

Catholic Social Services
Victoria

The Perfect Storm?

The Impacts of Abolishing Suspended Sentences in Victoria

Prepared for Catholic Social Services Victoria

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Contents

Executive Summary	iii
1. Introduction	1
1.1 Why this research is required.....	2
1.2 Methodology	2
2. Background	3
2.1 Suspended sentences in Victoria	3
2.2 Legislative reform	6
2.3 Public perceptions of sentencing.....	7
3. Victoria’s increasing prison population	8
4. Current sentencing practices in Victoria – higher courts.....	21
4.1 Likely sentencing outcomes – higher courts	26
5. Current sentencing practices in Victoria – Magistrates’ Court	27
5.1 Likely sentencing outcomes – Magistrates’ Court.....	30
6. The effectiveness of sentences	31
6.1 The effectiveness of suspended sentences.....	32
6.2 The effectiveness of community orders.....	34
6.3 The effectiveness of imprisonment	36
6.3.1 Imprisonment and deterrence	36
6.3.2 Imprisonment and incapacitation.....	38
6.4 Summary	40
7. The social costs of abolishing suspended sentences.....	43
7.1 Maintaining a full range of sentencing options.....	43
7.2 Ensuring the scalability of community corrections.....	50
7.3 Ameliorating the negative consequences of imprisonment	56
8. The financial costs of abolishing suspended sentences.....	65
9. Summary	72
10. Recommendations.....	74
11. Bibliography.....	77
12. Appendix A – List of organisations consulted.....	83
13. Appendix B – Steering Committee members	84
14. Appendix C – Data.....	85

Executive Summary

Over the course of the last decade Victorian governments have moved to limit the use of suspended sentences by the courts, with the aim of maximising community safety. Based on the evidence, however, the safety of the Victorian community is not being improved by the abolition of suspended sentences. Quite the contrary: the removal of a viable sentencing option, coupled with the increased workload faced by Victoria Police, the courts, community treatment and support providers, and Corrections Victoria in community corrections – coupled with the worsening conditions within Victorian prisons – all suggest that community safety may be compromised once the full reform process has been completed. Abolishing wholly suspended sentences will add approximately 5,500 people to the corrections population. To understand the scale of the impact of this reform, this is effectively equivalent to the number of people who currently receive community orders in Victoria each year. This increase has significant implications for the capacity of Corrections Victoria to manage – safely and effectively – a vastly increased workload. Many of those who work at the coalface of the criminal justice system have publicly expressed concern that Victorian law and order institutions are facing a ‘perfect storm’, with crippling effects.

To understand this, this report examines the likely impact of the abolition of suspended sentences in Victoria, and makes a series of recommendations to make Victoria safer. The report has been developed through a series of consultations with key stakeholders and through a review of the relevant research literature.

The report considers three key issues:

- the effectiveness of various sentencing options, including suspended sentences and those sentences which are likely to become more prevalent in the absence of suspended sentences;
- the social costs to the community of the abolition of suspended sentences; and
- the financial costs associated with the abolition of suspended sentences.

Legislative reform

Limitations on the use of suspended sentences for serious offences began in 2006, with a restriction on the use of *wholly* suspended sentences to only those instances in which there were ‘exceptional circumstances’ for offences committed on or after 1 November 2006.¹ This action

¹ *Sentencing (Suspended Sentences) Act 2006* (Vic) s 4.

followed the Sentencing Advisory Council's Final Report Part 1 on the issue, which recommended a phased abolition process.

The abolition of all suspended sentences began in 2010² with the removal of the use of either *wholly or partially* suspended sentences for 'serious' offences as defined under section 3 of the *Sentencing Act 1991* (Vic). These included offences causing death and serious injury, as well as sexual penetration offences and armed robbery.

The Coalition government extended these restrictions in 2011³ by adding a list of 'significant' offences for which suspended sentences (either wholly or partially) could no longer be imposed. These included causing serious injury recklessly, arson offences, aggravated burglary and serious drug trafficking offences. No suspended sentences may be imposed for any of the serious or significant offences committed on or after 1 May 2011.

The final stages of the abolition of suspended sentences remain to take full effect. Under legislation passed by Parliament, the final abolition is being implemented in two stages: suspended sentences have first been abolished in the Supreme and County Courts for offences committed on or after 1 September 2013, and will subsequently be abolished from the Magistrates' Court no later than 1 September 2014.⁴

Victoria's increasing prison population

Although the Victorian prison population remains one of the lowest in the country, over the past ten years it has steadily increased, with a more rapid increase seen in the last few years.

From 2002 to 2013, there has been a steep rise in the number of prisoners in Victoria, with an overall increase over the twelve years of 50.4%, or 1,783 people. The steepest growth of all is seen in the most recent financial year, increasing from 4,884 people in June 2012 to 5,323 in June 2013 – an increase of 439 people, or 9.0% in a single year.

Corrections Victoria advises that the number of people in prison has continued to grow rapidly since June 2013: as of 11 November 2013, the Victorian prison population reached a record high of 5,767 people, representing a 15% increase (756 people) over a 12-month period (Corrections Victoria Stakeholder Forum, 12 November 2013).

² *Sentencing Amendment Act 2010* (Vic) s 12.

³ *Sentencing Further Amendment Act 2011* (Vic) s 4.

⁴ *Sentencing Act 1991* (Vic) s 27(2C).

The increasing prisoner population and imprisonment rate are of particular concern in terms of the capacity of the system and the potential for negative consequences of overcrowding. While Victoria has not provided data on this issue to the Steering Committee for the Review of Government Service Provision in recent years, the most recent publically available document from Corrections Victoria shows that, as at 30 June 2011, the men's prison system was running at 96.2% capacity while the women's was at 86.0% (Corrections Victoria, 2011, p. 9). The more recent Victorian Auditor-General's review of prison capacity planning notes that the male prison system has been operating at close to or above 95% of its operational capacity since May 2011 (Victorian Auditor-General, 2012, p. 7); as of November 2013, the system is running at 104% of capacity.

Corrections Victoria aims to operate the prison system at between 90% and 95% of its operational capacity: the 95% prison utilisation rate is the nationally-accepted limit for the safe and efficient operation of the prison system, allowing prison management to manage the rehabilitation, human rights and welfare of prisoners. Operating above this rate compromises the ability of prison management to manage prisoners safely and humanely (Victorian Auditor-General, 2012, p. 9).

It is questionable whether the new prison beds that have been funded by the government will be able to meet the increasing influx of new prisoners or whether Victoria's prison system will continue to operate at or near capacity into the future. Corrections Victoria itself forecasts that, by 2016, neither the male nor the female prison systems will have sufficient capacity to meet expected demand, especially within the context of the major changes to sentencing policy that are currently underway (Victorian Auditor-General, 2012, p. ix).

The financial cost of this rising prison population is also substantial. In 2011-12, the real net operating expenditure per Victorian prisoner was more than \$97,000 for the year, or \$267.56 per prisoner per day (Steering Committee for the Review of Government Service Provision, 2013, Table 8A.9). Over the past decade, the real recurrent cost of prisons in Victoria (in 2011-12 dollars) grew from \$56.47 per year for every resident of Victoria to \$83.95. Even when the effects of inflation and population growth are considered, recurrent spending on Victorian prisons has increased by 49% (Sentencing Advisory Council, 2013a, p. 1).

Current sentencing practice

In the Victorian higher courts, the majority of sentences imposed are custodial: in 2011-12, 62.1% of all sentences imposed in the Victorian higher courts were custodial terms, while 18.9% of all sentences imposed were wholly suspended sentences. This equates to approximately 373 wholly suspended sentences. Both the number and the proportion of wholly suspended sentences imposed in the higher courts have been falling over the last eight years.

The number and proportion of suspended sentences imposed in the Magistrates' Court has also fallen, although, even at only 6.7% of all sentences in 2011-12, this still represents 5,415 people receiving a suspended sentence (either partially or wholly suspended). With approximately 200 to 300 people receiving a partially suspended sentence in the Magistrates' Court each year, the number of wholly suspended sentences imposed in 2011-12 is estimated (conservatively) to be approximately 5,100.

It is therefore estimated that, across both the higher courts and the Magistrates' Court, approximately 5,500 wholly suspended sentences were imposed in 2011-12.⁵

The effectiveness of sentences

Wholly suspended sentences have been criticised widely for having no punitive component and thus doing little to prevent further offending. The research literature, however, shows otherwise.

Research in Victoria has shown that people who receive a wholly suspended sentence are less likely to reoffend than people who received a fine and also less likely to reoffend than people who received a term of immediate imprisonment (Sentencing Advisory Council, 2013). NSW research has shown that, for people with no prior prison sentence, there is no difference in reoffending between those sent to prison and those who received a suspended term. For those with prior imprisonment terms, those who receive another term in prison are more likely to reoffend, and to reoffend more quickly (Lulham, Weatherburn and Bartels, 2009). Research from Tasmania also shows that suspended sentences may be effective at deterring future offending (Bartels, 2008).

⁵ This estimate includes the 373 wholly suspended sentences imposed in the higher courts and the conservative estimate of 5,100 wholly suspended sentences imposed in the Magistrates' Court.

While the evidence on the effectiveness of community orders in reducing reoffending is more mixed, considering this body of research as a whole, the primary conclusion is that community sentences are more effective in reducing recidivism than are terms of imprisonment. This is especially the case for those community sentences which involve best-practice treatment programs. Community sentences offer a combination of sentencing purposes, including a punishment component, a strong and clear rehabilitative component and possibly some level of denunciation.

While there is no doubt that prison is effective in punishing offenders and denouncing criminal behaviour, the evidence on its ability to reduce crime via deterrence or incapacitation is clear: prison is not an effective deterrent and is limited in its incapacitative effect.

Each sentencing option serves its own sentencing purpose and achieves those purposes in different ways. These diverse responses to crime illustrate the value to judicial officers of having as many options as possible to impose when faced with an individual offender.

The social costs of abolishing suspended sentences

As the social costs of abolishing suspended sentences are best understood through the insights of people who work at the coalface of the criminal justice system, consultations with key stakeholders formed the basis of the analysis of the social costs of the reforms (see Appendix A for a list of organisations consulted).

For most of the participants in the consultation process, the main concern with the abolition of suspended sentences was removal of a valuable tool from sentencers.

Without wholly suspended sentences, there are fewer options available to sentencers, with only very low-end orders such as fine or adjourned undertakings, then the community correction order and then straight into imprisonment. Given that each sentence serves its own particular purpose, the removal of one of those sentences equates to the removal of the particular purpose for which it was imposed. In the case of the wholly suspended sentence, its use in deterring and denouncing low-risk but high seriousness offenders will no longer be available as a sentencing purpose.

In addition, when an offender on a community correction order either breaches the order or commits a new offence, there are limited options available to sentencers. If offending continues

then the only step up in the sentencing hierarchy is imprisonment. Thus a person with a criminal history will soon end up at the top of the sentencing hierarchy.

Another major concern for participants in the consultation was whether community corrections could be sufficiently 'scaled up' to manage the significant influx of offenders that will result once suspended sentences have been abolished from the Magistrates' Court: specifically, whether Corrections Victoria and other service providers within the community corrections sphere will be able to provide adequate support and treatment services for the thousands of extra people expected to require supervision, monitoring and treatment. While the focus for funding of the current reforms has been on expanding prison capacity, little has been said about increasing the capacity of community corrections to handle the expected influx of offenders. Without adequate services, treatment and support, reoffending outcomes are likely to worsen and community safety will therefore be compromised.

Some of the stakeholders considered that there might be viable alternatives to community correction orders in the absence of wholly suspended sentences. These included a greater use of deferred sentencing, use of supervision-only community correction orders, the retention of some form of suspended sentences for some offenders or introducing new orders of the type recommended by the Sentencing Advisory Council (2008) to address the needs of especially vulnerable drug-dependent or young offenders.

Finally, a common concern for stakeholders was how to ameliorate the negative consequences of imprisonment, especially in the context of the current overcrowding crisis. The problems discussed above – restrictions on the range of orders available to sentencers and a lack of adequate resourcing for community corrections in the face of a large increase in offenders – are likely to be exacerbated by the current problems of capacity within the prison system, where overcrowding is leading to reduced access to treatment programs than is necessary to help prisoners return to the community safely.

The financial costs of abolishing suspended sentences

While the Victorian prison system is by no means large when compared with those in other countries or even in other jurisdictions in Australia, it remains substantial nonetheless, with more than 5,000 prisoners.

The 2013-14 Victorian Budget⁶ provided for \$758.8 million for prisoner supervision and support (that is, for prisons) and \$128.3 million for community-based offender supervision. Capital expenditures were funded in addition to these amounts: in a media release that accompanied the budget papers, the Minister for Corrections announced further capital works totalling \$131.5 million for 357 extra prison beds and an expansion of the high-security facilities at Barwon prison (Minister for Corrections, 7 May 2013). This is in addition to the \$670 million announced the previous year to build a new medium-security 500-bed prison at Ravenhall⁷ and to add 395 beds to existing prisons.

At \$97,000 per prisoner per year, the prison system exacts a significant financial cost – more than \$500 million annually. Community orders are far less expensive than terms of imprisonment. In 2011-12, the real net operating expenditure per Victorian offender on a community order was \$25.96 per day, or over \$9,000 per year (\$9,475.40). However, with the large number of people in community-based corrections (8,897 people in June 2013), the overall figure for the cost of community corrections is large – almost \$85 million.

Every stakeholder consulted referred to lack of resources for Corrections Victoria in managing the additional offenders who will either enter prison or will be given a community correction order. In either instance, Corrections Victoria will be responsible for a huge number of additional offenders, likely around 5,500 people per year. If all of the approximately 5,500 people⁸ who received a wholly suspended sentence in the Magistrates' Court and the higher courts in 2011-12 in the future receive a community correction order, at \$9,475.40 a year each the additional cost to the taxpayer for the abolition of wholly suspended sentences from the Victorian courts will be more than \$50 million per year.⁹ This figure may be a conservative one: if some of the previous wholly suspended sentences instead become an order for imprisonment, the cost will be even greater.¹⁰

To date, the main target of additional funding from the government is an increase in the number of prison beds, either via additional beds in existing facilities, or in the construction of the new prison at Ravenhall. Little, if anything, has been said by the government about additional resourcing for Corrections Victoria for its Community Correctional Services.

⁶ Budget papers are available at: <http://www.dtf.vic.gov.au/State-Budget/Budget-Papers>.

⁷ On 17 September 2013 the government announced that it would double the capacity of Ravenhall from its planned 500 beds to 1,000 beds. No mention was made of additional funding.

⁸ See Table C3 in Appendix C for raw data.

⁹ For 5,500 people, at a cost of \$9,475.40 per year, the total additional cost will be \$52,114,700 per year.

¹⁰ Although the increased costs associated with each imprisonment term may be offset by the lower costs of each community correction order that is imposed for less than one year.

The financial impact of the abolition will also be felt in other areas, including prosecuting services, legal aid funding, court services and among community treatment and support providers.

To ameliorate the potential negative consequences of the abolition of suspended sentences, several proposals have been developed based on both the published evidence and stakeholder consultations.

Recommendations

Catholic Social Services Victoria recognises that the best way to reduce crime is to broaden attention beyond a criminal justice system response to increase the focus on prevention. A more holistic approach addresses criminogenic disadvantage in the community and facilitates the health and well-being of the community as a whole. A greater focus on prevention to enhance community safety should target initiatives within areas known to contribute to offending behaviour. This would involve investment in areas such as:

- education, community-based counselling and residential treatment for alcohol and other drugs;
- child, family and community services;
- literacy and pre-employment education;
- primary health and mental health;
- homelessness; and
- disability, including acquired brain injury and intellectual disability.

Providing additional resources in these areas can reduce the sorts of disadvantage and pressures on individuals that contribute to criminal behaviour in the first place.

Once offending occurs, there are still opportunities to adopt a holistic approach by increasing the use of diversion out of the formal justice system where appropriate. This would be particularly useful for offenders who are vulnerable, young or first-time offenders, to reduce the negative consequences of involvement in the criminal justice system.

When a person is arrested, there is the opportunity for interventions to be put in place to prevent longer-term offending and its associated financial and social burdens on the community. Diverting people away from the criminal justice system has the potential to reduce these longer-term costs.

Diversion may be implemented in a number of ways, such as:

- police cautions and warnings;
- restorative justice practices, such as Youth Conferencing; and
- court-based practices, such as the Criminal Justice Diversion Program.

Support offered at this stage has the potential to improve opportunities for successful participation within the community, thus preventing the development of entrenched criminogenic behaviours.

Within the context of these broader issues, the following recommendations have been developed to address the impacts described in this report of abolishing suspended sentences in Victoria:

Recommendation 1: Maintain a full range of sentencing options

Provide a full complement of sentencing tools to magistrates. Do not abolish suspended sentences from the Magistrates' Court of Victoria.

Ensure that a comprehensive range of sentencing options, including suspended sentences, is available to magistrates in order to allow them to balance community safety with the specific circumstances of each individual case and to impose the order that best fits the purposes of sentencing.

Recommendation 2: Provide sentencing alternatives for vulnerable offenders

Establish alternative sentencing options for vulnerable offenders to ensure that their specific circumstances are acknowledged and the broader community interest is served.

Alternatives could include:

- Retain the availability of wholly suspended sentences for offenders who are aged 18, 19 or 20 at the time of sentencing, consistent with the unique position of young offenders who are sentenced to custody under Victoria's dual-track system (*Sentencing Act 1991* (Vic) s 3(1)).
- Create a modified version of the community correction order for offenders aged between 18 and 25 that has a greater focus on rehabilitation and support and less of a focus on punitive purposes.
- Ensure adequate resources to enhance diversion of Koori offenders (particularly women) and strengthen community-based alternatives to prison.
- Expand the availability of the drug treatment order beyond the drug court to all Magistrates' Courts to deal specifically with offenders with a severe drug or alcohol addiction.
- Encourage the use of deferred sentences by the courts for vulnerable offenders. Additional support would be required for this to be implemented, including judicial education (for example,

by the Judicial College of Victoria) and the use of a champion in the courts (such as the Chief Magistrate).

- Encourage a more nuanced use of community correction orders by the courts to ensure optimisation of its flexibility for vulnerable offenders. For example, increase the use of supervision-only orders for those who cannot perform the standard community work condition, such as the elderly, mothers with young children, those living in remote areas or people with a disability.

Recommendation 3: Plan for and provide sufficient resourcing

Ensure adequate planning and sufficient funding to enable sentences to be completed successfully and for the system as a whole to function humanely and effectively.

Additional resourcing is required in a number of areas, such as:

- enhancing legal aid services to help offenders understand and move through the court system;
- supporting court services such as the Courts Integrated Services Program that aims to link offenders with the support services they need to help them desist from offending;
- supporting sentencing magistrates and judges who are dealing with more people in the courts as more police are recruited;
- improving Community Correctional Services, with access to treatment and support services for offenders and exiting prisoners in order to maximise the chances of desistance, with a particular focus on increasing the expertise and retention of those staff who work in the community with offenders; and
- supporting non-government organisations such as VACRO and Brosnan Services that work with offenders and former prisoners to help them complete orders and reintegrate into the community.

Recommendation 4: Increase accountability and transparency

Ensure accessibility of timely, independent and reliable data from police, courts and corrections to enable monitoring of the impact of changes to the criminal justice system.

This could include:

- prison capacity versus prisoner numbers;
- assaults in prison;
- availability of, and participation in, treatment programs in prison and in the community;
- treatment program completion rates; and
- measures of return to prison.

1. Introduction

The progressive restriction of the use of wholly suspended sentences in the Victorian courts represents one of the most significant reforms in the sentencing arena in recent years. With the final stages of this reform – the complete abolition of wholly suspended sentences from the Supreme and County Courts for offences committed on or after 1 September 2013 and from the Magistrates’ Court of Victoria no later than 1 September 2014¹¹ – there remains a dearth of evidence on the potential impact of these reforms in terms of both community safety and the effective functioning of the criminal justice system.

Based on the evidence, the safety of the Victorian community is not being improved by the abolition of suspended sentences. Quite the contrary: the removal of a viable sentencing option, coupled with the increased workload faced by Victoria Police, the courts, community treatment and support providers, and Corrections Victoria in community corrections – coupled with the worsening conditions within Victorian prisons – all suggest that community safety may be compromised once the full reform process has been completed.

The research evidence suggests, and a number of key stakeholders in the system fear, that the abolition of suspended sentences may prove to be a final tipping point for the over-stretched correctional system in this state: that conditions are rife for a ‘perfect storm’ in terms of a devastating impact for the effective and safe functioning of Victoria’s criminal justice system.

Over the course of the last decade Victorian governments have moved to limit the use of suspended sentences by the courts, with the aim of maximising community safety. The focus of this report is also community safety, and the effectiveness of the abolition of suspended sentences in achieving this crucial objective.

This report examines the likely impact of the abolition of suspended sentences in Victoria, and makes a series of recommendations to make Victoria safer. The report has been developed through a series of consultations with key stakeholders and through a review of the relevant research literature.

¹¹ Division 3 of Part 2 of the *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic) will abolish suspended sentences in the Magistrates’ Court. The Division has not yet commenced but has a default commencement date of 1 September 2014. The abolition will apply to offences sentenced in the Magistrates’ Court that were committed on or after the commencement of the Division (Judicial College of Victoria, 2013, section 12.15.1).

The report considers three key issues:

- the effectiveness of various sentencing options, including suspended sentences and those sentences which are likely to become more prevalent in the absence of suspended sentences;
- the social costs to the community of the abolition of suspended sentences; and
- the financial costs associated with the abolition of suspended sentences.

1.1 Why this research is required

Catholic Social Services Victoria recognises that Victoria is currently undergoing a major shift in sentencing practices that includes the staged implementation of the abolition of suspended sentences as an option for the courts, and that research is needed to identify the likely effects and repercussions of this reform, both in the short term and longer term. While much analysis was published prior to the government's decision to remove suspended sentences, there is now a need to monitor the impact of the new sentencing regime and assess how it is beginning to be experienced and perceived by key stakeholders. It is acknowledged that the Sentencing Advisory Council is monitoring the statistical trends in the sentencing data but it is understood that the Council's monitoring is limited to examination of the reforms' statistical impacts only.

Although the abolition is a staged process, it is important that early effects are identified and understood, and, especially, that any negative impacts are identified and shared with the broader community. In particular, the consequences of the courts not being able to use the suspended sentence option any more may lead to unintended consequences that may have broader consequences. These consequences need to be identified and understood to enable policies and/or actions to be developed in response. It is hoped that this research will contribute significantly to identifying early warning signs of any negative consequences of removing suspended sentences, not only for the criminal justice system itself, but for the wider community.

1.2 Methodology

This report adopts several approaches in addressing the nominated issues. In order to provide context to the discussion, available data on the use of suspended sentences and other sentencing outcomes are first presented. Material on the effectiveness of sentencing options has been brought together through a review of the relevant criminological literature. As the social costs of abolishing suspended sentences are best understood through the insights of people who work at the coalface of the criminal justice system, consultations with key stakeholders have

formed the basis of the analysis of the social costs of the reforms (see Appendix A for a list of organisations consulted), while direct financial data have been drawn from sources such as the Report on Government Sources.

All the work for this report has been guided by a Steering Committee convened by Catholic Social Services Victoria (see Appendix B for a list of Steering Committee members). The Committee's input and guidance have been invaluable in the preparation of this report. The Committee has played the primary role in formulating the recommendations contained herein.

2. Background

2.1 Suspended sentences in Victoria

Sentencing options in Victoria can be broadly categorised as 'custodial', meaning a term served in prison, and 'non-custodial', meaning a sentence that is served in the community.

Custodial sentences may be either immediate (a straight term of imprisonment) or suspended (either wholly or partially). A partially suspended sentence involves an initial term served in prison followed by a period served in the community. A wholly suspended sentence, although notionally a term of imprisonment, nonetheless involves no actual time served in prison. There is a range of non-custodial options available in Victoria, including community correction orders¹² (that may involve both basic and optional conditions, such as reporting requirements and program participation), fines and adjourned undertakings. Additional orders, such as orders for restitution or forfeiture, are also available.

Suspended sentences are near the top of the sentencing hierarchy, sitting below an immediate term of imprisonment. They are ordered when the court believes that although the offences are serious enough to warrant a term of imprisonment, the term is not to be totally served in prison. In such instances the court may impose a sentence of imprisonment, which may then be partially or wholly suspended. In the case of a wholly suspended sentence, the offender does not spend any time in prison following sentencing; the term of imprisonment is served wholly in the community.

¹² Community correction orders came into effect from 16 January 2012. They replaced a number of orders that were repealed, including combined custody and treatment orders, intensive correction orders, home detention and community-based orders.

