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MAKING COMMUNITY CORRECTIONS WORK

Andrew Bushnell, Research Fellow

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About the author

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Executive summary

Findings

This paper draws on data from the Australian Bureau of Statistics, the Productivity Commission, and a range of studies conducted into the effectiveness of community corrections. It finds that:

- Community corrections is growing rapidly. The national community corrections population has grown by 18.6 percent in the last two years, and 30.2 percent since 2007. (Figure 1, Table 2)
- The community corrections rate rose from 329 per 100,000 adults in September 2007 to 361 per 100,000 adults in September 2017. (Figure 3)
- The fastest growth has been seen in the use of parole orders post-incarceration, suggesting that community corrections is operating in combination with incarceration and not always as a replacement for prison time. (Table 2)
- Over the past ten years, the proportion of the community corrections population whose most serious offence was an act intended to cause injury has risen. In 2016-17, more than 42,000 offenders whose most serious offence was a violent offence were given a principal sentence in community corrections. (Figures 4 and 5)
- Across the country, courts are increasingly using community corrections as the principal punishment for violent offenders. This growth, however, has mostly come from community corrections replacing monetary orders. (Figure 6)
- In 2016-17, nationwide spending on community corrections was \$589 million. This was less than \$22 per offender per day, about 10 percent of the cost of prison. (Section 4-1)
- There is emerging evidence that community corrections is more effective than prison in reducing reoffending, even where all relevant aspects of the different populations are controlled for. (Section 4-2)
- Completion rates vary from jurisdiction to jurisdiction with no clear correlation to per offender spending or the ratio of staff numbers to offender numbers. (Figures 11 and 12)
- Nationally, offenders only served about half the community service hours to which they were sentenced, indicating an under-supply of community service work opportunities. (Table 4)

Recommendations

Based on the above findings, this paper proposes the following reforms to strengthen community corrections as a viable alternative to prison for nonviolent offenders, as part of a broader reform effort to rationalise criminal justice spending towards maximising community safety:

1. Businesses should be permitted to bid for offender labour.
2. Corrections departments should provide offender workers to suitable businesses on a labour hire model. Participant offenders should be able to keep their earnings subject to program costs, victims' compensation, and fine payments.
3. The maximum number of hours of community service to which offenders can be sentenced should be increased.
4. Access to community service work should be enabled by expanding the use of residential facilities for offenders.

Introduction: the value of work in correcting criminal behaviour

Over the past decade, community corrections has grown quickly, with many more Australians being punished in the community, and at a higher rate. A greater proportion of offenders are now given community-based punishments as their principal sentence. It is therefore a priority for criminal justice that community corrections be as effective as possible in reducing reoffending.

The central contention of this paper is that work should play a larger role in how we punish offenders in the community. Research shows that unemployment is one of the main drivers of reoffending. However, while the majority of those serving community-based sentences are required to participate in community service, their activities do not always prepare them for productive society once their sentences are finished. Community corrections should endeavour to replicate the experience of having a job. This means skills acquisition. More controversially, it also means some form of payment.

Programs like the Northern Territory's 'Sentenced to a Job' have shown the potential gains from involving prisoners in work release programs. The principles underpinning work release can and should inform community-based punishments. Furthermore, many community-based offenders are serving post-release orders, and access to employment should, where possible, be a key part of reintegration into society.

Work should play a larger role in how we punish offenders in the community.

The system proposed in this paper would allow businesses to bid for offenders to come and work for them, in the same way that community organisations already do. Businesses could offer a flat rate to corrections departments based on their assessment of the value of the labour. Corrections would then pay offenders either the market rate, as determined by the bids, or the minimum wage, with any difference to be carried by the departments. The pool of offenders in the community would be run as a pool of labour, analogous to a labour hire firm.

Paying offenders for their labour is not a radical idea. Offenders already work in the community, impecunious offenders are already allowed to work off fines they cannot pay, and prisoners in prison industries and work release programs are paid the minimum wage.

While many people will understandably blanch at the idea that offenders could be rewarded for their work, there are many potential benefits to be gained from expanding access to paid employment for community-based offenders. At the moment, offenders in community service only serve about half of the hours to which they are sentenced, often for lack of suitable work. Allowing bids from businesses will expand the hours of work available to corrections departments overseeing community-based offenders. Businesses will also be more likely to supply more complex work that provides real skills acquisition opportunities. And offenders' behaviour is more likely to be corrected when they can see gains from following the rules of their orders. People with

jobs have less to gain and more to lose from criminality, and employment is the best way to instil the discipline that independent, law-abiding life requires.

Of course, work orders will not be appropriate for violent and dangerous criminals, and indeed may not be appropriate for some nonviolent offenders. Those whose offending merits only a short-term order may not benefit from programs that require significant training, and some offenders' records of misbehaviour in institutional settings may make them nonviable candidates. Furthermore, statistics show that there are likely a number of people being sentenced to community-based punishments when their behaviour truly merits incarceration. To ensure the viability of community-based corrections, criminals we are afraid of should go to prison, with only those we are merely "mad at" being given access to alternative punishments.

Nonetheless, with Australia's prison population rising and government and judiciaries turning more and more to community-based alternatives, even a small increase in the number of offenders who are given access to rewarding work and its benefits will be worthwhile.

Since it began in early-2016, the Institute of Public Affairs Criminal Justice Project has developed a framework for reforming Australia's underperforming criminal justice system in line with the traditional values of fair punishment, personal responsibility, and fiscal discipline. Above all else, it is our contention that rationalising the system towards these goals will improve community safety by reducing crime and reoffending.

This framework rests on one fundamental premise: that there are alternatives to prison that can be safely used to punish non-violent, non-recidivist offenders, reducing their likelihood of reoffending while also enabling states to avoid the high costs of incarceration. Community service is uniquely placed to deliver both retribution and rehabilitation to offenders, a combination that will only be strengthened by expanding the opportunities available to community-based offenders. Community service is not a cure-all for the criminal justice system, but its use will continue to grow, and, with proper reform, it is a promising means towards a more effective and efficient system of punishment.

The purpose of the criminal justice system is to correct people's behaviour. This is a normative exercise: it posits that some behaviours, and the values that motivate them, are better than others. When people commit crimes, they open themselves up to the coercion of the state. One of the values that we should impart to them is the importance of personal responsibility, and the realisation that reward follows effort. In short, we should instil in them an appreciation for the dignity of work.

People with jobs have less to gain and more to lose from criminality, and employment is the best way to instil the discipline that independent, law-abiding life requires.

1 What is community corrections?

KEY POINTS:

- » Community corrections typically involves a combination of community service, rehabilitation programs, fines, home detention, and movement and association restrictions.
- » Community service is defined as unpaid labour and usually involves menial tasks like graffiti removal and tending to public spaces.
- » Common rehabilitation programs include drug and alcohol counselling and violence reduction programs.

Community corrections is the system by which crimes deemed insufficiently serious to merit incarceration are punished in community settings. The goal of community corrections is to fill in the spectrum of punishment between incarceration and release into the community.

While each Australian jurisdiction varies from the others, there are many commonalities in how the states and territories punish offenders in the community, as summarised in Table 1 below.

Table 1: Community-based punishments by jurisdiction 2016-17

	NSW	VIC	Qld	WA	SA	TAS	ACT	NT
Supervised bail	✓	◆	◆	✓	✓	✓	✓	✓
Conditionally deferred or suspended conviction/sentence	✓	◆	◆	✓	◆	✓	◆	◆
Fine option/conversion order	✓	✓	✓	✓	✓	✓	◆	✓
Community service order	✓	✓	✓	✓	✓	✓	✓	✓
Probation, Community based order, Supervised good behaviour bond	✓	✓	✓	✓	✓	✓	✓	✓
Supervised suspended sentence	✓	◆	◆	✓	✓	✓	◆	✓
Intensive corrections/intensive supervision order	✓	◆	✓	✓	◆	◆	✓	◆
Home detention order	✓	◆	◆	◆	✓	◆	◆	✓
Post-prison order e.g. parole, release on licence	✓	✓	✓	✓	✓	✓	✓	✓
Post-sentence supervision order	✓	✓	✓	✓	◆	◆	◆	✓

Source: Productivity Commission, *Report on Government Services 2018*, Table 8A.21

Community-based punishments typically include community service (defined as unpaid labour), home detention, fines, and movement and association restrictions. These punishments can be combined into one order, for example an Intensive Corrections Order (NSW) or Community Corrections Order (Victoria). Offenders can be sentenced to serve community-based punishments as their main punishment or in combination with a term of incarceration. When in the community, offenders typically have to undertake at least one of community service, mandatory treatment programs, or supervision.

