. In this paper, we explore whether the immediate benefits of COVID-19 have helped or hindered efforts to address these wider concerns.

KEYWORDS

Prisons; prison resources; crime trends; COVID-19; pandemic; alternatives to incarceration; early release mechanisms; prison reform

Introduction

On January 30 2020, the World Health Organization (WHO) declared the novel coronavirus disease 2019 (COVID-19) as a public health emergency of international concern. Caused by an outbreak of severe acute respiratory syndrome coronavirus-2 (SARS-CoV-2), COVID-19 was later declared a global pandemic and has required governments around the world to implement a wide range of proactive and reactive measures to limit its spread. SARS-CoV-2 is genetically similar to the coronaviruses responsible for previous pandemic outbreaks (SARS-CoV and MERS-CoV). What makes it different, however, is that while it is less lethal, it appears to have a higher rate of transmission, a longer period of incubation and a shorter interval between symptom onset and maximum infectivity (Peterson et al., 2020). What this ultimately means is that SARS-CoV-2 presents a distinct and heightened risk of transmission in contexts where appropriate physical and social distancing cannot be enforced or maintained.

In the criminal justice context, this has important implications for the administration of justice and the management of corrective services. The health and wellbeing of incarcerated populations and custodial staff have been of particular concern in Australia (see Walhquist, 2020) and there has been much anxiety about how best to protect the health and human rights of the nation's prisoners. Prisoners, by virtue of their incarceration, cannot willfully elect to socially distance and can be subject to mandatory prison lockdowns that significantly restrict access to activities outside the confines of their prison cell. In the community corrections context, there are concerns about how best to enforce community-based orders

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when social-distancing regulations prohibit the gathering or congregation of small groups, or which restrict access to those communities and other treatment programs that form part of the conditions of an offender's community order. These concerns are shared by many countries around the globe (Kinner et al., 2020), although it is the objective of this paper to document the unique Australian experience of COVID-19 and its impact on the policy debate in corrective services.

COVID-19 in Australia

At the time of writing, Australia had recorded 26,912 confirmed infections of SARS-CoV-2 and 851 deaths (Department of Health, 2020). The first recorded infection was discovered on January 25, and the highest number of new daily cases during the first "wave" was 458 (see Figure 1). Since then, efforts to suppress community transmission had been generally effective until late June when case numbers began to increase. The most recent "second-wave" of infection has been almost exclusively felt in the south-eastern state of Victoria.

The Australian policy response to the impending threat of COVID-19 has been widely acknowledged by the international community as swift and effective (Duckett & Stobary, 2020). Nationwide, containment measures were coordinated by the federal government through a newly established National Cabinet (see Bonyhady & Duke, 2020), although individual states and territories had the autonomy to choose which restrictions to implement, and the timeline upon which to implement them. On 1 February, foreign nationals from China were banned and Australian citizens returning from China were required to self-quarantine for 14 days. Travel bans were later imposed on arrivals from Iran, South Korea, and Italy and a general travel ban for all arrivals was introduced on March 20. In late February, the Australian Prime Minister activated the *Australian Health Sector Emergency Response Plan* and created a new National Cabinet on March 13 – the first such national cabinet since World War II (Bonyhady & Duke, 2020).

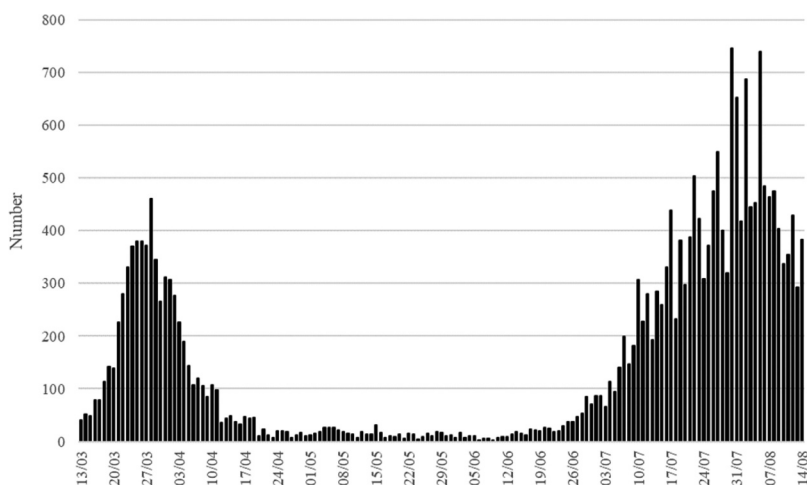


Figure 1. Daily cases of COVID-19 in Australia (March 13 – August 14, 2020). Source: www.covid19data.com.au

The first of the key social-distancing restrictions came into effect on March 15 with the cancellation and restriction of gatherings of more than 500 people. At the time, this excluded schools, universities, and public transport sites. On March 30, stricter rules were imposed, limiting indoor and outdoor gatherings to a maximum of two people (Morrison, 2020). Public spaces, such as parks, community halls, and gyms, were closed and the government issued strong advice for people to stay at home unless necessary. Implementation of these nationally agreed principles was then undertaken at the state level, with some additions and variations including the closure of schools and interstate borders and the restriction of interstate travel.