Unlike in most other Australian jurisdictions,¹³ wholly suspended sentences in Victoria do not have associated conditions, other than the requirement that the offender not commit another offence while serving the sentence. If a new offence is detected, the offender may be returned to court for resentencing and may be required to complete the term of the sentence in prison. This does not, however, happen frequently. Data show that, of all the people who received a suspended sentence in the Victorian courts from July 2000 to June 2002, 27.5% breached their orders in the following five years. Of all people who initially received a suspended sentence, 17.2% had their sentence wholly or partially restored. A further 2.7% of people had their operational term extended, while no order was made for 7.5% of people (Sentencing Advisory Council, 2007a, p. 13)

Much has been written on the role of suspended sentences – especially the wholly suspended sentence – in the Victorian criminal justice system. The Sentencing Advisory Council published a series of reports on suspended sentences during its inquiry for the government of the day, from 2005 to 2008. These reports collectively provide a thorough examination of the purpose of suspended sentences, how they are used by the courts, how they are perceived by criminal justice stakeholders and the public, and an assessment of the arguments for and against their abolition.

The original purpose of suspended sentences was to ‘provide for a more serious punishment than a fine for first-time offenders who were not considered a danger to the community and which would avoid the negative effects of imprisonment’ (Sentencing Advisory Council, 2005, p. 2). One advantage of suspended sentences (Sentencing Advisory Council, 2005, p. 5) was that:

Suspended sentences allow the court to recognise the seriousness of the offence and denounce the offender’s behaviour by imposing a prison term, yet enable the court to respond to the individual circumstances of the offender and show mercy.

¹³ Suspended sentences are available in every jurisdiction in Australia, although they vary in the specifics of the order, such as the maximum length of the term that can be suspended, the allowable operational period of the order, whether conditions may be attached, the power of the court on breach and whether partial suspension is allowed. Victoria and Queensland are the only jurisdictions in which conditions may not be attached to suspended sentences, although offenders convicted of multiple charges may receive a suspended sentence for one and a community order with conditions on another. See Sentencing Advisory Council (2008) *Suspended Sentences and Intermediate Sentencing Orders: Suspended Sentences Final Report–Part 2*, pp. 16-18 for a more detailed discussion. There have been recent calls, however, for Queensland to abolish its suspended sentences: ‘Court-ordered parole, suspended sentences may be dumped as state gets tough on criminals’ by Renee Viellaris and Robyn Ironside, 31 July 2013. Available at: <http://www.couriermail.com.au/news/queensland/courtordered-parole-suspended-sentences-may-be-dumped-as-state-gets-tough-on-criminals/story-fnihsrf2-1226688347819>.

It has also been suggested that wholly suspended sentences can provide an effective deterrent from further offending, as a term of actual imprisonment hangs like a 'Sword of Damocles' over the heads of offenders (Bartels, 2009).

Wholly suspended sentences enable the courts to avoid sending offenders to prison (thus helping to rein in prison populations), while at the same time denouncing the offending behaviour and acknowledging its seriousness. They remain, however, sentences of imprisonment. This paradox – a term of imprisonment for a serious offence, but a term that is not actually served in a prison – forms the foundation of one of the key criticisms that has been aimed at wholly suspended sentences: that they are inherently contradictory and therefore represent a 'fiction'. Indeed, the Sentencing Advisory Council (2005, p. 19) noted that the suspended sentence of imprisonment 'occupies an anomalous place in the sentencing hierarchy ...it is one of the most serious penalties that can be imposed, and yet the offender is free on conviction to resume their life in their community'.

This point is not lost on members of the public and various media commentators. The range of phrases employed by the media to reflect this anomaly has been substantial, but most have revolved around the use of key terms such as 'walk free', 'scot free', 'slap on the wrist' and the like. It is difficult to reconcile a term of imprisonment with an offender walking away from the court into the community.

It was partially for this reason that the Sentencing Advisory Council recommended that wholly suspended sentences be slowly abolished, after a number of intermediate orders had been implemented, tried and evaluated (Sentencing Advisory Council, 2008). Confidence in the courts (and the criminal justice system in general) is eroded if sentences are not seen to be what they are claimed to be. In the case of the wholly suspended sentence, the disjunction between theory and practice was seen to be insurmountable.

The Sentencing Advisory Council (2005) also noted that wholly suspended sentences may lead to 'sentence inflation', whereby offenders who were serving a wholly suspended sentence and then reoffended might be required to complete their term in prison, while offenders who were serving a community order and then reoffended would be far less likely to be imprisoned. On the basis of a large number of submissions, extensive consultation and analysis, the Sentencing Advisory Council ultimately recommended that the wholly suspended sentence be abolished, but only once a range of appropriate and well-resourced intermediate orders had been introduced to act as viable and credible alternatives for the judiciary. A range of intermediate orders was proposed in the Council's Final Report Part 2 (Sentencing Advisory Council, 2008).

Other researchers have noted additional concerns about the use of suspended sentences. Bartels (2009, p. 1) notes that some have suggested that suspended sentences favour middle class offenders, that there are difficulties in dealing with breaches and that they violate the proportionality principle¹⁴ by imposing a sentence that in practice is far less severe than the seriousness of the offence might demand.

Much less has been written about the likely consequences that would arise were suspended sentences to be removed as an option for the courts.

2.2 Legislative reform

Limitations on the use of suspended sentences for serious offences began in 2006, with a restriction on the use of *wholly* suspended sentences to only those instances in which there were 'exceptional circumstances' for offences committed on or after 1 November 2006.¹⁵ This action followed the Sentencing Advisory Council's Final Report Part 1 on the issue, which recommended a phased abolition process.

The abolition of all suspended sentences began in 2010¹⁶ with the removal of the use of either *wholly or partially* suspended sentences for 'serious' offences as defined under section 3 of the *Sentencing Act 1991* (Vic). These included offences causing death and serious injury, as well as sexual penetration offences and armed robbery.

The Coalition government extended these restrictions in 2011¹⁷ by adding a list of 'significant' offences for which suspended sentences (either wholly or partially) could no longer be imposed. These included causing serious injury recklessly, arson offences, aggravated burglary and serious drug trafficking offences. No suspended sentences may be imposed for any of the serious or significant offences committed on or after 1 May 2011.

The final stages of the abolition of suspended sentences remain to take full effect. Under legislation passed by Parliament, the final abolition is being implemented in two stages: suspended sentences have first been abolished in the Supreme and County Courts for offences

¹⁴ The proportionality principle states that, in sentencing, the overall punishment imposed must be proportionate to the gravity of the offending behaviour (which is usually determined by reference to both the harm caused by the offence and the culpability (or degree of responsibility) of the offender).

¹⁵ *Sentencing (Suspended Sentences) Act 2006* (Vic) s 4.

¹⁶ *Sentencing Amendment Act 2010* (Vic) s 12.

¹⁷ *Sentencing Further Amendment Act 2011* (Vic) s 4.

committed on or after 1 September 2013, and will subsequently be abolished from the Magistrates' Court no later than 1 September 2014.¹⁸

2.3 Public perceptions of sentencing

In his April 2013 media release, the Premier of Victoria (2013) stated that 'suspended sentences allow offenders to walk straight out of court and back into the community with no restrictions, community service obligations or reporting requirements'. At the same time, the Attorney-General stated that the new laws would ensure stronger and more effective sentences that would better protect the community: 'this will bring an end to the fiction of suspended sentences in Victoria, so that in future, jail will truly mean jail'. In both of these statements there is a clear imperative to assure the Victorian community that offenders will be appropriately punished under the new regime.

Arguably, the comments made by the Premier and the Attorney-General are both founded on the assumptions that the public believes that sentences are too lenient and that people want offenders to be punished harshly. While media representations of public outrage over lenient sentences might contribute to such an understanding, the evidence in this field shows otherwise.

There is a vast literature from both Australia and internationally consistently showing that, in the abstract, people think that sentences are too lenient; but, when given more information about a given case, their thoughts on appropriate sentences are in fact similar to the sentences that are actually imposed (Gelb, 2006; 2008). This result has been found remarkably consistently across dozens of studies in many western countries over the past 30 years, since the pioneering work of Doob and Roberts (1983) in Canada.

In their ground-breaking work, Doob and Roberts (1983) conducted a series of studies for the Canadian Department of Justice in order to determine the effect of providing more information on respondents' attitudes. In one of the studies, Doob and Roberts contrasted responses given to brief descriptions of sentences (only offence and sentence information) to those given to more complete descriptions of the same cases (including a case summary). Respondents were initially asked a general question about their perceptions of court sentencing practice. In the abstract, over 90% of the total group reported that the courts are generally too lenient.

¹⁸ *Sentencing Act 1991* (Vic) s 27(2C).

Respondents were then randomly assigned to one of two groups: one to receive a brief description of a manslaughter case (akin to the type of information provided in media accounts) and one to receive a more detailed case description with information on incident and offender characteristics.

Fully 80% of the respondents provided with a short description of the case felt that the sentence was too lenient, while only 7% felt the sentence was about right. For those given a longer description of the case, only 15% felt that the sentence was too lenient and 30% felt that the sentence was about right. The most common response for this group – 45% – was to describe the sentence as too harsh (Doob and Roberts, 1983, p.6).

This study (and the many that followed over the decades) clearly shows that people who are given more information about a case – information such as that heard by the judge or magistrate – are less likely to believe that the sentence is too lenient.

Building on the large body of research in this field, a seminal Australian study of the perceptions of Tasmanian jurors (Warner et al., 2011) showed that jurors recommended the same or a more lenient sentence than the judge in the majority of cases heard. Having heard all the information presented to the judge, most of the time the jurors came to the same conclusions as the judge in terms of sentencing. Nonetheless, when asked an abstract question about the adequacy of sentences in general, participants in this study still felt that sentences were too lenient. The authors note this ‘perception gap’ between the specifics of the case that the jurors tried and the extrapolation of their satisfaction to sentencing in criminal cases more generally.

This study, and the body of similar international research, clearly shows that, when given the opportunity to hear the facts of a case and to think more carefully about the information provided, public opinion is far from the punitive voice so often invoked in the ‘tough-on-crime’ debate. But this more nuanced, informed public ‘judgment’ (Green, 2006) tends to be overshadowed by the powerful headlines portrayed in the popular media. Ultimately, policy-makers draw on purportedly punitive community attitudes to justify punitive criminal justice policies, rather than relying on the research evidence in the field.

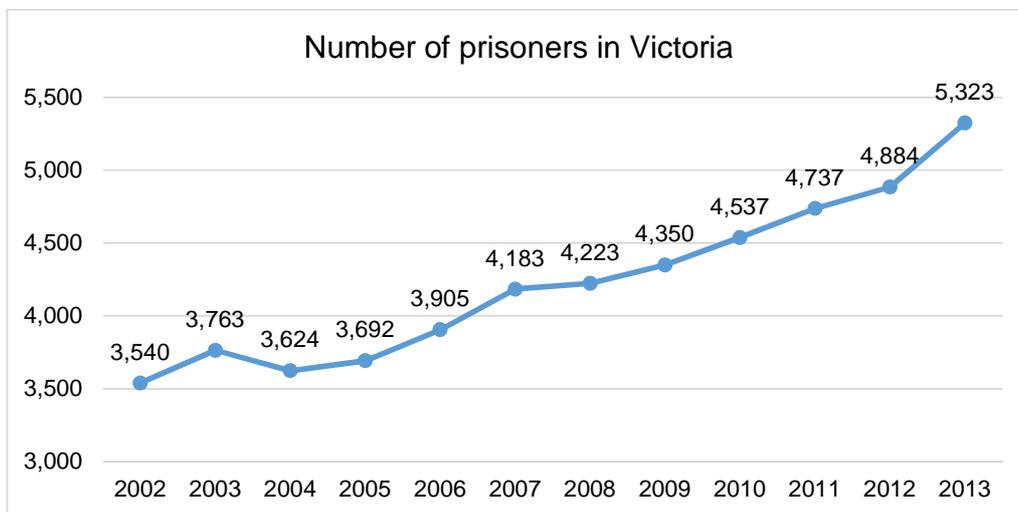
3. Victoria’s increasing prison population

Although the Victorian prison population remains one of the lowest in the country, over the past ten years it has steadily increased, with a more rapid increase seen in the last few years. In 2002, Victoria’s imprisonment rate stood at 94.2 prisoners per 100,000 adults. By 2012, this had

risen to 111.7 per 100,000 adults. Almost half (47.4%) of the increase occurred in the last four years of this period (Sentencing Advisory Council, 2013a, p. 1), with the prison population actually increasing at a rate faster than that of the general population.

Figure 1 shows the number of people in Victoria’s prisons (both sentenced and on remand) at the time of the annual prisoner census, 30 June, from 2002 to 2013.¹⁹ It shows the steep rise in the number of prisoners in Victoria, with an overall increase over the twelve years of 50.4%, or 1,783 people. The steepest growth of all is seen in the most recent financial year, increasing from 4,884 people in June 2012 to 5,323 in June 2013 – an increase of 439 people, or 9.0% in a single year.

Figure 1: The number of sentenced and unsentenced prisoners in Victoria, 2002 to 2013



Source: Australian Bureau of Statistics (2013) *Prisoners in Australia*; Australian Bureau of Statistics (2013) *Corrective Services Australia, June Quarter*

A similar increase has been seen in the population of Victoria’s women prisoners as well. From 2002 to 2013, the number of women in prison increased 46.1%, from 254 to 371. Once again, the steepest increase is seen in the last financial year, with an additional 31 women in prison, representing a 9.1% increase in a single year. While the women’s prison population is clearly

¹⁹ Data from 2013 are taken from the Australian Bureau of Statistics’ quarterly publication, *Corrective Services Australia, June Quarter 2013* as the June 2013 census data will not be available until early 2014. The 2013 data are therefore slightly different from the data reported in the previous years, representing the average daily number of people in full-time custody in Victoria in the month of June 2013, rather than the census count of all people in full-time custody on 30 June each year. This difference is only slight: in 2012 the census count was 4,884 while the average daily number for the month of June was 4,867. Thus the 2013 data are deemed sufficiently accurate to include in this graph.

much smaller than the men's, the proportion of women in prison has been increasing since 2008, when it reached a low of 5.6%, to 7.0% in 2012 and 2013.

Corrections Victoria advises that the number of people in prison has continued to grow rapidly since June 2013: as of 11 November 2013, the Victorian prison population reached a record high of 5,767 people, representing a 15% increase (756 people) over a 12-month period (Corrections Victoria Stakeholder Forum, 12 November 2013).

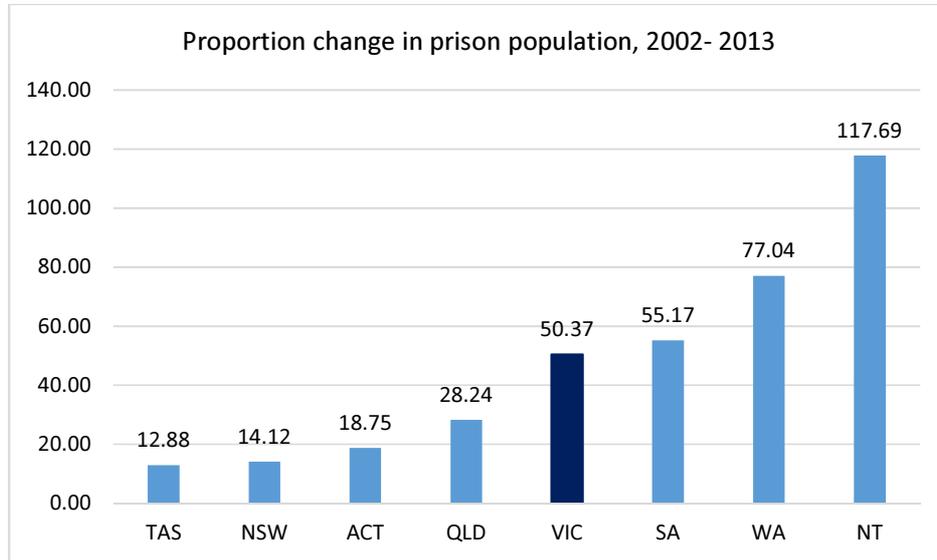
While the increase in the number of prisoners has been most dramatic in the last year, it must be noted that the rise in prisoner numbers pre-dates the current state government. While the Coalition ran a law-and-order campaign, came into office on a tough-on-crime platform and has implemented a number of sweeping, punitive reforms, the previous Labor government held power during a period of substantial growth in the prison population, seen from 2004 to 2010 in Figure 1 above. The increase in the number of prisoners in Victoria thus represents an entrenched, decade-long pattern.²⁰

Victoria is not unique among Australian jurisdictions in its increase in the prison population. Figure 2 uses data from the annual prisoner census to examine the proportionate change in the number of people in prison in each jurisdiction on 30 June from 2002 to 2013.²¹

²⁰ With such an established trend firmly in place, it is arguably difficult for alternative voices to be heard above the fray. Nonetheless, part of the role of Catholic Social Services Victoria is to advocate on the basis of evidence and reason, contributing a calm and rational perspective to policy debates.

²¹ As with Figure 1, data from 2013 are taken from the Australian Bureau of Statistics' quarterly publication, *Corrective Services Australia, June Quarter 2013*.

Figure 2: Proportionate change in the number of prisoners in each Australian jurisdiction, 2002 to 2013

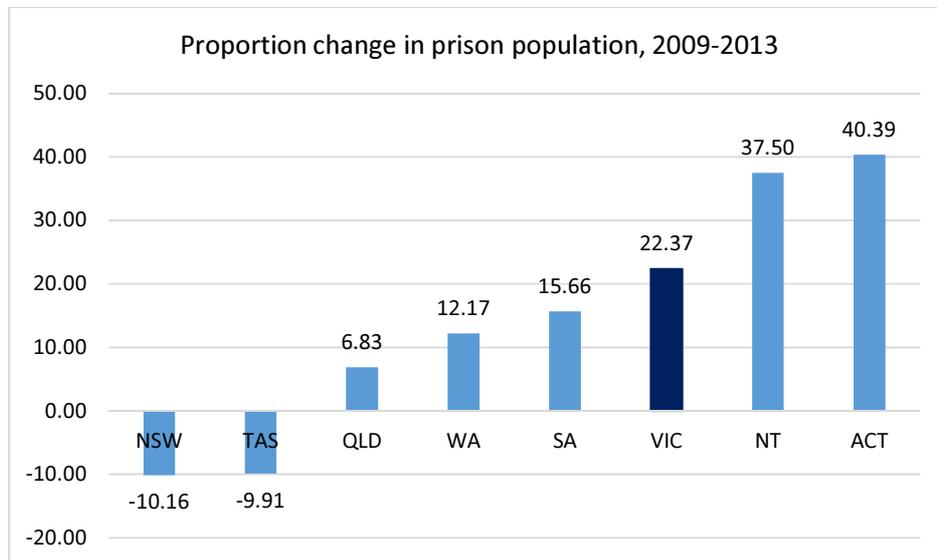


Source: Australian Bureau of Statistics (2013) *Prisoners in Australia*; Australian Bureau of Statistics (2013) *Corrective Services Australia, June Quarter*

Figure 2 shows that Victoria’s prison population has increased almost four times more than the prison population in New South Wales (NSW) over the twelve years – the jurisdiction arguably most comparable to Victoria.

The pattern changes somewhat, however, when examining data from more recent years. Over the past five years, the prison population in some jurisdictions has actually declined, while the enormous increases seen in the Northern Territory and Western Australia are no longer evident. Figure 3 uses the final five years of data from Figure 2 above to show the proportionate change in the number of people in prison in each jurisdiction on 30 June for the last five years, from 2009 to 2013.

Figure 3: Proportionate change in the number of prisoners in each Australian jurisdiction, 2009 to 2013



Source: Australian Bureau of Statistics (2013) *Prisoners in Australia*; Australian Bureau of Statistics (2013) *Corrective Services Australia, June Quarter*

Figure 3 shows that, as a proportion, Victoria’s prison population has increased substantially over the past five years, while those in both NSW and Tasmania have actually fallen. Indeed, the NSW prison population fell from 11,127 in 2009 to 9,996 in 2013, while Tasmania’s fell from 535 to 482 over that period. Victoria’s increased from 4,350 in 2009 to 5,323 in 2013.

While Victoria’s prison population has been, and continues to be, far lower than the prison population in NSW,²² it is notable that this jurisdiction with the most prisoners in Australia has shown a decrease in its population. Research by the NSW Bureau of Crime Statistics and Research has suggested that the decrease has been limited to sentenced prisoners only (rather than those on remand) and has been driven by a reduction in the number of offenders serving prison sentences for assault, break and enter, theft and traffic offences. While the incidence of these offences seems to have fallen, the research suggests that there have also been moves away from the use of imprisonment as a penalty (Fitzgerald and Corben, 2012, p. 1).

²² NSW has traditionally had a higher imprisonment rate than Victoria. The difference between the two states has been examined by BOCSAR and, most recently, has been attributed to factors such as a higher rate of court appearance, a slightly higher conviction rate, a higher likelihood of imprisonment and a higher likelihood of remand in custody (Weatherburn, Grech and Holmes, 2010, p. 1).

Part of this change in sentencing practice might be attributed to the environment fostered by Attorney-General of NSW, the Hon. Greg Smith, who came to power in 2011 after explicitly avoiding a 'law-and-order auction' in his campaign.²³ The Attorney has worked to reform prisons, particularly for non-violent offenders, young offenders and Indigenous offenders, by improving opportunities for rehabilitation and treatment. He has also closed three prisons and reduced spending. He is reported to have explained it thus:²⁴

The whole hardline approach against crime has been a failure in many places. This attempt to make me look softer misrepresents what I am trying to do. I am trying to turn people away from crime. It's not soft, it's being more pragmatic.

In launching the NSW campaign for Justice Reinvestment for Aboriginal Young People, the Attorney called for being 'smarter' on crime, noting that this does not mean being 'softer' on crime. He called for an approach to crime that addresses the reasons behind offending of young people, and suggests that justice reinvestment²⁵ 'deserves support from every political party', combining support for families and communities as a strategy to address the underlying causes of youth crime and thus prevent crime and reoffending.²⁶

NSW is not the only state to be moving towards a justice reinvestment approach to reducing its rates of crime and imprisonment. Western Australia (WA), with its especially high Indigenous imprisonment rate, has also been the focus of calls for moving money away from corrections and into services in the community to prevent and reduce crime.²⁷ Public discussions of the

²³ Analysis by Sydney Morning Herald reporter Anna Patty describes the outcome of law-and-order elections: 'The promises to increase punishments, which have characterised every state election campaign since 1988, have filled jails, but have done little to reduce the rate of reoffending. More often than not, those responses led to ill-considered policies which have clogged the jail system and drained state government coffers'. 'Hardline AG hits back at his critics' by Anna Patty, 3 February 2012. Available at: <http://www.smh.com.au/nsw/hardline-ag-hits-back-at-his-critics-20120203-1qw3o.html#ixzz2iK0ov3AT>.

²⁴ 'Ending Sydney's law-and-order auction' by Robert Milliken, 3 April 2012. Available at: <http://inside.org.au/ending-sydneys-law-and-order-auction/#sthash.VKU1fQcc.dpuf>.

²⁵ Justice reinvestment may be defined as the redirection of resources from Corrections budgets to various forms of community provision such as education, housing, drug and alcohol, employment, healthcare and other resources in high crime communities from which many prisoners come and to which many prisoners will return. For more information on justice reinvestment, see Brown (2013), p. 36. Available at: <http://vcoss.org.au/insight/issue8-crime-and-justice/>.

²⁶ See the Attorney's opening speech for the launch of the campaign on 2 May 2012. Available at: <http://www.youtube.com/watch?v=eS5qDzWEOr0>. More information on the campaign itself is available at: <http://justicereinvestmentnow.net.au/>.

²⁷ See, for example, the Shadow Minister for Corrective Services of WA, Paul Papalia's Discussion Paper of 2010. Available at: <http://www.paulpapalia.walabor.org.au/news/justice-reinvestment-an-option-for-western-australia-740>.

need to find non-incarceration alternatives to reduce crime may have played a role in the relatively small increase in the WA prison population over the past five years (12.17%) that is seen in Figure 3. This approach has been growing in popularity around the world (Brown, 2013, p. 36):

Its growing popularity stems from a range of factors, including recognition across the political spectrum that increasing imprisonment rates and populist law and order strategies have failed to prevent crime and ensure public safety.

In the context of calls for ‘justice reinvestment’ in other Australian jurisdictions (and following the unprecedented turn away from prison that has been seen in the United States over recent years),²⁸ Victoria’s approach has become harsher: in the words of one headline, Victoria’s ‘tough-on-crime stance [is] at odds with global trend’.²⁹ Indeed, Professor David Brown notes how justice reinvestment is being adopted in NSW (Brown, 2013, p. 37):

The NSW Greens have adopted Justice Reinvestment as part of their justice policy platform; a strategic review for the Minister for Juvenile Justice recommended it be implemented for juveniles in NSW; and NSW Attorney General Greg Smith has expressed support and proposals for pilot projects are under consideration by the NSW Coalition Government. Unfortunately the Victorian Government seems headed in the opposite direction, buying heavily into the discredited law and order approach finally being abandoned in NSW.

