



**MONASH** University  
Castan Centre for Human Rights Law

**Information for OHCHR on “Human rights in the  
administration of justice, including juvenile justice”**

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**Prepared by Adam Fletcher**

## Summary

The following briefing has been prepared in response to the OHCHR's request of 6 January 2017 regarding 'the causes and effects of overincarceration and overcrowding with regard to non-discrimination and persons with increased vulnerability in the administration of justice.' It provides an overview of these issues as they presently manifest themselves in Australia, drawing on research by the Castan Centre for Human Rights Law (Castan Centre) and other experts.

The key points in this briefing are that Australia has unacceptably high imprisonment rates of vulnerable groups including Indigenous people, disabled people and those with a mental illness. It also has a national prison occupancy rate of 122%, signifying overcrowding which has led to serious violence and which appears to be worsening. Criminal justice policies which have been made in response to erroneous perceptions of crime are, in large part, responsible for disproportionate increases in incarceration in recent years. Other causes and effects of these problems are examined below.

## Background

Australia currently has a national imprisonment rate of 208 per 100,000 adults.<sup>1</sup> This is a relatively moderate figure, albeit higher than most democratic nations.<sup>2</sup> However, this statistic masks some glaring inequalities in our criminal justice system. It also fails to tell the story of a mismatch between 'tough on crime' policies, which have been a regular feature of Australian elections for decades, and investment in detention-related infrastructure.

### Overincarceration of Vulnerable Groups

Corrective services, as prisons and remand centres are collectively known in Australia, are the responsibility of state and territory governments. Rates of incarceration in Australia vary from jurisdiction to jurisdiction.

Victoria has the lowest rate in the country, with 138 per 100,000; New South Wales (NSW) has the largest prison population but also the largest population overall, resulting in a rate of 211 per 100,000. This is close to the national average of 208 per 100,000.<sup>3</sup>

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<sup>1</sup> See *Prisoners in Australia, 2016*, ABS:

<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Main%20Features~Overview~3>.

<sup>2</sup> See *World Prison Brief*, Institute for Criminal Policy Research: [http://www.prisonstudies.org/highest-to-lowest/prison\\_population\\_rate?field\\_region\\_taxonomy\\_tid=All](http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All). NB Australia's rate has increased markedly since this list was compiled in 2015, as explained below.

<sup>3</sup> See *Prisoners in Australia, 2016*, ABS, above n 1.

The Northern Territory (NT) has the lowest population but the highest rate of imprisonment, at 923 per 100,000.<sup>4</sup> That is higher than any national imprisonment rate.<sup>5</sup> 84% of prisoners in the NT are Indigenous (Aboriginal and Torres Strait Islander) Australians.<sup>6</sup>

Nationally, Indigenous people comprise 27% of the prison population,<sup>7</sup> yet just 3% of the overall population.<sup>8</sup> Indigenous Australians are 16 times more likely than non-Indigenous Australians to be imprisoned; the relevant rate being 3,383 per 100,000 adults in 2016.<sup>9</sup> Indigenous young people aged 10-17 are even more overrepresented, being 24 times more likely than non-Indigenous young people to be detained.<sup>10</sup> Such disparities indicate that Australia's criminal justice system does not treat Indigenous people equally.

The other major vulnerable groups overrepresented in Australian prisons are the disabled and those with chronic health conditions. The Australian Institute of Health and Welfare found in 2015 that 30% of prison entrants had long-term health conditions or disabilities limiting daily activities such as education and employment.<sup>11</sup> For comparison, the rate in the general population is 18.5%.<sup>12</sup> In addition, research in 2015 found that prisoners are 10-15 times more likely to have a psychotic disorder than those in the general community.<sup>13</sup>

The total number of prisoners in Australia in 2016 was 38,845 – 25% more than in 2013<sup>14</sup> and 84% more than in 2000.<sup>15</sup> This outstrips the overall population growth rate by a large margin.<sup>16</sup> Much of this rapid growth has been driven by increasing use of remand rather than bail or other alternatives

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<sup>4</sup> See *Prisoners in Australia, 2016*, ABS (Northern Territory): <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Main%20Features~Northern%20Territory~24>.

<sup>5</sup> In 2015, the world's highest imprisonment rate was in the Seychelles – 799 per 100,000 adults – see *World Prison Brief*, Institute for Criminal Policy Research, above n 2.

<sup>6</sup> See *Prisoners in Australia, 2016*, ABS (Northern Territory), above n 4.