Community service typically involves menial labour such as graffiti removal and tending to public spaces like parks, cemeteries, and roads. Workers are supervised by the organisations that organise the work. Work is usually in teams but can also be in small groups or on an individual basis. Work opportunities are provided by corrections departments and by community organisations. Charities and other community groups are able to bid for access to offender workers. In Victoria, for example, potential participants in this program are advised that they only need to supply “tools, safety equipment and materials needed by the offenders”.¹

Common mandatory treatment programs include drug and alcohol rehabilitation and aggression and violence programs. Figures from the NSW Department of Justice show that in that state, addiction treatment and aggression and violence programs are the most common programs for community-based offenders.²

1 Department of Justice - Corrections Victoria (2012), “Working with Community Correctional Services”

2 NSW Department of Justice (2016), “Fact sheet 6: Offender programs”

2 The growth of community corrections

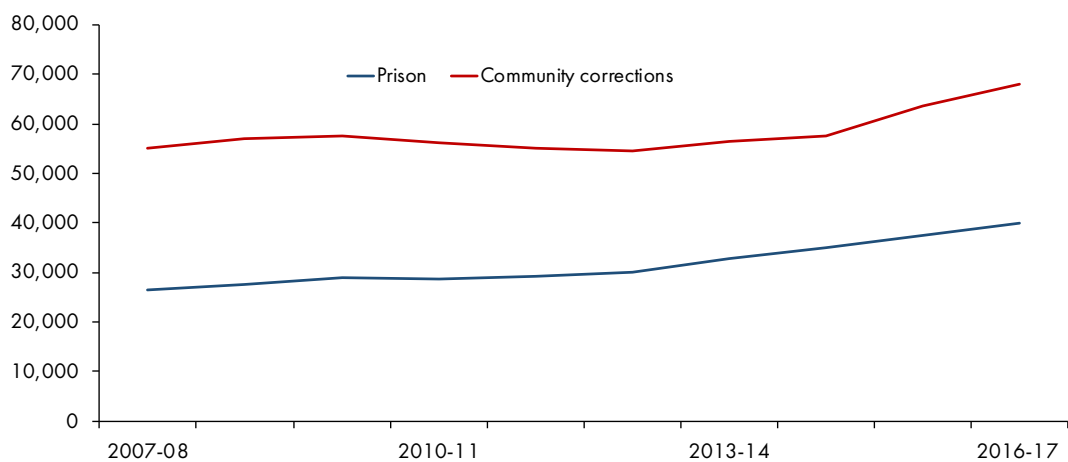
KEY POINTS:

- » The community corrections population has grown by 18.6 percent in the past two years.
- » This growth has been most rapid amongst those offenders serving their entire sentences in community corrections, but there has also been strong growth in the population with combined community corrections and prison sentences.

As described in the IPA's report, *The use of prisons in Australia*, Australia has a large and rapidly-growing prison population. However, there are more than twice as many people in community corrections as in prison.

The community corrections population has grown rapidly in the last several years, albeit not as quickly as the prison population. As Figure 1 shows, in recent years the community corrections population has begun to increase again, after a long period without growth.

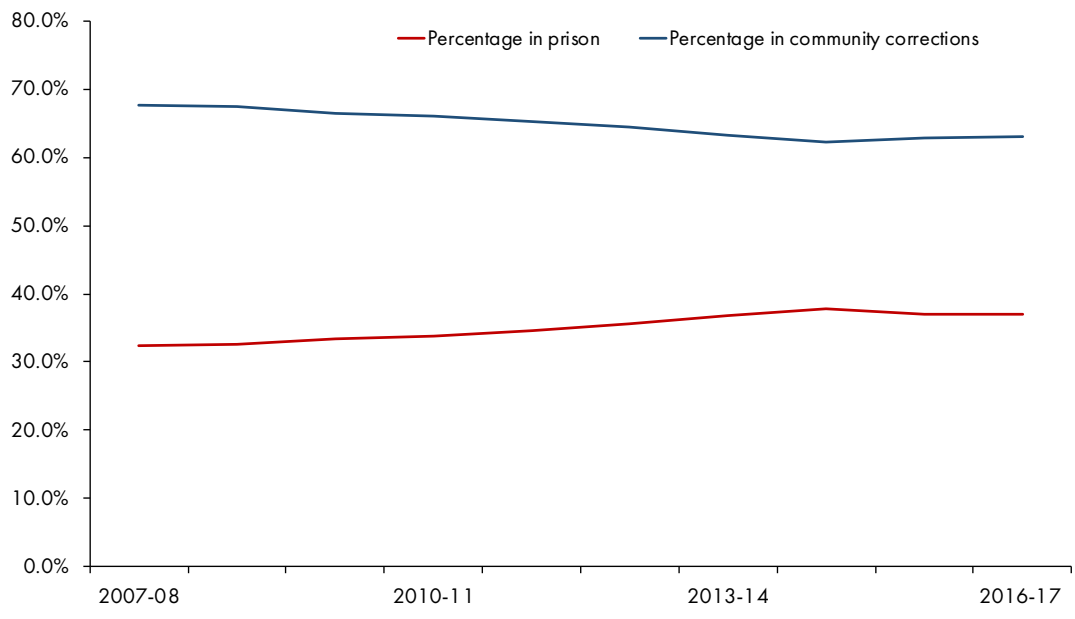
Figure 1: Growth of Australia's corrections population 2007-2017



Source: Productivity Commission, *Report on Government Services 2018*, Tables 8A.4 and 8A.8

The community corrections population only increased by 4.3 percent between 2007-08 and 2014-15. Since then, it has increased by 18.6 percent. Overall, between 2007-08 and 2016-17, the community corrections population grew by 23.7 percent, compared to 51.4 percent growth in the prison population. These different growth rates have resulted in the share of offenders in community corrections falling by more than four percentage points, as shown in Figure 2.

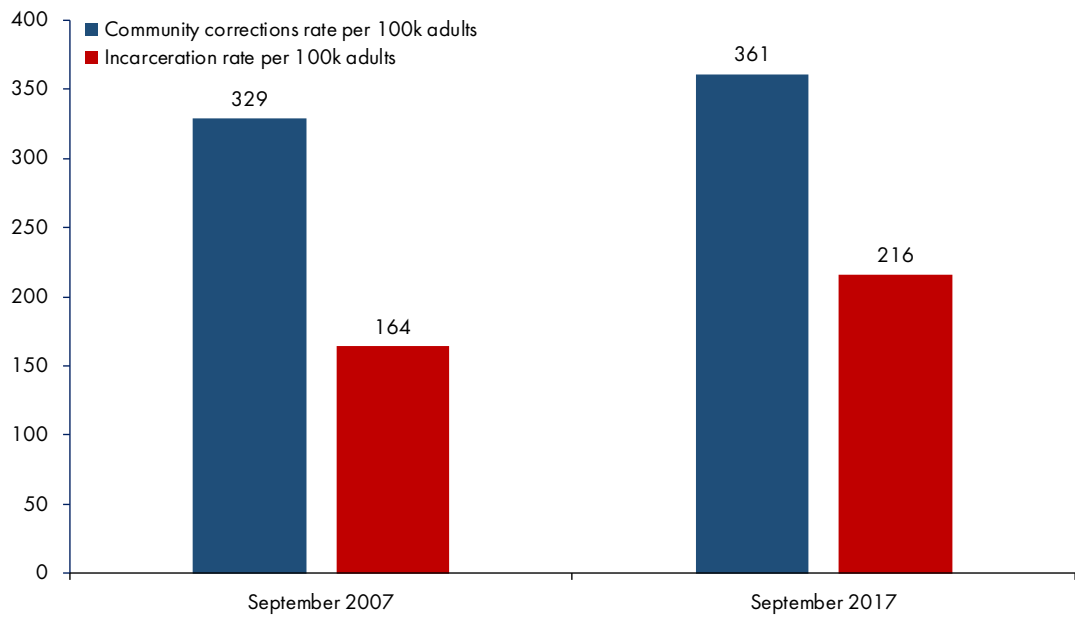
Figure 2: Share of offenders in prison and community corrections



Source: Productivity Commission, *Report on Government Services 2018*, Tables 8A.4 and 8A.8

We see a similar pattern in the community corrections rate (the number of people per 100,000 adults who are in community corrections). Between September 2007 and September 2017, the community corrections rate increased by 9.7 percent while the incarceration rate increased by 31.7 percent (from a lower base).

Figure 3: Incarceration and community corrections rates per 100,000 adults 2007 vs 2017



Source: Australian Bureau of Statistics, *Corrective Services September 2007 and September 2017*

What these figures suggest is that in recent years as more people have been convicted of crimes and sentenced to punishment, courts (and governments) have increasingly preferred to use prison as a punishment. However, this picture grows more complicated when we look at the offences for which the different punishments are imposed (Section 3, below).

Another complicating factor is that much of the growth in community corrections has been in the population serving post-incarceration parole orders. As Table 2 shows, the number of people serving community-based orders on parole has increased 47.6 percent in the last ten years. So as the overall share of the corrections population who are based in the community has increased, this has not meant fewer offenders going to prison, and may mean that violent or recidivist criminals are serving greater proportions of their sentences in the community (albeit under supervision).³

Table 2: Rates of change in community corrections population by type of order

	September 2007	September 2017	Change
Total in community corrections	52916	68878	30.2%
Parole orders post incarceration	10277	15171	47.6%
Sentenced probation	32623	41402	26.9%
Community service orders	10045	11001	9.5%

Source: Australian Bureau of Statistics, *Corrective Services Australia* September 2007 and September 2017

An analysis of the operation of Community Correction Orders (CCOs) in Victoria since their introduction reflected this trend. The report by the Sentencing Advisory Council found that in the four years to 2015, courts increasingly combined CCOs with imprisonment, with such orders in Magistrates Courts rising from 386 in 2012 to 2,028 in 2015, and in higher courts from 29 to 356. However, the report also found that this was in part combined with judges imposing shorter sentences, because a CCO cannot be combined with a prison term of greater than two years.⁴ That is, as community corrections becomes more frequently used in combination with prison, this relationship is not purely additive, because the term in community corrections might displace some part of the otherwise expected term of incarceration.