Numerous calls have been made for Victoria to abandon its determined tough-on-crime approach to adopt a more evidence-based policy of justice reinvestment. The Smart Justice coalition, led by the Federation of Community Legal Centres, has called for greater investment

²⁸ The ‘Right on Crime’ movement in the United States was founded by a number of prominent conservative Republican politicians who saw the need for spending justice money in a way that would actually reduce and prevent offending. Following their lead, many states have reduced their prison populations, closed prisons, and diverted funds into community programs to prevent crime. At the federal level as well, Attorney-General Eric Holder has called for smarter responses to crime. As a result of this movement, the prison population in the United States has decreased for the past three years, after four decades of increasing rapidly on the back of harsh sentencing policies and the war on drugs (see ‘U.S. Prison Populations Decline, Reflecting New Approach to Crime’ by Erica Goode, 25 July 2013. Available at: <http://www.nytimes.com/2013/07/26/us/us-prison-populations-decline-reflecting-new-approach-to-crime.html>). For more information on the Right on Crime movement, see <http://www.rightoncrime.com/>. For the key Eric Holder speech from August 2013, see <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html>; for an example of the response to his speech, see http://www.huffingtonpost.com/2013/08/12/eric-holder-mandatory-minimum_n_3744575.html.

²⁹ ‘Tough-on-crime stance at odds with global trend’ by Andrea Petrie, 25 August 2013. Available at: <http://www.theage.com.au/victoria/toughoncrime-stance-at-odds-with-global-trend-20130824-2siri.html>.

in programs that tackle the causes of crime, rather than greater investment in prisons, as well as research, evaluation and pilot programs to determine the viability and impact of justice reinvestment in Victoria (Smart Justice, 2012, p. 2). Various newspaper reporters have called for Victoria to adopt an evidence-based approach, getting smarter on crime rather than tougher:³⁰

As Victoria heads towards a state election next year, it is time to reframe the debate. The last thing we need is another law-and-order auction based on expensive, punitive ideas. The emphasis should be on justice reinvestment - directing funds into programs that prevent criminal behaviour and tackle generational disadvantage rather than just the consequences of crime.

If it sounds like the bleeding obvious, it is.

Closer to home, the Napthine government's priorities are a study in contrasts. On one hand, we are spending more than \$800 million to build a new jail in Melbourne's west, a new high-security unit at Barwon and hundreds of additional beds.

On the other hand, dozens of programs designed to keep people out of jail are being cut. One such initiative is the YMCA Bridge Project, which helps young offenders find supported training and employment.

More broadly, Peter Norden advocates justice reinvestment across Australia, and asks: 'Wouldn't we better off spending that money more wisely, trying to prevent people ending up in jail rather than providing facilities when they are sentenced to custody?' He equates the Australian experience with imprisonment over the past 30 years with that of California, noting that 'our national prison population has been increasing at three times the rate of the national population, despite the fact that serious crime has not significantly increased in most categories over this same period of time' (Norden, 2013).

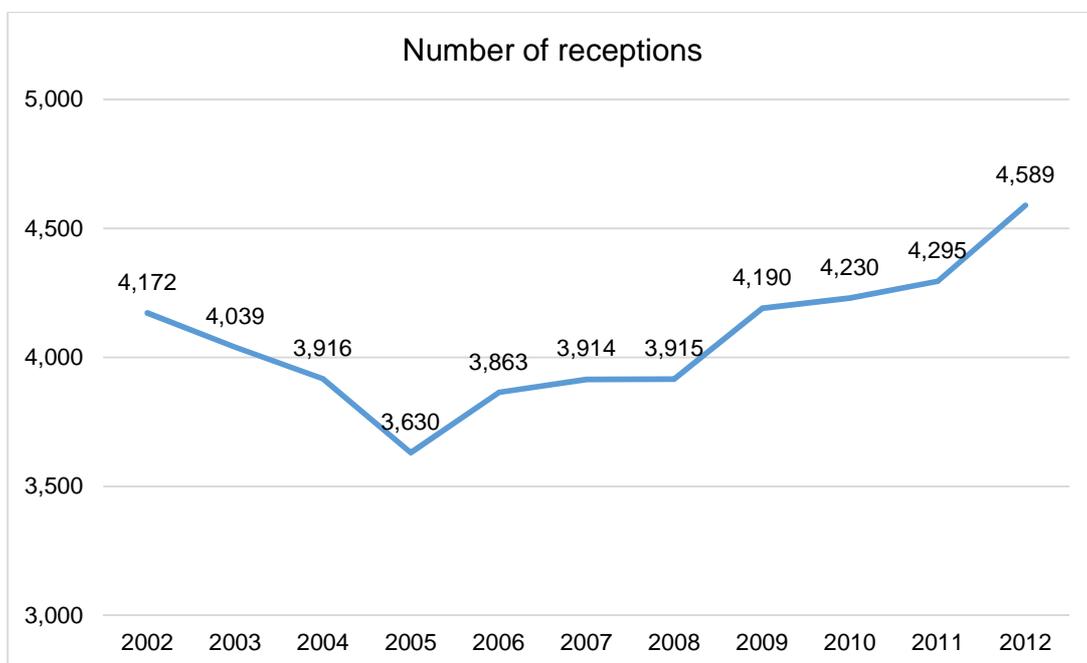
In the current political climate of tough-on-crime policies, Victoria's prison population has continued to climb, as seen in the figures above. But the data in Figure 1 through Figure 3 count the number of people who are in prison at the time of the annual census, on 30 June each year. These figures tend to over-represent more serious offenders (who tend to be in prison longer, and are therefore more likely to be counted on 30 June) and under-represent less serious offenders who cycle in and out of prison more quickly (and so are less likely to be in prison on census night).

³⁰ 'Justice demands a smarter, not tougher, solution: Prevention rather than punishment is the obvious path' by Farrah Tomazin, 1 September 2013. Available at: <http://www.theage.com.au/comment/justice-demands-a-smarter-not-tougher-solution-20130831-2sxno.html#ixzz2iK8seSQn>.

To address this, Figure 4 shows the number of sentenced³¹ people who are received into prison each year.³² It is important to consider prison receptions as it is possible that the impact of the abolition of suspended sentences may be seen most keenly in these data: if people receive short terms of imprisonment in place of wholly suspended sentences, they will be counted in receptions data but will not necessarily be counted in the 30 June census data.³³

After a decline in the number of sentenced receptions from 2002 to 2005, there has been a steady increase in the number of sentenced people entering prison, from 3,630 in 2005 to 4,589 in 2012 – an increase of 26.4%, or 959 people. The pattern in receptions is thus similar to the pattern seen in the prisoner census data in Figure 1.

Figure 4: The number of sentenced receptions into Victorian prisons, 2002 to 2012



Source: Australian Bureau of Statistics (various) *Corrective Services Australia*

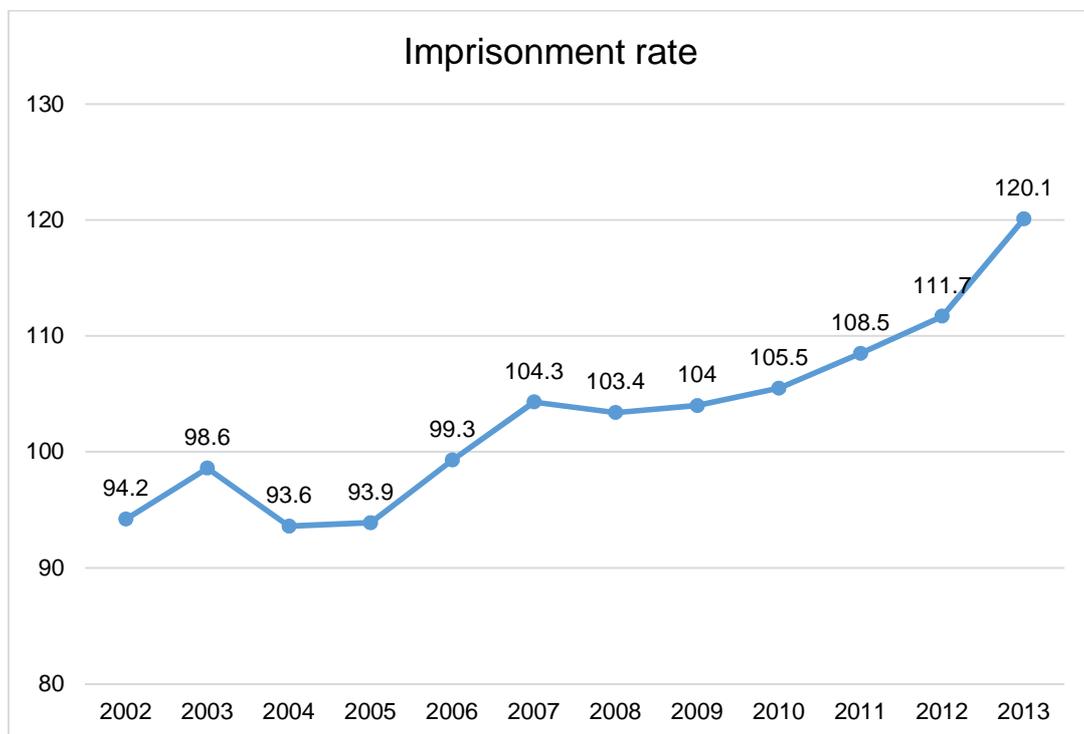
³¹ Figure 1 includes both sentenced and unsentenced people (those on remand) as it is a count of all people in prison on 30 June. As it presents sentenced receptions, Figure 4 includes only people who have been sentenced.

³² Data are only available for the full year through 2012.

³³ Census data are known to over-represent more serious offenders who tend to receive longer terms in prison. Less serious offenders who serve short prison terms will only be counted in the census data if their term happens to include 30 June; if not, they will enter and leave prison without being counted in the census.

The growth of the prison population has outpaced the growth of the general population over the past decade. This can be seen by examining imprisonment rates, which are the number of prisoners per 100,000 of the general population. Figure 5 shows the Victorian imprisonment rate, expressed as a number of prisoners per 100,000 Victorian adults. The rate increased from 94.2 prisoners per 100,000 adults in 2002 to 120.1 in 2013³⁴ – an increase of 27.5%, at a time when the general population increased by 15.6% (Sentencing Advisory Council, 2013a, p. 8). Again, the steepest growth of all is seen in the most recent financial year, increasing from 111.7 in 2012 to 120.1 in 2013 – an increase of 7.5% in a single year.

Figure 5: Victoria’s imprisonment rate, 30 June 2002 to 30 June 2013

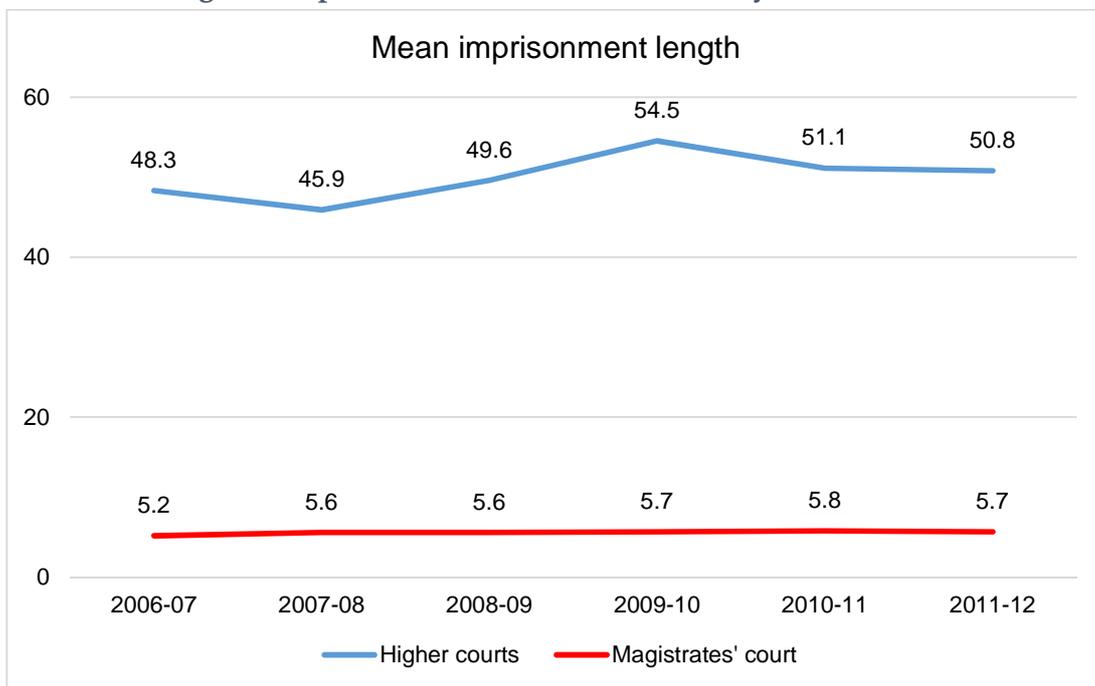


Source: Australian Bureau of Statistics (2012) *Prisoners in Australia*; Australian Bureau of Statistics (2013) *Corrective Services Australia, June Quarter*

³⁴ As with Figure 1, data from 2013 are taken from the Australian Bureau of Statistics’ quarterly publication, *Corrective Services Australia*. The 2013 data are therefore slightly different from the data reported in the previous years, representing the imprisonment rate in Victoria in the month of June 2013, rather than the imprisonment rate at the census date of 30 June. This difference is only slight: in 2012 the imprisonment rate at the time of the census was 111.7 while the imprisonment rate in the month of June was 111.9. Again, the 2013 data are deemed sufficiently accurate to include in this graph.

At the same time as both the number of people in prison and the imprisonment rate are increasing, the average length of sentence for people who are being sent to prison has also increased. Figure 6 shows that the mean sentence of imprisonment imposed in the higher courts has increased from 48.3 months to 50.3 months, an increase of 2.6 months or 5.3%. In the Magistrates' Court, the mean sentence of imprisonment has increased from 5.2 months to 5.7 months, representing an increase of 9.3%. Across the two court levels combined, the mean imprisonment length increased from 14.5 months to 15.6 months between 2006–07 and 2011–12, an increase of 1.1 months or 7.6%.

Figure 6: Mean length of imprisonment sentences (months) by court level, 2006-07 to 2011-12



Source: Sentencing Advisory Council (2013a)

These apparently small increases nonetheless have a substantial impact on the prison population as they represent the average increase across *all* sentences of imprisonment. Thus a small increase applied to every sentence becomes significant as the effect accumulates within the prison population.

The increasing prisoner population and imprisonment rate are of particular concern in terms of the capacity of the system and the potential for negative consequences of overcrowding. While Victoria has not provided data on this issue to the Steering Committee for the Review of Government Service Provision in recent years, the most recent publically available document from Corrections Victoria shows that, as at 30 June 2011, the men's prison system was running

at 96.2% capacity while the women's was at 86.0% (Corrections Victoria, 2011, p. 9). The more recent Victorian Auditor-General's review of prison capacity planning notes that the male prison system has been operating at close to or above 95% of its operational capacity since May 2011 (Victorian Auditor-General, 2012, p. 7); as of November 2013, the system is running at 104% of capacity.

Corrections Victoria aims to operate the prison system at between 90% and 95% of its operational capacity: the 95% prison utilisation rate is the nationally-accepted limit for the safe and efficient operation of the prison system, allowing prison management to manage the rehabilitation, human rights and welfare of prisoners. Operating above this rate compromises the ability of prison management to manage prisoners safely and humanely (Victorian Auditor-General, 2012, p. 9).

It is questionable whether the new prison beds that have been funded by the government will be able to meet the increasing influx of new prisoners or whether Victoria's prison system will continue to operate at or near capacity into the future.

Indeed, a recent review by the Victorian Auditor-General examined the question of Victoria's prison capacity, responding to concerns about potential overcrowding in Victoria's prison system. The review found that prison infrastructure in Victoria has not kept pace with the increase in the number of prisoners over the past decade; into the future, the system will face increasing pressure, especially with male prisoners, as the capacity of the system to cope with the increase in prisoners 'is becoming unsustainable' (Victorian Auditor-General, 2012, p. ix). Corrections Victoria itself forecasts that, by 2016, neither the male nor the female prison systems will have sufficient capacity to meet expected demand, especially within the context of the major changes to sentencing policy that are currently underway (Victorian Auditor-General, 2012, p. ix).

An inability to meet expected demand is of particular concern in the context of the complex physical and mental health needs found among a large proportion of the prison population (for a comprehensive snapshot of the poor health of Australia's prisoners, see Australian Institute of Health and Welfare, 2011, pp. xii-xiv).³⁵ As with many prison populations, Victoria's prison population is a particularly disadvantaged one – an 'extraordinarily needy, unhealthy, and life-

³⁵ The Australian Institute of Health and Welfare's report covers a wide range of physical and mental health indicators, revealing the extreme levels of health problems within the Australian prison population. Although Victoria did not participate in the research for this report, there is no reason to presume that Victoria's prison population differs systematically from other Australian prison populations in its health status.

damaged cohort' (Deloitte Consulting, 2003, p. 1) – in terms of low levels of physical, mental and social well-being, requiring substantial investment of time and resources for management and rehabilitation.

Victorian research has shown that prisoners with an intellectual disability differ from those without an intellectual disability in terms of their prior experiences with the criminal justice system and their rehabilitation and support requirements (Corrections Victoria, 2007, p. 6). In addition, acquired brain injury is significantly over-represented in Victorian prisons: recent research found that 42% of male prisoners and 33% of female prisoners had an acquired brain injury, compared with an estimated prevalence among the general population of just 2% (Corrections Victoria, 2011, p. 6). Among prisoners, the most common cause of acquired brain injury tends to be drug and alcohol abuse, while among the general population the most common cause tends to be traumatic head injury. Prisoners also present with higher rates of co-morbid psychiatric conditions, resulting in a very high-need population in terms of both management and rehabilitation strategies and programs; according to Corrections Victoria, prisoners with an acquired brain injury may also require 'specific assistance from correctional staff as well as altered approaches to the delivery of offending behaviour programs' (Corrections Victoria, 2011, p. 6). In this context, the rising prison population – and the capacity of Victoria to keep pace with prison demand – become of even more pressing concern as overcrowding potentially reduces the ability of Corrections Victoria to provide for its more complex and high-need prisoners.

The financial cost of this rising prison population is also substantial. In 2011-12, the real net operating expenditure per Victorian prisoner was more than \$97,000 for the year, or \$267.56 per prisoner per day (Steering Committee for the Review of Government Service Provision, 2013, Table 8A.9). Over the past decade, the real recurrent cost of prisons in Victoria (in 2011-12 dollars) grew from \$56.47 per year for every resident of Victoria to \$83.95. Even when the effects of inflation and population growth are considered, recurrent spending on Victorian prisons has increased by 49% (Sentencing Advisory Council, 2013a, p. 1).

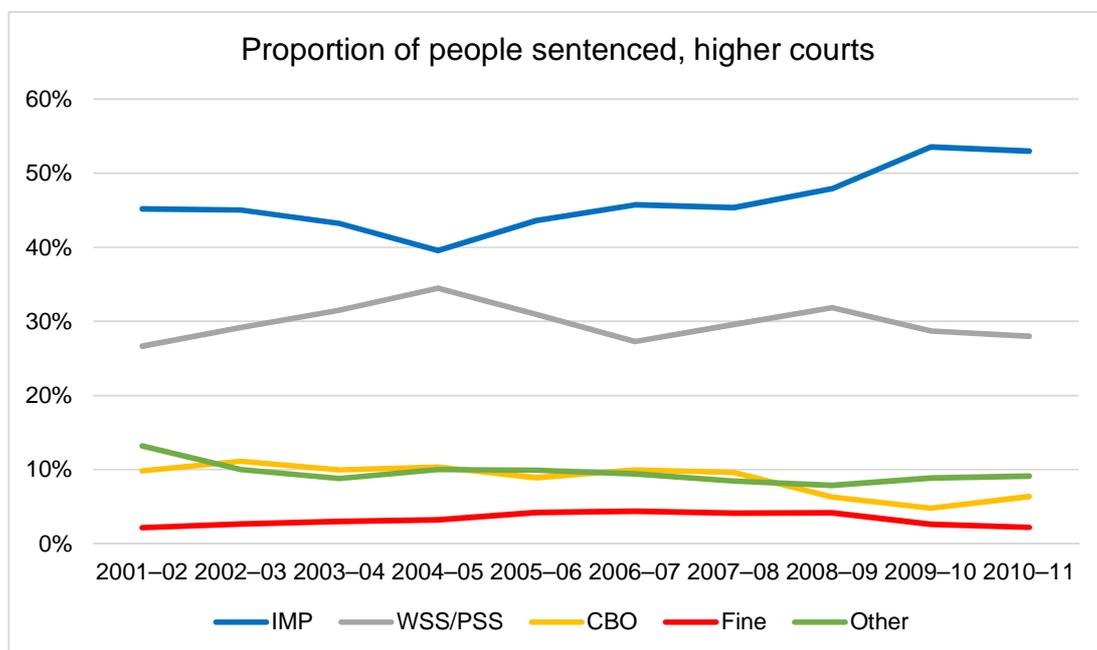
With an increasing prison population and an increasing rate of imprisonment, it is critical to understand any further impact that may ensue following the complete abolition of suspended sentences in Victoria. Examining current sentencing practices in the courts will assist in assessing the likely impact of this abolition.

4. Current sentencing practices in Victoria – higher courts

As the abolition of all suspended sentences will necessarily result in an increase in the imposition of sentences both higher and lower in the sentencing hierarchy, it is important to understand the use of suspended sentences in the broader context of other sentencing orders.

Figure 7 below³⁶ illustrates the proportion of people sentenced in the higher courts from 2001-02 to 2010-11 who received each outcome, for a selection of sentence types.

Figure 7: Proportion of people sentenced, by order, higher courts, 2001-02 to 2010-11



IMP = imprisonment; WSS = wholly suspended sentence; PSS = partially suspended sentence; CBO = community-based order; Other includes youth orders, adjourned undertakings, discharges, dismissals and Commonwealth orders

Source: Sentencing Advisory Council website <www.sentencingcouncil.vic.gov.au>

Figure 7 shows that, in the Victorian higher courts (the Supreme Court and the County Court), the most common sentence imposed is a term of immediate imprisonment. Data from the Sentencing Advisory Council website³⁷ show that immediate imprisonment accounted for 53.0%

³⁶ Raw data for all unlabeled data series in the figures in this report may be found in Appendix C.

³⁷ The Sentencing Advisory Council maintains some sentencing data on its website, available at www.sentencingcouncil.vic.gov.au. Although data for the Magistrates' Court have been updated to

of all sentences imposed in 2010-11. The proportion of all people who receive a term of imprisonment has increased in recent years, from a low of 39.6% in 2004-05. In 2010-11, 1,063 people were sentenced to an immediate term of imprisonment in the Victorian higher courts, out of a total of 2,006 people sentenced. More recent data (2011-12) show that 1,976 people were proven guilty³⁸ in the County Court (County Court, 2012, p. 2), but complete sentencing data on all outcomes imposed by the higher courts are not yet available for more recent periods.³⁹

Suspended sentences (wholly and partially suspended combined) have fluctuated over the past decade but have remained largely stable. In 2010-11, suspended sentences comprised 28.0% of all sentences imposed in the Victorian higher courts, accounting for 562 people. As the broader restrictions on the use of suspended sentences for 'serious and significant' only applies to those offences committed on or after 1 May 2011, the full impact of the restrictions is not yet reflected in these data.

Community orders are far less common in the higher courts, likely due to the more serious nature of the offences with which people present. Community-based orders comprised between about 5% and 10% of sentences imposed over the period, although their use steadily decreased from 2006-07, before rising again in 2010-11 to 6.4% (or 128 people).

The Sentencing Advisory Council has produced more recent data that compare the proportion of all sentences imposed in the higher courts that are custodial terms⁴⁰ with the proportion that are wholly suspended sentences (Sentencing Advisory Council, 2013, p. 19). While these data do not provide a complete picture of all sentences imposed in the higher courts through 2011-12, they do show that the custody rate has been increasing substantially over the past eight years, while the proportion of all sentences that are wholly suspended sentences has fallen.

Figure 8 shows that, in 2011-12, 62.1% of all sentences imposed in the Victorian higher courts were custodial terms, while 18.9% of all sentences imposed were wholly suspended sentences.