<sup>7</sup> See *Prisoners in Australia, 2016*, ABS, above n 1.

<sup>8</sup> See *Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 2001 to 2026*, ABS: <http://www.abs.gov.au/ausstats/abs@.nsf/Products/C19A0C6E4794A3FACA257CC900143A3D?opendocument>.

<sup>9</sup> See *Number of prisoners rise*, ABS Media Release, 8 December 2016: [http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Media%20Release~Number%20of%20prisoners%20rise%20\(Media%20Release\)~26](http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Media%20Release~Number%20of%20prisoners%20rise%20(Media%20Release)~26).

<sup>10</sup> See *Report on Government Services 2017*, Productivity Commission, January 2017, Chapter 17: <http://www.pc.gov.au/research/ongoing/report-on-government-services/2017/community-services/youth-justice>.

<sup>11</sup> See *Prisoner Health – Disability Status*, AIHW, 2015: <http://www.aihw.gov.au/prisoner-health/disability-status>.

<sup>12</sup> See *Disability, Ageing and Carers, Australia: Summary of Findings, 2012* (Disability – Characteristics), ABS 2013: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/3A5561E876CDAC73CA257C210011AB9B?opendocument>.

<sup>13</sup> See Ogloff, *Good mental health care in prisons must begin and end in the community*, *The Conversation*, 24 April 2015: <http://theconversation.com/good-mental-health-care-in-prisons-must-begin-and-end-in-the-community-40011>; also Bennett, Ogloff and Stuart, 'A study of psychotic disorders among female homicide offenders' (2012) 18(3) *Psychology, Crime and Law* 231.

<sup>14</sup> See *Prisoners in Australia, 2016*, ABS, above n 1.

<sup>15</sup> See *Old and Inside: Managed aged offenders in custody*, NSW Inspector of Custodial Services, 2015: <http://www.custodialinspector.justice.nsw.gov.au/Documents/Old%20and%20inside%20Managing%20aged%20offenders%20in%20custody.pdf>, 5.

<sup>16</sup> See *Australian Social Trends, Jun 2010* (Population Growth: Past, Present and Future), ABS 2010: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features10Jun+2010>.

to pretrial detention – 31% of the prison population is now unsentenced (nearly twice the 2013 percentage).<sup>17</sup> The causes of this significant increase are discussed below.

### Overcrowding

One of the consequences of the substantial increases in Australia's prison population in recent years has been overcrowding. Some detention facilities in Australia have been operating over their design capacity for decades.<sup>18</sup> However, national prison utilisation has only recently exceeded 100% capacity (the latest available figure, for 2015-16, is 111.4% of capacity).<sup>19</sup>

In December 2016, the WA Inspector of Custodial Services reported that WA prisons were well over capacity, and that benchmarks had been altered to try to hide this fact.<sup>20</sup> In NSW, which has the largest prison population in the country, the occupancy rate was higher than the national average at 122% of capacity.<sup>21</sup>

The deleterious effects of this increase in overcrowding are discussed below.

### Effects of Overcrowding 2014-2017

In 2014, an escalation of violence inside Australian prisons due to overcrowding was reported by the union representing prison officers.<sup>22</sup> The growth in the prison population in that year was so rapid that shipping containers had to be used to accommodate prisoners in Victoria, South Australia and the NT.<sup>23</sup> The Victorian Ombudsman released a report on deaths and harm in that state's prison system which revealed that 55% of prisoners were at risk of suicide or self-harm, and that despite many recommendations to fix them, hanging points and other suicide risks still existed in 38% of prisons.<sup>24</sup>

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<sup>17</sup> See *Prisoners in Australia, 2016*, ABS, above n 1.

<sup>18</sup> See eg Weatherburn, *Non-Custodial Sanctions, Prison Costs and Prison Overcrowding*, AIC, 1987: [http://www.aic.gov.au/media\\_library/publications/proceedings/11/weatherburn.pdf](http://www.aic.gov.au/media_library/publications/proceedings/11/weatherburn.pdf).

<sup>19</sup> See *Report on Government Services 2017*, Productivity Commission, January 2017, Chapter 8: <http://www.pc.gov.au/research/ongoing/report-on-government-services/2015/justice/corrective-services>, [8.15].

<sup>20</sup> See *Review – Western Australia's Prison Capacity*, WA OICS, 19 December 2016: <http://www.oics.wa.gov.au/wp-content/uploads/2016/12/Western-Australias-Prison-Capacity-Media-Release-19-12-16.pdf>.