Nonetheless, as Table 2 shows, the largest group in the national community corrections population are those who are serving the entirety of their sentences in the community, on sentenced probation. And this population has also seen quite rapid growth. The differences in growth between combination orders and entirely community-based orders may be due to underlying offending patterns, with community corrections deemed insufficiently punitive for more dangerous offences, and consequent political pressure. The next section analyses the use of community corrections in relation to different types of offending.

³ A 2017 report by the Victorian Auditor-General found that 27 percent (more than 3000 offenders) of offenders in community corrections were deemed to be at "high risk" of reoffending. Though of course, the risk of reoffending is not necessarily the risk of violent offending. James Hancock (2017), "Thousands of offenders on Community Corrections Orders at 'high risk of reoffending'" ABC News 8 February 2017

⁴ Sentencing Advisory Council (2016), *Community Correction Orders: third monitoring report* pp. 13; 38-9

3 Offender demographics

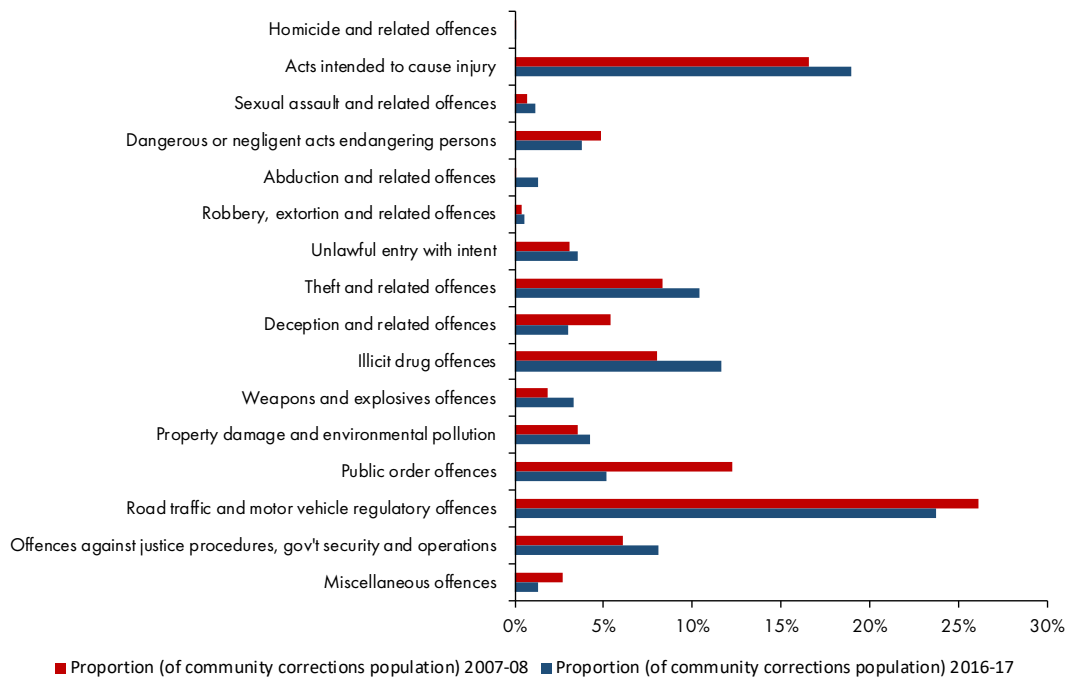
KEY POINTS:

- » There has been a rise in the number of violent offenders being sentenced to community corrections as their principal punishment.
- » Almost half of all those found guilty of a violent crime in Australia in 2016-17 were sentenced to community corrections.
- » Among nonviolent offenders, community service is increasingly being preferred to monetary orders.

Ideally, prison would be used for isolating violent and recidivist offenders whose conduct has indicated that they are a threat to the community. Non-prison sentences would be applied to nonviolent offenders, who pose less risk to community safety and whose crimes merit less severe punishment. One of the goals of criminal justice reform is to rationalise the punishment of criminals along these lines.

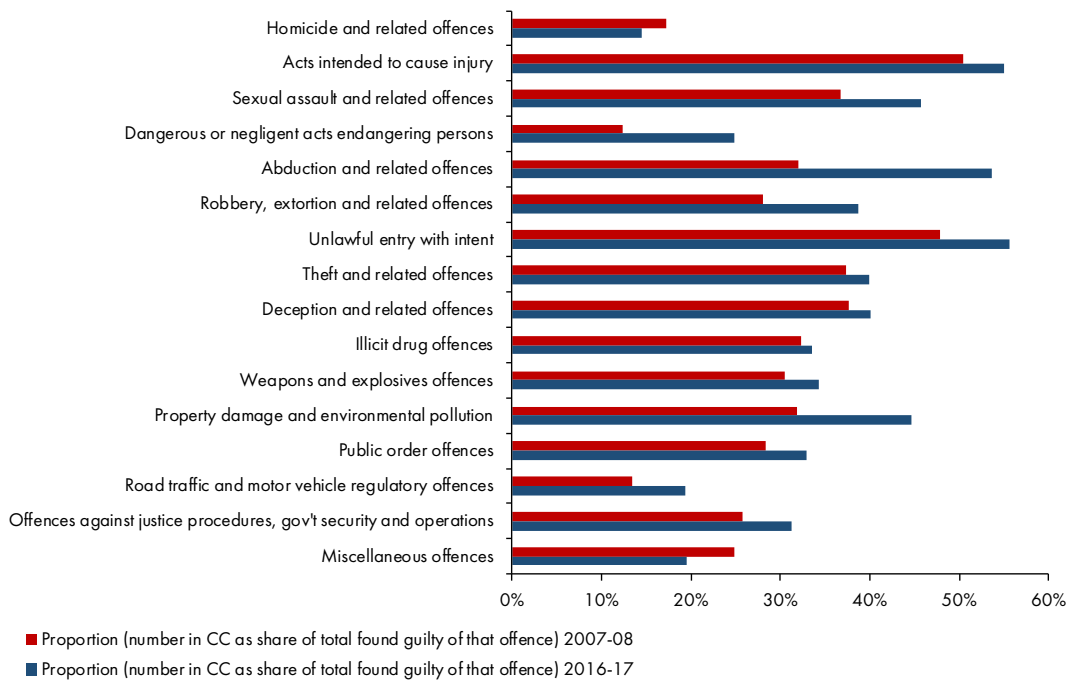
However, in recent years the share of those given principal non-prison punishments (excluding monetary orders) has risen. Moreover, in some key categories of violent offending, a greater share of those found guilty are being sentenced to community-based punishments. This is illustrated in Figures 4 and 5.

Figure 4: Proportion of community corrections population by most serious offence, 2007-08 vs 2016-17



Source: Australian Bureau of Statistics, *Criminal Courts Australia 2007-08* Table 7

Figure 5: Proportion of those found guilty of a class of offence receiving a principal sentence in community corrections, 2007-08 vs 2016-17



Source: Australian Bureau of Statistics, *Criminal Courts Australia 2016-17* Table 10

Figure 4 shows that among the community corrections population, the share of offenders whose most serious offence was an act intended to cause injury (the category that includes assault) has increased from 16.6 percent to 19 percent over the last decade. There have also been substantial increases in the number of convicted sexual offenders and abductors being punished in the community. Among the first six categories listed, which together constitute the nominal violent crime category, the overall share of the community corrections population has increased from 22.5 percent to 25.8 percent. This suggests that even as the prison population has increased, a number of violent criminals have not been sentenced to incarceration, as would be the intuition if community safety were the paramount concern. In raw numbers, the first six categories represented more than 42,000 offenders in 2016-17.

Even as the prison population has increased, a number of violent criminals have not been sentenced to incarceration, as would be the intuition if community safety were the paramount concern.

Figure 5 reinforces this impression. Among all those convicted of acts intended to cause injury, in 2007-08, 50.5 percent were sentenced to community corrections. This rose to 55.1 percent in 2016-17. In all nominally violent crime categories, the proportion of convicted offenders being sentenced to community corrections rose. Overall, the share of convicted violent criminals being sentenced to punishments other than prison or fines rose from 29.9 percent to 45.9 percent. Which is to say, almost half of all those found guilty of a violent crime in Australia in 2016-17 were sentenced to community corrections.