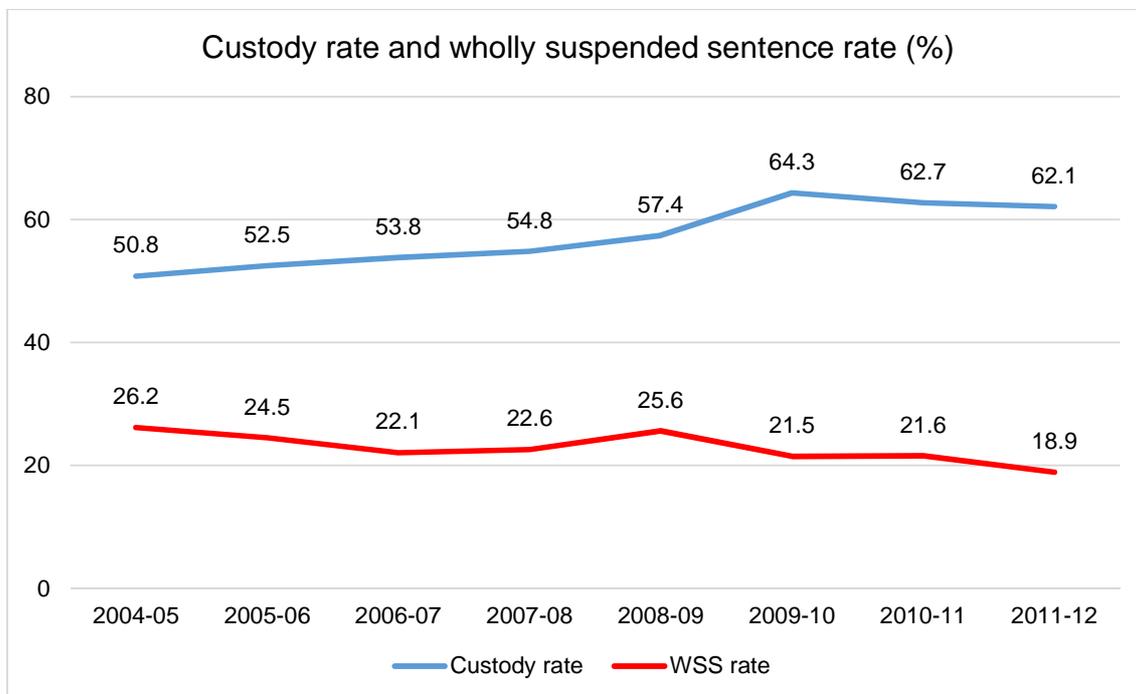
include 2011-12, the most recent data available for a range of sentencing outcomes in the higher courts are 2010-11 data.

³⁸ The County Court Annual Report provides data on finalisations in the court, and the total number of people proven guilty was calculated by adding the number of people who pleaded guilty, the number who were scheduled for trial but ended up pleading guilty, and the number who were found guilty at trial. This figure is then used to represent the number of people sentenced in the County Court in 2011-12.

³⁹ The Annual Report of the Supreme Court of Victoria does not contain comparable data on the number of people proven guilty and therefore sentenced.

⁴⁰ Custodial terms generally include imprisonment, partially suspended sentences and combined custody and treatment orders – any order for which the offender is immediately sent to be held in a corrections facility.

Figure 8: Proportion of people sentenced who received a custodial term or a wholly suspended sentence, higher courts, 2004-05 to 2011-12



WSS = wholly suspended sentence

Source: Sentencing Advisory Council (2013) *Victoria's Prison Population 2002 to 2012*

The increase in the proportion of people being sentenced to a term of imprisonment in the higher courts is not necessarily directly and causally related to the 2006 legislative reforms limiting the use of wholly suspended sentences for serious offences. Indeed, the Sentencing Advisory Council's report comparing the use of suspended sentences before and after the introduction of the *Sentencing (Suspended Sentences) Act 2006* (Vic) showed that there was no statistically significant difference in the use of wholly suspended sentences after the provisions of the Act came into force.⁴¹ The effects of subsequent constraints on the use of both wholly and partially suspended sentences in 2011 would similarly not appear within the reference period of the available data.

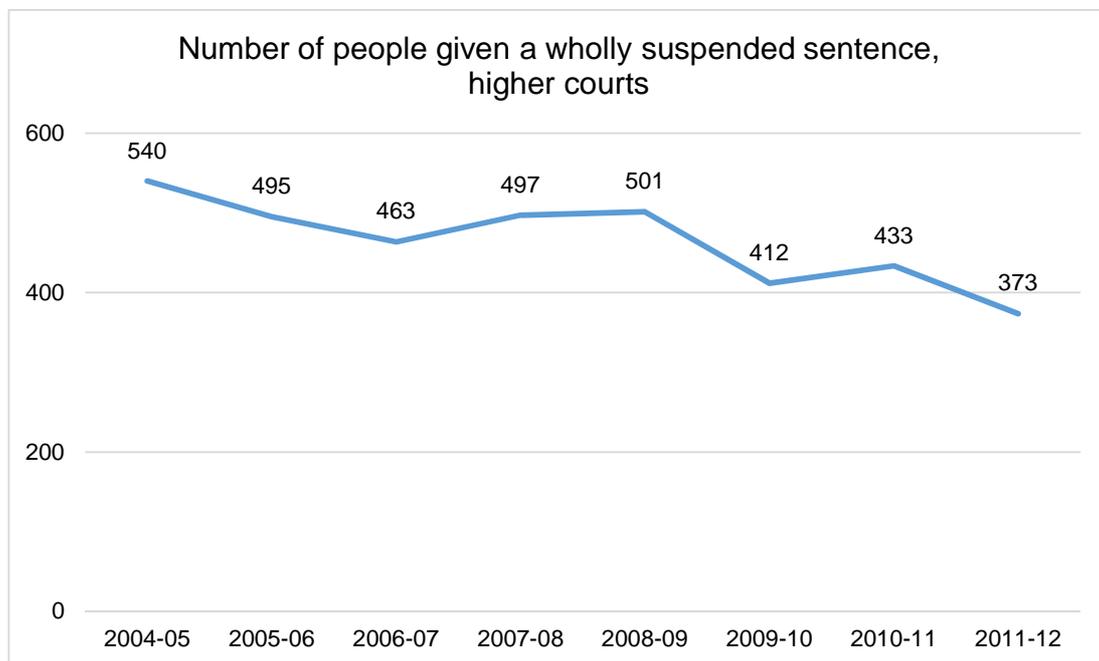
⁴¹ The *Sentencing (Suspended Sentences) Act 2006* (Vic) stipulated that suspended sentences could not be imposed for a 'serious' offence (as defined by Section 3 of the *Crimes Act 1958* (Vic)) committed on or after 1 November 2006 unless there were 'exceptional circumstances' and it was in the interests of justice to do so.

In order to identify more clearly the number of people sentenced in the higher courts who received a wholly suspended sentence only,⁴² data from Figure 7 and Figure 8 were combined to extrapolate the figures. That is, the total number of people sentenced in the higher courts (available from data underlying Figure 7) was combined with the proportion of people receiving a wholly suspended sentence (available from Figure 8). The resulting data allow a picture of the number of wholly suspended sentences imposed in the Victorian courts from 2004-05 to 2011-12.⁴³

⁴² Detailed analysis in this paper focuses on wholly suspended sentences only, for two reasons: firstly, the number of partially suspended sentences imposed in the courts each year is very small (and so the data are subject to substantial fluctuations); secondly, as people who receive a partially suspended sentence are already serving time in prison, the impact of the abolition of suspended sentences is arguably less uncertain, as one may assume that in the future these people are more likely to be sentenced to imprisonment than to a community correction order as they are already spending time in prison, though this will arguably become longer.

⁴³ Sentencing Advisory Council data only cover the period to 2010-11. In order to estimate the number of wholly suspended sentences imposed in 2011-12, data from the County Court's 2011-12 Annual Report were used. The report provides data on finalisations in the court, and the total number of people sentenced was calculated by adding the number of people who pleaded guilty, the number who were scheduled for trial but ended up pleading guilty, and the number who were found guilty at trial. It should be noted that the total number of people sentenced in 2011-12 does not include those people sentenced in the Supreme Court. The number of people who received a wholly suspended sentence in the higher courts in 2011-12 is thus an estimate only; the true value is likely to be somewhat higher were the Supreme Court sentences included (although the difference is likely to be minimal, given the typically low number of people sentenced in the Supreme Court – on the order of a couple of hundred per year).

Figure 9: Number of people sentenced to a wholly suspended sentence, higher courts, 2004-05 to 2011-12



Source: Analysis of data from Sentencing Advisory Council (2013) *Victoria's Prison Population 2002 to 2012* and from Sentencing Advisory Council website <www.sentencingcouncil.vic.gov.au>

Over the last eight years, the number of wholly suspended sentences imposed in the higher courts has steadily fallen, despite an increase between 2006-07 and 2008-09. It is unclear whether the overall decrease in the use of wholly suspended sentences is due primarily to legislative changes or to some general reaction on the part of judges to the extensive discussion and investigation of the issue undertaken by the Sentencing Advisory Council over the years 2004 to 2010. As each piece of relevant legislation constraining the use of wholly suspended sentences was framed to apply to offences committed 'on or after' a certain date (1 November 2006 and 1 May 2011), it is likely that there was some substantial lag between the implementation of the legislation and any changes in sentences actually imposed. Thus the point at which the impact of the legislative changes appears in the data remains unclear. Whatever the cause, the use of wholly suspended sentences in the higher courts of Victoria has declined substantially over the past eight years.

4.1 Likely sentencing outcomes – higher courts

Now that suspended sentences have been completely abolished from the higher courts for offences committed on or after 1 September 2013, the 370 or so people who currently receive a suspended sentence will receive some other order, either higher in the sentencing hierarchy (that is, a term of imprisonment) or lower in the sentencing hierarchy (a community correction order). These changes will not become evident in the data for some time, however, as there is a substantial lag between the commission of an offence and its sentencing in the higher courts.⁴⁴ Nonetheless, it is possible to make reasonable estimates of the number of additional people who will be entering prison or community corrections following the abolition of suspended sentences from the higher courts.

According to a judge who participated in the consultations for this research, it is unlikely that all the people who would have previously received a wholly suspended sentence will now receive a term of imprisonment. Previously, a judge would have determined that the offender did not need to be sent for an immediate imprisonment term. In the absence of wholly suspended sentences, this in/out decision is unlikely to change: an offender who previously did not warrant a term of immediate imprisonment will still not warrant a term of immediate imprisonment. As the next rung in the sentencing hierarchy is now a community correction order, it is likely that the vast majority of offenders who previously would have received a wholly suspended sentence will instead receive a community correction order.

Based on approximately 370 people who received a wholly suspended sentence in the higher courts in 2011-12 (see Figure 9), if at most one-quarter of former wholly suspended sentences become sentences of straight imprisonment, then an additional 93 people will enter prison. If – as is potentially more likely – only 5% or 10% of former wholly suspended sentences become sentences of imprisonment, then approximately 20 to 40 additional people will receive a term of imprisonment, while approximately 330 to 350 additional people will enter Community Correctional Services from the higher courts. (Note that this is before the larger impact of the abolition of suspended sentences from the Magistrates' Court is included: see Section 5 below).

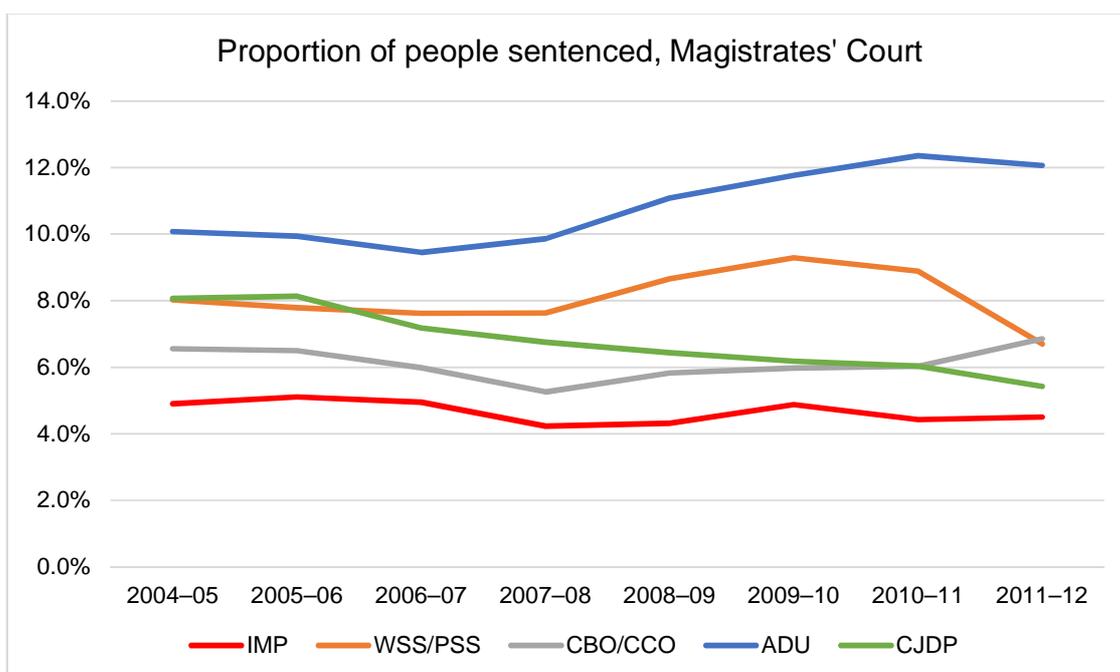
⁴⁴ As the final stage of the abolition from the higher courts applies to offences committed on or after 1 September 2013, it is likely that the impact of this part of the reforms will not be seen in the data for a year or two (although the impact of the earlier reforms is already evident in the reduction of the number of wholly suspended sentences imposed over the last few years). Offences need to be reported to the police who need to investigate and bring charges against an offender. The offender then needs to appear before the Magistrates' Court to be committed to the higher courts. Finally, if the offence is proven, the offender will be sentenced. This process tends to be long, such that offences subject to the abolition of suspended sentences in the higher courts will not appear in the data for some time.

In either instance, there will be an additional impact on the workload of Corrections Victoria that did not exist for the wholly suspended sentence.

5. Current sentencing practices in Victoria – Magistrates’ Court

The Magistrates’ Court, with its far larger volume of cases, has the potential to have a substantial impact on the number of people in Victoria’s prisons. Figure 10 shows sentencing outcomes for people sentenced in the Magistrates’ Court from 2004-05 to 2011-12.⁴⁵

Figure 10: Proportion of people sentenced, by order, Magistrates’ Court, 2004-05 to 2011-12



IMP = imprisonment; WSS = wholly suspended sentence; PSS = partially suspended sentence; CBO = community-based order; CCO = community correction order; ADU = adjourned undertaking; CJDP = Criminal Justice Diversion Program

Source: Sentencing Advisory Council website <www.sentencingcouncil.vic.gov.au>

⁴⁵ The graph does not include fines; these constitute a huge proportion of all sentences imposed (57.6% in 2011-12), which tends to distort the graph and result in the lower prevalence orders becoming impossible to distinguish.

Figure 10 shows that, apart from fines, the most common type of sentence in the Magistrates' Court of Victoria is the adjourned undertaking. Terms of imprisonment, suspended sentences (both wholly and partially combined) and community orders⁴⁶ each constitute only a small proportion of all sentences imposed in the Magistrates' Court. Given the number of people appearing before the court, however, the number in each of these groups is substantial.⁴⁷

The use of suspended sentences in the Magistrates' Court decreased in 2011-12 to its lowest level (6.7%) throughout the reference period, although this still represents 5,415 people who received a wholly or partially suspended sentence. The decrease is particularly noticeable after 2009-10, when 9.3% of all sentences (or 7,659) were suspended terms. Part of this is likely to be the impact of legislative changes to sentencing for repeat offenders convicted of driving while disqualified or suspended. Prior to the amendments in 2010,⁴⁸ people who were convicted of a second or subsequent driving while disqualified or suspended offence faced a mandatory minimum term of one month in prison. With no discretion to impose a different sentence, magistrates were compelled to impose the imprisonment term. They did, however, retain the power to suspend the term, resulting in a large proportion of wholly suspended sentences being imposed for this offence: between 2004-05 and 2006-07, almost half (54.5%) of all people sentenced for repeat driving while disqualified or suspended received a wholly suspended sentence (Sentencing Advisory Council, 2009, p. 13). Since the amendments, magistrates are able to use their discretion and choose from the full range of sentencing options, which is likely to have contributed to the fall in the proportion of suspended sentences imposed.⁴⁹

The use of immediate terms of imprisonment has remained stable over the eight years, with 3,643 sentences of imprisonment being imposed in 2011-12. In addition, there were 5,550 community-based orders and community correction orders imposed in 2011-12.

As with the analysis of outcomes in the higher courts, more detailed data for wholly suspended sentences only were found for a limited number of years. Figure 11 shows the number of people given a wholly suspended sentence in the Magistrates' Court through 2008-09.

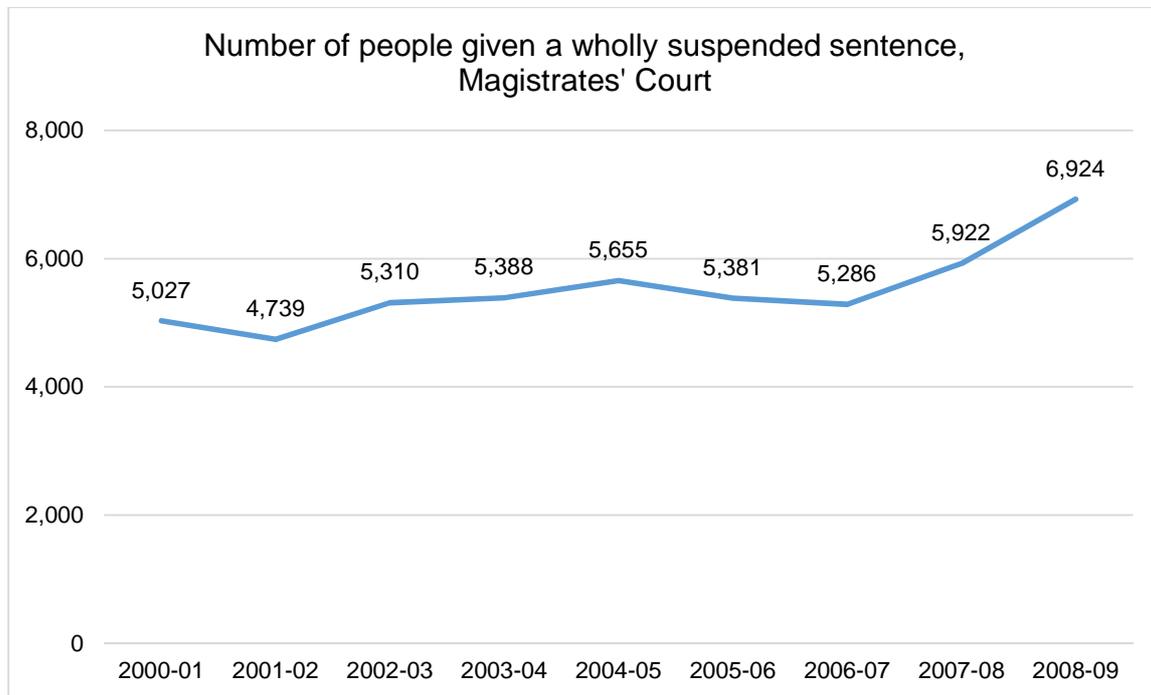
⁴⁶ Community correction orders came into effect on 16 January 2012, while community-based orders were repealed that day. The final year of data therefore includes both types of community order.

⁴⁷ Detailed data on the number of people given each sentence type may be found in Appendix C.

⁴⁸ *Sentencing Amendment Act 2010* (Vic) s 28.

⁴⁹ Only the mandatory minimum has been repealed; the maximum penalties remain the same (*Road Safety Act 1986* (Vic) s 30).

Figure 11: Number of people sentenced to a wholly suspended sentence, Magistrates' Court, 2000-01 to 2008-09



Source: Sentencing Advisory Council (2010). *Suspended Sentences in Victoria: A Monitoring Report*

As seen in the higher courts, the use of wholly suspended sentences decreased from 2004-05 to 2006-07, before increasing again in the following two years. While a substantial part of this increase has been attributed to the imposition of wholly suspended sentences for driving while disqualified or suspended offences, there remains an increase in the use of wholly suspended sentences over and above the increase seen for these specific offences (Sentencing Advisory Council, 2010, p. 7). Although data for the most recent three years are not available, based on the data underlying Figure 10 (found in Table C3 in Appendix C) it is clear that the use of wholly suspended sentences in the Magistrates' Court of Victoria has since dropped. In 2011-12, there were 5,415 wholly and partially suspended sentences imposed in the Magistrates' Court. Given that there are typically only 200 to 300 partially suspended sentences imposed each year,⁵⁰ it is fair to estimate that there were at least 5,100 wholly suspended sentences imposed in the Magistrates' Court in 2011-12.

⁵⁰ This figure is derived by subtracting the number of wholly suspended sentences identified in Figure 11 through 2008-09 from the total number of wholly and partially suspended sentences imposed in the corresponding year in Figure 10 and Table C3. For example, Figure 11 shows that 6,924 wholly suspended sentences were imposed in 2008-09, while Table C3 shows that 7,138 wholly suspended plus partially suspended sentences were imposed in that same year. The difference between the two is about

5.1 Likely sentencing outcomes – Magistrates’ Court

The 5,100-plus people who receive a wholly suspended sentence in the Magistrates’ Court each year will no longer be able to have their terms of imprisonment suspended after the final stage of the legislative amendments takes effect, no later than 1 September 2014. It is likely that these people will either be sentenced to a term of immediate imprisonment (adding to the 3,000 or more people who are already sent to prison from the Magistrates’ Court) or will be placed on a community correction order, effectively doubling the 5,000-plus people who currently receive a community order each year. In either instance, the number of people for whom an alternative sanction will need to be found will be substantial, adding to the heavy workload already experienced by Corrections Victoria in its various roles.

It is likely that people who previously would have received a wholly suspended sentence in the Magistrates’ Court will instead receive a community correction order. Based on the estimated 5,100 people who received a wholly suspended sentence in the Magistrates’ Court in 2011-12, up to 5,100 additional people will receive a community correction order from the Magistrates’ Court,⁵¹ although it is possible that some small proportion will instead be sentenced to a term of imprisonment. Given that it is the less serious offences that are sentenced in the Magistrates’ Court, the proportion sentenced to a term of imprisonment instead of a wholly suspended sentence is likely to be low. This proportion might range anywhere from 1% to 10%, representing from 50 to 500 people. Even at the low estimate, an additional 50 people entering prison each year will place additional strain on an already stretched prison system.⁵²

Regardless of the proportion of people who enter prison versus community corrections each year, the number of people requiring supervision by Corrections Victoria will increase substantially. In particular, the number of people entering the community corrections system each year is likely to double. This increase has significant implications for the capacity of Corrections Victoria to manage – safely and effectively – a vastly increased workload.

200, and this pattern holds for each year of available data. It is thus estimated that about 200 to 300 partially suspended sentences are imposed each year in the Magistrates’ Court.

⁵¹ When these 5,100 people are added to the people sentenced in the higher courts, an estimate is reached of 5,500 additional people who will no longer be able to receive a wholly suspended sentence and who will instead come under the supervision of Corrections Victoria (most likely in Community Correctional Services).

⁵² The Victorian Aboriginal Legal Service (VALS) notes that even a small increase in the number of Aboriginal offenders being imprisoned will represent a large percentage increase and will have a significant impact on both family and community. VALS is particularly concerned about the broader impact of the abolition of suspended sentences on Indigenous communities in Victoria.

Combining the figures from both the higher courts and the Magistrates' Court, there will be an estimated 5,500 people who previously received a wholly suspended sentence who will, in the future, need to be accommodated either in prison or in community corrections. This increase will place a significant burden on Corrections Victoria to deliver services to a far greater number of people. As the vast majority of these 5,500 will likely be placed on a community correction order rather than in prison, the scale of the impact on the community corrections system is enormous: the additional people is effectively double the number of people who receive a community order each year (5,550 from the Magistrates' Court in 2011-12 and 128 people from the higher courts in 2010-11).⁵³ In the context of the current focus of criminal justice system funding being placed on building more prisons, the ability of Corrections Victoria to manage so many additional offenders is questionable.

The capacity of Corrections Victoria to increase the scale of its work in service provision, monitoring and support is a key concern for this research, and will be further discussed below (see Section 7.2).

6. The effectiveness of sentences

Sentences in Victoria may be imposed for one or more of the following purposes: (i) punishment, (ii) denunciation, (iii) rehabilitation, (iv) deterrence and (v) community protection (Ritchie, 2012). For research purposes, effectiveness may be assessed against any of these sentencing purposes.

The effectiveness of sentences in achieving any of these purposes is typically assessed in terms of the likelihood of reoffending (measured in a variety of ways), the nature (severity) of the reoffending behaviour or the frequency of reoffending. It should be noted, however, that measures of reoffending do not represent the full spectrum of possible outcomes that indicate 'effectiveness'. For example, measures of improved contact with pro-social peers, enhanced social supports, reduced drug use, or finding more stable employment and housing are equally valid and important measures of the effectiveness of sentencing, but they are rarely available for statistical measurement and thus are not generally included in the literature on the effectiveness of sentencing options.

Punishment and denunciation are purposes relating to the concept of just deserts, such that the sentence becomes an end in itself. These sentences are thus effective in their own right. For the

⁵³ See raw data in Appendix C.

remaining sentencing purposes – rehabilitation, deterrence and community protection (via incapacitation) – the sentence is imposed in order to achieve a utilitarian purpose, such that the sentence is a means to an end (reducing further offending). The focus of the question of effectiveness lies on the future behaviour of the individual offender, and whether the sentence has reduced the likelihood, severity and frequency of further criminal behaviour.

With the abolition of suspended sentences, offenders will receive sentences either lower or higher in the sentencing hierarchy. This means that offenders will either be sentenced to a community correction order or will receive a term of imprisonment. It is thus useful to consider the evidence on the effectiveness of these three orders – suspended sentences, community orders and imprisonment – in reducing further offending, as a way of understanding the likely impacts of the abolition of suspended sentences on community safety.