In early May, as suppression efforts appeared to be successful in curbing transmission, social-distancing restrictions were slowly relaxed in most states and territories (Harris, 2020). That was until late June when transmission rates began to increase again in Victoria. As a response, the Victorian government announced the immediate and temporary lockdown of nine high-rise public housing buildings and strict restrictions on resident and nonresident movement in 10 postcode areas, including the Melbourne Metropolitan area. Not long after, interstate travel was closed to residents and recent travelers from Victoria, extending to residents and recent travelers from certain emerging hotspots in New South Wales (see, for example, the Queensland Border restrictions Direction No.11 (Queensland Government, 2020)).

Prisons in Australia before COVID-19

As of June 2019, there were 43,028 prisoners in Australia (Australian Bureau of Statistics, 2019). The national imprisonment rate is 219 prisoners per 100,000 of the adult population. Australia's largest prison is the newly opened Clarence Correctional Center in New South Wales. It has a capacity to contain 1,700 prisoners and 600 operational staff and it reflects a longer-term shift in Australia toward the building so-called "mega-prisons". Others include the 2017-built Ravenhall prison in Victoria which already a planned extension beyond its current capacity of 1,300 prisoners. Casuarina prison in Western Australia is also scheduled for expansion from its current capacity of 1,033 to 1,782 in the next 3 years. In all, nine facilities across Australia are considered "private prisons," operated by private corporations under contractual arrangements with the relevant state and territory governments. Although Australia has relatively few prison facilities, the proportion of Australian prisoners incarcerated in private facilities is reported as being among the highest in the world (Andrew, Baker & Roberts 2016).

Unlike the United States, imprisonment in Australia has been increasing steadily over the last 10 years – a trend that has been shared by all states and territories. In New South Wales, the largest Australian jurisdiction by population, imprisonment rates have grown as much as 36% in the last 7 years (Bureau of Crime Statistics and Research, 2020) and these trends have been underpinned by a disproportionate increase in the rate of unsentenced imprisonment (i.e. remand and pre-trial custody) and the imprisonment of female and Indigenous Australians (Australian Bureau of Statistics, 2019).

Despite the building of new and expansion of old facilities to accommodate this growth, prison over-crowding has been common in Australia (Mackay, 2015). COVID-19 and the threat of a highly infectious communicable disease has brought the design and architecture of prisons into sharp relief. Prisoners live in close proximity to each other, and commonly

share cells or units. However, even in prisons that are able to retain single-cell occupancy despite population increases, facilities such as bathrooms, dining, and recreational spaces are shared and large numbers of people use these spaces each day.

Notwithstanding the rapid expansion of prisons in Australia making custodial facilities more vulnerable to the spread of infectious diseases, Australian prisoners are also disproportionately more likely to experience adverse health outcomes. Prisoners are overwhelmingly drawn from groups that have a greater incidence and co-occurrence of various health issues and emerging data links some of these conditions with the most severe incidences of COVID-19. For example, 22% of prison entrants reported that they had been told they had asthma at some point in their lives. The community rate of asthma is 11%. The rate of tobacco smoking is 4–5 times higher in the prison population compared to the general community population, with 75% of Australian prison entrants reporting that they currently smoke (Australian Institute of Health and Welfare, 2019). There is some evidence that both asthma and smoking may be associated with severe instances of COVID-19 (Centers for Disease Control and Prevention, 2020). While the rates of diabetes in the Australian population are comparable to the community incidence of diabetes (6% and 5%, respectively) diabetes is four times more prevalent in the Aboriginal and Torres Strait Islander population (Australian Institute of Health and Welfare, 2019) a group enormously over-represented in Australian prisons (Australian Bureau of Statistics, 2020). Type 2 diabetes in particular has been identified as increasing the risk of more severe COVID-19 symptoms (Centers for Disease Control and Prevention, 2020). The Australian Institute of Health and Welfare's (AIHW) Health of Australia's Prisoners report does not disaggregate the proportional occurrence of each type of diabetes, but overall it is likely that type 2 diabetes is more common in the Aboriginal and Torres Strait Islander prisoner population.

Taken together, these data highlight that the architecture, use, and high population in prison facilities, coupled with some prisoners' increased vulnerability to more severe instances of COVID-19 presents a potential public health crisis in Australia. The recognition of the significant consequences of COVID-19 infection in the prison estate resulted in the unusual move to implement a national response to shut all Australian prison facilities to social and, in some cases, professional visitors followed by a series of adapted and new practices to reduce the risk. Criminal justice is a state and territory responsibility and there are varied examples of jurisdictions implementing differential practices as a result including, for example, "three strikes" legislation in Western Australia (Hinds, 2005) and the "dual track" system in Victoria for young adult offenders (Victorian Government, 2020). However, COVID-19 appears to offer a unique case study in converging policy and practice across Australia. Analysis of publicly available information about corrective services responses around Australia highlights three inter-related themes; visitation and contact, health provisions, and service delivery modes. Each theme is explored below following an overview of the broad events that have shaped policy in this area.

Prisons in Australia during COVID-19

Major events shaping policy

During the first wave of the COVID-19 pandemic in Australia, there were no confirmed cases of SARS-CoV-2 in any custodial or correctional center. The screening of inmates, visitors, and staff was widely implemented early in the pandemic (ABC News, 2020a) and in

at least one jurisdiction (the Australian Capital Territory) all prison visits were suspended until further notice (ABC News, 2020b). Special medical facilities were set up in some prisons as corrective services agencies were on high alert after three justice health workers in New South Wales tested positive in late May (Clun, 2020)

The first recorded case of COVID-19 in custody was reported on July 17 when a remand prisoner in Victoria tested positive during routine testing. At the time, prisons in Victoria had implemented new procedures, mandating the testing and 14-day quarantine of all new custodial receptions (Corrections Victoria, 2020). It was during this routine testing that the positive result was detected, but not before the remandee had been in close contact with a number of other prisoners and prison staff. Responding to the risk of local transmission, the Victorian government placed six prison centers into lockdown. Later that month, a custodial officer in Victoria tested positive (Russell, 2020).

