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Reducing adult reoffending

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by Lenny Roth

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Reducing adult reoffending

by

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SUMMARY

Repeat offenders are responsible for a large proportion of crime in NSW; and those returning to prison make up more than half of the prison population. It is clear therefore that reoffending imposes high social costs and makes up a large component of the costs associated with the criminal justice system. The focus of this paper is on adult reoffending. [1]

Rates of reoffending

Reconviction within 2 years: BOCSAR has published time series data on the proportion of adult offenders who are reconvicted of an offence within 24 months. The current series is for persons convicted of offences between 2000 and 2011. There has been a general downward trend, from a reconviction rate of 31.4 per cent for adults convicted in 2000 to a rate of 25.8 per cent for adults convicted in 2011. Reconviction rates are much higher for Indigenous adults (47.9 per cent) than non-Indigenous adults (27.3 per cent). [2.2]

Return to prison within 2 years: More than 45 per cent of offenders who were released from prison in 2011-12 returned to prison within two years; and more than 50 per cent returned to corrective services management within two years. While the rate of released prisoners who returned to prison within 2 years improved from 2000-01 to 2007-08, a sharp rise between 2010-11 and 2011-12 now sees it above the 2000-01 rate. The NSW rate of return to prison within 2 years is higher than all other jurisdictions except the Northern Territory. [2.3]

What factors are associated with reoffending?

Payne has outlined a range of factors associated with reoffending, including:

- *Age* – the probability of being a repeat offender is greatest between the ages of 17-21 and decreases into adulthood;
- *Criminal history* - more frequent and serious prior offending, and prior imprisonment, are linked to an increased risk of reoffending;
- *Type of offence* – Serious acquisitive offences, such as robbery and property offences, are markers of an increased risk of reoffending;
- *Lifestyle* – unemployment, low level education, poor residential location, history of mental health problems, family instability, and serious, prolonged drug use are all risk factors for reoffending;
- *Post-release difficulties* – for example, limited financial resources, limited contact with family, and limited knowledge of social support and health services are linked to a higher probability of reoffending. [3.1]

What works in reducing reoffending?

Does deterrence or incapacitation work? A 2010 BOCSAR study which compared reoffending among persons given custodial sentences for either burglary or assault with persons given non-custodial sentences for the same offences found that prison did not deter persons from reoffending, and, in the

case of assault, may have even increased the risk of reoffending. A 2012 paper by the Sentencing Council of Victoria discussed the evidence on the extent to which increasing the use of imprisonment can prevent crime through incapacitation. According to the paper, a system of collective incapacitation that increases the use of imprisonment without distinguishing between offenders' risks of reoffending will generally be ineffective. Policies of selective incapacitation might be more effective but there are difficulties in determining which individuals should be incapacitated. [4.1]

Australian literature on reoffending: The Australian literature on what works in reducing reoffending is fairly limited. A 2009 report on court intervention programs noted evaluations showing reduced reoffending for drug court participants in various jurisdictions, and for participants of other programs (see below for evidence in relation to NSW court intervention programs). A 2013 paper found that the effectiveness of Indigenous-specific diversionary programs has not been clearly demonstrated. A 2014 paper on restorative justice programs stated that the evidence on the impact of these programs on reoffending was mixed. A 2011 paper on prison-based correctional rehabilitation programs noted the paucity of evaluations that were available. [4.2]

International literature on reoffending: A 2013 paper by the UK Ministry of Justice outlined some key learning about what works in supporting offenders rehabilitation through the supervisory relationship and case management. These included: applying risk-need-responsivity principles, addressing offender needs in a holistic manner, and integrated case management. The paper also outlined the state of the evidence for offender intervention programs. There was good evidence supporting interventions targeting drug use, interventions that address cognitive skills, and psycho-social interventions targeting violent behaviour. There was mixed/promising evidence on the effectiveness of a range of other interventions: e.g. sex offender programs. [4.3]

NSW Government policy to reduce reoffending

State Plan: One of the goals of the NSW Government's State Plan, *NSW 2021*, is preventing and reducing the level of reoffending. A key target is to reduce adult and juvenile reoffending by 5 per cent by 2016. The performance measures for this target adopt a 12-month time period (in contrast, the reoffending rates noted above use a two-year period). Between 2008-09 (baseline year) and 2011-12, the percentage of adult offenders who had at least one proven offence within 12 months decreased from 16.1 to 15.0 per cent, and the percentage of adults who were reconvicted within 12 months of release from prison decreased from 38.1 per cent to 33.8 per cent. [5.1]-[5.2]