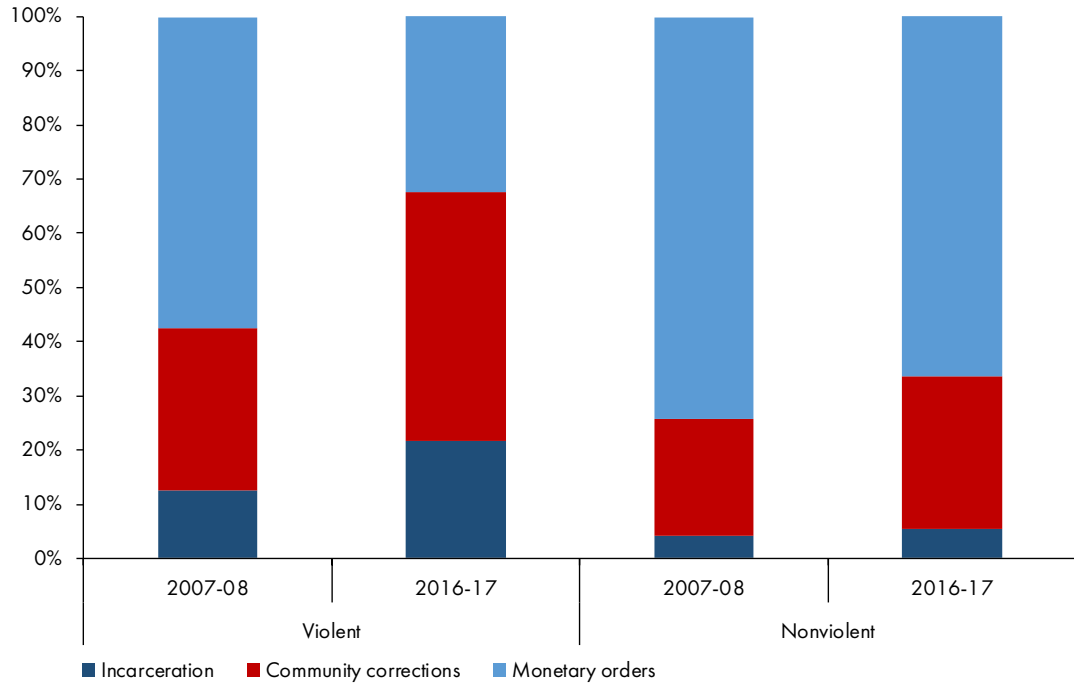
Among nonviolent offenders, community service is increasingly being preferred to monetary orders as the principal punishment.

It should be noted, however, that the proportion of those found guilty of violent crimes being sentenced to prison also rose, from 12.7 percent to 21.8 percent. This is a result of a large reduction in the number of violent crimes being punished principally with monetary orders. This reduction was greatest in the category 'dangerous or negligent acts endangering persons', which saw a corresponding increase in the percentage of convicted offenders being sentenced to community service or prison. The toughening up of the punishments in this category accounts for much of the increase in the share of violent offenders being sentenced to prison. Additionally, this change might be the result of changes in how reporting jurisdictions count the most serious offence of an offender. In any event, it does not contradict the overall impression that community corrections is now being used more than in the past for the punishment of potentially violent criminals.

At the same time, among nonviolent offenders, community service is increasingly being preferred to monetary orders as the principal punishment. In 2007-08, the principal punishment of 74.1 percent of nonviolent offenders was a monetary order. This fell to 66.3 percent in 2016-17. Meanwhile, in 2007-08, community corrections was the principal punishment given to 21.7 percent of convicted nonviolent offenders. In 2016-17, this rose to 28.2 percent.

This information is summarised in Figure 6, which provides a simple breakdown of the share of convicted offenders in the violent and nonviolent categories by principal punishment.

Figure 6: Violent and nonviolent convicted offenders by principal punishment, 2007-08 vs 2016-17



Source: Australian Bureau of Statistics, *Criminal Courts Australia* 2007-08 Table 7 and 2016-17 Table 10

The low share of nonviolent offenders being sentenced to prison poses a challenge for reformers who want to restrain the growth of the prison population. While that share has grown (from 4.1 percent to 5.6 percent), reforms that merely address sentencing for nonviolent criminals are not likely to address the main driver of the growth of incarceration, which is the increased number of people being convicted of violent crimes. The key challenge for criminal justice reform is to lower the level of offending. The corrections system naturally plays a vital role in this task – after all, the purpose of corrections is, as the name suggests, correcting criminals’ behaviour so that they do not reoffend.

To this end, the following section examines some of the evidence for the effectiveness of community corrections in reducing reoffending.

4 The advantages of community corrections

Community corrections has two main advantages when compared to prison: it is considerably cheaper and there is some evidence to suggest that it is more effective in reducing reoffending, at least for some offenders.

4-1: Community corrections costs

KEY POINTS:

- » In 2016-17, national community corrections expenditure was \$589 million, compared to \$4.2 billion for prisons.
- » On a per offender per day basis, community corrections is only about 10 percent as costly as prison.
- » Community corrections spending has seen flat growth in most jurisdictions, and on average across the country.

Compared to prison, community corrections is cheap. As Table 3 shows, community corrections is on average only 10 percent as costly as prison, when operating expenditures (excluding capital costs) are used.

Table 3: Relative cost of prison and community corrections by state 2016-17 (2017 A\$)

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aus
Real net operating expenditure per prisoner	173	304	183	237	210	297	298	205	215
Real net operating expenditure per offender	21	29	12	39	17	14	33	47	22
Relative cost of community corrections to prison	12%	10%	7%	16%	8%	5%	11%	23%	10%

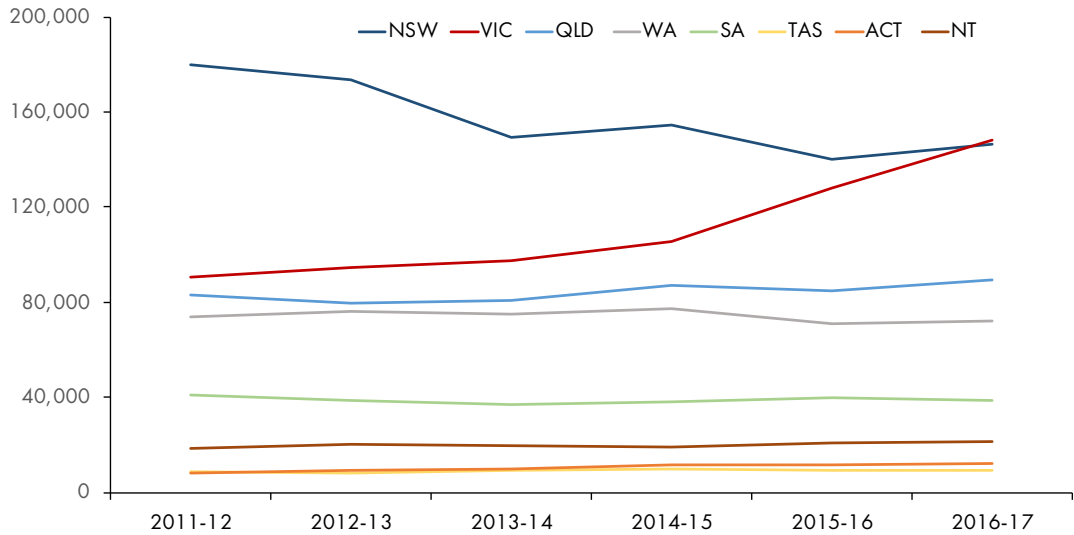
Source: Productivity Commission, *Report on Government Services 2018*, Table 8A.17

Even though the community corrections population is twice the size of the prison population, a much smaller share of criminal justice spending is dedicated to it. In 2016-17, the national total expenditure on prisons was \$4.2 billion, compared to just \$589 million on community corrections.⁵

⁵ Productivity Commission (2017), *Report on Government Services Table 8A.1*

Moreover, as the community corrections population has increased, spending has stagnated, leading to a fall in the amount being spent per offender, both nationally and across most jurisdictions (Figure 7). Over the past five years, the national average fell from \$25 per offender per day to less than \$22, with all of the mainland states seeing their averages fall (Figure 8).

Figure 7: Community corrections net operating expenditure by state 2011-12 to 2016-17 (\$'000)

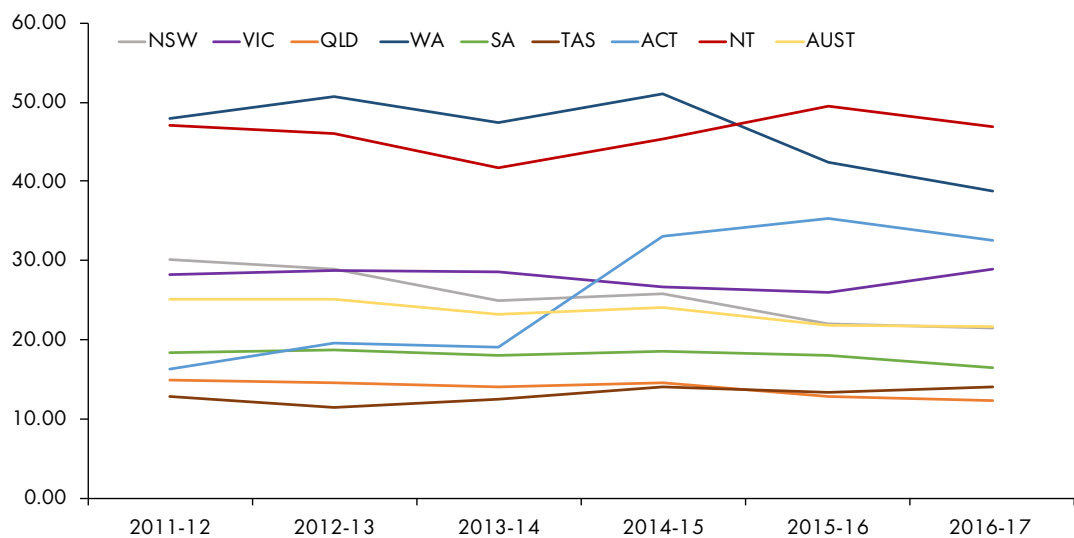


Source: Productivity Commission, *Report on Government Services 2018* Table 8A.2

Figure 7 shows that the stagnant growth of national community corrections spending is the result of a rise in community corrections spending in Victoria being offset by a fall in such spending in NSW, with the other states mostly seeing modest-to-no growth.