While Australian prisons have experienced only a small number of transmission events, the early experience of COVID-19 in countries such as Italy and the United States provided a foreground for early preparation and policy debate. Watching from afar, the Australian professional and academic community were particularly exercised by the rapid rate of transmission in some U.S.-based custodial centers and so on March 20 an open letter to Australian Governments was published calling for action to prevent the spread of COVID-19 in prisons (Bartels, Anthony & Fletcher, 2020). This was the first of three open letters that have been published since the start of the pandemic (Personal Communication). All three called for the release of prisoners from custody.

Visitation and contact

Following the National Cabinet meeting in March 2020, all jurisdictions in Australia ceased in-person social visitation within prisons. At the time of writing, visitation had recommenced in several jurisdictions including, for example, the Northern Territory, Tasmania and Western Australia. Social visitation recommenced and was temporarily suspended again in South Australia in August 2020 due to heightened infection risk in the community. Visitation is a core pillar of prisoners' rights because of the varied and well-documented benefits associated with regular contact with family and friends. These benefits include promoting positive mental health, maintaining family connections, and reduced recidivism (Duwe & Clark, 2011; McLeod & Bonsu, 2018). The benefits extend beyond prisoners. For children with a parent in prison, visitation offers some protection from the negative impacts of parental incarceration (Schubert et al., 2016).

When social visitation ceased at the end of March all Australian jurisdictions identified alternative solutions to maintain some visitation contact.¹ Most commonly, video-calling was implemented or extended using programs such as zoom and skype and, in some jurisdictions, such as Tasmania, tablet devices were provided to people in prison to facilitate video-visits. However, only Victoria mentioned the provision of technical support to community visitors to assist with the use of this new visitation mode. The picture is unclear in the Northern Territory² as the most recently available information states that Corrective Services are considering other modes of communication, including video-calls, where available, and that there will be "increased access" to telephone and video calls. This careful rhetoric is ambiguous about the extent to which visitation is continuing, and in what forms. This is particularly concerning given that "non-essential" service visits have been suspended in the Northern Territory, including visits by non-government organizations and volunteers.

The extent of take-up in alternative social visitation such as video-calling, and the level of effectiveness, access, and satisfaction with the technology is unknown. Where social visitation has, or will soon resume, the number of visitors and/or duration of the visit has been limited, visitors are subject to enhanced health screening, and physical distancing is in place, even in jurisdictions that have exempted prisons from distancing rules, such as Tasmania. For example, in South Australia visitors will be excluded if they present as ‘unwell’, in the Northern Territory visits are limited to one hour with a smaller number of people, gradually scaled up to larger groups of visitors, and in Tasmania only two visitors are allowed, including children. For example, in South Australia visitors will be excluded if they present as “unwell” and in the Northern Territory visits are limited to 1 hour, with a smaller number of people, gradually scaled up to larger groups of visitors. Meanwhile New South Wales has restricted the consumption of food during visits and physical touching. Video-calling has continued in most jurisdictions to alleviate these restricted face to face visits. The use of video-calling for professional visits is more variable. In the Australian Capital Territory, professional visits continued in person, but were discouraged, whereas in the Northern Territory professional visits were suspended.

Traditional modes of contact have remained, with some variations to increase prisoners’ access. Increased phone call allowances, such as an additional weekly AUD\$20 credit in the Australian Capital Territory also featured in most jurisdictions. This was further supported by new access to voicemail and e-mail communication. Most jurisdictions noted that letter-writing was encouraged. More broadly there was a “business as usual” thread in several jurisdictions where physical exercise, cultural activities, and existing modes of recreation were highlighted as providing essential structure to the day. While these practices are not new, or even varied, their significance from the perspective of prison management strategy is noteworthy, particularly given that there has been “disturbances” in several Australian prisons attributed to prisoners’ frustrations about the lack of social visitation (ABC News, 2020c).

Health provisions

While the use of video-calling represents an adapted strategy for maintaining an existing provision within prisons, there have also been entirely new practices that have emerged in response to the COVID-19 risk. Most obviously, health screening and hygiene practices have been implemented in all jurisdictions, although the form that it takes is somewhat variable from hand washing and physical distancing to dedicated accommodation for people in quarantine. For example, the Australian Capital Territory is one of the jurisdictions to use a COVID-19 screening questionnaire. While most jurisdictions have implemented temperature checking, the temperature thresholds differ. In Tasmania the temperature threshold for concern is 37.3 degrees Celsius compared to 37.5 in New South Wales and 38 in Queensland. In New South Wales the temperature threshold for concern is 37.5 compared to 38 in Queensland. Examples of hygiene measures include hand sanitation, physical distancing, directions not to hug or shake hands, and more frequent cleaning of facilities. Information provided by Western Australia Correctional Services has a significant emphasis on hygiene measures and included the provision that staff are required to use PPE where a person is suspected of having COVID-19, though the form of PPE was not specified. Mask-wearing does not appear to be a common practice as masks

are only mentioned by South Australia Correctional Services, most likely for the reasons that South Australia set out about screening and security concerns.