Strategies: In 2014, Corrective Services NSW released *A Strategy for supporting Aboriginal offenders to desist from reoffending*. It outlines several actions that will be taken, including: seeking the involvement of Aboriginal community representatives in devising policies and programs; collaborating with regional non-government agencies that deliver rehabilitation and community integration programs; and promoting the expansion of diversionary programs. In 2014, the Department of Police and Justice also commenced leadership of a project to develop a *NSW Strategy to Reduce Re-offending*. [5.3]-[5.4]

NSW court intervention programs

There are a range of court-based intervention programs, many of which aim to address the underlying problems associated with offending. BOCSAR has evaluated most programs to determine their impact on reoffending. [6.1]-[6.10]

Program	Does it reduce reoffending?
Traffic Offenders Program (began 2008)	No evidence
Aboriginal Drivers Licence project (began 2013-14)	No evidence
Magistrates Early Referral into Treatment (MERIT) (began 2000)	Yes (evaluated in 2009)
Court Referral of Eligible Defendants into Treatment (CREDIT) (began 2009)	No (evaluated in 2013)
Life on Track (began 2013-14)	No evidence
Court Liaison Service (began 1999)	Yes (evaluated in 2009)
Residential rehabilitation programs (various years)	No evidence
Drug Court program (began 1999)	Yes (evaluated in 2008)
Forum Sentencing (began 2005)	No (evaluated in 2013)
Circle Sentencing (began 2002)	No (evaluated in 2008)

NSW alternative custodial sentencing options

Compulsory Drug Treatment Orders: Compulsory drug treatment orders (CDTOs) were introduced in 2006 to “target a hard-core group of offenders with long-term drug addiction and an associated life of crime and constant imprisonment”. The Drug Court can make CDTOs in relation to certain offenders. There are three stages of detention under CDTOs: closed detention in the Compulsory Drug Treatment Correctional Centre; semi-open detention; and intensive supervision in the community. A 2010 BOCSAR evaluation noted that the small number of offenders deemed eligible for the program made it impossible to investigate whether the program reduced reoffending. [7.1]

Intensive Correction Orders: Introduced in 2010, Intensive Correction Orders (ICOs) are designed “to reduce an offender’s risk of reoffending through the provision of intensive rehabilitation and supervision”. A court that has sentenced an offender to imprisonment for not more than two years may make an ICO. A 2013 BOCSAR paper examined the effectiveness of ICOs in reducing reoffending compared to periodic detention (abolished in 2010) and supervised suspended sentences. It found that offenders receiving ICOs had lower rates of reoffending compared to periodic detention but there was no significant difference between those on ICOs and supervised suspended sentences. [7.2]

NSW management of sentenced offenders

Case planning: Corrective Services prepares case plans for all prisoners with six months or more remaining until their earliest release date, and for offenders who are being supervised as part of community-based orders. Case planning starts with an assessment based on the risk-needs-responsivity model. [8.1]

Rehabilitation programs: Corrective Services provides a range of group rehabilitation programs to offenders in custody and, to a more limited extent, to

those serving community-based orders. The programs target: aggression and violence; drug and alcohol use; sex offenders; and young adult offenders. A 2014 Law Reform Commission paper noted that there can be problems with the availability of in-custody programs. Following a review of the programs, the Department has developed a new suite of programs for medium-high risk offenders, which is to be implemented in 2014-15. **[8.2]**

Mental health treatment: There are a number of facilities in the correctional system that provide specialised assessment and treatment of mental health issues. These include the Long Bay Hospital, which has a 40-bed mental health unit; the Forensic Hospital; and the Mental Health Screening Unit in the Metropolitan Remand and Reception Centre at Silverwater. Silverwater Women's Correctional Centre provides a range of services for females. However, the NSW Mental Health Commission has identified barriers to properly addressing mental health problems in correctional centres. **[8.3]**