This has led the per offender per day cost to fall in many jurisdictions and nationally.

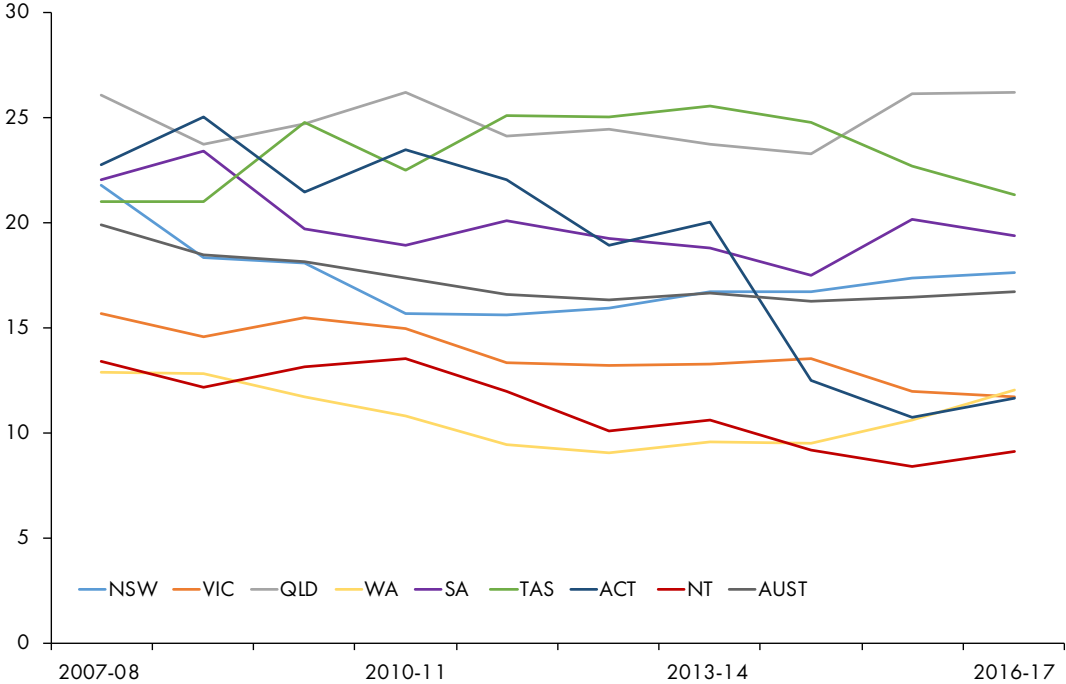
Figure 8: Real net operating expenditure per offender per day in community corrections 2011-12 to 2016-17



Source: Productivity Commission, *Report on Government Services 2018*, Table 8A.18

As expenditures have stayed steady and the number of offenders in community corrections has risen, the ratio of offenders to community corrections staff has risen in most jurisdictions. However, time series data for this measure are available back to 2007-08, and this reveals that despite the recent rises, figures for this ratio are mostly lower than they were ten years ago.

Figure 9: Community corrections staff-to-offender ratio by state 2007-08 to 2016-17



Source: Productivity Commission, *Report on Government Services 2018* Table 8A.7

Figure 9 suggests that even as spending on community corrections has remained steady, this has not significantly impacted staffing levels vis-à-vis the offender population. The implication is then that the hiring of new staff has displaced growth in other areas of the administration. As discussed in Section 4-2, it is unclear whether this has had any impact on the effectiveness of community corrections.

The lower cost of community corrections is one of its major advantages. This advantage is partially offset, however, when the expansion of community corrections comes in place of monetary orders, which are cheaper still, or in addition to (rather than in place of) prison sentences. Moreover, as earlier IPA research showed, prison sentences and the expected time an offender will serve in prison have both increased on average over the past 10 years.⁶ This suggests that the growth of community corrections should be seen in the context of increasing severity in sentencing across the country. Again, to maximise the benefit of community corrections, governments need to focus on placing the right offenders into the community, rationalising spending on incarceration towards the isolation of violent and recidivist criminals.

⁶ Andrew Bushnell and Daniel Wild (2016), *The use of prisons in Australia* pp. 45-50

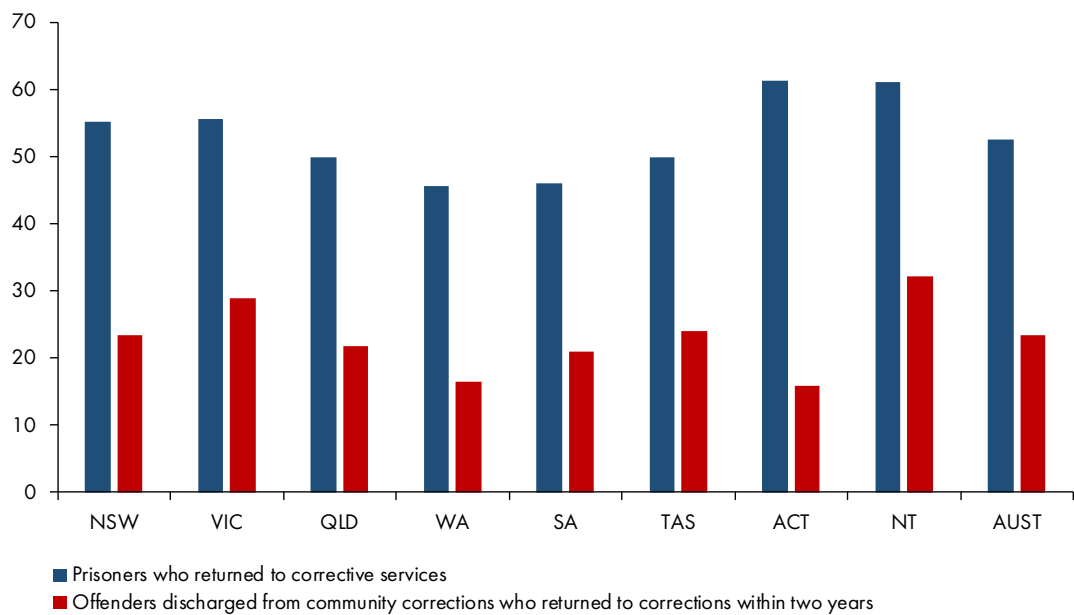
4-2: Community corrections and reoffending

KEY POINTS:

- » There is some evidence to suggest that community corrections is more effective than prison in reducing reoffending, even when relevant differences between the two populations are controlled for.
- » There is no correlation between expenditure, staffing levels, and completion rates, suggesting that community corrections does not require more funding.
- » With such a large gap between the costs of prisons and community corrections, there is scope for increasing the cost of community corrections where doing so displaces prison spending.

Along with its lower cost, community corrections may be more effective in reducing reoffending than prison. However, the question of whether community corrections achieves better results than prison is hard to measure and the relationship is not straightforward. A simple comparison, as in Figure 10, does not capture the effectiveness of the different punishments in a nuanced way. Nonetheless, the figures are worth noting for the sake of completeness.

Figure 10: Percentage of offenders released from prison or community corrections in 2013-14 who returned to the corrections system within two years



Source: Productivity Commission, Report on Government Services 2017, Tables C.4 and C.5

This figure shows clearly that released prisoners are far more likely to return to the corrections system than are offenders discharged from community corrections. The problem with a simple comparison like this, however, is that the populations being compared have been sorted (through sentencing) by the seriousness of their offending. The community corrections population is made up of criminals whose offending was less serious than that of the prison population. In this respect then, it is not surprising that released prisoners should return to corrections at a higher rate: they are often hardened criminals.

To compare the effect on reoffending of community corrections and prison therefore requires a more sophisticated statistical analysis that accounts for the differences between the two populations. Based on studies that have controlled for demographic differences, there is emerging evidence that community corrections can be more effective than short prison sentences in correcting offenders' behaviour.

4-2-1: Summary of reoffending studies

A 2017 study by the NSW Bureau of Crime Statistics and Research (BOCSAR) compared offenders who received Intensive Corrections Orders (ICOs) between 1 October 2010 and 30 September 2012 with those who, in the same period, received prison sentences of less than two years. The study tested for reoffending, defined as any proven offence committed after the end of the relevant period that lead to a finalised court appearance. It found that the ICO population was younger, more likely to come from major cities and less-disadvantaged areas, and less likely to have committed certain offences, such as justice procedure offences and indictable offences. Using two different models, the study concluded that those offenders who received ICOs were less likely to reoffend. The authors attributed this effect to the combination of supervision and rehabilitation offered by ICOs.⁷

Another important factor in the effectiveness of community corrections is access to community service work, for which there is some evidence of a correlation with reduced reoffending.⁸

An earlier BOCSAR study that performed a similar analysis of matched populations found that community service (imposed at the time as a separate order) was more effective in reducing reoffending than good behaviour bonds, suggesting a connection between work and corrected behaviour.⁹ Similarly, there is some evidence that community service orders get better results in terms of reoffending than incarceration. A literature review conducted by Monash University for Corrections Victoria examined evidence from overseas, with one study from Scotland finding that "offenders on community service consistently have lower reconviction rates than would be predicted by their criminal history, age, and other relevant characteristics".¹⁰ A Deakin University study of an employment assistance program that involved placing interested prisoners and offenders into paid work found that participants had low reoffending rates while in the program, consistent with the established correlation between unemployment and offending.¹¹

There is some evidence that community service orders get better results in terms of reoffending than incarceration.