A corollary of the attention on hygiene is the increased provision of information to prisoners and staff about effective hygiene practices and physical distancing. Only the Northern Territory referred specifically to the provision of health information in “plain English and in Aboriginal languages about what coronavirus is and what is being done to protect prisoners from potential infection.” (Northern Territory Government, 2020). Queensland Corrective Services noted that information about what to do if symptoms develop post-release was provided to eligible prisoners. Transition into the community was, overall, rarely mentioned.

There was considerable variation in the response to identified COVID-19 cases in the prison population. Corrections Victoria referred to quarantine reception units for new receptions to ensure that testing could be undertaken before a prisoner was in contact with the prison population. The Tasmanian Prison Service has also implemented a 14-day quarantine period for all receptions. In Queensland, the mandatory 14-day quarantine provision has been abandoned and now, as in the ACT, only people displaying symptoms will be quarantined until test results are available. New South Wales had established a field hospital prepared to treat prisoners with COVID-19. In Queensland, prisoners with COVID-19 would be transferred into a community hospital setting. In Western Australia “each facility has its own operational plan in place to ensure that they are prepared to receive a prisoner or detainee who has, or is suspected of having, COVID-19. Anyone who presents with symptoms can be isolated from the mainstream population and be cared for appropriately by staff and health care professionals.” (Western Australia Government, 2020) This approach reflects other jurisdictions in that new receptions are screened, isolation measures are in place, and prisoners remain in a prison rather than a community health setting. The information for Western Australia also raises the possibility of varied practices within-jurisdiction as COVID-19 response plans appear to have been developed at a facility rather than service level. The extent to which this is the case elsewhere is unknown.

Finally, as earlier mentioned nine of Australia’s custodial facilities are operated by private enterprise under contract with the relevant state or territory government. These nine private prisons are among some of the largest in Australia, meaning that a sizable proportion of Australian prisoners is incarcerated in privately run facilities. To what extent the facility-level response to COVID-19 has differed between private and state-run prisons is not yet clear and questions remain about the level of influence and control that state governments might have in mandating specific infection control and management protocols. An early account of the situation by the Australian Center for Corporate Responsibility (ACCR) noted that while custodial center service provision contracts might provide a framework for state-mandated COVID-19 requirements, what happens at the ground-level is still a matter for the private contractor (Australian Centre for Corporate Responsibility [ACCR], 2020). The Workers’ Union representing staff at one of Australia’s largest private custodial service providers, Serco, have made public their concerns that facilities have not provided sufficient personal protective equipment, have not engaged full-time health professionals, and have not supported staff with sufficient personal leave provisions should they develop COVID-19 related symptoms and require home isolation (Australian Centre for Corporate Responsibility [ACCR], 2020). This will be an important area to monitor in Australia as

private facilities have not been spared of the need to implement new policies and practices. In Victoria, for example, the main COVID-19 related incident so far – afflicting at least one remanded inmate and at least two staff – occurred at the privately run Ravenhall Remand Center (Mills, 2020).

Service delivery modes

A key area of adapted practices concern offender programs both within and outside of the prison setting. Here there is considerable variation in practice, and less clarity about service revisions, with most jurisdictions adapting programs to reduce infection risk. In the Northern Territory offense-based treatment programs have continued with smaller group sizes and physical distancing. However, at least some prisoner education programs have been temporarily suspended in face-to-face delivery mode. In the Northern Territory, some areas are subject to biosecurity restrictions which have directed Corrective Service options for some program delivery in the community including the Family Violence and Elders Visiting Programs. In the Australian Capital Territory, like Western Australia, community programs have continued except for in proscribed circumstances such as following a direction to isolate by a medical professional. For programs that have continued there are enhanced safety measures such as physical distancing. In South Australia, like Queensland, several programs have resumed including rehabilitation programs in the Aboriginal Services unit and substance testing. A number of jurisdictions have noted that some programs have been moved to an online delivery mode, such as AOD programs, though the rationale for which programs, their effectiveness online, and participation rates is not known.

Overall, corrective services in all Australian jurisdictions have taken substantial steps to manage the risk of COVID-19. Based on publicly available information, which is variable in volume and detail across the jurisdictions, there are two clear strategies that have been pursued to date. First, suspension of social and some professional visitation and the provision of alternative communication approaches including video-visitation. Second, significantly enhanced hygiene practices, COVID-19 screening and procedures for managing staff and prisoners who display symptoms or test positive. Changes to the provision of programs, activities, and requirements in Community Corrective Services have also occurred but the information about Community Corrective Services is comparatively less well documented. Presumably, the attention on the prison as opposed to community setting reflects the greater responsibility of Corrective Services to prisoners due to their confinement.

That said, some states and territories have released a broad set of Community Corrections policy and practice guidelines. In Victoria, for example, Community Corrections have clearly acknowledged a shift to physically distanced supervision protocols which has significantly limited in-person meetings and physical visitations. As an alternative, digital video technology is being progressively rolled out where remote supervision is deemed appropriate (Corrections Victoria, 2020). The use of electronic monitoring (EM) in Victoria will continue, although there is no indication that EM capacities have been increased to meet the higher demand for community supervision alternatives to imprisonment. Unpaid community work has been temporarily suspended while other program attendance (such as drug and alcohol treatment programming) continues in Victoria so long as social and physical distancing can be maintained (Corrections Victoria, 2020). In

Queensland, a four-stage response protocol was developed for community corrections which outlines the service and practice requirements needed at different levels of COVID-19 risk (Queensland Corrective Services, 2020). The protocol can be applied at varying levels to different geographical regions and community corrections offices ranging from Stage 1, which requires basic social and physical distancing, to Stage 4, which prevents staff and all other members of the public from accessing a specific community corrections office or site. At the time of writing, most Queensland Community Corrections offices in the south of the state were at Stage 2 restrictions. This means that programs and services can continue under an approved COVID-19 management plan, although non-essential face-to-face meetings have been limited (Queensland Corrective Services, 2020).