Education, training and employment: AEVTI provides education courses to inmates in correctional centres. TAFE NSW also provides vocational education to inmates. In 2013-14, 34 per cent of all inmates (who had access) participated in an education and/or vocational training program. Intensive Learning Centres have also recently been established at four centres, providing courses for those with low literacy and numeracy skills. In addition, there is an Inmate Traineeship program, where inmates work in Corrective Services Industries and undertake associated training for 12 months or more. Corrective Services Industries provides various work opportunities to inmates. In 2013-14, 80 per cent of the eligible inmate population was employed. **[8.4]**

Post-release supervision and support: Nearly all parolees are required to accept supervision as a condition of their parole. A parolee's level of risk determines the intensity of supervision. Supervision enables monitoring to deter and detect reoffending, and it also enables case management. Some rehabilitation programs are available to parolees. In addition, Corrective Services funds a range of services for persons exiting from custody. The Funded Partnership Initiative provides funding to non-government organisations (\$5.6 million) in three streams: transitional support, offenders' children and family support, and victim support. A 2013 report by the Public Interest Advocacy Centre, based on interviews with 26 people who had recently exited prison, reported difficulties accessing stable accommodation. **[8.5]**

Extended supervision and continuing detention: In 2006 the NSW Parliament enacted the *Crimes (Serious Sex Offenders) Act*, which provided for the making of orders for the extended supervision and continuing detention of serious sex offenders. The Act was aimed at "a handful of high-risk, hard-core offenders who have not made any attempt to rehabilitate whilst in prison". In 2013, this scheme was extended to serious violent offenders, in accordance with a recommendation of the NSW Sentencing Council. While other States have introduced similar laws, these schemes are controversial. **[8.6]**

Reform proposals to reduce reoffending

Report on people with cognitive and mental health issues: This 2012 report

by the NSW Law Reform Commission recommended: providing for a police diversion option for people with these issues; amending the provisions governing Local Court diversion for people with these issues; establishing a specialist list for persons with these issues in certain locations; and expanding the CREDIT program and Court Liaison Service to all Local Courts. [9.1]

Report on sentencing: This 2013 report by the NSW Law Reform Commission recommended: introducing a general cautioning scheme for adults; expanding the MERIT program, the Drug Court program and the Compulsory Drug Treatment program in terms of eligibility criteria and available locations; and introducing more flexible custodial and non-custodial sentencing options that would replace certain existing sentencing options. [9.2]

Report on sentencing child sex offenders: This 2014 report by a NSW Parliament Select Committee recommended: developing alternative programs to replace the Cedar Cottage diversion program for low risk offenders; allocating resources to ensure offenders who may benefit from anti-libidinal medication have been assessed and treated prior to release from custody; and increasing the use of extended supervision orders. [9.3]

Report on Justice Reinvestment: This 2013 Senate Committee report noted that the Justice Reinvestment approach is based on evidence that a significant proportion of offenders come from a small number of communities; and funding is provided in those communities to strengthen the community and address the causes of crime. It recommended that the Commonwealth take a leadership role in supporting the implementation of Justice Reinvestment in Australia. [9.4]

United Kingdom Government strategy

In June 2011, the Ministry of Justice published its *Breaking the Cycle* Strategy which contained a broad range of measures to tackle the causes of reoffending such as drug and alcohol problems, mental health issues and stable housing. The strategy also outlined plans to “pioneer a world first”: a payment by results system. The first such scheme commenced in September 2010, and aims to reduce reoffending by short-sentence prisoners at Peterborough prison. The Ministry of Justice will only make payments to investors if reoffending rates fall by a certain percentage compared to a control group. [10.1]

In 2013, the UK Government released *Transforming Rehabilitation: A Strategy for Reform*, noting that overall reoffending rates had barely changed over the past decade. Key measures in the strategy include: new statutory rehabilitation requirements for offenders sentenced to 12 months or less; a new nation-wide resettlement service, so that most offenders are given continuous support by one provider from custody into the community; opening up the market to a diverse range of new rehabilitation providers; and introducing new payment incentives for providers to focus on reforming offenders. [10.2]

1. INTRODUCTION

Repeat offenders are responsible for a large proportion of crime in NSW: in 2013, more than 60 per cent of persons found guilty of an offence in the Local Court (and more than 70 per cent of those found guilty of an offence in the Higher Courts) had a prior proven offence in the past 10 years.¹ In addition, those returning to prison make up a sizeable proportion of the prison population: in 2014, 56 per cent of prisoners in NSW had a prior period of imprisonment.² It is clear therefore that reoffending imposes high social costs and makes up a large component of the costs associated with the criminal justice system.