<sup>21</sup> See Mayers, *Overcrowded jails costing NSW \$200,000 per day, Auditor-General finds*, ABC News, 26 November 2016: <http://www.abc.net.au/news/2016-11-26/nsw-prison-capacity-blown-out-auditor-general-warns/8060214>.

<sup>22</sup> See Rubinsztein-Dunlop, *Australia's prison system overcrowded to bursting point with more than 33,000 people in jail*, ABC News, 3 July 2014: <http://www.abc.net.au/news/2014-07-02/australian-prison-overcrowding-female-populations-growing/5567610>.

<sup>23</sup> See Mackay, *Accommodating people in cages and shipping containers: the reality of overcrowded prisons*, Regarding Rights (ANU), 31 January 2014.

<sup>24</sup> *Investigation into deaths and harm in custody*, Victorian Ombudsman, March 2014: <https://www.ombudsman.vic.gov.au/Reports-Publications/Parliamentary-Reports/Investigation-into-deaths-and-harm-in-custody>, 6.

In 2015, The Victorian Ombudsman found that ‘an increase in prisoner numbers sparked by reforms to sentencing, bail and parole arrangements is reducing access to programs aimed at reducing recidivism.’<sup>25</sup> One of the main prison healthcare providers reported that:

...long waiting lists - for most health needs, not just mental illness - are being exacerbated by unprecedented levels of overcrowding.

As prisoner numbers have grown, the ratios of healthcare staff just haven't kept up and in some cases have gone backwards.

Overcrowding aggravates problems in an environment already unfavourable to good health.

Stacking vulnerable and unwell people together in confined spaces is a recipe for increased anxiety and depression; it stokes the likelihood of aggression and violence.<sup>26</sup>

The NSW Custodial Inspector found in 2015 that NSW prisons face issues including:

- inadequate bedspace and the dysfunctional geographical configuration of the estate as a result of the poverty of earlier estate planning;
- extensive inmate accommodation in 19th-century facilities;
- a significant number of facilities assessed as “not effectively contributing to business objectives”;
- the institutionalisation of ‘doubling up’ as both a response to inmate population growth and as a design practice;
- excessive inmate movements around the estate;
- inefficient legacy staffing arrangements;
- budget pressures and savings targets, which have resulted in inmates being locked down at 2.30pm in the afternoons or on weekends;
- facilities and services which have not kept pace with the growth of the inmate population; and
- program provision to address offender behaviour which falls well short of requirements.<sup>27</sup>

The Inspector concluded:

[A]s a result of overcrowding, quality of life in the NSW custodial setting for both inmates and staff is diminished. At the time of finalising this report (February 2015) the extent of overcrowding was quite clear: the inmate population had risen to 11,399. There is extensive doubling up of inmates in cells; the reinstatement of tripling up in cells; an essential buffer stock of beds is being used; demountable cells are being constructed; old facilities are being reopened; and inmates are being housed for long periods in court cells.<sup>28</sup>

In January-February 2016, Corrections Victoria failed to bring 455 prisoners to their scheduled court appearances because the system was overwhelmed by increases in prisoner numbers.<sup>29</sup> In late 2016, the NSW Auditor-General found that a similar backlog in NSW was costing that state more than

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<sup>25</sup> See *Prisons failing to keep us safe: Ombudsman*, Victorian Ombudsman Media Release, 17 September 2015: <https://www.ombudsman.vic.gov.au/getattachment/8a800602-94a5-4e7b-9e7b-5c930bfe7b8f>.

<sup>26</sup> See Hall, *This is why you should care about the health of prisoners*, ABC News, 27 November 2015: <http://www.abc.net.au/news/2015-11-27/hall-this-is-why-you-should-care-about-the-health-of-prisoners/6981364>.

<sup>27</sup> See *Full House: The growth of the inmate population in NSW*, Inspector of Custodial Services, 2015: <http://www.custodialinspector.justice.nsw.gov.au/Documents/Full%20House%20-%20Final%20report%20April%202015.pdf>, 5.

<sup>28</sup> As above.

<sup>29</sup> See Hall, *Prisoners released on bail instead of remanded because of jail overcrowding*, The Age, 10 March 2016: <http://www.theage.com.au/victoria/prisoners-released-on-bail-instead-of-remanded-because-of-jail-overcrowding-20160303-gn9l1g.html>.