Prisoner trends

The impact of COVID-19 on incarceration rates in Australia is difficult to ascertain, largely because few Australian States and territories regularly release information about their custodial population. Annual national and jurisdictional data collection is conducted by the Australian Bureau of Statistics (ABS) and reported in its *Corrections in Australia* (Australian Bureau of Statistics, 2020) and *Prisoners in Australia* (Australian Bureau of Statistics, 2019) series. The national reports containing data for the period between April and June 2020 have not yet been released, however, at the state-level, some jurisdictions do provide interim quarterly or monthly reports. For example, the New South Wales Bureau of Crime Statistics and Research (BOCSAR) reports quarterly on New South Wales prison and custodial data and their Quarter 2, 2020 (May–June) was recently released. In Victoria and Queensland, the second and third largest states by population, monthly custodial and community corrections data are made publicly available through their respective Open Government Data Portals.

The available data suggest that since the onset of the pandemic in Australia, prison population numbers have declined. In New South Wales, Australia's most populated jurisdiction, the prison population in February 2020 was at an all-time-high of 13,974. By May 2020, that number had dropped to 12,588 (down by 10%) and it remained relatively consistent in June (Figure 2). In Victoria, there were 8,142 prisoners in custody at the end of February 2020 and the 12-month average for 2019 was 8,126. By the end of June 2020, this number had fallen to 7,151 prisoners – the lowest for that state since early-2018 representing a 12% decline since February 2020. Never in the history of the available data series have the New South Wales or Victorian prison populations declined so considerably in such a short period of time.

In Queensland, the available series of monthly data is much shorter, providing only a 12 month snapshot in the period prior to the onset of the pandemic (Figure 3). Still, we note that the custodial population in May 2020 (8,756) was the lowest recorded in the available series and represents a more than 5% decline from its peak in March 2020 (9,226). Of course, the recent decline in prisoner numbers in Queensland follows a substantial increase throughout the first three months of 2020 and some readers might describe this as a “return to trend” rather than a direct response to COVID-19. In our view, however, a reduction of the magnitude witnessed between March and May is unlikely to occur in a custodial population without some meaningful change in policy or practice.

Two mechanisms are likely to have contributed to the decline in prison numbers – an increase in the rate of prison discharge and a decrease in the rate of new prison receptions.

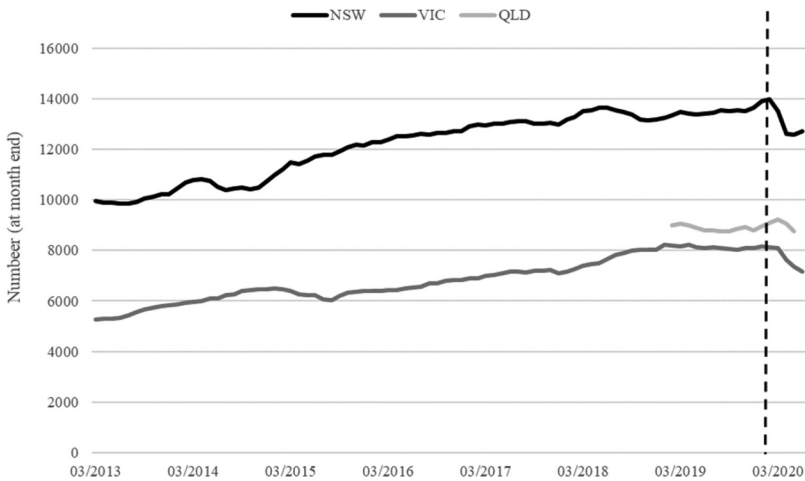


Figure 2. Custodial Prisoner Numbers. Vertical line denotes February 2020. Source: New South Wales Bureau of Crime Statistics; Corrections Victoria; Queensland Government Open Data Portal

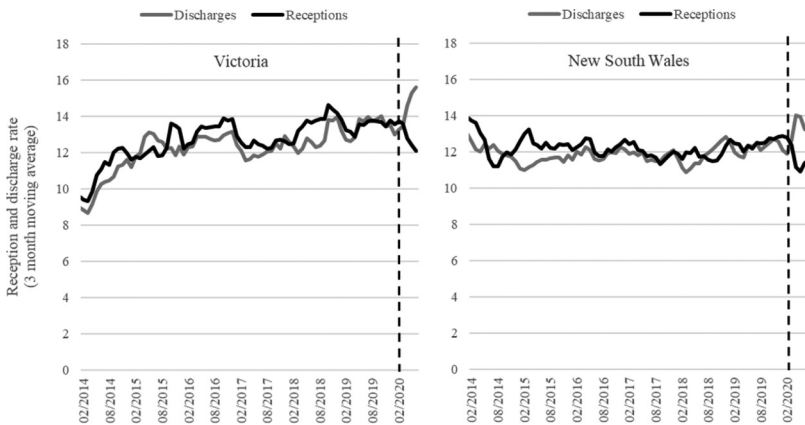


Figure 3. Prison discharge and reception rates, Victoria and New South Wales. Monthly discharge rates are calculated as the number of prisoners discharged in 1 month, divided by the number of prisoners in custody at the end of the previous month. Reception rates are calculated as the number of new receptions divided by the number of prisoners in custody at the end of the same month. Source: New South Wales Bureau of Crime Statistics; Corrections Victoria

Only in New South Wales and Victoria are these data currently available (Figure 3). Using an estimate of the three-monthly moving average (to smooth an otherwise volatile series), Figure 3 shows that both the prison reception and discharge rates in New South Wales and Victoria changed considerably from March 2020 onwards. Discharge rates are the highest they have been in recent history and the rate of new-receptions is also lower than average. Rarely has the discharge rate exceeded the reception rate in either state, and never before has the magnitude of the difference been so large. Put simply, the prison population in New South Wales and Victoria rapidly declined because more prisoners (than average) have been released, and fewer prisoners (than average) have been received into custody.