6.1 The effectiveness of suspended sentences

There has been some Australian research on the effectiveness of suspended sentences in terms of their impact on reoffending, but this has been limited to a handful of states. The New South Wales Bureau of Crime Statistics and Research has produced a handful of reports on this question using New South Wales data, and there have been several papers based on Tasmanian data, as well as a reoffending report using Victorian data published by the Sentencing Advisory Council.

The Sentencing Advisory Council's report on reoffending following sentencing in the Magistrates' Court shows that there is a small but statistically significant reduction in the likelihood of reoffending following a wholly suspended sentence. For offenders who share similar offending histories but who received different sentences, those who received a wholly suspended sentence were 8.4% less likely to reoffend than were those who received a fine (Sentencing Advisory Council, 2013, p. 22). When comparing offenders who received a suspended sentence with those who served an immediate term in prison, those actually sent to prison exhibited a 24.6% increase in the likelihood of reoffending compared with similar, matched offenders who received a wholly suspended term (Sentencing Advisory Council, 2013, p. 25). Thus suspended sentences were more effective in terms of reducing reoffending than either fines or immediate imprisonment.

In their research on reoffending following suspended sentences in New South Wales courts, the Bureau of Crime Statistics and Research examined the issue of whether suspended sentences have the same deterrent effect on reoffending as prison sentences. Lulham, Weatherburn and

Bartels (2009) compared rates of reoffending for offenders who received suspended sentences with those for a matched group who were immediately imprisoned. For offenders who had no prior prison sentence, there was no statistically significant difference in reoffending between the two groups. Among those who had previously been to prison, however, there were statistically significant differences: those who received a prison sentence were more likely to reoffend (77.9% versus 69.3% of the suspended sentence group) and to reoffend more quickly. The authors conclude that their findings are inconsistent with the deterrent hypothesis: there is no evidence that imprisonment exerts a greater specific deterrent effect than a suspended sentence of imprisonment. Given that prison is far more expensive than a suspended sentence, in terms of specific deterrence at least, a suspended sentence is more cost-effective (Lulham, Weatherburn and Bartels, 2009, p. 12).

The Tasmanian research, conducted in great detail by Dr Lorana Bartels, also shows that suspended sentences may be an effective deterrent, although Bartels (2008) notes that there is much room for their improvement.

These findings do not suggest, however, that suspended sentences are necessarily more effective in reducing reoffending than all other orders. Earlier research on data from New South Wales, for example, showed no difference in reoffending rates for those given a suspended sentence and those receiving a supervised bond (Weatherburn and Bartels, 2008).

To summarise the existing research on the effectiveness of suspended sentences in terms of reducing reoffending, it appears that suspended sentences have a small but statistically significant effect for at least some offenders, decreasing reoffending when compared with immediate terms of imprisonment and fines but perhaps with no difference in reoffending when compared with supervised bonds. One explanation for this effect may be that the suspended sentence avoids the negative consequences of imprisonment, allowing offenders to maintain family and community ties, continue any employment and avoid losing accommodation.

Finally, it must be acknowledged that measuring 'effectiveness' in terms of reoffending does not address other, broader purposes of sentencing, which may include the ability to garner confidence in the criminal justice system among the public. The issue of public trust in suspended sentences has been analysed at length; it is clear that people do not have much faith in the idea of a suspended sentence as a term of imprisonment.

6.2 The effectiveness of community orders

Many of the studies in this field consider the outcomes of community sentences by comparing recidivism rates with those for sentences of imprisonment. The underlying assumption of this approach is that there may be a fine line for sentencers in deciding between a community order and a term of imprisonment. That is, if there are offenders for whom either of these two sentences may be appropriate, then an examination of recidivism rates for each might inform sentencers about the effectiveness of the orders in reducing or preventing crime.

In a recent examination of the effect of prison on adult reoffending, Weatherburn (2010) measured time to reconviction among 96 matched pairs of convicted burglars and 406 matched pairs of offenders convicted of non-aggravated assault in New South Wales in 2003 and 2004. Pairs were matched in that one offender in each received a prison sentence, while the other received some form of non-custodial sentence. Other factors, such as offence type, prior offending and bail status, were also matched to ensure that any differences in rates of reconviction could be ascribed to differences in sentence types, rather than to other possible influences.

Controlling for a number of factors, including sentence type, gender, age, prior offending and plea entered, results of regression analyses showed that offenders who received a prison sentence were slightly more likely to be reconvicted than were those who received some form of non-custodial sentence. The effect of sentence type was significant for non-aggravated assault, although it was not significant for burglary. Although the full model for non-aggravated assault only just reached statistical significance, nonetheless offenders who received a prison term were 22% more likely to be reconvicted than were those who received a non-custodial sentence (Weatherburn, 2010, p. 8).

Using a larger dataset, Wermink et al. (2010) compared the effects of community service and short-term imprisonment on recidivism rates among 4,246 offenders in the Netherlands. The researchers matched adult offenders on a number of critical case characteristics (such as criminal history and offence type), as well as demographic variables (such as age, race and sex). This matching process addresses the possibility that selection processes will tend to make the community service group less crime-prone compared with the imprisonment group, thus potentially affecting differences in recidivism outcomes.

Overall, Wermink et al. (2010) found that community service led to a reduction in recidivism after five years of 46.8% compared to recidivism following a term of imprisonment. Recidivism

for property crimes after five years was 53.9% lower following a community service sentence, while recidivism for violent crimes was 45.0% lower following a community sentence. These differences were statistically significant both in the short term (after one year) and in the longer term (after eight years) (Wermink et al., 2010, p. 344).

The Oregon Department of Corrections (2002) has evaluated the effectiveness of community-based sanctions in reducing recidivism and protecting public safety. Using data on more than 13,000 first-time offenders sentenced over a three-year period from 1999 to 2001, recidivism was examined over a 12-month follow-up period.

Consistent with the literature, the rates of reconviction were higher following a jail sentence than following a community-based sentence. Differences in recidivism rates were statistically significant for all groups in the study except medium risk offenders sentenced for an offence against the person and sex offenders who were classified as high or medium risk. For these three groups, although recidivism rates following a term of imprisonment were still higher than following a community-based sentence, the difference was not statistically significant. Finally, for offenders who served a jail sentence, longer sentences were associated with higher rates of recidivism (Oregon Department of Corrections, 2002, pp. 18-19).

Not all studies in this field, however, find results favourable to community-based sentences. As part of the Campbell Collaboration's Systematic Reviews⁵⁴ series, Villettaz, Killias and Zoder (2006) examined abstracts of more than 3,000 studies concerning the effects of custodial and non-custodial sanctions on reoffending. Finding only 23 studies that met the strict conditions of an experimental or quasi-experimental design for inclusion in the Campbell Review, the authors note that few studies compare recidivism rates for offenders sentenced to prison with those of offenders given some alternatives to incarceration.

Those studies that did meet the criteria for high-quality research design bore contradictory findings. For those studies in which a statistically significant difference was found between custodial and non-custodial sanctions, 11 out of 13 significant results showed that reoffending was lower following a non-custodial sanction. Overall, however, of the 27 statistical comparisons, 14 showed no statistically significant difference between the two types of sanction

⁵⁴ The Campbell Collaboration is an international network of researchers that prepares and disseminates systematic reviews of high-quality research on social interventions. High-quality research is defined as those studies that employ experimental and quasi-experimental research designs. The purpose of a systematic review is to synthesize the best available research on a specific question. This approach is based on that of the Cochrane Collaboration, which initiated the systematic review of high-quality experimental and quasi-experimental research in the field of medicine.

(Villettaz, Killias and Zoder, 2006, p. 29). The authors suggest that such contradictory results may be due to insufficient control of initial differences between prisoners and those serving non-custodial sentences.

Considering this body of research as a whole, the primary conclusion is that community sentences are more effective in reducing recidivism than are terms of imprisonment.

6.3 The effectiveness of imprisonment

There is a large body of research that examines the effectiveness of imprisonment at achieving different sentencing purposes. While there is no doubt that prison is effective in punishing offenders and denouncing criminal behaviour, there is little evidence to suggest that it works well as a deterrent⁵⁵ or that it is able to reduce offending via incapacitation⁵⁶ for all types of offences.

6.3.1 Imprisonment and deterrence

Under the *Sentencing Act 1991* (Vic), a court may impose a sentence ‘to deter the offender or other persons from committing offences of the same or a similar character’.⁵⁷ That is, a sentence may be imposed on the grounds of specific or general deterrence. The Victorian Court of Appeal has noted the importance of deterrence as a sentencing purpose,⁵⁸ and it is an oft-cited justification for sentencing in contemporary cases.

Two kinds of deterrence have been posited to act to discourage people from committing crimes: general deterrence, in which the threat of punishment deters the general population from criminal behaviour; and specific deterrence, in which an individual’s previous experience with sentencing deters that individual from reoffending in the future. Underlying the specific deterrence hypothesis is the premise that more severe sentences will have a greater deterrent effect than less severe sentences.

The essential premise of deterrence theory is that offenders weigh the costs and benefits of their actions and make a rational decision about which course to adopt. But such rational decision-making cannot be said to be characteristic of a large number of offenders who may not be

⁵⁵ For an overview of the research on imprisonment as a deterrent, see Ritchie (2011).

⁵⁶ For an overview of the research on imprisonment and incapacitation, see Ritchie (2012).

⁵⁷ *Sentencing Act 1991* (Vic) s 5(1).

⁵⁸ *R v Williscroft* [1975] VR 292; cited in Sentencing Advisory Council (2011), p. 4.

capable of rational thought: drug affected or intoxicated offenders, offenders with a cognitive impairment, or those who simply act spontaneously or opportunistically without forethought. For these people, the central premise of rational decision-making simply does not apply.

In the absence of rationality, then, specific deterrence in particular becomes a questionable purpose of sentencing. Indeed, when examining reoffending rates following release from prison, studies have shown that a large proportion of prisoners go on to reoffend. Victorian data have shown that more than one-third (34.7%) of prisoners released in 2002-03 returned to prison within two years, with even higher rates (55.7%) for young offenders aged 17 to 20 (Holland, Pointon and Ross, 2007). Data from the Australian Bureau of Statistics show that 47.5% of Victorian prisoners in custody at 30 June 2012 had previously been imprisoned as an adult (Australian Bureau of Statistics, 2013).

Several significant reviews of research may be found in the criminological literature. Gendreau, Goggin and Cullen (1999) undertook a meta-analysis of 50 studies on the question of deterrence to determine whether prison could reduce the likelihood of further offending. Their research showed that imprisonment actually produced a slight increase in reoffending following release. The authors concluded that imprisonment not only had no specific deterrent effect, but that it had the potential to affect prisoners – especially younger, lower-risk offenders – negatively. These results were confirmed by a more recent study that showed that prison either had no effect on reoffending or had a mildly criminogenic effect when compared with non-custodial options, increasing the likelihood of reoffending (Nagin, Cullen and Johnson, 2009).

Research on reoffending in Victoria has shown that, compared with offenders who were matched on characteristics such as age, gender, offence type and prior offending history, the likelihood of reoffending following a sentence of imprisonment was 24.6% higher than for those who received a wholly suspended sentence. According to the Sentencing Advisory Council (2013b, p. 25):

...after controlling for the effect of offender, offence and prior offending characteristics, imprisonment was associated with a higher risk of reoffending than a wholly suspended sentence.

People who were sentenced to a term of imprisonment not only were most likely to reoffend, but they were likely to reoffend most quickly (Sentencing Advisory Council, 2013b, p. 29). The Sentencing Advisory Council report concludes that imprisonment fails to deter people from committing further crimes (Sentencing Advisory Council, 2013b, p. 31):

...of the various purposes for which a term of imprisonment may be imposed, dissuading an offender from further offending via specific deterrence is unlikely to yield its intended result.

Imprisonment has been postulated to exert a criminogenic effect in a number of ways (Nagin, Cullen and Johnson, 2009). Most commonly, it is suggested that prison acts as a 'school for crime', providing a criminal learning environment. Young or first-time prisoners may be especially susceptible to these learning effects, as they are exposed to hardened criminals. Imprisonment may also act to stigmatise and label offenders, making it more difficult for them to find employment or stable accommodation upon release or to regain pro-social relationships. Finally, imprisonment may not assist in addressing the underlying causes of people's offending behaviour: without adequate treatment programs for issues such as substance use, mental illness or victimisation experiences, prison is unlikely to deter people from further offending.

There is some evidence, however, to show that general deterrence may have a small deterrent effect. Methodological issues in this field of research, however, have rendered the results somewhat less certain than those considering specific deterrence. Nonetheless, the bulk of the evidence suggests that increases in the severity of punishment (particularly in the form of an imprisonment sentence) do not provide an increased general deterrent effect, but increases in the certainty of apprehension do show a positive effect in deterring people from offending (Ritchie, 2011). The Sentencing Advisory Council's 2011 review of the literature in this issue concludes (Ritchie, 2011, p. 23):

The research shows that imprisonment has, at best, no effect on the rate of reoffending and is often criminogenic, resulting in a greater rate of recidivism by imprisoned offenders compared with offenders who received a different sentencing outcome.

6.3.2 Imprisonment and incapacitation

While prison undoubtedly is effective at incapacitating individual offenders, thus preventing them from committing crimes against the community while they are inside prison walls, it is less clear whether prison's incapacitative effect can actually reduce levels of offending. Research in this area has divided the incapacitative effect into two distinct components: collective incapacitation and selective incapacitation. Collective incapacitation involves increasing the severity of sentences for all offenders who are convicted of a particular offence, focusing on the offence itself without considering an individual's risk of further offending. Selective incapacitation, on the other hand, identifies individual offenders who pose the greatest risk of reoffending and selects those individuals for imprisonment (or a longer term of imprisonment) on the basis of the prediction.

Measuring the effectiveness of imprisonment in reducing crime based solely on incapacitation has proven to be difficult, with a number of methodological issues affecting the research. One of

these issues is how to measure the 'replacement effect', in which some offences with a strong demand market – such as drug or weapons offences – tend to see offenders in the community taking the place of those who are imprisoned, such that there is no reduction in the amount of crime due to incapacitation. Nonetheless, several consistent conclusions have been reached.

Collective incapacitation that increases the use and length of prison sentences without differentiating among offenders based on their levels of future risk of reoffending is generally ineffective in reducing crime. The costs of such policies – which tend to sweep large numbers of both low- and high-risk offenders into prison – may outweigh the initial benefits of removing offenders from the streets. Studies have shown that a 1% increase in the imprisonment rate would lead to no more than one-third of 1% decrease in the crime rate (Spelman, 2000: cited in Ritchie, 2012, p. 13). Indeed, one researcher has drawn the following conclusions about the use of imprisonment as a crime-control measure (Spelman, 1994: cited in Ritchie, 2012, pp. 13, 15):

Benefit/cost analysis suggests that, for most states and the nation as a whole, constructing additional jails and prisons is a risky investment with a very uncertain payoff.

Collective incapacitation is a gamble. The direct benefits are much less than the direct costs.

As more and more people are imprisoned, the criminogenic effect of prison may even lead to increases in crime, thus reversing what initial incapacitative benefit the approach may have held. This is especially true as more and more people are eventually released back into the community, creating an ever larger group of people who have potentially experienced the criminogenic aspects of imprisonment. Thus indiscriminate and widespread use of imprisonment as a means of collective incapacitation has been shown to be ineffective in reducing crime.

Selective incapacitation that targets high-risk offenders has been shown to be somewhat more effective in reducing crime. Past behaviour is known to be the strongest predictor of future behaviour (Kurlychek, Brame and Bushway, 2006), so targeting individuals based on their future risk of reoffending holds some inherent logic. It also, however, presents serious practical and ethical dilemmas. Predicting future behaviour, even using the most sophisticated of actuarial tools and the best clinical judgment, is notoriously difficult.⁵⁹ Even if one were able to predict future behaviour perfectly, the ethical (and legal) dilemma arises of punishing someone for crimes yet to be committed.

⁵⁹ For an overview of difficulties associated with risk assessment, see Sentencing Advisory Council (2007b).

Nonetheless, the principles of selective incapacitation are already reflected in sentencing law and practice, with provisions such as those for ‘serious offenders’ who have previously been convicted of certain offences. For example, in Victoria the primary purpose of sentencing a person classified as a ‘serious offender’ – who has previously been convicted of arson, drug offences, sexual or violent offences – must be the protection of the community. That is, other sentencing purposes must be relegated to a lower priority for these repeat offenders. In addition, the sentence may be ‘longer than that which is proportionate to the gravity of the offence’.⁶⁰

The Sentencing Advisory Council concludes its report on incapacitation with the following caution (Ritchie, 2012, p. 19):

Until the necessary research has been conducted, far-reaching expectations regarding the crime-reducing effects that might be expected from the use of imprisonment as a means of incapacitation must be tempered with an appreciation of its limitations and cost.

6.4 Summary

Wholly suspended sentences are clearly not as effective as imprisonment in achieving punishment and cannot achieve incapacitation. On their own, wholly suspended sentences cannot facilitate rehabilitation via treatment programs, but when combined with community orders for multiple offences, they effectively become a conditional suspended sentence.⁶¹ In this way, the sentencing purpose of rehabilitation might be achieved.

The primary purposes for which wholly suspended sentences seem to be effective are deterrence and denunciation. Research has shown that wholly suspended sentences are an effective deterrent – that the ‘Sword of Damocles’ of a possible term in prison acts to deter people from further offending. And while the media may disagree on the denunciatory value of wholly suspended sentences, certainly judicial officers appreciate their symbolic value in denouncing serious crimes while simultaneously taking into account the individual circumstances of a specific offender. This was confirmed by a judge who participated in the

⁶⁰ *Sentencing Act 1991* (Vic) ss 6D(a)–(b).

⁶¹ While it was not common for people to receive wholly suspended sentences in combination with community orders, there was some use of this combination in the Victoria courts. In the three years from July 2004 to June 2007, 8.4% of people sentenced in the Magistrates’ Court who received a wholly suspended sentence on one charge also received a community-based order on another charge. In the higher courts, this figure was 15.2% (Sentencing Advisory Council, 2007a, p. 4).

consultations for this project, who noted that wholly suspended sentences were clearly denunciatory.

Community sentences offer a combination of sentencing purposes, including a punishment component, a strong and clear rehabilitative component and possibly some level of denunciation. Community sentences cannot achieve incapacitation and may or may not deter people from further offending.⁶²

Undoubtedly, prison is an effective option when aiming to achieve the sentencing purposes of punishment and denunciation. But the evidence on its ability to be effective at reducing crime via deterrence or incapacitation is clear: prison is not an effective deterrent and is limited in its incapacitative effect. The value of imprisonment for rehabilitative purposes is also questionable, as research has shown that treatment programs offered in a community setting tend to perform better at reducing reoffending than those offered within prisons. It has been suggested that community programs are more effective as they include both the cognitive-behavioural and relapse prevention aspects of treatment that are found in prison programs, but additionally they may involve a longer treatment period and include helping offenders develop a network of supportive family and friends (Gelb, 2007, p. 35).⁶³

The ineffectiveness of prison in reducing reoffending is not only seen in the research evidence, but is also appreciated by the general public. The 2007 Australian Study of Social Attitudes showed that the majority of people do not believe that prison can rehabilitate prisoners, deter future offending, teach prisoners skills or indeed even punish them. The table below reproduces the results of a survey of 8,133 randomly selected adults from all Australian states and territories (Roberts and Indermaur, 2009, p. 20).

Table 1: Proportion of people reporting confidence in the prison system

⁶² The ability of community sentences to deter has not been subject to specific testing. However, part of the principle behind the use of visible road-side 'chain gangs' in the United States in the mid-twentieth century was for the public to see what happens to those who break the law. While prison-based chain gangs are rarely used today, offenders undertaking unpaid community work as part of a community sentence are sometimes required to wear identifying clothing, possibly as a way of providing general deterrence. The effectiveness of this approach remains unknown.

⁶³ While the Gelb (2007) review of treatment programs focused on treatment of sex offenders, the findings specific to this group of offenders are more broadly applicable to other programs as well, such as drug treatment or mental health programs.

	Rehabilitate prisoners	Form of punishment	Deter future offending	Teach skills
A great deal of confidence	1.5	5.6	2.1	3.6
Quite a lot of confidence	10.8	35.2	13.2	32.6
Not very much confidence	66.6	44.8	59.8	51.9
None at all	21.1	14.4	24.9	11.9
Total	100.0	100.0	100.0	100.0

It is perhaps not surprising that Australians have little or no confidence in the ability of prisons to rehabilitate prisoners (87.7% have little or no confidence), deter future offending (84.7%) or teach prisoners skills (63.8%). What is perhaps most surprising is that 59.2% of respondents have little or no confidence in prisons as a form of punishment. Thus for this large, random sample of the Australian public, prison does little to fulfil three of the primary purposes of sentencing.

Regardless of the effectiveness of imprisonment in achieving its various purposes, it also has negative community impacts that are difficult to quantify and are often overlooked. In particular, research has shown that children suffer a host of negative consequences when a parent is incarcerated: they are at an increased risk of abuse and neglect, are far more likely to engage in criminal behaviour themselves, are more likely to be in foster care and are more likely to display aggression and other emotional and behavioural problems over both the short term and the longer term (La Vigne, Davies and Brazzell, 2008). Such 'collateral consequences' of imprisonment for the children and family of offenders are perhaps even more pronounced for families in rural and regional areas, where access to services may not be as well developed as in metropolitan areas.

Ultimately, the effectiveness of any sentencing option is judged by its ability to reduce reoffending. Wholly suspended sentences have been shown to reduce further offending (likely via their deterrent effect), while community sentences, with their combination of supervision, support and treatment, have also proven effective at reducing reoffending. Based on a large body of research evidence, it is clear that imprisonment is ineffective at preventing reoffending and may in fact increase the likelihood of further crime.

Each sentencing option serves its own sentencing purpose and achieves those purposes in different ways. These diverse responses to crime illustrate the value to judicial officers of having as many options as possible to impose when faced with an individual offender. Indeed, a judge consulted for this research suggested that as many tools as possible are required for sentencing, both for individual judges and for government policy:

We understand that one size does not fit all...

No government can afford not to have these as part of their weaponry.

That is, to choose the best possible sentence with which to facilitate a specific offender's desistance, sentencers need a viable range of options from which to choose. By reducing the options available to sentencers, the abolition of suspended sentences from the Victorian sentencing hierarchy will reduce judicial discretion, thus making it more difficult for sentencers to tailor their responses to the circumstances of the individual. Indeed, the Sentencing Advisory Council (2008, p. xxiv) has noted that:

It is important to retain a number of distinct sentencing orders to provide well-defined 'rungs' in the penal ladder, and to affirm that a sentence of immediate imprisonment is a sentence of last resort reserved for the most serious offences, and for offenders at high risk of reoffending.

It is difficult to predict the effect that this reduction in judicial discretion will have on rates of reoffending. In a number of years, data from the Report on Government Services on return to prison and return to corrective services will provide some evidence on the effectiveness of sentencing under the new regime, as will data from police and courts. In the meantime, however, sentencers will have fewer options with which to try to encourage desistance among the offenders who appear before them.

7. The social costs of abolishing suspended sentences

The issue of the social costs of the abolition of suspended sentences is best understood through the views and insights of people who work at the coalface of the criminal justice system. The following analysis is thus heavily informed by the comments of participants in the consultation undertaken for this research.⁶⁴

While this issue relates to effectiveness (in terms of the social costs of reoffending), it also relates to other services and support that are provided to offenders and their families.

7.1 Maintaining a full range of sentencing options

⁶⁴ Note that these stakeholders were consulted on the basis of their individual experiences and perspectives, rather than as representatives of their organisations. The views expressed herein therefore represent only the views of the individuals themselves.

Wholly suspended sentences serve a niche role in the sentencing hierarchy, providing an order that can be imposed to denounce serious offending while at the same time being used for offenders who are at a lower risk of reoffending. While some of those consulted, such as Victoria Police prosecutors, expressed concerns about the high breach rates of wholly suspended sentences,⁶⁵ others lamented losing a viable option in the sentencing hierarchy. For these people, the primary issue of concern about the abolition of suspended sentences is the removal of a valuable tool from sentencers.

Without wholly suspended sentences, there are fewer options available to sentencers, with only very low-end orders such as fine or adjourned undertakings, then the community correction order and then straight into imprisonment.

Participants from South East Centres Against Sexual Assault (SECASA) suggested that an order is needed between imprisonment and the community correction order; without it, prisons will become unmanageable as their populations increase. The Law Institute of Victoria (LIV) suggested that, without the threat of imprisonment that wholly suspended sentences present, the community correction order will have less of a deterrent effect, potentially resulting in more breaches of the order. YouthLaw suggested that suspended sentences are an appropriate sentence for many offenders and, according to the research evidence, are more effective as a deterrent than prison. YouthLaw is concerned that:

Abolishing suspended sentences will make it more difficult for judges to impose a sentence which is appropriate in the circumstances and which minimises the chance of reoffending. The abolition removes the discretion of the courts and increases the potential risk of unjust sentences in individual cases.