7 Joanna JJ Wang and Suzanne Poynton (2017), "Intensive Corrections Orders versus short prison sentence: a comparison of reoffending" in *Contemporary Issues in Crime and Justice* No. 207

8 This claim should not be confused with claims about compulsory work components providing a barrier to access to community corrections. This point is addressed in Section 6 of this report.

9 Lucy Snowball and Lorana Bartels (2013), "Community Service Orders and Bonds: a comparison of reoffending" in *Contemporary Issues in Crime and Justice* No. 171

10 Shelley Turner and Chris Trotter (2013), *Best practice principles for the operation of community service schemes* p. 28

11 Joe Graffam, Alison Shinkfield, and Barbara Lavelle (2005), "Employment and recidivism outcomes of an employment assistance program for prisoners and offenders" in ACEA Conference 2005: proceedings

It should, however, be noted that an earlier 2008 American survey of different studies found evidence of a link between unpaid work (specifically) and reduced reoffending to be “sparse and dated”. That report did note though that offenders reported a positive effect from participation in unpaid work, including predicting that they were less likely to reoffend.¹² Finally, a 2014 analysis by the Victorian Sentencing Advisory Council found only a non-significant lower rate of reoffending by those given community work as part of their community-based orders, stating that there was “no clear relationship” between the two. That report also noted that one of the limitations of its analysis was that it was unable to discriminate between the types of offending of participants or the nature of the programs in which they participated.¹³

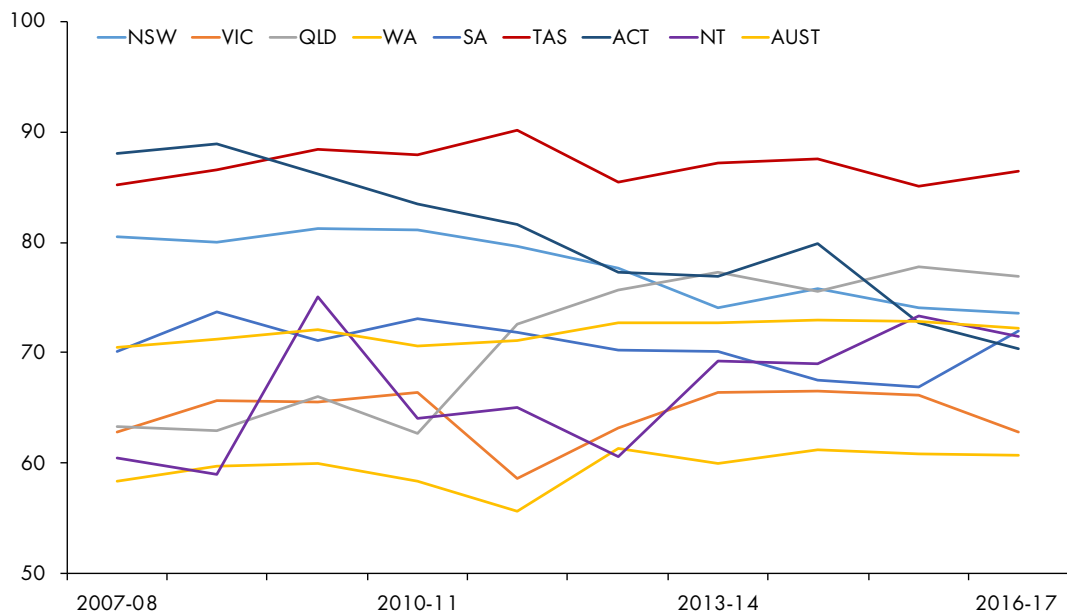
None of the above data mean that there are no other considerations to be taken into account in punishment. It is still reasonable to say that community safety in the immediate term trumps reoffending, and this means violent criminals should be imprisoned. But it does suggest that the growth of community corrections may contribute to a longer-term increase in community safety, as long as offenders are selected appropriately.

4-2-2: Other community corrections performance data

If we accept that there is at least some positive effect that community corrections might have on criminals who otherwise would have been imprisoned, the next question we need to consider is how well the programs are delivering that benefit.

One relevant consideration here is the rate at which offenders in community corrections complete the programs to which they have been sentenced. As Figure 11 shows, completion rates across the country have mostly been steady over the past 10 years, and vary quite substantially between jurisdictions.

Figure 11: Completion rates of all community corrections orders by state 2007-08 to 2016-17 (%)



Source: Productivity Commission, *Report on Government Services 2018* Table 8A.19

12 Robert Davis et al (2008), *A synthesis of literature on the effectiveness of community orders*, pp. 20-21

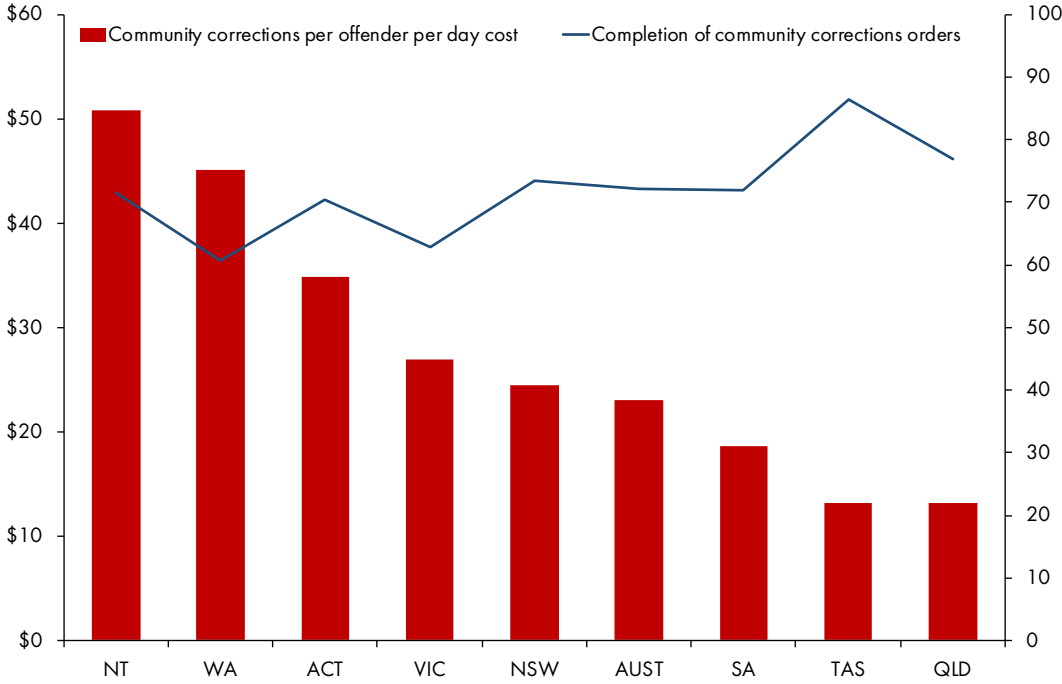
13 Sentencing Advisory Council (2014), *Exploring the relationship between Community-Based Order conditions* pp. 21-2

Completion rates have risen in Queensland and, in recent years, in the Northern Territory. In Victoria, Western Australia, South Australia, and Tasmania completion rates have been steady. In New South Wales and the Australian Capital Territory they have fallen.

Completion rates do not necessarily reflect the success of the programs. The rate may fall if supervision improves, such that breaches are more readily detected. Changes to policy may also mean that some breaches may now lead to termination of an offender’s community corrections order where previously they did not, or vice versa.

Perhaps in part for this reason, completion rates do not track community corrections spending or staff levels. There is no correlation between completion rates, staffing levels, and spending. This strongly suggests that the effectiveness or otherwise of community corrections in Australia is not being determined by resourcing. However, the large gap in cost between community corrections and prison does mean that there is significant scope for increasing community corrections costs if those costs displace prison spending.

Figure 12: Community corrections per offender per day cost versus order completion rate by state 2016-17

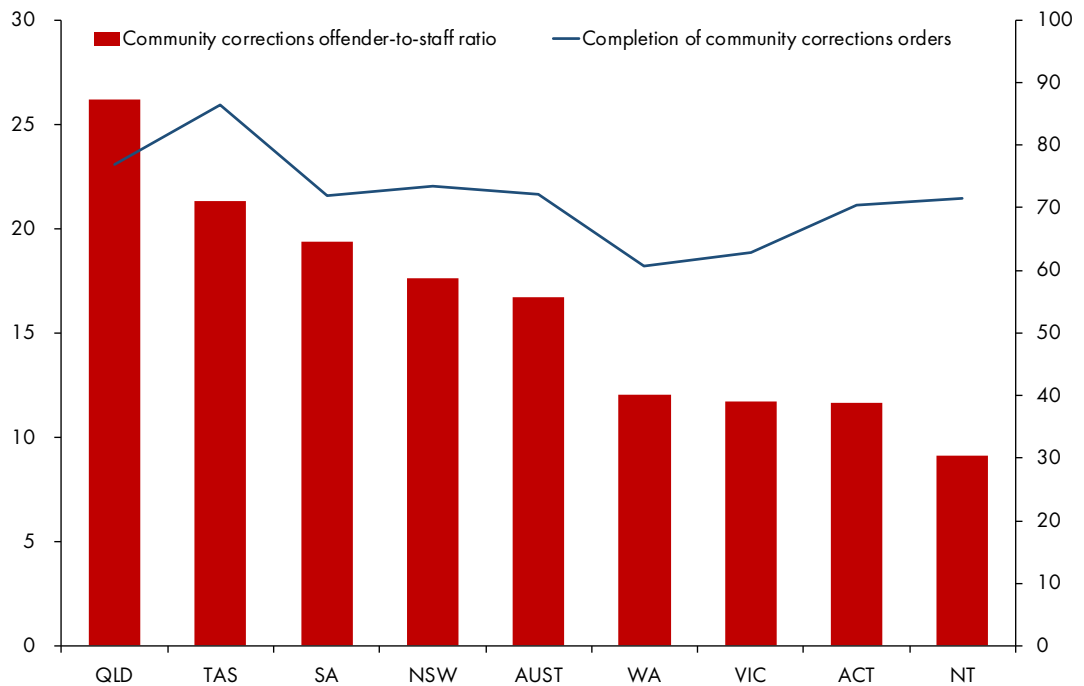


Source: Productivity Commission, *Report on Government Services 2018* Tables 8A.18 and 8A.19

Figure 12 shows that if there is a correlation between community corrections completion rates and spending, it actually runs the opposite way from what might be expected. The jurisdictions with lower per offender per day costs tend to have higher completion rates.