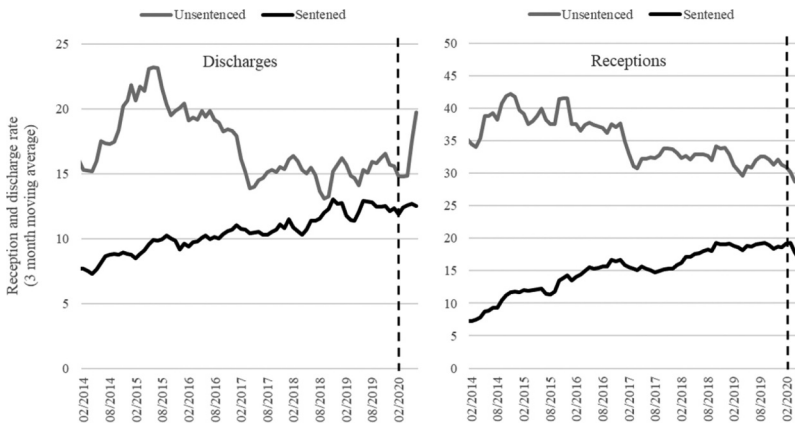


Figure 4. Sentenced and unsentenced prisoner discharge and reception rates, Victoria. Monthly discharge rates are calculated as the number of prisoners discharged in one month, divided by the number of prisoners in custody at the end of the previous month. Reception rates are calculated as the number of new receptions divided by the number of prisoners in custody at the end of the same month. Source: Corrections Victoria

Finally, discharge rates only increased above trend for unsentenced prisoners (Figure 4) while reception rates declined only for sentenced prisoners. In other words, the overall change in the prison population was the result of releasing a larger than average number of unsentenced prisoners, and receiving a smaller than average number of new prisoners on sentence from the courts. The latter is likely the result of some purposeful policy to release prisoners on bail, where appropriate, while the former is likely a result of the slowdown in court processing that occurred while stay-at-home orders were in place and non-essential business activities were temporarily suspended (Wells, 2020). Only in New South Wales has there been an official announcement of a change in policy, with the Commissioner of Corrective Services New South Wales announcing the intention to “conditionally release some low risk and vulnerable inmates from prison, if this is necessary for the safety and effectiveness of our prisons” (New South Wales Government Department of Communities and Justice, 2020). To date, no prisoners have “officially” been released to mitigate COVID-19 risk, but the prisoner trends suggest that these provisions are being informally enacted in all jurisdictions.

Alternatives to imprisonment

The sudden apparent changes in custodial numbers across Australia raise important questions about alternatives to imprisonment. On this topic, however, the publicly available information has been comparatively sparse. For example, it is not clear whether there has been a commensurate increase in the use of alternatives such as home detention or electronic monitoring. In part, this is explained by the fact that a significant proportion of the change in prison numbers has come from a change in the incarceration of pre-trial offenders. The creative use of strict bail conditions has likely been sufficient to manage the unusually high number of offenders who are being released back into the community.

Prisons in Australia after COVID-19

It is too early in the cycle of the COVID-19 pandemic to predict how Australian prisons, prisoners, and prison staff will fare. So far, we have successfully avoided a significant custodial transmission event, but whether COVID-19 will eventually breach the walls is anyone's guess. What matters from here is whether Australian corrective services have sufficiently safeguarded against the ever-present risk and whether any of the reactive COVID-19-related policy and practice changes will have longer term impacts (either positive or negative) on custodial populations and imprisonment trends.

Importantly, as a once-in-a-generation public health crisis of international reach, COVID-19 also offers new opportunities to both reimagine and reinvent corrective services practice. For the first time in a long time, significant effort has been invested into ways of keeping people out of prison and better connecting those who are in prison with family and services beyond the prison walls. This new (and hopefully not temporary) policy orientation offers fertile ground for reform.

Impact on key priority issues and trends

As noted earlier, Australia has seen a continued growth in the use of imprisonment, with imprisonment rates higher now than at any other time in recent history. In addition to this, the overrepresentation of Indigenous Australians remains a significant national problem and the subject of considerable international concern and condemnation (United Nations Human Rights Office of the High Commissioner, 2017). Australia has also seen a disproportionate increase in the rate of female imprisonment, which a sharp incline between 2011 and 2018 (Australian Bureau of Statistics, 2018), and an increase in the imprisonment of unsentenced (pre-trial) offenders since 2010 (Australian Bureau of Statistics, 2019). Each of these issues has been hotly debated across both academic and policy settings and there are emerging concerns that COVID-19 might exacerbate these trends or halt existing efforts to reverse them.