\$200,000 per day, and that 'tough on crime' policies had not been matched by sufficient capital investment to house the state's ever-increasing number of prisoners.<sup>30</sup>

Later in 2016, a Queensland coronial inquest found that overcrowding, causing low and high security risk prisoners to be accommodated in the same unit, contributed to the death of a young man convicted of a minor offence.<sup>31</sup>

An Australian Broadcasting Corporation (ABC) broadcast of abuse of young detainees in the Northern Territory prompted the federal Government to launch a Royal Commission of inquiry in July 2016.<sup>32</sup> This inquiry is not due to report until August 2017, but earlier reports on the NT youth detention system revealed serious systemic problems, including evidence that:

...higher detainee numbers, inability to separate detainees appropriately, including female detainees, and what they see as a different type of high risk, aggressive detainee with challenging behaviours, are some of the major factors that have resulted in unrest within the youth system which in turn has placed pressure on staffing, room accommodation and other centre infrastructure.<sup>33</sup>

In Victoria's youth justice system in early 2017, young detainees have been treated harshly due to earlier riots, which were themselves caused, at least in part, by poor detention standards.<sup>34</sup> They have been forced to sleep on the floor, been locked in cells for almost 24 hours per day and denied access to education and reading material, as well as basics such as sufficient toilet paper, bedding and clothing.<sup>35</sup> Such conditions breach relevant international standards.<sup>36</sup> However, the relevant standards have not been made binding in Australian domestic law.<sup>37</sup> Moreover, Victoria has no dedicated inspector of prisons, unlike NSW and WA.<sup>38</sup>

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<sup>30</sup> See Mayers, *Overcrowded jails costing NSW \$200,000 per day, Auditor-General finds*, ABC News, 26 November 2016: <http://www.abc.net.au/news/2016-11-26/nsw-prison-capacity-blown-out-auditor-general-warns/8060214>.

<sup>31</sup> See Cansdale, *Prison overcrowding leading to increasing tensions between inmates, says former guard*, ABC News, 12 August 2016: <http://www.abc.net.au/news/2016-08-12/former-guard-raises-concerns-about-overcrowding-in-prisons/7720426>.

<sup>32</sup> See *Royal Commission to be Established into Don Dale Youth Detention Centre in the Northern Territory*, Prime Minister's Media Release, 26 July 2016: <https://www.pm.gov.au/media/2016-07-26/royal-commission-be-established-don-dale-youth-detention-centre-northern-territory>.

<sup>33</sup> See Vita, *Review of the NT Youth Detention System – Report*, January 2015: [https://www.nt.gov.au/data/assets/pdf\\_file/0004/238198/Review-of-the-Northern-Territory-Youth-Detention-System-January-2015.pdf](https://www.nt.gov.au/data/assets/pdf_file/0004/238198/Review-of-the-Northern-Territory-Youth-Detention-System-January-2015.pdf).

<sup>34</sup> See eg Florence and Longbottom, *Victorian youth justice centre deemed 'appalling' six years before riot crisis, former deputy ombudsman says*, ABC News, 28 January 2017: <http://www.abc.net.au/news/2017-01-28/victorian-youth-justice-centre-malmsbury-breakout-parkville/8218702>.

<sup>35</sup> See Preiss, *Watchdog slams 'knee jerk' reaction to Victoria's youth justice crisis*, The Age, 6 February 2017: <http://www.theage.com.au/victoria/watchdog-slams-knee-jerk-reaction-to-victorias-youth-justice-crisis-20170206-gu6j9u.html>.

<sup>36</sup> See eg ICCPR, article 10 and *UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)*: [https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf).

<sup>37</sup> More accountability in this area should eventuate with the Australian Government's promised ratification of the OPCAT in December 2017 – see *Improving oversight and conditions in detention*, Attorney-General Media Release, 9 February 2017: <https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/FirstQuarter/Improving-oversight-and-conditions-in-detention.aspx>.

<sup>38</sup> NB the Victorian Ombudsman, which occasionally performs similar functions to a prison inspector but has a much broader mandate, recommended a dedicated office in 2014: <https://www.ombudsman.vic.gov.au/getattachment/Publications/Presentations/Why-we-need-independent->

Violence and poor health outcomes inevitably accompany an increase in prison overcrowding. Overcrowding also affects the ability of the remand system to function as intended, in particular to deliver remandees to their court hearings on time. If current trends continue, Australia will face these problems increasingly frequently in the coming years.