There is also no correlation between completion rates and staffing levels.

Figure 13: Community corrections offender-to-staff ratio versus completion rates by state 2016-17



Source: Productivity Commission, *Report on Government Services 2018* Tables 8A.7 and 8A.19

Figure 13 suggests that the number of offenders per staff member is a poor predictor for how likely an offender is to complete a community corrections order. This is worth noting, as it might be suspected that a higher ratio would mean that breaches are less likely to be detected or, conversely, that it is more difficult for offenders to complete their orders without more extensive support. However, it is possible that these two effects cancel each other out in the statistics.

5 What do offenders do when being punished in the community?

KEY POINTS:

- » Offenders only perform about half of the community service hours to which they are sentenced.
- » This is in part caused by a shortage of suitable work opportunities.
- » Unlike prisoners, offenders in the community do not have access to paid employment opportunities.

Community corrections is increasingly replacing both prison sentences and monetary orders. Community corrections is cheaper than incarceration and there is some evidence suggesting that it is more effective in correcting offenders' behaviour. However, these benefits depend on how community corrections is structured. In particular, community corrections is designed to achieve two purposes: the punishment of wrongs and the correction of wrongful behaviour.

For this reason, offenders in community corrections are usually involved in both rehabilitation programs and community service work.

For example, in NSW in 2015-16, 3,775 offenders in community corrections participated in rehabilitation programs, with most of them in programs for violence and addiction.¹⁴ The NSW Department of Justice also states that Community Service Orders supervise approximately 9,635 offenders. This compares to the average daily community corrections population in that state in that year being 17,450 – the total of everyone in community corrections regardless of order.¹⁵

In Victoria, of the 10,508 offenders who received CCOs in 2015, 74.3 percent included work orders, and 76.6 included an assessment or treatment order.¹⁶

Community service is widely regarded as a unique form of corrections, able to satisfy retributive and rehabilitative ends simultaneously.¹⁷ It achieves this by imposing a mix of the deprivation of liberty (through coerced participation), restoration of damage to the community (through participation in programs improving community amenity), and providing offenders an opportunity to learn skills and reintegrate into the community (by working with selected organisations).

The ability of community service programs to satisfy these aims is limited by the availability of suitable community work. Across Australia, offenders usually serve around half of the community sentence hours to which they have been sentenced.¹⁸

14 NSW Department of Justice (2016), "Fact Sheet 6: Offender programs"

15 NSW Department of Justice (2016), "Fact Sheet 3: Community Service Orders"

16 Sentencing Advisory Council (2016), *Community Corrections Orders: third monitoring report* p. 17

17 Turner and Trotter (2013), as above, p. 14

18 In most jurisdictions, community service sentences are between 40 and 240 hours, though in some jurisdictions the limit is 400 hours.

Table 4: Offender community work by jurisdiction 2015-16

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aus
Average hours ordered per offender	na	102	64	62	142	na	122	85	78
Average hours worked per offender	90	30	30	36	41	na	63	43	41

Source: Productivity Commission, *Report on Government Services 2017* Table 8A.13

What this says is that even though community service is recognised as a useful form of punishment, getting full value for the community from its use is constrained by its unreliable availability,¹⁹ and arguably, enforcement.²⁰ Offenders are not only avoiding the full measure of their punishments, they are missing out on the benefits of being engaged in work. As the Sentencing Advisory Council has written:

Unpaid community work often represents the first time that offenders have experienced structure, routine, and responsibility in their chaotic lives. It also allows offenders to develop skills that might otherwise be unattainable with potential relevance to future job opportunities.²¹

This would be equally true if we deleted the first word in that quote – “unpaid”. Prisoners have access to paid labour. New South Wales, for example, has a prison industries program that has annual revenue of more than \$100 million.²² In the Northern Territory there is an innovative work release program, *Sentenced to a Job*, in which prisoners are given the opportunity to work in commercial businesses in the community. Participants are able to work in, for example, a commercial bakery.

The goal is both to provide skills training and to normalise work in the lives of offenders.

Participant businesses are chosen based on a number of considerations, which include minimising the disruption caused to the economy. Selected industries have a need for additional labour. The program has enjoyed strong growth and good results: reoffending has been reduced for first-time offenders and offenders who have committed less than five offences; property offending may have been reduced because of access to legitimate earnings; offenders have earned hundreds of thousands of dollars towards their board and lodging and victims’ compensation; and both participants and staff have reported that the program is beneficial.²³

19 For example, in its 2013 review of sentencing, the NSW Law Reform Commission noted that the number of hours of community service per offender would have to be limited “due to the difficulties [Corrective Services NSW] sometimes experiences in arranging sufficient community service work”. New South Wales Law Reform Commission, *Report 139: Sentencing* p. 254

20 One possible contributor to the ratio of hours ordered to hours worked is compliance by offenders. However, a comparison of Table 4 with Figure 8 reveals no clear correlation between this ratio and completion rates by state.

21 Sentencing Advisory Council (2014), as above, p. 4

22 NSW Department of Justice (2016), “Fact Sheet 7: Corrective Service Industries”

23 Jo Wodak and Andrew Day (2017), *Sentenced to a job: A case study*

In both programs, offenders are paid the minimum wage. The goal is both to provide skills training and to normalise work in the lives of offenders. There is a growing body of work that associates employment with lower reoffending.²⁴

If the challenge of community corrections is a lack of supply of meaningful work, and the benefits of paid work for prisoners are well understood, then the conclusion we should draw is that limiting community corrections to unpaid work is counterproductive.

The final section of this report discusses this proposition.

24 Bushnell and Wild (2016), as above, p. 20

A recent study in United States showed that prisoners who were laced into work at the end of their sentences had lower reoffending rates.

Peter Cove and Lee Bowes (2015), "Immediate access to employment reduces recidivism" *realclearpolitics.com* 11 June 2015

A 2012 study from Indiana found that employment was the main predictor of reoffending, with employment stability also "decisive". John M. Nally et al, *The post-release employment and recidivism among different types of offenders with a different level of education: a 5-year follow-up study in Indiana* pp. 23-4

6 Making community corrections work

KEY POINTS:

- » Opening up community service programs to bids from businesses would increase the quantity and quality of work opportunities for offenders.
- » Paying offenders in community service for their labour is consistent with prison industries and work release programs, and with enabling fine-defaulters to work off their debts.
- » The maximum number of community service hours to which an offender can be sentenced may have to increase to take advantage of these opportunities.
- » This will also help to maintain a balance between the rehabilitative and retributive goals of community service.

Australia's rapidly rising rate of incarceration has rightly attracted the attention of governments and the judiciary. One response has been to increase the use of community corrections, in order to fill in the spectrum of punishment between incarceration and release into the community. Community corrections has two main advantages: first, it is much cheaper than incarceration; second, there is emerging evidence that community corrections is more effective than incarceration in reducing reoffending.

An important part of community corrections is community service. Forced participation in work serves as a punishment for offenders, enables them to give back to the communities they have harmed, and provides access to training and experience that can assist offenders to stay on the straight and narrow. Unemployment is correlated with offending, so part of correcting offenders' behaviour is instilling in them the discipline and skills required to hold down employment.

Unfortunately, the viability of community service as an alternative to prison (whether in place of a prison sentence or together with a shorter prison sentence) is threatened by an under-supply of meaningful work. Studies have shown that community service is more effective where offenders regard the work as meaningful. But community service work in Australia is usually made up of simple tasks like cleaning up public spaces, in contrast to prison-based programs that enable participation in industry and skills training. Moreover, offenders in community service complete only half of the hours to which they are sentenced.

Community service programs are operated by community organisations that bid for access to offender labour. To be selected, organisations have to show that they are able to supervise offenders in their charge. The work is explicitly required to be unpaid. For example, Corrections Victoria's *Guidelines for Community Work Partner Agencies* states that partner agencies are to:

...[E]nsure that, as community work offenders are performing unpaid community work, they are not given money or other material rewards for their services.²⁵

25 Department of Justice – Corrections Victoria (2013), *Guidelines for Community Work Partner Agencies: Community Correctional Service*

This free labour contributes tens of millions of dollars to the economy each year. In New South Wales, community service contributes \$10 million worth of free labour.²⁶ In Queensland, the figure is \$8.4 million.²⁷

It is clear the labour of offenders in community corrections has value. It is also clear that the capacity of this workforce is underused. And the underuse of this workforce undermines the retributive and rehabilitative advantages of community corrections. For these reasons, this report proposes the following reform.