Perhaps the first observation to make here is that the greatest decline in prison numbers has occurred within the unsentenced prison population. This is a consistent trend across the three most populated states (New South Wales, Queensland, and Victoria) and it is a positive indication that police, courts and corrective services agencies have begun to reevaluate the use of pre-trial incarceration. In a pandemic, the costs and consequences of denying bail are conceivably very different. Remanded offenders enter custodial institutions from the community and they are the most likely source of new transmission within a prison setting. For the relevant gatekeepers making the decision to grant or deny bail, the risk of introducing COVID-19 into a custodial environment must now be weighed against the risk of (re)offending. In all, we see this as a positive step toward a wider re-evaluation of the principles underpinning the use of remand and pre-trial custody in Australia. However, it remains to be seen whether these changes can be formalized into a consistent approach that mutes the growth of unsentenced imprisonment well beyond the end of the pandemic.

For the issue of Indigenous over-representation, the early data are mixed and require ongoing monitoring. In Queensland, for example, the number of incarcerated Indigenous offenders has decreased by just 1% since February 2020 and this compares to an overall decline of 5% for their non-Indigenous peers (Figure 5). Even where prison populations

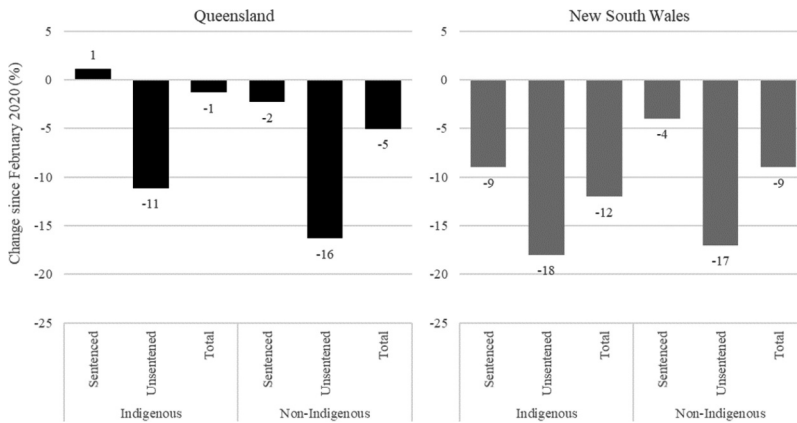


Figure 5. Change in prison population as at May 2020, by Indigenous status, Queensland and New South Wales. Change is calculated as the percentage difference between the prisoner number in February and June 2020. Source: New South Wales Bureau of Crime Statistics; Queensland Government Open Data Portal

have declined the most – i.e. unsentented imprisonment – the decline since February has not been as large for Indigenous prisoners in Queensland (–11% vs. –16%) and this suggests that over-representation in that state could worsen throughout the pandemic. In New South Wales, the data paint a more positive picture where the decline in both sentenced and unsentented imprisonment has been disproportionately greater for Indigenous prisoners than for their non-Indigenous peers. The number of sentenced Indigenous prisoners in New South Wales declined by 9% (cf –4%) and the number of unsentented Indigenous prisoners declined by 18% (cf –17%).

Of course, we are reminded that Indigenous Australians are incarcerated at a rate 15 times higher than non-Indigenous Australians and any disproportionate benefit during COVID-19 is but a small fraction of what is needed to redress this most pressing issue. Still, it is positive to see that in Australia’s largest jurisdiction the recent decline in prison numbers has disproportionately favored Indigenous prisoners.

By gender, data from Victoria and New South Wales indicate that female prisoner populations have declined more rapidly during the pandemic than male prisoner numbers (Figure 6). In Victoria, the female prison population declined by 23% between February and June 2020 (cf. –11% for men) and the decline was larger for women in both the sentenced and unsentented categories (Figure 6). In New South Wales, female imprisonment numbers were down by 17% over the same time period (cf –9% for men).

Although in the short term it seems that COVID-19 has not exacerbated Indigenous over-representation, nor further hastened the growth in female or unsentented imprisonment, what happens in Australia over the longer term should be monitored carefully. A consequence of the dramatic decline in prison numbers since the start of the pandemic is that previously occupied prison beds are now empty. These beds, and possibly more in coming months, will likely remain empty until the pandemic passes. But, once it has, and once the risks of transmission are muted, there is a real possibility that this underutilized capacity is quickly re-used if current policies are

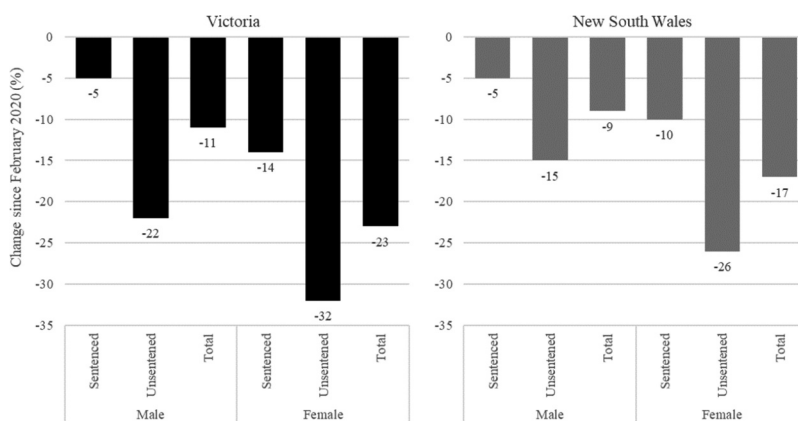


Figure 6. Change in prison population as at June 2020, by gender, Victoria and New South Wales. Change is calculated as the percentage difference between the prisoner number February and June 2020. Source: New South Wales Bureau of Crime Statistics; Corrections Victoria

not examined, evaluated and, where appropriate, embedded into an ongoing practice. This is not likely to be a unique problem for Australia, but we must be extra vigilant to ensure that any “return to trend” does not come at the cost of those populations who are most vulnerable and at risk of incarceration.