## Causes of Overincarceration and Overcrowding

Human Rights Council resolution 30/7 lists a number of factors which contribute to overincarceration and overcrowding around the world.<sup>39</sup> Several of these are present in the Australian context, including:

- ‘Tough on crime’ or ‘zero tolerance’ government policies;
- Mandatory detention for certain groups including those who breach immigration laws;
- Mandatory minimum sentences;<sup>40</sup>
- Over-reliance on pretrial detention (along with strong presumptions against bail in respect of certain offences);<sup>41</sup>
- The age of criminal responsibility is lower than 12 (10, although it must be noted that the *doli incapax* presumption is that under 14s are not responsible);<sup>42</sup>
- Life imprisonment remains possible for children under 18<sup>43</sup>

The NSW Bureau of Crime Statistics and Research, which studies causes of overincarceration and overcrowding, reported in 2016 that tougher bail and sentencing approaches and increases in the average time spent on remand were key factors in the 18% increase in the NSW prison population between 2011 and 2015.<sup>44</sup> Such ‘tough on crime’ measures have also led to overcrowding in other Australian jurisdictions.<sup>45</sup>

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[oversight-of-the-Victorian/WHY-WE-NEED-INDEPENDENT-OVERSIGHT-OF-THE-VICTORIAN-PRISON-SYSTEM.pdf.aspx](#).

<sup>39</sup> See Human Rights Council, resolution 30/7 (UN Doc A/HRC/30/L.16, 29 September 2015), paras 15-24.

<sup>40</sup> See eg *The mandatory sentencing debate*, Law Council of Australia 2014:

<http://www.lawcouncil.asn.au/lawcouncil/index.php/law-council-media/news/352-mandatory-sentencing-debate>.

<sup>41</sup> See eg *Bail and remand for young people in Australia: A national research project*, Australian Institute of Criminology 2013: <http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp125.html>.

<sup>42</sup> See *Crime Facts info No. 106: The age of criminal responsibility*, Australian Institute of Criminology 2005: <http://www.aic.gov.au/publications/current%20series/cfi/101-120/cfi106.html>; also Booth, *The age of criminal responsibility must rise, say experts after 11-year-old’s murder charge*, NITV News, 16 February 2016: <http://www.sbs.com.au/nitv/article/2016/02/11/age-criminal-responsibility-must-rise-say-experts-after-11-year-olds-murder>.

<sup>43</sup> See *Blessington and Elliott v Australia*, HRC Communication 1968/2010 (UN Doc CCPR/C/112/D/1968/2010, Views of 22 October 2014). The Committee found that sentences of life without parole for juveniles violated article 7, read together with articles 10 and 24 (at para 7.12).

<sup>44</sup> See *Why is the NSW prison population still growing? Another look at prison trends between 2011 and 2015*, BOCSAR, January 2016: <http://www.bocsar.nsw.gov.au/Documents/BB/Report-2016-Why-is-the-NSW-prison-population-still-growing-bb113.pdf>.

<sup>45</sup> See eg Barns, *The Libs’ tough-on-crime policies failed Victoria*, Sydney Morning Herald, 8 December 2014: <http://www.smh.com.au/comment/the-libs-toughoncrime-policies-failed-victoria-20141205-121b6u.html> or Solonec, *“Tough on crime”: Discrimination by Another Name – The Legacy of Mandatory Sentencing in Western Australia*, (2015) 8(18) Indigenous Law Bulletin 7.

However, the tougher policies are not necessarily justified by evidence of need or efficacy. In 2013, the Australian Senate conducted an inquiry entitled *The value of a justice reinvestment approach to criminal justice in Australia*.<sup>46</sup> The inquiry found a distinct disconnect has developed between policy and crime statistics:

...while crime rates have declined the rate of imprisonment has increased. Factors contributing to the rate of increase include changes to justice policies and practices including mandatory sentencing and more stringent bail conditions. There are also underlying economic and social determinants which contribute to criminal behaviour and thus bring people into contact with a more punitive criminal justice system.