Recommendation 1: Businesses should be permitted to bid for offender labour.

The following sections outline how this would work in practice, and discuss some of the advantages and disadvantages of this reform.

6-1: Offender labour in commercial enterprise: how it would work

Businesses would be able to bid, along with community groups, for offender labour. Unlike community groups, businesses would be expected to pay a flat rate to corrections departments, based on the expected value of the work to be done. This income could then be put towards the cost of the departments paying the offenders. Governments would have to set the wages of participant offenders based on political and legal considerations, like the minimum wage and labour law, from which participant businesses and offenders would likely have to be exempt. The model would be analogous to that of a labour hire firm: suitable offenders would constitute a pool of labour available at a price to suitable businesses. Offenders would keep their earnings, subject to government decisions about the contributions they need to make to program costs, victims' compensation, and fine payments.

Recommendation 2: Corrections departments should provide offender workers to suitable businesses on a labour hire model. Participant offenders should be able to keep their earnings subject to program costs, victims' compensation, and fine payments.

Commercial enterprises could be selected based on their ability and willingness to impart useful skills to offenders. However, even where the work is of a similar nature to existing programs, giving offenders a material reward for their work can operate as positive reinforcement.²⁸ Participant businesses could also be incentivised, with costs reduced for businesses that show results in reducing reoffending among their participant offenders. Some American states have performance incentives for agencies supervising offenders on probation and parole.²⁹

Another option would be for the state to run commercial industries to employ community-based offenders, similar to prison industries. This is an inferior policy option, however, as it would likely cost more, offer offenders less opportunity to integrate into the community, and be more distortive of the local economy.

26 Department of Justice (NSW) (2016), "Community Service Orders"

27 Department of Justice and Attorney-General (Queensland) (2016), Annual Report 2015-16 p. 57

28 Some of the benefits of work placement programs are outlined in Chapter 3 of Arthur Brooks' *The Conservative Heart*. Brooks discusses the success of reintegration programs focused on providing work, and the program providers' "entrepreneurial" view of offenders not as liabilities but as "under-utilized assets".
Arthur C. Brooks (2015), *The Conservative Heart*, pp. 81-105

29 Vera Institute of Justice (2013), *The potential of community corrections to improve communities and reduce incarceration* p. 28

6-2: Advantages of this reform

Opening up community service to bids from commercial enterprise would increase the supply of hours available for community work. This would go at least some of the way to ensuring that offenders in community corrections complete the number of hours to which they have been sentenced. That is, it would increase the retribution being meted out to offenders.

This reform would also potentially give offenders access to more meaningful work and skills training, both of which are correlated with reduced reoffending risk. The overall goal of the rehabilitative aspects of corrections is to change offenders' perceived incentives for committing crime.

6-3: Responses to possible problems

Community corrections sentences are too short to enable successful training

One of the differences between prisoners and offenders being involved in commercial enterprise is that prison sentences are longer and provide more time for appropriate offenders to be selected for work programs and more time for skills to be imparted to them. Community service orders usually only span from 40 to 240 hours in most jurisdictions, although this rises to 400 hours in Victoria. To mitigate this concern, and to reflect the increasing use of community corrections in place of prison, the maximum number of hours of community service to which offenders can be sentenced should be increased.

Recommendation 3: Increase the maximum number of hours of community service to which offenders can be sentenced.

Paid community service is insufficiently retributive

This change should also help to offset any concern that allowing community service to be in paid work will decrease its retributive impact.

That it is a softer punishment than prison is a frequent criticism aimed at community service. The key is to make sure that punishments are proportional, and this requires judges to operate according to community standards. It also requires that those in community service programs are supervised properly, with little tolerance for absences or misbehaviour.³⁰

A related concern is that allowing offenders to be paid for their work is of itself in derogation of the criminal justice system's commitment to punishing wrongdoing. At the margin, payment of offenders for their labour might be seen as a perverse incentive encouraging crime. This concern can be mitigated in practice by the selection process for access to paid programs. But in principle, it is probably a misunderstanding of how criminals think. Criminals are characterised by short-term thinking. It is unlikely that a criminal would plan to be caught in the hope of some distant payoff in the form of access to paid employment after sentencing.

³⁰ See for example the discussion of the United Kingdom's attempts to expand community corrections here: Andrew McFarlane (2010), "Can community sentences replace jail?" *BBC New Magazine* 16 August 2010
The reform proposed in this section could be combined with the adoption of swift and certain administrative sanctions for offenders in community service programs. See <http://www.swiftcertainfair.com/> and <https://scfcenter.org/> for examples.

Lastly on this point, across the country prisoners are given access to a range of paid work programs. And some jurisdictions allow impecunious offenders to work off their unpaid fines through community service at rates higher than the minimum wage. That is, there are clear precedents for paying offenders for their labour.

The reform would increase the cost of community corrections

The combination of longer hours and potential subsidies for offenders would undoubtedly increase the per offender per day cost of community corrections. This would diminish one of community corrections advantages, as discussed above. The overall per offender per day cost of community corrections would likely still be much lower than that of prison. And this increase would be offset at least in part by increasing the viability of community corrections as a replacement for prison.

The reform would reduce community organisations access to free labour

As noted, offender labour contributes tens of millions of dollars to the economy each year. A significant part of the work that offenders do is on behalf of community organisations that cannot afford paid labour nor find sufficient numbers of volunteers.

While some offender labour might be displaced from community work to commercial enterprises, there is currently a surfeit of offender labour based on hours served. Opening up community service to commercial enterprises would supplement rather than replace existing supply of work opportunities.

Barriers to accessing community corrections

One of the challenges of community corrections is providing offenders with equal access to community-based punishments. Offenders in rural areas, for example, already have less opportunity to participate in community service work, and those areas may not have commercial enterprises that can take on the responsibility of supervising offender labour.

This is one reason that it is important to focus on commercial viability. Reducing labour costs for employers allows them to take on more staff. For small businesses, this reduction can be decisive.

Previous IPA research has recommended that the use of intermediate residential facilities be expanded, so that offenders in rural areas or with unstable housing can access community-based programs.³¹ Such facilities could include co-located rehabilitation services. They would need to be located in major population centres for staffing reasons, but this would still be better for offenders from remote areas than being sentenced to prison.

31 Andrew Bushnell (2017), *Indigenous Australians and the criminal justice system*, p. 36

Recommendation 4: Enable access to community service work with the expansion of residential facilities.

As previously discussed, a 2017 BOCSAR study that found that ICOs were more effective in reducing reoffending than short prison sentences. The authors of that study further suggested that the mandatory work component of ICOs was a barrier to extending ICOs to some higher-risk populations that they argued would benefit from their use.³² This conclusion arguably does not follow from their other findings, however, since removing that requirement would change the nature of ICOs and therefore would require a different study comparing the efficacy of the changed program, rather than the existing program, to prison sentences. More importantly, this observation elevates rehabilitation above retribution. The expansion of community corrections cannot be solely motivated by a desire for better rehabilitation outcomes; it must also deliver proportionate punishments to wrongdoers.

³² Wang and Poynton (2017), as above, p. 10

Conclusion

Australia's community corrections population is growing rapidly. This growth has resulted from community corrections increasingly serving as an alternative to prison and as a replacement for monetary orders. And while community safety is best served by using prison for violent and recidivist criminals and community-based alternatives for nonviolent offenders, the growth of community corrections has not always followed this pattern.

The first step in reforming community corrections, then, is to rationalise the system in line with the demands of community safety. We need to distinguish between those offenders we are afraid of, and those we are merely mad at – and make sure that it is only the latter group who are in our communities.

The second step is to improve the viability of community corrections as an alternative to prison. It needs to be shown that it can deliver a proportionate punishment, hold offenders responsible for their wrongs, and deliver value for money to taxpayers.

Community corrections is less costly than prison, and there is some evidence that community corrections can reduce reoffending more effectively than can prison. It is incumbent upon reformers to make sure that these advantages are captured in a way that does not sacrifice the retributive element of corrections. It is submitted here that community service is the punishment best placed to achieve both the retributive and rehabilitative ends of criminal justice.

However, across Australia there is an under-supply of community service opportunities, and consequently offenders are not serving all of the hours to which they have been sentenced.

To rectify this problem, this report recommends that commercial enterprise be permitted to bid for offender labour. To take advantage of more meaningful and complex work opportunities, and to increase the retributive value of community corrections as an alternative to prison, jurisdictions should follow the lead of Victoria and increase the maximum number of hours of community service to which an offender can be sentenced. And to expand the range of offenders who can participate in community service work, the further development of intermediate housing arrangements for offenders is recommended.

The goal of the criminal justice system is to keep the community safe. It does this by isolating dangerous criminals and by correcting the behaviour of offenders, thereby reducing reoffending and crime. We know that work is the basic building block of a good life, and we know that its absence is a factor in a wide range of offending. As we look for safe, efficient alternatives to prison, we cannot ignore that employment is the best way for offenders to acquire the discipline and skills required in productive society. To make community corrections work, we should make community corrections work.

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