The Federation of Community Legal Centres (FCLC) also expressed concern that, by removing a sentencing option that has a legitimate purpose, judicial discretion has been reduced. As another stakeholder suggested, 'we can't be taking tools out of the sentencing toolbox'. A magistrate who was consulted noted the gradual review and removal of a range of orders, reducing the flexibility that is so critical to sentencers, particularly in the Magistrates' Court. The magistrate also noted that these reforms have taken place during a time when serious crime has fallen, when the system has not been in need of such major review and reform.

⁶⁵ The problems associated with suspended sentences have been thoroughly canvassed in the work of the Sentencing Advisory Council in its numerous reports and extensive consultation process. The consultation process for the current research did not focus on the problems associated with suspended sentences, but instead on the impact of their abolition.

According to the magistrate, the use of wholly suspended sentences has been common with particular types of cases. With a young offender whose offending is quite serious, denunciation is important and so imprisonment is within range. But mitigating factors – youth, mental illness and the like – are best reflected by a wholly suspended sentence. For example, if the offender has shown evidence of progressing in rehabilitation (for example, engaging with treatment via the Courts Integrated Services Program, returning to family, improving stability in his life), a wholly suspended sentence is useful to avoid disrupting the rehabilitation that is underway. Previously, the combination of a wholly suspended sentence with a community-based order allowed the magistrate to present both the carrot (ongoing participation in a treatment program via the community-based order) and the stick (the threat of imprisonment associated with the wholly suspended sentence). With the community correction order this combination is no longer legally valid and the abolition of the wholly suspended sentence will leave magistrates with far less flexibility and fewer options for keeping offenders – especially young offenders – out of prison. The wholly suspended sentence was thus a particularly important rung in the sentencing hierarchy for this kind of offender.

This concern about the reduction in options for sentencers, and the negative consequences of the criminal justice system (particularly imprisonment) for young offenders, lies at the heart of the work of Jesuit Social Services, who provide intensive case management support to young people with multiple and complex problems, such as mental illness and substance abuse.⁶⁶ For Jesuit Social Services, the critical problem with the abolition of suspended sentences is that sentencers will no longer have the full range of options from which to choose to impose an appropriate sentence. Given that each sentence serves its own particular purpose, the removal of one of those sentences equates to the removal of the particular purpose for which it was imposed. In the case of the wholly suspended sentence, its use in deterring and denouncing low-risk but high seriousness offenders will no longer be available as a sentencing purpose.

The magistrate provided an example of a hypothetical type of case that will be difficult to sentence once wholly suspended sentences are abolished from the Magistrates' Court. An elderly sex offender who offended more than 30 years ago and is now in his eighties, but who has lived crime-free since the original offending, is an ideal candidate for a wholly suspended sentence. He presents no risk at all to the community but the seriousness of the historical offence warrants strong denunciation. He is unable to undertake unpaid community work, does not need treatment or supervision and is not able to report regularly to community corrections

⁶⁶ See, for example, Jesuit Social Services (2013) *Thinking Outside: Alternatives to Remand for Children*. Melbourne: Jesuit Social Services. Available at: <http://www.jss.org.au/policy-and-advocacy/publications-and-research>.

officers. Without wholly suspended sentences, the only options available to magistrates will be imprisonment or a fine. Nothing is achieved in sending such an offender to prison, but a fine does not sufficiently denounce the behaviour. This magistrate is concerned about not being able to sentence such cases appropriately.

In addition, the magistrate noted that Corrections Victoria generally requires that a person have stable accommodation in order to be assessed as suitable for a community correction order. The lack of viable alternatives for homeless people is thus especially problematic – if a community correction order is not an option due to lack of stable housing, then prison might be the only alternative. This magistrate noted that:

Without appropriate resources in the community, community correction orders will come under increasing pressure and if there's an increase in uptake it will become increasingly problematic, especially for the disadvantaged in the community who will face jail terms.

In acknowledgement of the particular difficulties faced by especially vulnerable offenders – the young, the drug-addicted and the mentally ill – the Sentencing Advisory Council's final set of recommendations on the issue of suspended sentences included a suite of orders that would address the specific needs of such offenders.

The Council recommended a targeted form of intensive correction order for drug and alcohol affected offenders that would allow courts to attach at least one program condition to address the offender's dependency and that would be delivered in a residential setting. The order would also allow for judicial monitoring to review the offender's progress. This order was intended to reflect the success of the drug treatment order that is only available at the Dandenong Drug Court (Sentencing Advisory Council, 2008, pp. xxviii-xxix).

The Council also recommended a community-based order for young adult offenders (aged 18 to less than 25) that would acknowledge that traditional community-based orders, being highly structured and focused on keeping appointments, are not necessarily appropriate for the chaotic lifestyles of some young people, particularly those who are addicted to drugs, such that the orders set these offenders up to fail. The order would have the same basic conditions as the regular community-based order (although with a reduction in the maximum number of hours of unpaid community work or the maximum duration of the orders), but with a greater focus on dealing with those factors linked to specific developmental needs in order to help the offender's rehabilitation and re-integration (Sentencing Advisory Council, 2008, pp. xxxi-xxxii).

For such groups of offenders, the abolition of suspended sentences without the concomitant implementation of alternative intermediate orders such as those recommended by the Sentencing Advisory Council, is likely to be especially problematic. There is nothing to fill the gap between the community correction order and imprisonment, and higher rates of breach of community orders among, in particular, young offenders (Sentencing Advisory Council, 2008, p. xxxi), means that they are more likely to face a subsequent term in prison.

The Victorian Aboriginal Legal Service (VALS) also expressed significant concern about the impact of the abolition of suspended sentences in terms of outcomes on breach of a community correction order. Previously, the wholly suspended sentence provided a useful tool for magistrates to wield when an offender breached a community order. In the absence of wholly suspended sentences, however, there are fewer options in such a case. According to both VALS and participants from Brosnan Services, vulnerable offenders are more likely to breach community correction orders as they can lack the literacy, knowledge or understanding to be able to comply with their conditions. Thus the majority of breaches of community correction orders are found among the especially vulnerable, such as those with an acquired brain injury, an intellectual disability or a severe drug or alcohol addiction. For these people, successfully complying with the range of conditions attached to a community correction order is a particularly difficult task. With high rates of breach among these groups, it is likely that they will ultimately end up in prison without the option of the wholly suspended sentence.

In terms of sentencing severity, the Victorian Association for the Care and Resettlement of Offenders (VACRO) suggested that the community correction order in fact sits higher in the hierarchy than it appears, with an emphasis on restriction rather than rehabilitation. This view was shared, although expressed somewhat differently, by Victoria Police prosecutors, who suggested that a community correction order does not necessarily sit down the sentencing hierarchy from the wholly suspended sentence; as the new order also replaced the intensive correction order, the potential power of the community correction order can be used to place it higher in the sentencing hierarchy than may first be apparent.

A number of participants were concerned about the substantial range of offending that community correction orders must address. From lower level property or drug offences to higher level violent offences, the community correction order has to cover a wide variety of offending. While the flexibility of the order has been designed so that sentencers can tailor conditions to the individual circumstances of the offender, there remain difficulties with the position of the order in the sentencing hierarchy.

Once an offender on a community correction order either breaches the order or commits a new offence, there are limited options available to sentencers. Conditions may be made more stringent on the order, or a new community correction order may be imposed, but ultimately if offending continues then the only step up in the sentencing hierarchy is imprisonment. There are no intermediate steps. Thus a person with a criminal history will soon end up at the top of the hierarchy, in prison. This issue was raised by a magistrate as causing significant concern. If a community correction order is breached, there is little point in increasing the severity of conditions – if the offender did not comply with conditions before, there is little chance that additional conditions will secure compliance. The only option might therefore be to move up the hierarchy and into prison, adding more people to an already overcrowded system.

In addition to the problem of the position of the community correction order in the sentencing hierarchy, The First Step Legal Service raised the issue of public perceptions of the order. The vast range of conditions that may be imposed on offenders within this single order obscures from public view the nature of offending that is captured by the order. That is, there will be both low-level and more serious offenders serving community correction orders. The lack of transparency in the matching of the order to the offender may affect public confidence in the order.

Not all participants of the consultation process saw only the problematic aspects of the community correction order. Some identified a number of advantages of the community correction order that, hypothetically at least, have the potential to reduce offending behaviour. Victoria Police prosecutors referred to the flexibility of the community correction order as a great advantage, and suggested that the primary purpose of the community correction order is rehabilitation (whereas the primary purpose of imprisonment is punishment).

The participant from the Sentencing Advisory Council noted that there had been some advantages to wholly suspended sentences. Corrections Victoria favoured them as no resources were required unless a new offence was committed. Courts used wholly suspended sentences to be tough symbolically while still considering the individual circumstances of the case. But without any real punitive content to the wholly suspended sentence, the Council recommended that suspended sentences should be abolished.⁶⁷ In its stead, sentencers are likely to use community correction orders rather than imprisonment: the community correction order does indeed 'have some substance'. While a preferred approach would have been to implement the wider range of specific intermediate orders recommended in its report, the community

⁶⁷ Note that the Council recommended that they be abolished only after the suite of other intermediate orders was both implemented and evaluated (Sentencing Advisory Council, 2006).

correction order can fill an area of the sentencing hierarchy. The use of very long orders, or long conditions on orders, however, is 'guaranteed to fail'.

The danger for the community correction order, according to the Sentencing Advisory Council participant, lies in the issue of whether the judiciary has sufficient confidence in Corrections Victoria to manage the order effectively. While the community correction order 'can do some heavy lifting', it remains to be seen how confident sentencers will be in the order: how many offenders will move to a community correction order and how many will be sentenced to prison.

Part of the issue of judicial confidence in community correction orders revolves around the question of scalability: whether Corrections Victoria will be able to manage the thousands of additional offenders who will come under their supervision. This is a key point for participants in the consultation process – whether Corrections Victoria will have sufficient resourcing to keep caseloads manageable and to offer optimal services and programs – and is further discussed in the following section (see Section 7.2 below).

VACRO noted that for some offenders – people with an intellectual disability or a mental illness – a community correction order could help improve their circumstances by helping link people into services and support programs. In theory, such support could be of great benefit to people who need assistance in accessing services. But, as VACRO noted, this sort of support does not happen a great deal currently as it requires substantial funding. Without such funding,⁶⁸ the potential of the community correction order to make a difference in offenders' lives may be limited. SECASA agreed with this sentiment, suggesting that, for community correction orders to be effective at reducing crime, 'massive amounts of resources' are needed.

A magistrate suggested that, while most magistrates impose a combination of unpaid community work, some sort of treatment condition (typically for drug or mental health issues) and supervision, typically offenders are not being 'loaded up' with a raft of conditions with which it would be difficult to comply. In addition, the magistrate noted that the community correction order could be used partially to offset the loss of wholly suspended sentences by imposing just a single supervision condition for those offenders who do not need treatment and who cannot manage community work. Ultimately, though, adequate support needs to be provided by Corrections Victoria to ensure that community correction orders retain their credibility.

⁶⁸ VACRO itself has had to limit the number of offenders it can assist via its LinkOut program due to lack of funding, which is a problem faced by other such organisations operating in this space.

The community correction order is also a common disposition in the higher courts, with the most common conditions also being unpaid community work and some form of drug or alcohol treatment. According to participants from the Office of Public Prosecutions, the vast majority of community correction orders being imposed are short, with terms of less than three years. Participants felt that judges were using community correction orders as rehabilitative orders and that the three year term could be seen as a conceptual link to the operational period of the abolished wholly suspended sentence.

7.2 Ensuring the scalability of community corrections

Another critical issue for stakeholders is the ability of Corrections Victoria and other service providers within the community corrections sphere to be able to provide adequate support and treatment services for the thousands of extra people expected to require supervision, monitoring and treatment once wholly suspended sentences have been completely abolished. Given that the number of offenders in the community corrections system is likely to double, the key issue that has been identified in this report is whether Corrections Victoria has the capacity to increase the scale of its community corrections work to meet the significant increase in the number of offenders that it supervises, monitors and treats.

While the focus for funding of the current reforms has been on expanding prison capacity, little has been said about increasing the capacity of community corrections to handle the expected influx of offenders. The recent review of the Victorian parole system by Mr Ian Callinan noted that Corrections Victoria is 'heavily pressed' in relation to the number of parole officers and those supervising offenders on community orders. Among many recommendations, he called for 'incentives to attract and retain efficient and mature staff' who undertake case management and reducing the ratio of offenders to supervision staff (Callinan, 2013, p. 97).

The Department of Justice Annual Report 2012-13 shows that the number of staff employed by Corrections Victoria as community corrections officers has increased only marginally over the past year. While there was a small reduction in the ongoing total FTE (full-time equivalent) measure, from 491.4 at 30 June 2012 to 489.7 at 30 June 2013, there was an increase in the fixed-term and casual FTE over the same period, from 61.3 at 30 June 2012 to 76.9 at 30 June 2013. The greatest contribution to this increase was in the number of trainee community corrections officers, with 8.9 additional fixed-term and casual FTE in this category (Department of Justice, 2013, p. 155).

During this same period, there was an increase in the average daily number of offenders actively under community supervision, from 6,821 in 2011-12 to 7,144 in 2012-13 (Department of Justice, 2013, p. 17).⁶⁹ While the average daily number of offenders increased by 4.7% from 2011-12 to 2012-13, there was a decrease in the number of ongoing community corrections officers and an increase in the number of fixed-term and casual officers. When the number of ongoing and fixed-term and casual officers are combined, the total number of community corrections officers has increased from 552.7 FTE in 2011-12 to 566.6 FTE in 2012-13 (Department of Justice, 2013, p. 155). This represents an increase of only 2.5%, during a year in which the average daily number of offenders grew by 4.7%.

These figures cast real doubt on the capacity of Community Correctional Services to provide high-quality and effective rehabilitation and supervision to the people under its supervision. In such circumstances, the ability of the community corrections system to achieve the government's objectives in community corrections – to help break the cycle of reoffending, to reduce the overall incidence of crime and to enhance the safety of the Victorian community (Department of Justice, 2013, p. 17) – must surely be cause for concern.

Mr Ian Callinan expressed his concerns about the capacity of Corrections Victoria to supervise offenders on community orders under existing sentencing options. Once the abolition of suspended sentences is complete, and thousands more offenders enter the community corrections system, the additional impact means that a 'heavily pressed' Corrections Victoria will face extraordinary additional pressures as it tries to provide a safe and effective community corrections system.

To achieve the government's objectives with community corrections, Corrections Victoria requires funding to recruit additional staff – particularly specialised treatment and program staff, rather than general staff – and to put systems in place to offer adequate services and treatment programs to the many additional offenders entering its purview. With difficulties even now in optimising the capacity of community corrections to supervise offenders, once wholly suspended sentences are abolished and the number of offenders entering the community corrections system doubles, these problems are likely to be compounded exponentially unless additional funding is provided to ensure the right number of staff and the right kind of staff – those with sufficient knowledge and experience to provide the kind of support required to keep offenders from reoffending. Without adequate services, treatment and

⁶⁹ This figure represents the average daily number of offenders under community supervision over the course of a year. The figure therefore differs from the number of community-based orders or community correction orders imposed by the courts in a given year.

support, reoffending outcomes are likely to worsen and community safety will therefore be compromised.

Both VALS and Brosnan Services noted that a lack of appropriate and sufficient treatment programs would be particularly problematic for some populations. Aboriginal offenders, women offenders (especially those with young children) and those in rural and regional areas are already disadvantaged in terms of access to appropriate services. Some service providers are not well positioned to provide culturally safe and appropriate services to Aboriginal offenders as they lack an understanding of the social and community structures of the various Aboriginal communities in the state. The difficulties faced by Aboriginal women are particularly pronounced. And offenders in rural and regional areas are not able to access services close to their communities, making it more difficult to participate in required treatment programs. For VALS, with the third Victorian Aboriginal Justice Agreement (AJA3) recently launched, any serious commitment to reducing Aboriginal over-representation in the criminal justice system must include providing adequate resources to be able to provide a culturally appropriate system of support. This may be achieved by increasing the rate at which justice agencies are successful in diverting Koori offenders, particularly Koori women, from further contact with the justice system, as well as by strengthening community-based alternatives to imprisonment.

In order to address concerns about the ability of community corrections to provide adequate support and services for offenders, some of the stakeholders consulted considered that there might be viable alternatives to community correction orders in the absence of wholly suspended sentences. These included a greater use of deferred sentencing, use of supervision-only community correction orders, retaining some form of suspended sentences for some offenders or bringing in new orders of the type recommended by the Sentencing Advisory Council (2008) to address the needs of especially vulnerable drug-dependent or young offenders.

The First Step Legal Service assists people who have voluntarily entered drug or alcohol treatment in the community, who are then charged with crimes and appear before the Magistrates' Court. The program is designed to provide 'wrap-around' treatment model to offer support to addicted people, assisting in areas such as securing stable housing, successfully engaging in employment and accessing treatment for their addiction. First Step works closely with Toll Group, through its Second Step program, to place addicted individuals in employment with a mentor to help them gain the skills and stability they need to return to a productive life.

During consultations, one of the main issues identified for offenders who are already in treatment in the community and who are trying to maintain steady employment, is that the imposition of a community correction order is a particular burden. The imposition of reporting requirements or community service conditions makes it more difficult for such offenders to continue with the Second Step program, for example, despite the tolerance that Toll Group has for such disruptions.

Offenders in such circumstances are in the perfect circumstances for receiving a wholly suspended sentence. They are already in treatment, are being mentored in a stable employment role and have access to the holistic support provided by The First Step Legal Service. Indeed, an internal evaluation of the program revealed that almost 60% of clients through the program have not reoffended. Of those who do reoffend, 30% have much less serious or less serious offending than previously. Finally, people completing the program tend to take longer to reoffend than before they entered the program.⁷⁰

In the absence of wholly suspended sentences, this approach will not be possible. To work around the absence of the order, it is likely that the deferred sentence will take its place. Deferred sentences allow the decision on the sentence to be deferred pending some efforts on the part of the offender to address the underlying causes of his or her criminal behaviour. Previously, deferred sentencing was reserved for young offenders aged under 25 years who were sentenced in the Magistrates' Court, and could be used for up to 6 months. Following recommendations of the Sentencing Advisory Council and legislative amendments, deferred sentences may now be used in the County Court as well, with an offender of any age, for up to 12 months (Sentencing Advisory Council, 2008, p. xxxiv).

A number of stakeholders suggested that the deferred sentence may be able to function effectively in the same way as the wholly suspended sentence, particularly at the low end of the 'suspended sentence market', acting as a 'Sword of Damocles' if offenders do not show progress during the deferred period. This would be a particularly effective option were sentencers able to attach court-ordered programs to a deferral to mandate specific kinds of treatment program. In

⁷⁰ Evidence of the success of this approach is also seen in similar criminal justice system approaches such as the Neighbourhood Justice Centre, the Courts Integrated Services Program and the Dandenong Drug Court. All three of these approaches have been evaluated and all have been found to reduce reoffending. For example, in September 2013 the NJC received ongoing funding of \$4 million per year in the 2013-14 state budget on the basis that it reduces both offending and the costs of administering justice. The evaluation, undertaken by KPMG, has not been released to the public. See 'Trailblazing Collingwood justice centre wins new funding after it cuts crime, saves money' by Nic Price, 30 September, 2013. Available at: <http://www.heraldsun.com.au/leader/central/trailblazing-collingwood-justice-centre-wins-new-funding-after-it-cuts-crime-saves-money/story-fngnvlpt-1226728754461>.

addition, it would not necessarily require Corrections Victoria resources if private or not-for-profit options were used instead.

The Sentencing Advisory Council participant noted that many of the wholly suspended sentences imposed in Victoria were short. Deferrals could become a 'functional equivalent' of these, allowing judicial officers a second chance at sentencing if the offender fails. If used robustly, deferred sentencing could provide a way forward to meet the need that wholly suspended sentences meet.

A magistrate noted that deferred sentencing is used a lot in the Magistrates' Court. It allows the magistrate to maintain contact with the offender to see if change is genuine and ongoing, if any stability and rehabilitation that might have begun can be maintained over the longer term. It can show if there is a pattern to the change in behaviour that indicates that the offender has good prospects for being able to comply with the conditions of a community correction order. Finally, it allows for a more accurate and sensible assessment of the prospect of real rehabilitation. Due to the workload pressures faced by the courts, however, some magistrates prefer not to defer.

Not all participants in the consultations thought that expansion of deferred sentencing would be valuable. Victoria Police prosecutors expressed scepticism of deferrals, suggesting that genuine remorse is evidenced from the time of the offence, with offenders seeking voluntary admission to treatment programs. Deferrals that involve court-ordered participation in treatment programs are based on remorse expressed only in court, which may therefore not be genuine. With the existence of support programs such as the Court Integrated Services Program⁷¹ (CISP) and the CREDIT/Bail Support Program,⁷² Victoria Police prosecutors are not

⁷¹ The Department of Justice and the Magistrates' Court of Victoria established the Court Integrated Services Program (CISP) in November 2006. The program provides accused persons with access to services and support to reduce rates of re-offending and promote safer communities. The program currently operates at the Latrobe Valley, Melbourne and Sunshine Magistrates' Courts. For more information, see <http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/court-integrated-services-program-cisp>.

⁷² The CREDIT/Bail Support Program was created from the merger of two court bail programs. In December 2004, the Magistrates' Court of Victoria combined the Court Referral & Evaluation for Drug Intervention & Treatment Program (CREDIT) and the Bail Support Program (BSP). The program aims to help the accused compete bail successfully via assessment, case management and support, and linkages to community support and treatment. For more information, see <http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/credit-bail-support-program>.

convinced of the need for additional use of deferrals to allow offenders to participate in treatment programs.

Participants from the FCLC did not feel hopeful that deferrals could take the place of suspended sentences. They thought that deferrals would be viable in practical terms but not in political ones. In particular, expanding deferred sentencing might be palatable in the current political environment, especially in the context of the parole crisis gripping Victoria. In such a risk-averse environment, deferred sentencing might only be viable for low-risk offenders, who might be unlikely to risk serving a term of imprisonment anyway. In addition, an expansion in the use of deferred sentencing might cause concern for victims' groups about slowing down the wheels of justice.

SECASA suggested other alternatives to ameliorate the impact of the abolition of suspended sentences, such as greater use of diversion programs, conferencing, mediation or other court-ordered restorative justice (RJ) practices. Using such creative approaches gives victims a better way to move forward. Others also suggested greater use of therapeutic jurisprudence (TJ) approaches, and the need to move such approaches more into the mainstream. Associated with this would need to be substantial cultural change to make the whole TJ/RJ approach more widely acceptable within the courts.

To increase the acceptance of deferred sentencing and alternative approaches, it was suggested that steps would need to be taken within the judiciary. A champion might be found in the Chief Judge or Chief Magistrate, and education programs might be provided by the Judicial College of Victoria.

Other participants suggested that some form of suspended sentences be retained. Proposals included retaining the order for those young offenders aged 18 to 21 who are already part of Victoria's dual-track system, although the logistics of another age-based order was thought to be prohibitively complex. The retention of partially suspended sentences was also raised as a possibility, although it is noted that this order is currently only used infrequently by the courts. Finally, some participants suggested that a more nuanced use of breach provisions for community correction orders could effectively take the place of wholly suspended sentences, with sentencers using the opportunity to resentence as a 'Sword of Damocles' to ensure compliance with the order.

Although not specifically raised during the consultation process, a further option that might be considered is the creation of the two orders recommended by the Sentencing Advisory Council in its 2008 report, in order to provide some acknowledgement of the most vulnerable in the

system: some sort of targeted order for drug and alcohol dependent offenders (akin to the drug treatment order, but expanded to be available in all courts) and a community order for young adult offenders.

7.3 Ameliorating the negative consequences of imprisonment

Finally, a common concern for stakeholders was how to ameliorate the negative consequences of imprisonment, especially in the context of the current overcrowding crisis. The problems discussed above – restrictions on the range of orders available to sentencers and a lack of adequate resourcing for community corrections in the face of a large increase in offenders – are likely to be exacerbated by the current problems of capacity within the prison system as well. The current overcrowding crisis has led some stakeholders to suggest that the situation is ‘unprecedented’ and is a ‘time bomb’: the ‘perfect storm’ has hit and it is simply a matter of time until the ‘criminal justice system collapses’.

Without sufficient resourcing for an ever-increasing prison population (which is likely to increase even further after the abolition of suspended sentences), a major concern for stakeholders is that rehabilitative activities and programs within prisons may be reduced. The combination of increased use of prison as a sanction and reduced access to rehabilitative programs has significant potential for negative outcomes in terms of both the safety of the community (in terms of increased reoffending) and the ability of offenders to become productive members of society. This may be an issue of particular concern for young or first-time offenders who have not previously been exposed to criminal cultures within the prison environment.