Technology and reform

In addition to the decline in prison populations, COVID-19 has also necessitated the rapid evolution of policy, practice, and services offered within the prison. As highlighted earlier, significant effort was made to accommodate the use of tele- and video-conferencing alternatives to in-person social visitation. Although it is important for in-person visitation to resume as soon as practicable and safe, the wide-spread trial and expansion of digital communication facilities within prisons should offer flexible opportunities to connect prisoners with their family and other services. This is particularly promising in the area of program and service delivery, where the rapid investment in new digital and online facilities during the pandemic may be appropriated as a means to overcome a number of long-standing oft-cited barriers to education, program, and service delivery. For example, the availability and accessibility of prison programs have been documented as a barrier to rehabilitation, particularly in remote or regional facilities (Australian Law Reform Commission, 2018). Similarly, resourcing constraints often limit the availability of education and rehabilitation programs to sentenced prisoners, and even then, only those prisoners with sufficient time in custody to wait for the next available vacancy (Australian Law Reform Commission, 2018). Finally, post-release planning and through-care programs are regularly criticized for insufficiently connecting prisoners to community-based services and supports with enough time to solidify positive working relationships and develop truly individualized transition plans (Council of Australian Governments, 2016). While each of these issues may not be completely solved by the use of tele- and video-conferencing facilities, their rapid expansion and widespread implementation during COVID-19 have paved the way for new and innovative approaches that have previously been too costly or too difficult to trial and implement.

Discussion and conclusion

The global pandemic of 2020 represents a once-in-a-generation health crisis that has demanded a rapid reevaluation and reconfiguration of a range of government and community services. Few sectors have been spared and the Australian corrective services system is no exception. Since the onset of the pandemic, it appears that efforts have been made to reduce the number of people in prison mostly by limiting the reception of new unsentenced prisoners (opting instead for a wider use of bail) and releasing sentenced prisoners to community supervised parole. Of the available data for Australia's three most populated states (New South Wales, Victoria and Queensland), the decline in the prison population has been universal, ranging from between 5% in Queensland (to May) and 10percent in New South Wales (to June). Never in the history of the available data for Victoria and New South Wales has there been such a large month-on-month decline in the prison population.

In conjunction with there being fewer prison receptions and more prison discharges than usual, Australian corrective services agencies have taken steps to mitigate the risk of COVID-19 transmission within the custodial setting. For example, special quarantine principles have been adopted for newly received pre-trial prisoners in several jurisdictions, and new health and social-distancing practices have been widely implemented across the country. Social visitation has been temporarily suspended and digital tele- and video-conferencing alternatives have been rapidly implemented or expanded. In some respects, much like the pandemic itself, the pace of policy and practice change in the first half of 2020 has been unprecedented.

Australia is by no means unique in its experience of COVID-19, nor is it unique in the way in which corrective services have responded. Nevertheless, Australian corrective services entered the pandemic with a bleak outlook; where incarceration rates have been persistently increasing over the last 20 years, where per-head of population Australia's Indigenous and First Nations peoples are incarcerated at one of the highest rates of any minority population in the world (Anthony, 2017) and where the increase in female incarceration has been accelerating faster than for their male peers, and especially in the case of Indigenous women (Phelan et al., 2019). Whether COVID-19 will positively affect or exacerbate these disparities makes Australia a country to watch as the pandemic continues. For now, the data is showing some positive signs with equal or better outcomes for Indigenous people and women in prison. There remains a cause for careful monitoring given that the data are emerging, partial, and indicate that the prison population reduction gains are not being evenly felt by Indigenous people in all jurisdictions.

Finally, we believe that COVID-19 presents a once-in-a-generation opportunity to reevaluate and reimagine Australian corrective services policy and practice. Recommendations and decisions once considered too risky or too politically unpalatable have now been given new life as health and viral transmission risks are weighed against recidivism and community safety concerns. For the first time in a long time, there is an opportunity to revitalize arguments for keeping non-serious and low-risk offenders out of prison – it is better for the community as a whole if the transmission of COVID-19 within custody can be prevented. We are hopeful that while the pandemic is likely to be temporary, the efforts taken to reduce incarceration and improve services for prisoners in custody are not short-lived.

Notes

1. This section summarizes information gathered from each of the State and Territory websites. A list of web links and sources is provided in the reference list.
2. Overall, the Northern Territory had the least publicly available information about Corrective Services responses to COVID-19 and the information that was available was difficult to navigate.

Disclosure statement

No potential conflict of interest was reported by the author(s).

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Corrective Services Sources

This paper has been written with reference to a large number of digital sources and news updates from each state and territory. A link to each jurisdiction is provided below.

Australian Capital Territory Corrective Services:

<https://www.coronavirus.dcj.nsw.gov.au/>

Northern Territory Correctional Services:

<https://coronavirus.nt.gov.au/>

Queensland Corrective Services:

<https://corrections.qld.gov.au/>

South Australia Department for Correctional Services:

<https://www.corrections.sa.gov.au/>

Corrections Victoria:

<https://www.corrections.vic.gov.au/covid19>

Western Australia Corrective Services:

<https://www.correctiveservices.wa.gov.au/>