Evidence received noted that the public response to crime in Australia has grown increasingly punitive. Generally, the public perception of crime is at odds with the actual incidence and trends in crime. This is attributed, in part, to the portrayal of crime in the media, especially more violent and sensational crime. The Australian Justice Reinvestment Project stated many of the changes to judicial policy, such as mandatory sentencing, parole changes and restrictions to bail, have followed 'media-driven law and order campaigns around individual cases or as part of election campaigns seeking to demonstrate "tough on crime" credentials and sympathy towards victims of crime.'<sup>47</sup>

The inquiry recommended a justice reinvestment approach, involving diversion schemes and therapeutic jurisprudence techniques, be adopted by Australian Governments given the overall ineffectiveness of incarceration.<sup>48</sup> However, it acknowledged that responsibility-shifting between federal and state/territory governments, as well as public perceptions that such an approach equates to 'going soft on crime,' would constitute major obstacles to the implementation of justice reinvestment measures.<sup>49</sup>

## Conclusion

Criminal justice reform, including penal reform, does not appear to be a priority for Australian governments. Investment in recent years has largely been limited to adding capacity to deal with urgent overcrowding issues. Other vital elements of the prison system are continually underfunded. For example, in 2016, the NSW Government cut the number of teachers in its prisons from 152 to just 20.<sup>50</sup> Similarly, health providers report:

Mental health services for inmates - including treatment and withdrawal programs for drug and alcohol addicts - are massively overstretched.

Given the prevalence of severe mental illness, repeated expert inquiries have called on state and territory governments to improve these mental health services but largely to no avail.

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<sup>46</sup> See *Value of a justice reinvestment approach to criminal justice in Australia*, Senate Legal and Constitutional Affairs References Committee, June 2013: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2010-13/justicereinvestment/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index).

<sup>47</sup> As above, 7.

<sup>48</sup> As above, 81-82.

<sup>49</sup> As above, 85-89.

<sup>50</sup> See McNally, *NSW teachers rally outside Parliament over cuts to jail jobs*, ABC News, 14 September 2016: <http://www.abc.net.au/news/2016-09-14/prison-teachers-strike-and-rally-outside-nsw-parliament/7844574>.

Victoria appears to be the only state that is responding, building a 75-bed specialist mental health unit as part of its new Ravenhall Prison scheduled for completion in 2017.<sup>51</sup>

This lack of impetus for reform is also reflected in an extremely slow process towards the ratification of the Optional Protocol to the Convention against Torture. Despite signing in May 2009, and continually claiming that it intends to ratify, the Australian Government has made little progress towards this goal nearly eight years later. The cost of a National Preventive Mechanism and access for the Subcommittee on the Prevention of Torture have proven obstacles to ratification (which the Government insists must not proceed until the nation is ready to implement the treaty fully).<sup>52</sup>

The Castan Centre prepared a detailed report for the Australian Government in 2012 entitled *Alternatives to Imprisonment for Vulnerable Offenders: International Standards and Best Practice*.<sup>53</sup> It contained 42 recommendations to assist in addressing overincarceration of vulnerable groups. The Government indicated its intention to take these recommendations into account in policy development, but there has been little apparent progress in this regard. For example, the federal Government does not appear to be interested in helping the states and territories to fund diversion schemes or legal aid for vulnerable offenders, both of which could make a difference. It has also failed to show leadership by addressing the high rate of incarceration of federal offenders.<sup>54</sup>

Only major crises seem to be able to prompt positive policy shifts – for example the NT has just announced major funding for youth diversion programs in response to controversy over abuse in its youth detention system.<sup>55</sup>

As long as criminal justice policy settings continue to be driven largely by sensationalist media rather than evidence about the value of prevention and diversion, Australians – and vulnerable Australians in particular – seem fated to suffer increasingly from overincarceration and prison overcrowding.

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<sup>51</sup> See Hall, *This is why you should care about the health of prisoners*, above n 26.

<sup>52</sup> See Fletcher, 'Australia and the OPCAT' (2012) 37(4) *Alternative Law Journal* 233.

<sup>53</sup> The Castan Centre's report is available at:

[https://www.monash.edu/\\_data/assets/pdf\\_file/0007/139849/alternatives-imprisonment-report.pdf](https://www.monash.edu/_data/assets/pdf_file/0007/139849/alternatives-imprisonment-report.pdf).

<sup>54</sup> See *Same Crime, Same Time*, Australian Law Reform Commission 2006: <http://www.alrc.gov.au/report-103>.

<sup>55</sup> See Bardon, *NT youth diversion programs to receive millions more in funding in wake of Don Dale scandal*, ABC News, 8 February 2017: <http://www.abc.net.au/news/2017-02-08/nt-government-to-spend-more-on-youth-diversion-programs/8249684>.