A potential lack of adequate rehabilitative programming may be particularly salient for the large number of offenders within prisons who have drug and alcohol dependencies, acquired brain injuries and poor educational histories (Jesuit Social Services, 2013). The lack of treatment available for short-term prisoners has recently been highlighted by a study in the United Kingdom examining effective alternatives to short sentences. The Revolving Doors Agency’s (2012) briefing identifies that not only do short-sentence prisoners have very high rates of reoffending, but they also exhibit high levels of substance misuse, homelessness, poverty and debt. Compared with prisoners serving sentences of one to four years, short-sentence prisoners were more likely to have used illegal drugs immediately prior to custody (44% of the short-sentence prisoners compared with 35% of those serving longer sentences), more likely to have been homeless (17% compared with 9%) and less likely to have been employed in the year prior to custody (50% compared with 58%) (Revolving Doors Agency, 2012, p. 3). Given its lack of

access to offender management programs and other activities to reduce reoffending, it is not surprising that this particularly vulnerable cohort reoffends at a high rate.

Hugh de Kretser of the Human Rights Law Centre is reported to have commented on his concerns about the impact of overcrowding on the ability to access treatment:⁷³

We speak to people who have tried to get mental health help in prison but are denied access due to the problems caused by overcrowding. The net effect is a lack of humane conditions for prisoners, but also a less safe community because these people are released without getting those essential services to help them stop reoffending.

VACRO participants pointed to the social costs of prison overcrowding in Victoria. Having less physical space and less personal space in a more crowded prison increases levels of anxiety and tension for prisoners, which in turn bodes poorly for a successful reintegration into the community. This is especially problematic for lower-level offenders who are being brought together with more serious offenders in such circumstances. As noted by the participant from the Crime Victims Support Association, there are many offenders in prison who do not belong there: non-violent offenders serving a short prison term who are exposed to the dangerous conditions in an overcrowded prison. In such circumstances, there is a concern for community safety once prisoners are released.

As prisons become more crowded, their management becomes more difficult and prison safety requires increasing time for prisoners to be locked in their cells. Some stakeholders suggested that they are seeing 'all the trigger points for a prison riot'. As VACRO noted, 'prison is set up for punishment, not rehabilitation'. A concern for the safety and security of those in prison was also noted by Opposition corrections spokesperson Jill Hennessy, who was reported⁷⁴ as saying that 'our jails are packed to the rafters, which puts security and safety at risk'. These sentiments echo those of the Community and Public Sector Union (CPSU), with Andrew Capp reportedly fearing more assaults on prison guards due to overcrowded prisons. When temporary camp

⁷³ 'Victorian prison death rise blamed on overcrowding and tougher sentencing' by Oliver Milman, 18 October 2013. Available at: http://www.theguardian.com/world/2013/oct/18/victorian-prison-deaths-overcrowding-tougher-sentencing?CMP=soc_568.

⁷⁴ 'Record prison load a 'security risk'' by Farrah Tomazin, 6 October 2013. Available at: <http://www.theage.com.au/victoria/record-prison-load-a-security-risk-20131005-2v14i.html#ixzz2guLQ6saX>.

beds were introduced into communal areas of some minimum and medium security prisons due to a lack of prison cells, Mr Capp is reported⁷⁵ to have said:

Our experience shows that it does lead to an increase in prisoner tension. Then that in turn leads to prisoner assault on prisoner and prisoner assault on prison staff.

Indeed, figures from the Department of Justice Annual Report (2012-13) show that prisoners are harming themselves and assaulting each other and staff at the highest rate in five years, with 13 deaths in custody in 2012-13, up from four the previous year.⁷⁶ The Victorian Auditor-General also noted the increase in violence in Victoria's prisons (Victorian Auditor-General, 2012, p. 16):

The rate of serious incidents, such as assaults, attempted suicides and self-mutilation, nearly doubled over the past six years. This has coincided with an increase in the prisoner numbers and overcrowding within prisons...

While Corrections Minister Edward O'Donohue is reported to have said that the Coalition had 'made no secret of the fact Victoria's prison system is coming under pressure in several different ways, not least capacity pressures', which will be alleviated once all the new beds have become available,⁷⁷ Shadow corrections minister Jill Hennessy is reported to have said that overpopulated prisons had created a 'fertile environment' for violence.⁷⁸

Concern over the safety of prisoners and prison staff has been publicly raised in a number of other settings. The LIV has warned that overcrowding in custody jeopardises the safety of police, prison guards and prisoners, suggesting that the system is at 'breaking point' and that a serious incident is imminent. Even within the courts, overcrowding has become a consideration in bail applications, with Victoria's Deputy Chief Magistrate Jelena Popovic noting the issue in her remarks.⁷⁹ Magistrate Popovic also reportedly called the failure to deliver defendants who were remanded to appear in court on a certain date 'contemptuous', creating an 'unacceptable' and 'costly' situation. The delay was noted to be particularly difficult for victims: Magistrate

⁷⁵ 'Prison guard union fears unrest over camp bed plan to ease overcrowding' by ABC News, 5 September 2013. Available at: <http://www.abc.net.au/news/2013-09-05/prison-guard-union-fears-unrest-over-camp-bed-plan-to-ease-over/4936814?section=vic>.

⁷⁶ Department of Justice Victoria (2013). *Annual Report 2012-13*. p. 170.

⁷⁷ The new prison at Ravenhall – with 1,000 beds – is due to open in 2017.

⁷⁸ 'Self harm and assaults rise in crowded prisons' by Jane Lee, 18 October 2013. Available at: <http://www.theage.com.au/victoria/selfharm-and-assaults-rise-in-crowded-prisons-20131017-2vpsr.html>.

⁷⁹ 'Warning that custody overcrowding is 'jeopardising safety'' by ABC News, 23 September 2013. Available at: <http://www.abc.net.au/news/2013-09-23/warning-that-custody-overcrowding-is-27jeopardising-safety27/4974126>.

Popovic reportedly said that relatives of the victim involved in her matter were frustrated and upset over the delay.⁸⁰

Police Association secretary, Greg Davies, reportedly raised concerns over the safety of police officers, pointing to the use of police cells – designed for holding someone for a matter of hours – that are ‘basically being used as a jail cell for two or three days’ as there is no room in prisons for people to be held on remand.⁸¹ Immediate past president of the Law Institute of Victoria, Michael Holcroft, is reported to have calculated that 270 of the 366 people held in police cells as of 14 November 2013 were unsentenced, with 149 people being held beyond the 14-day permitted holding limit. Mr Holcroft reported that many prisoners had reached more than 20 consecutive days in police custody, while two had been in police cells for 32 consecutive days.⁸²

By the night of 14 November 2013, the number of people in police cells had reportedly increased to 370,⁸³ which is reportedly more than double the number compared with one year ago⁸⁴ and well over the 150 person maximum target set by the government.⁸⁵ This overcrowding in police cells leads to significant management problems for police, with the number of assaults in police stations, and the number of incidents of criminal damage of cells, both increasing. To deal with the management issues posed by overcrowded police cells, police officers have been removed from their shifts in the community to stay in police stations and monitor the people being detained. With up to 500 officers per day⁸⁶ reportedly being taken off the streets to manage overcrowding in police cells, there are fewer police in the community to ensure public safety.

⁸⁰ ‘Escort plan suggested as overcrowded cells cause delays in court hearings’ by Paul Anderson, 21 October 2013. Available at: <http://www.news.com.au/national/victoria/escort-plan-suggested-as-overcrowded-cells-cause-delays-in-court-hearings/story-fnii5sms-1226743938884>.

⁸¹ ‘Warning that custody overcrowding is ‘jeopardising safety’’ by ABC News, 23 September 2013. Available at: <http://www.abc.net.au/news/2013-09-23/warning-that-custody-overcrowding-is-27jeopardising-safety27/4974126>.

⁸² ‘Prison detox’ by Kaitlyn Opie, 15 November 2013. Available at: <http://www.sunraysiadaily.com.au/story/1909479/prison-detox/?cs=1259>.

⁸³ ‘Cell spill “a danger to everyone”’ by 3AW Mornings, 15 November 2013. Available at: <http://www.3aw.com.au/blogs/neil-mitchell-blog/cell-spill-a-danger-to-everyone/20131115-2xkwb.html>.

⁸⁴ ‘Hundreds of cops taken off the beat to manage police cell overcrowding’ by ABC News, 25 September 2013. Available at: <http://www.abc.net.au/news/2013-09-25/hundreds-of-cops-taken-off-the-beat-to-manage-police-cell-overc/4979920>.

⁸⁵ ‘Cell spill “a danger to everyone”’ by 3AW Mornings, 15 November 2013. Available at: <http://www.3aw.com.au/blogs/neil-mitchell-blog/cell-spill-a-danger-to-everyone/20131115-2xkwb.html>.

⁸⁶ ‘Hundreds of cops taken off the beat to manage police cell overcrowding’ by ABC News, 25 September 2013. Available at: <http://www.abc.net.au/news/2013-09-25/hundreds-of-cops-taken-off-the-beat-to-manage-police-cell-overc/4979920>.

A magistrate noted that sentencers have been acutely aware of prison overcrowding this year. Bail applications have not proceeded as offenders have not been able to be transported to the court, due both to a lack of available transport vehicles and to a cap on the number of people allowed to be held in the Melbourne Custody Centre. Prisons are too full for offenders to be transferred from the Custody Centre, but with a maximum allowable stay of 12 days, offenders are being transported to regional police stations and circulated from one to the other to meet maximum stay rules. With the abolition of wholly suspended sentences from the Magistrates' Court, such overcrowding will only worsen, prompting this magistrate to suggest that the abolition be deferred until the current crisis can be ameliorated.

The Law Institute of Victoria has also called for a delay in the abolition of suspended sentences. In a letter to the Attorney-General dated 18 September 2013,⁸⁷ the President of the LIV, Reynah Tang, called for government attention to the overcrowding crisis. He noted that:

Our members report that a significant number of matters have been delayed as people held in custody were not being brought into the Melbourne Magistrates' Court because there was no room for them in the Melbourne Custody Centre (MCC).

Members report that staff at the MCC are advising practitioners that the police are no longer bringing remanded prisoners to Court where the MCC is at maximum capacity (80 prisoners). This practice has meant that in a substantial number of matters, clients are not being brought to Court at all and matters are adjourned in their absence. This is of great concern particularly where accused people who are on remand without having been found guilty of any offence, are having their bail applications substantially delayed or adjourned.

This will eventually result in an increased number of bail applications in both the Magistrates' and Supreme Courts on humanitarian grounds pursuant to section 21(5) of the Charter of Human Rights and Responsibilities due to its breach of an accused person's right to a fair hearing without unreasonable delay.

We note that in some matters, the Court has already awarded costs against Corrections Victoria when prisoners have not appeared. This practice will no doubt increase the longer this issue remains.

In its letter, the LIV notes that Ravenhall Prison will take some time until it is completed, and that 'the Government needs to rethink some of its proposed law and order policies in the meantime'. In particular:

⁸⁷ Available at: <http://www.liv.asn.au/For-Lawyers/Sections-Groups-Associations/Practice-Sections/Criminal-Law/Submissions/Custody-Issues.aspx?rep=1&glist=0&sdiag=0&h2=1&h1=0>.

We suggest that the proposed removal of suspended sentences in the Magistrates' Court be delayed until such time as there is capacity within the system to deal with the increase in prison numbers.

Similar concerns have been raised for those sentenced in the higher courts. Participants from the Office of Public Prosecutions also noted that Corrections Victoria is facing difficulties in bringing offenders to court, which may lead to increased delay in the court and thus increased costs of justice. They also noted the possibility of someone being injured in prison due to overcrowding, which could lead to civil damages claims or human rights challenges because of crowded conditions.

The President of the LIV, Reynah Tang, has also called for the government to change its focus from building more prisons to addressing the underlying causes of crime, recommending the introduction of conditional suspended sentences (Law Institute Journal, November 2013, p. 16):

Instead of increasing prison numbers through the scrapping of suspended sentences, the government should consider conditional suspended sentencing programs for non-violent offenders that focused on fixing the causes of crime, rehabilitating the offender and reducing recidivism.

A preference for conditional suspended sentences was also noted by a judge who participated in the consultations, who suggested that 'what judges really want is a conditional suspended sentence'.

The primary concern with the overcrowding of Victorian prisons seems to be that the negative effects of imprisonment are being exacerbated by crowded, tense conditions where there is less access to treatment programs than is necessary to help prisoners return to the community safely.

The CPSU⁸⁸ suggested that the current increase in prisoners is being driven by sentencing reforms and changes to parole. But for them, the primary issue is the lack of planning by the current government, which began implementing its tough-on-crime policies without planning for the inevitable consequences. As a result, prisons have been fitted with so-called 'surge beds' – bunk beds, fold-up beds and even the conversion of store areas into cells. But these temporary beds cannot address the infrastructure of the prisons. For example, Barwon prison, designed to

⁸⁸ The CPSU represents about 80% of all prison officers around the state; in some individual prisons, the figure is in the mid-90s.

hold 250 people, now holds around 430; the kitchen and the sewage system, however, have not increased capacity.

In such an overcrowded prison environment, members of the CPSU now feel that 'sooner or later, something is going to give' – it is 'just a matter of time' until there is an incident. The CPSU has received reports from its members of gang activity in certain prisons and near-riots in others that have only just been defused. Part of the problem is that, due to overcrowding, 'the prisoner rating system has gone out the window'. That is, prisoners are at times being placed in prisons based on where there is space available, rather than in prisons that match their security classification.

The overcrowding has also led to a fall in the capacity of the prisons' treatment programs to meet demand. Prison programs were designed for the original capacity of each prison, but as populations have swollen, program capacity has not increased. There has been an increase in the number of unit staff and general staff to aid in managing the prisons, but there has been no increase in the number of program staff to provide treatment, health and mental health services. This has led to the program regime being 'disrupted' and 'swamped'. The CPSU noted that this lack of program capacity will have a negative impact on community safety as prisoners do not have adequate access to treatment programming to address the underlying causes of their offending. Unfortunately, participants from the CPSU see no readily available options for running prisons safely in the current situation due to the discrepancy in capacity. In the longer-term, better planning is required. As they noted:

It's not a Corrections Victoria problem, it's a government problem.

Indeed, the CPSU stakeholders ended the consultation discussion with the following comment on the policy of abolishing suspended sentences:

This is a cynical, populist policy designed to deliver electoral advantage.

This sentiment echoes almost precisely the reported criticism levelled at the abolition of suspended sentences by Sam Norton, Chair of the Criminal Law Section of the Law Institute of Victoria (Gregory, 2013, p. 16):

It is by far and away, in my time in the law, the most populist, cynical, un-thinking piece of law and order policy I have seen.

The negative effects of overcrowding are being exacerbated further by the current parole environment in Victoria: 'the current train wreck in prison is parole', according to one participant in the consultation process. Following a series of high-profile failures of the parole

system, in which a number of women were murdered by offenders who were on parole, the parole system has almost shut down: the 'release valve has been closed to a trickle' according to VACRO. There is a perception among prisoners that conditions have been made more stringent and that breaches of conditions will no longer be tolerated; breach of parole itself is now an offence that leads to an additional three months in prison. In such an environment, more prisoners are apparently choosing not to apply for parole and instead are staying in prison for the full length of their sentences. This too contributes to prison overcrowding but has broader implications for community safety: according to both VACRO and the CPSU, prisoners being released straight from prison, with no supervision or participation in post-release support and treatment programs, are more likely to reoffend.

The First Step Legal Service pointed out that the clients whom they represent live chaotic, dysfunctional lives, as do many offenders. Putting such people in prison has its costs if adequate treatment programs are not available: without treatment, imprisonment can only reduce community safety. The current pandemic of methamphetamine abuse in Victoria was raised as relevant in this context: if there is inadequate treatment for people being imprisoned for crimes committed while on 'ice', community safety will suffer when these people are released.

The Auditor-General's 2012 audit of Victoria's prison capacity planning (Victorian Auditor-General, 2012, p. 18) notes that, in the context of a significant increase in the state's prison population:

The provision of services and rehabilitation programs has not kept pace with the increasing prison population, despite actions from CV to remedy the situation.

The report notes that, prior to 2009-10, Corrections Victoria did not request additional funding for support services such as health services and rehabilitation programs as its increase in prisoners was seen to be temporary. There was a subsequent shortfall in the provision of services as prisons had to cope with more prisoners with existing funding. This shortfall in its rehabilitative programs – drug and alcohol, violent, sex offending and problem solving programs – has continued. For example, the report notes that (Victorian Auditor-General, 2012, p. 20):

Due to delays in beginning a sex offender program, in 2011-12 only 33 per cent of prisoners starting treatment completed their program prior to their earliest eligible release date compared to 81 per cent in 2009-10.

This reduction in service provision has substantial implications for community safety (Victorian Auditor-General, 2012, p. 19):

A decrease in the number of prisoners accessing support services has the potential to limit the success of rehabilitation and increase the risk of reoffending.

Participants in the consultation also noted the negative impact of imprisonment on community safety that follows from a lack of adequate treatment and services within overcrowded prison environments. The Crime Victims Support Association called for better programs in prison, with real skills training and job training to help people return to the community and lead productive lives. SECASA also expressed concern about prison overcrowding, noting that crowded conditions mean that prisoners are likely to be locked up for longer each day, reducing prospects for rehabilitation. With more prisoners there is a concomitant lack of adequate and timely treatment capacity and, with the tightening of parole release, little hope for receiving parole, such that prisoners are likely to become unmanageable – offenders do not necessarily enter prison as dangerous people, but they are more likely to come out dangerous following confinement in an overcrowded prison. If a sentence in an overcrowded prison does indeed make people more dangerous, the abolition of suspended sentences has dire implications for community safety: ‘locking people up doesn’t make us any safer’.

The FCLC acknowledged that the number of people in prison has been increasing for some years now, but that the current tough-on-crime approach, including the abolition of suspended sentences, compounds the problem. The FCLC suggested that the significant funds allocated to building more prisons represent an ineffective use of resources; they expressed particular concern about a reduction in the capacity of prisons to provide treatment programs and rehabilitation.

VACRO also suggested that funding for such services has not increased as the prison population has increased, meaning that offenders are waiting ever longer for fewer available spots in prison treatment programs. With no increase in the capacity to provide programs to inmates, prisoners face longer waits to participate in programs that have been ordered by the courts. Without such participation, prisoners face longer sentences as they cannot access parole without completing the programs mandated by the court. Indeed, an article in The Age newspaper⁸⁹ noted that male prisoners are currently waiting twice as long for treatment in the secure mental health facility at Thomas Embling hospital, waiting 10.7 days in the acute

⁸⁹ ‘Mentally ill male prisoners waiting longer for treatment’ by Henrietta Cook, 21 September 2013. Available at: <http://www.theage.com.au/victoria/mentally-ill-male-prisoners-waiting-longer-for-treatment-20130920-2u5jt.html#ixzz2guNdu4tx>.

assessment unit of the Melbourne Assessment Prison before being transferred to Thomas Embling, compared with 5.7 days in the previous financial year (2011-12).⁹⁰ Such delays represent risks not only to offenders themselves, but to the community more broadly: if offenders are not able to access services during their time in prison, they may be released without the treatment they need to help them abstain from offending. Indeed, in the context of a suspension of court assessments and closure of a number of beds at the hospital due to funding cuts, in February 2013 the chair of the faculty of forensic psychiatry at the Royal Australian and New Zealand College of Psychiatrists, Dr Ness McVie, noted the risk to the community of mentally ill offenders being imprisoned without treatment:⁹¹

If people are released from jail without treatment and their illness continues, they are at the same risk of reoffending. People who go through the mental health system instead of jail have a much lower rate of recidivism.

Similar issues have been noted with regard to access for prisoners to medical services and programs. Discussions with stakeholders suggested that the number of medical problems within prisons has increased; it is only through 'sheer luck' that there have been no deaths due to lack of access to medical treatment.

One of the stakeholders summarised his views on the options available to government into the future to deal with the prison overcrowding crisis by suggesting that there are two main options: bring back home detention and suspended sentences, expand parole and provide more funding for services in the community, including community supervision, treatment programs, halfway houses and electronic monitoring; or keep building more and more prisons.

8. The financial costs of abolishing suspended sentences

The financial cost of imprisonment is clearly one of the greatest costs associated with the criminal justice system. While the Victorian prison system is by no means large when compared with those in other countries or even in other jurisdictions in Australia, it remains substantial nonetheless, with more than 5,000 prisoners. As of November 2012, the prison system had a capacity of 5,318 beds but prisons at the time were holding 22% more beds than their supported

⁹⁰ Victorian Institute of Forensic Mental Health (2012). *Report of Operations 2011-12*, p. 26.

⁹¹ Quoted in 'No help for the mentally ill facing court charges' by Henrietta Cook, 8 February 2013. Available at: <http://www.theage.com.au/victoria/no-help-for-the-mentally-ill-facing-court-charges-20130207-2e1cy.html#ixzz2hSth6vPr>.

capacity (Victorian Auditor-General, 2012, p. xi). By 11 November 2013, there were 5,767 people in prison – an increase of 15% from the previous November.

The 2013-14 Victorian Budget⁹² provided for \$758.8 million for prisoner supervision and support (that is, for prisons) and \$128.3 million for community-based offender supervision. Capital expenditures were funded in addition to these amounts: in a media release that accompanied the budget papers, the Minister for Corrections announced further capital works totalling \$131.5 million for 357 extra prison beds and an expansion of the high-security facilities at Barwon prison (Minister for Corrections, 7 May 2013). This is in addition to the \$670 million announced the previous year to build a new medium-security 500-bed prison at Ravenhall⁹³ and to add 395 beds to existing prisons.

According to the Jesuit Social Services' response to the most recent budget announcements, the 2013-14 Victorian budget has not addressed the existing shortfall in funding for prison services as identified by the Auditor-General in 2012. In particular, Jesuit Social Services noted the complex problems faced by Victorian prisoners (55% have drug and alcohol issues, 43% of male and 33% of female prisoners have acquired brain injuries, and only 7.2% have completed secondary education) and suggested that more such people are being imprisoned while no additional funding is being allocated to providing them with support to overcome the problems that contribute to their offending. Despite the substantial funding commitments over the last two years, the most recent budget 'is silent' on the long-term, ongoing operational costs of running and maintaining all the new beds (Jesuit Social Services, 2013).

At \$97,000 per prisoner per year, the prison system exacts a significant financial cost – more than \$500 million annually. With the possibility of many hundreds of new prisoners entering prison once the abolition of suspended sentences is complete, the already substantial financial costs to the Victorian community of housing prisoners will increase. Indeed, the Herald Sun newspaper reported that 'a 17 per cent surge in prisoners from the Government's tough on crime approach has led to severe prison overcrowding and added an estimated \$80 million a year to the annual jails bill'.⁹⁴

⁹² Budget papers are available at: <http://www.dtf.vic.gov.au/State-Budget/Budget-Papers>.

⁹³ On 17 September 2013 the government announced that it would double the capacity of Ravenhall from its planned 500 beds to 1,000 beds. No mention was made of additional funding.

⁹⁴ 'Soaring prisoner numbers add \$80 million to annual jail bill' by Peter Mickelborough, 12 September 2013. Available at: <http://www.heraldsun.com.au/news/law-order/soaring-prisoner-numbers-add-80-million-to-annual-jail-bill/story-fni0fee2-1226718019075>.

Carolyn Atkins, Acting CEO of the Victorian Council of Social Service (VCOSS), explains why this is problematic (Atkins, 2013, p. 3):

Victoria remains trapped in a 'tough on crime' cycle. Driven by imprecise or often misleading evidence and political imperatives, it's a vicious cycle that is consuming hundreds of millions of dollars to pay for more and more prison beds while doing little to make the community safer. Worse, it is failing many vulnerable Victorians and undermining other government programs that seek to address the causes not the consequences of crime...But prisoner numbers have continued to rise in Victoria under both Labor and Coalition governments, and we now see the current Victorian Government making huge financial investments in prisons and protective service officers at the expense of health, housing, education, drug and alcohol services, and family supports which can work to stop crimes before they happen.

Research on public perceptions of how taxpayer dollars should be spent in the criminal justice arena sheds light on how people might perceive such high levels of spending on prisons. Research in Victoria has shown that, when asked to choose between building more prisons and increasing the use of alternatives to prison, 74.3% of survey respondents preferred increasing the use of alternatives. Respondents were particularly keen to use alternatives for mentally ill offenders (91.7% agreeing with the use of alternatives), as well as for young (87.9%), drug-addicted (83.5%) and non-violent offenders (74.9%) (Gelb, 2011).

Some international research has used a 'contingent valuation' approach to understand how much money people are willing to spend on various crime control strategies. For example, Cohen, Rust and Steen (2006) asked respondents to put themselves in the shoes of their local mayor who has just received a grant from the Federal government equal to either \$100 or \$1,000 per household. The respondent was asked to decide how to allocate that money among four different crime control programs: (1) more prisons, (2) more drug and alcohol treatment programs for offenders convicted of nonviolent crime, (3) more police on the street, and (4) more prevention programs to help keep youth out of trouble. A fifth alternative was also offered, to return all or part of the money back to local residents in the form of a tax rebate.

The researchers found that the highest priority for crime control spending was prevention programs targeting at-risk youth, with an average of 36.6 percent of the funds being allocated to prevention. An average of 22.1% was allocated to drug treatment, 21.0% to police, 11.9% to a tax rebate and 8.4% to prison. When considering the median allocations, however, the proportion allocated to the tax rebate and prisons dropped to 0.0%, while the allocations for prevention (33.3%), drug treatment (25.0%) and police (20.0%) were similar to the mean allocations (Cohen, Rust and Steen, 2006, p. 325). The authors conclude that respondents would not spend any

money on prisons: ‘overall, the public perceives a considerably greater need for money spent on “at risk” youth prevention programs, and little need for spending more money on prisons’ (Cohen, Rust and Steen, 2006, p. 326). Similar results have been found in studies of public preferences in juvenile justice (see, for example, Nagin et al, 2006).

The research literature therefore provides evidence that people do not necessarily want their taxpayer dollars spent on prisons.

The prison system is but one aspect of the work of Corrections Victoria as it strives to ‘contribute to safer communities by delivering a safe, secure and humane correction system’ (Victorian Auditor-General, 2012, p. 3). The other main arm to the work of Corrections Victoria lies in its Community Correctional Services (CCS) work, overseeing both people who are serving community orders and prisoners who have been released on parole. CCS oversees a large number of people in the community; for example, in 2011-12, 11,149 offenders⁹⁵ completed some 713,157 hours of unpaid community work.⁹⁶ Data for the June 2013 quarter show that Victoria had 8,897 people in community-based corrections, including those on probation, parole and community service orders (Australian Bureau of Statistics, 2013).⁹⁷

Community orders are far less expensive than terms of imprisonment. In 2011-12, the real net operating expenditure per Victorian offender on a community order was \$25.96 per day, or over \$9,000 per year⁹⁸ – one-tenth the cost of imprisonment in Victoria (Steering Committee for the Review of Government Service Provision, 2013, Table 8A.11). However, with the large number of people in community-based corrections (8,897 in the June 2013 quarter), the overall figure for the cost of community corrections is large – almost \$85 million. And while these sentences clearly cost less to administer than prison sentences, there remain substantial resourcing implications for Community Correctional Services in the provision of supervision, monitoring and other community-based services that are required as part of these orders.

With many thousands of extra people likely to enter community corrections once the abolition of suspended sentences is complete, the total financial cost of community corrections will

⁹⁵ This is likely to be non-discrete offenders. That is, one person may be counted each time a new order is made for community work, such that the number of offenders presented is actually double-counting individual, discrete people.

⁹⁶ Information on the work of Corrections Victoria may be found on their website at www.corrections.vic.gov.au/home/community+corrections/.

⁹⁷ This is the average number of people on the first day of the month.

⁹⁸ The precise figure is \$9,475.40, based on the 2011-12 figure of \$25.96 per day.

increase significantly. If all of the approximately 5,500 people⁹⁹ who received a wholly suspended sentence in the higher courts and the Magistrates' Court in 2011-12 in the future receive a community correction order, at \$9,475.40 a year each, the additional cost to the taxpayer for the abolition of suspended sentences from the Magistrates' Court will be more than \$50 million per year.¹⁰⁰ This figure may be a conservative one: if some of the previous wholly suspended sentences instead become an order for imprisonment, the cost will be even greater.¹⁰¹

Clearly, the financial cost of administering imprisonment orders and community orders is substantial. In contrast, the current cost of administering a wholly suspended sentence is minimal, although there are no data available that specifically identify the cost of this order. But with no conditions to be monitored, no reporting requirements and no programs in which to participate, the only financial cost associated with a wholly suspended sentence is incurred upon breach, when a new offence is committed. At that point, the cost involved is the cost incurred by any offending behaviour, involving police, courts and associated services such as legal aid. And while suspended sentences have been criticised on the basis of potential net-widening due to the possibility of incarceration upon breach,¹⁰² breach rates for suspended sentences have been found to be fairly low. Of those people who received a suspended sentence in 2000-01 and 2001-02 in the Victorian higher courts and Magistrates' Court, 27.5% were breached within five years, with the breach rate being higher in the Magistrates' Court (29.1%) than in the higher courts (8.6%) and slightly higher for partially suspended sentences than for wholly suspended sentence (Sentencing Advisory Council, 2007a, pp. 8-9). Of all people who initially received a suspended sentence during the two years, only 17.2% went on to breach and have their sentence fully or partially restored, ending up in prison (Sentencing Advisory Council, 2007a, p. 13).

The cost of suspended sentences is thus minimal, especially when compared with the cost of imprisonment and even with the cost of community orders.

Every stakeholder consulted referred to lack of resources for Corrections Victoria in managing the additional offenders who will either enter prison or will be given a community correction

⁹⁹ See Table C3 in Appendix C for raw data.

¹⁰⁰ For 5,500 people, at a cost of \$9,475.40 per year, the total additional cost will be \$52,114,700 per year.

¹⁰¹ Although the increased costs associated with each imprisonment term may be offset by the lower costs of each community correction order that is imposed for less than one year.

¹⁰² Net-widening would occur in situations where people are given a suspended sentence instead of a sentence further down the sentencing hierarchy. When a suspended sentence is subsequently breached, the offender may be required to serve their term in prison, as opposed to people who breach a lower order (a community order) who do not face a term in prison.

order. In either instance, Corrections Victoria will be responsible for a huge number of additional offenders, likely around 5,500 people per year.

The cost implications of this are enormous. However, to date, the main target of additional funding from the government is an increase in the number of prison beds, either via additional beds in existing facilities, or in the construction of the new prison at Ravenhall. Little, if anything, has been said by the government about additional resourcing for Corrections Victoria for its Community Correctional Services.

When asked about judicial confidence in Corrections Victoria, a magistrate suggested that significant resources will be required for Corrections Victoria to meet the increased demand, either in prison or in the community. There are already issues with community treatment providers being overloaded; for example, one of the men's treatment programs has had to close its doors to all new referrals for 2013 as it cannot keep up with demand. Magistrates are being told by Corrections Victoria that participation on a community sex offender program requires a sentence of at least 18 months, in order to allow for delay in getting on to the program to begin with. This causes dilemmas for this magistrate in terms of balancing an appropriate sentence length with a having time to complete a treatment program. With a finite amount of funding, other programs run by Corrections Victoria, such as intensive support programs for women or for high-risk offenders, will be available to a smaller proportion of offenders as the number of people under Corrections Victoria supervision increases. This concern is echoed by YouthLaw, which suggests that:

If these orders are to work properly for young offenders, mentally impaired, intellectually disabled and drug and alcohol and other 'high-risk' offenders, there needs to be a significant increase in resources for Youth Justice and Corrective Services.

YouthLaw also suggests that 'more people will be sentenced to immediate custody at considerable cost to individuals, families and the broader community', citing New Zealand research that showed an increase in the number of people being sentenced to imprisonment following the abolition of suspended sentences in that country. That research showed that 7,930 people were given a custodial sentence in 2002; after the abolition in June 2002, the number of people receiving a custodial sentence in 2003 increased 8% to 8,497, then reached 10,353 by 2004:¹⁰³ a 23% increase in just two years. The increase from 2001 to 2002, in contrast, was only

¹⁰³ See <http://www.justice.govt.nz/publications/global-publications/c/conviction-and-sentencing-of-offenders-in-new-zealand-1997-to-2006/3-sentencing-for-all-offences#33>.

2%.¹⁰⁴ The abolition of suspended sentences as a sentencing option has been posited to be a contributor to this increase.¹⁰⁵ Extrapolating the New Zealand data to the 5,323 average daily number of people in custody in Victoria in June 2013,¹⁰⁶ this would mean an additional 1,224 people (23% more people) being sentenced to prison in the two years following the complete abolition of suspended sentences. Clearly the financial cost of such an increase would be enormous.

The financial impact of the abolition will also be felt in other areas. Consultation with the LIV highlighted that resourcing is a critical issue for service provision within the courts. For example, offenders sentenced at Sunshine Magistrates' Court cannot access the Courts Integrated Services Program (CISP), leaving practitioners to scramble to link offenders in with services and support. At bail hearings, magistrates will not release an offender on bail without some sort of support program: without space being available on CISP, bail is denied. With the abolition of wholly suspended sentences, this problem is likely to be exacerbated. Indeed, from the perspective of practitioners, the abolition of suspended sentences is 'a disaster'.

Sam Norton, Chair of the Criminal Law Section of the Law Institute of Victoria, has commented in the Law Institute Journal that the abolition of suspended sentences would severely impinge on already stretched prosecuting services, legal aid funding and court budgets, suggesting the abolition was leading to 'a great deal more work for trial lawyers', especially as clients were more likely to choose 'rolling the dice' and chancing a trial instead of pleading guilty (Gregory, 2013). Such a reduction in guilty pleas has implications not only for the courts in terms of costs and delays, but also for victims and witnesses, who may be adversely affected by being subject to more drawn-out proceedings.

The FCLC also noted difficulties in providing adequate treatment and supervision for offenders serving community correction orders. Without sufficient funding, support and supervision are limited: the reality of community correction orders, according to the FCLC, is that the capacity of Corrections Victoria to provide truly effective programs that can reduce reoffending is already limited, and having thousands more offenders being placed on a community correction order once wholly suspended sentences are abolished from the Magistrates' Court will only exacerbate the problem. The key message from the FCLC is that community correction orders

¹⁰⁴ Spier, P. and Lash, B. (2004). *Conviction and Sentencing of Offenders in New Zealand, 1994 to 2003*. p. 61. Available at: <http://www.justice.govt.nz/publications/global-publications/c/conviction-and-sentencing-of-offenders-in-new-zealand-1994-to-2003>.

¹⁰⁵ Sentencing Advisory Council (2008). *Suspended Sentences and Intermediate Sentencing Orders: Suspended Sentences Final Report—Part 2*. p. 23.

¹⁰⁶ Australian Bureau of Statistics (2013). *Corrective Services, Australia, June Quarter 2013*. Cat. No. 4512.0.

can work if – and only if – they are properly resourced. Additional funding is critical if community corrections is to be effective at reducing reoffending, and only once it can be shown to work will there be judicial confidence in the community correction order as a useful sentencing option. The introduction of the community correction order has the potential to reduce the number of people in prison, but only if sufficient funding is provided.

As part of the issue of judicial confidence, the FCLC suggested that, at the time that wholly suspended sentences are about to be abolished from the Magistrates' Court, there is an information and education program provided for sentencers. It will be important for judicial officers to understand both the evidence on the capacity of prison to rehabilitate and the current situation of overcrowding in the prison system. Other useful information would be data on the availability of treatment programs within prisons, program completion rates, rates of assault in prison, the extent of double-bunking and other such prison capacity issues, and the number of people who return to prison. Although much of these data are publicly available through reports such as the Report on Government Services,¹⁰⁷ it is cumbersome to access readily: judicial officers would benefit from a readily-accessible version, or some data incorporated in the Judicial College of Victoria's *Victorian Sentencing Manual*.¹⁰⁸

9. Summary

The number of wholly suspended sentences being imposed in both the higher and Magistrates' Court of Victoria has fallen in recent years. While some of this is due to legislative changes, some may be due to an increasingly harsh response on the part of judges and magistrates to offenders who come before the courts. It is not possible to determine if sentencers are responding to community concerns, to parliamentary guidance or to the nature of the offences coming before them, but regardless of the causes, the use of suspended sentences has decreased while the use of imprisonment has increased. At the same time, the length of imprisonment terms has also increased (Sentencing Advisory Council, 2013, p. 22). In addition, the tightening of parole processes has led to fewer prisoners being released on parole and more parolees being returned to prison for breaches. The resultant increase in Victoria's prison population provides a backdrop against which to consider the implications of the complete abolition of suspended sentences in Victoria over the coming year.

¹⁰⁷ The annual reports are available at <http://www.pc.gov.au/gsp/rogs>.

¹⁰⁸ The online manual is available at <http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#13888.htm>.

Despite the reduction in the use of wholly suspended sentences, they continue to be a popular option with the Magistrates' Court, with around 5,100 being imposed in 2011-12 (and a further 373 imposed in the higher courts). Once the reforms are complete and suspended sentences are no longer available in any court, the pressure on Corrections Victoria will mount as they become responsible for thousands more offenders, either in prison or in the community. The capacity of Corrections Victoria to deal with these extra people is questionable, unless there is a sizeable increase in funding.

In the longer term, the abolition of suspended sentences may also lead to a more sustained increase in the prison population and in the crime rate itself. Given the vast body of research that shows that imprisonment is not effective at reducing further offending, and given the current crisis of overcrowding in the Victorian prison system, it is certainly possible that the rate of recidivism among Victorian prisoners might increase.

Based on the evidence, the safety of the Victorian community is not being improved by the abolition of suspended sentences. Quite the contrary: the removal of a viable sentencing option, coupled with the increased workload faced by Victoria Police, the courts, community treatment and support providers, and Corrections Victoria in community corrections – coupled with the worsening conditions within Victorian prisons – all suggest that community safety may be compromised once the full reform process has been completed.

The issue of whether Corrections Victoria will be able to manage the increase in its client base depends on the funding that is made available to the organisation. While the government has already allocated substantial funding for the building of a new prison and additional beds in current prisons, Corrections Victoria will also require substantial additional funding for its Community Correctional Services arm, which is already managing many thousands of people. To date, the government has focused its funding on building more prisons, rather than increasing the capacity of Community Correctional Services: there has been no known proposal to extend the funding of community corrections, yet it is community corrections that will be required to absorb the vast bulk of the 5,500 people currently subject to wholly suspended sentences in the higher courts and the Magistrates' Court.

While the actual impact of the abolition of suspended sentences in Victoria remains to be seen, the research evidence suggests, and a number of key stakeholders in the system fear, that the abolition of suspended sentences may prove to be a final tipping point for the over-stretched correctional system in this state. Conditions are rife for a 'perfect storm' in terms of a devastating impact for the effective and safe functioning of Victoria's criminal justice system, with ripple effects throughout the Victorian community. To ameliorate the potential negative

consequences of the abolition of suspended sentences, several proposals have been developed based on both the published evidence and stakeholder consultations.

10. Recommendations

Catholic Social Services Victoria recognises that the best way to reduce crime is to broaden attention beyond a criminal justice system response to increase the focus on prevention. A more holistic approach addresses criminogenic disadvantage in the community and facilitates the health and well-being of the community as a whole. A greater focus on prevention to enhance community safety should target initiatives within areas known to contribute to offending behaviour. This would involve investment in areas such as:

- education, community-based counselling and residential treatment for alcohol and other drugs;
- child, family and community services;
- literacy and pre-employment education;
- primary health and mental health;
- homelessness; and
- disability, including acquired brain injury and intellectual disability.

Providing additional resources in these areas can reduce the sorts of disadvantage and pressures on individuals that contribute to criminal behaviour in the first place.

Once offending occurs, there are still opportunities to adopt a holistic approach by increasing the use of diversion out of the formal justice system where appropriate. This would be particularly useful for offenders who are vulnerable, young or first-time offenders, to reduce the negative consequences of involvement in the criminal justice system.

When a person is arrested, there is the opportunity for interventions to be put in place to prevent longer-term offending and its associated financial and social burdens on the community. Diverting people away from the criminal justice system has the potential to reduce these longer-term costs.

Diversion may be implemented in a number of ways, such as:

- police cautions and warnings;
- restorative justice practices, such as Youth Conferencing; and
- court-based practices, such as the Criminal Justice Diversion Program.

Support offered at this stage has the potential to improve opportunities for successful participation within the community, thus preventing the development of entrenched criminogenic behaviours.

Within the context of these broader issues, the following recommendations have been developed to address the impacts described in this report of abolishing suspended sentences in Victoria:

Recommendation 1: Maintain a full range of sentencing options

Provide a full complement of sentencing tools to magistrates. Do not abolish suspended sentences from the Magistrates' Court of Victoria.

Ensure that a comprehensive range of sentencing options, including suspended sentences, is available to magistrates in order to allow them to balance community safety with the specific circumstances of each individual case and to impose the order that best fits the purposes of sentencing.

Recommendation 2: Provide sentencing alternatives for vulnerable offenders

Establish alternative sentencing options for vulnerable offenders to ensure that their specific circumstances are acknowledged and the broader community interest is served.

Alternatives could include:

- Retain the availability of wholly suspended sentences for offenders who are aged 18, 19 or 20 at the time of sentencing, consistent with the unique position of young offenders who are sentenced to custody under Victoria's dual-track system (*Sentencing Act 1991* (Vic) s 3(1)).
- Create a modified version of the community correction order for offenders aged between 18 and 25 that has a greater focus on rehabilitation and support and less of a focus on punitive purposes.
- Ensure adequate resources to enhance diversion of Koori offenders (particularly women) and strengthen community-based alternatives to prison.
- Expand the availability of the drug treatment order beyond the drug court to all Magistrates' Courts to deal specifically with offenders with a severe drug or alcohol addiction.
- Encourage the use of deferred sentences by the courts for vulnerable offenders. Additional support would be required for this to be implemented, including judicial education (for example, by the Judicial College of Victoria) and the use of a champion in the courts (such as the Chief Magistrate).
- Encourage a more nuanced use of community correction orders by the courts to ensure optimisation of its flexibility for vulnerable offenders. For example, increase the use of supervision-only orders for those who cannot perform the standard community work condition, such as the elderly, mothers with young children, those living in remote areas or people with a disability.

Recommendation 3: Plan for and provide sufficient resourcing

Ensure adequate planning and sufficient funding to enable sentences to be completed successfully and for the system as a whole to function humanely and effectively.

Additional resourcing is required in a number of areas, such as:

- enhancing legal aid services to help offenders understand and move through the court system;
- supporting court services such as the Courts Integrated Services Program that aims to link offenders with the support services they need to help them desist from offending;
- supporting sentencing magistrates and judges who are dealing with more people in the courts as more police are recruited;
- improving Community Correctional Services, with access to treatment and support services for offenders and exiting prisoners in order to maximise the chances of desistance, with a particular focus on increasing the expertise and retention of those staff who work in the community with offenders; and
- supporting non-government organisations such as VACRO and Brosnan Services that work with offenders and former prisoners to help them complete orders and reintegrate into the community.

Recommendation 4: Increase accountability and transparency

Ensure accessibility of timely, independent and reliable data from police, courts and corrections to enable monitoring of the impact of changes to the criminal justice system.

This could include:

- prison capacity versus prisoner numbers;
- assaults in prison;
- availability of, and participation in, treatment programs in prison and in the community;
- treatment program completion rates; and
- measures of return to prison.

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12. Appendix A – List of organisations consulted

Table A1: Organisations consulted

Note that these stakeholders were consulted on the basis of their individual experiences and perspectives, rather than as representatives of their organisations. The views expressed herein therefore represent only the views of the individuals themselves.

Organisation	Date of consultation
Jesuit Social Services	19 August 2013
Crime Victims Support Association	25 August 2013
Sentencing Advisory Council	30 August 2013
South East Centres Against Sexual Assault	30 August 2013
YouthLaw	6 September 2013
Federation of Community Legal Centres	9 September 2013
Law Institute of Victoria	9 September 2013
Victorian Association for the Care and Resettlement of Offenders	24 September 2013
Victoria Police Prosecutors	24 September 2013
Human Rights Law Centre	2 October 2013
The First Step Legal Service	7 October 2013
Magistrates' Court of Victoria	16 October 2013
Office of Public Prosecutions	16 October 2013
Community and Public Sector Union	25 October 2013
County Court of Victoria	29 October 2013
Brosnan Services	11 November 2013
Victorian Aboriginal Legal Service	11 November 2013

13. Appendix B – Steering Committee members

Table B1: Steering Committee members

Individual	Organisation
Denis Fitzgerald (Chair) dfitzgerald@css.org.au , tel 0418 136 372	Executive Director, Catholic Social Services Victoria
Helen Burt	Senior Policy Officer, Catholic Social Services Victoria
Vin Martin	Policy and Advocacy Committee, Catholic Social Services Victoria
Julie Boffa	Policy Manager, Jesuit Social Services
Daniel Clements	General Manager, Brosnan Services, Jesuit Social Services

14. Appendix C – Data

Table C1: Prison population in each Australian jurisdiction, 2002 to 2013 (Figure 2 and Figure 3)

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUST
2002	8,759	3,540	4,721	1,461	2,800	427	667	240	22,492
2003	8,881	3,763	5,243	1,455	2,899	453	729	249	23,555
2004	9,329	3,624	5,240	1,485	3,169	447	717	278	24,171
2005	9,819	3,692	5,354	1,473	3,482	551	820	275	25,353
2006	9,822	3,905	5,562	1,567	3,526	512	792	218	25,790
2007	10,285	4,183	5,567	1,771	3,847	528	906	237	27,224
2008	10,510	4,223	5,544	1,942	3,766	515	953	250	27,615
2009	11,127	4,350	5,667	1,960	4,419	535	1,056	203	29,317
2010	10,947	4,537	5,615	1,963	4,772	489	1,097	280	29,700
2011	10,040	4,737	5,574	2,026	4,648	509	1,270	302	29,106
2012	9,645	4,884	5,593	2,077	4,964	494	1,411	313	29,381
June quarter 2013	9,996	5,323	6,054	2,267	4,957	482	1,452	285	30,816

Source: Australian Bureau of Statistics (2013) *Prisoners in Australia*; Australian Bureau of Statistics (2013) *Corrective Services Australia, June Quarter*

Table C2: Number and proportion of orders imposed, higher courts, 2001-02 to 2010-11 (Figure 7)

	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Imprisonment	795	854	957	815	881	959	997	938	1,025	1,063
Intensive correction order	52	38	77	49	49	67	62	36	28	26
Wholly and partially suspended sentence	469	553	698	711	625	572	651	624	550	562
Community-based order	173	211	221	213	180	209	212	124	92	128
Fine	38	51	67	66	85	92	91	82	50	44
Other	232	190	195	206	201	198	186	154	170	183
Total	1759	1897	2215	2060	2021	2097	2199	1958	1915	2006
	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Imprisonment	45.2%	45.0%	43.2%	39.6%	43.6%	45.7%	45.3%	47.9%	53.5%	53.0%
Intensive correction order	3.0%	2.0%	3.5%	2.4%	2.4%	3.2%	2.8%	1.8%	1.5%	1.3%
Wholly and partially suspended sentence	26.7%	29.2%	31.5%	34.5%	30.9%	27.3%	29.6%	31.9%	28.7%	28.0%
Community-based order	9.8%	11.1%	10.0%	10.3%	8.9%	10.0%	9.6%	6.3%	4.8%	6.4%
Fine	2.2%	2.7%	3.0%	3.2%	4.2%	4.4%	4.1%	4.2%	2.6%	2.2%
Other	13.2%	10.0%	8.8%	10.0%	9.9%	9.4%	8.5%	7.9%	8.9%	9.1%

Source: Sentencing Advisory Council website at www.sentencingcouncil.vic.gov.au.

Table C3: Number and proportion of orders imposed, Magistrates' Court, 2004-05 to 2011-12 (Figure 10)

	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Imprisonment	3,577	3,636	3,551	3,410	3,559	4,017	3,418	3,643
Drug treatment order	84	43	43	47	47	44	40	40
Intensive correction order	1,244	1,276	1,509	1,535	1,561	1,751	1,604	653
Wholly and partially suspended sentence	5,850	5,540	5,459	6,151	7,138	7,659	6,854	5,415
Youth training centre/youth residential centre	220	188	144	131	119	168	131	155
Community-based order/community correction order	4,782	4,620	4,293	4,244	4,805	4,926	4,652	5,550
Fine	42,235	41,472	42,322	48,815	46,680	45,753	42,085	46,633
Adjourned undertaking	7,350	7,062	6,771	7,951	9,141	9,694	9,532	9,763
Criminal justice diversion plan	5,888	5,780	5,147	5,444	5,306	5,096	4,654	4,388
Discharge/dismissal	1,004	849	1,837	2,288	3,261	2,483	3,601	4,220
Commonwealth orders	673	574	527	539	801	773	528	424
Other orders	38	43	53	64	34	35	27	16
Total number of people sentenced	72,945	71,083	71,656	80,619	82,452	82,399	77,126	80,900

	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Imprisonment	4.9%	5.1%	5.0%	4.2%	4.3%	4.9%	4.4%	4.5%
Drug treatment order	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%
Intensive correction order	1.7%	1.8%	2.1%	1.9%	1.9%	2.1%	2.1%	0.8%
Wholly and partially suspended sentence	8.0%	7.8%	7.6%	7.6%	8.7%	9.3%	8.9%	6.7%
Youth training centre/youth residential centre	0.3%	0.3%	0.2%	0.2%	0.1%	0.2%	0.2%	0.2%
Community-based order/community correction order	6.6%	6.5%	6.0%	5.3%	5.8%	6.0%	6.0%	6.9%
Fine	57.9%	58.3%	59.1%	60.6%	56.6%	55.5%	54.6%	57.6%
Adjourned undertaking	10.1%	9.9%	9.4%	9.9%	11.1%	11.8%	12.4%	12.1%
Criminal justice diversion plan	8.1%	8.1%	7.2%	6.8%	6.4%	6.2%	6.0%	5.4%
Discharge/dismissal	1.4%	1.2%	2.6%	2.8%	4.0%	3.0%	4.7%	5.2%
Commonwealth orders	0.9%	0.8%	0.7%	0.7%	1.0%	0.9%	0.7%	0.5%
Other orders	0.1%	0.1%	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%

Source: Sentencing Advisory Council website at www.sentencingcouncil.vic.gov.au.