In the context of a rising prison population, a 2009 study by the NSW Bureau of Crime Statistics and Research (BOCSAR) examined the potential effects of a reduction in the rate of *reimprisonment* on the prison population and prison expenditure in NSW.³ In summary, the study concluded that:

...modest reductions in the rate at which offenders are re-imprisoned would result in substantial savings in prisoner numbers and correctional outlays. A ten per cent reduction in the overall re-imprisonment rates would reduce the prison population by more than 800 inmates, and would save \$28 million per year. Comparable reductions in the number of new sentenced prisoners also produce benefits but they are smaller...⁴

Past and current NSW Governments have recognised the problem of high rates of reoffending, and have introduced various measures to address this, at different points in the criminal justice system. The current Government's State Plan, *NSW 2021*, has the target of reducing reoffending by 5 per cent by 2016.⁵ The Department of Police and Justice has recently developed a strategy to support Indigenous offenders to desist from re-offending and is currently leading a cross-agency project to develop a NSW Strategy to Reduce Reoffending.⁶

The focus of this paper is on adult reoffending. It begins with an examination of rates of reoffending in NSW over the past decade. The factors associated with reoffending are then outlined along with recent Australian and international evidence on what works in reducing reoffending. Next, the paper reviews the NSW Government's policy and key interventions to reduce reoffending, including court intervention programs, alternative custodial sentencing options,

¹ NSW Bureau of Crime Statistics and Research, [NSW Criminal Court Statistics 2013](#), Revised Edition, October 2014, p64 (table 1.14) and p137 (table 3.15)

² Australian Bureau of Statistics, [Prisoners in Australia 2014](#), Prisoner Characteristics States and Territories, Table 27 PRISONERS, Indigenous status, sex and prior imprisonment by state/territory, Cat 4517.0, released 11 December 2014

³ D Weatherburn et al, [Prison populations and correctional outlays: The effect of reducing re-imprisonment](#), NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin 138*, December 2009, p1

⁴ D Weatherburn et al, note 3, p1

⁵ NSW Government, [NSW 2021: A Plan to Make NSW Number One](#), 2011, p35 (Goal 17)

⁶ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p57-59

and interventions for sentenced offenders. Some recent reform proposals in NSW and, at the national level, are then outlined. The final section of the paper looks at the UK Government's recent strategies to reduce reoffending.

It should be noted that reoffending is very broad subject, encompassing all aspects of the criminal justice system, and this paper does not intend to cover every issue. For example, while it is acknowledged that bail and parole laws are both relevant to this discussion, neither is covered in this paper.

2. RATES OF REOFFENDING

2.1 Measuring reoffending

Payne has identified three key elements in measuring reoffending:

- What sample of individuals are being examined in the research?
- What indicator events have been selected to identify recidivism, including what data sources are used, and what counting and definitional methods are applied to those data
- Over what time period is recidivism being measured?⁷

With respect to the first of these elements, it can be noted that different studies have different target groups of persons whose reoffending is being measured: e.g. all persons convicted of any offence; all persons convicted of a certain type of offence; or all persons who have been imprisoned. In relation to the second element, Payne notes that researchers must rely on either self-reported or official administrative records (police, court or corrections data) as a proxy for reoffending, and he outlines the limitations of the data sources.⁸ As for the third element, he states that "how long criminal events are observed has significant implications for our capacity to identify and count events as recidivism".⁹

Furthermore, as noted by the NSW Bureau of Crime Statistics and Research (BOCSAR), it is difficult to assess progress made by governments in reducing reoffending, for two key reasons:

First, not all re-offending leads to an officially recorded reconviction with many re-offences not being detected by the justice system. Second, officially recorded reconviction rates are affected not only by the effectiveness of the justice system in dealing with offenders, but also by the characteristics of the offenders coming to court. Indigenous offenders, for example, have higher rates of reconviction than non-Indigenous offenders...If the number of Indigenous offenders brought to court increases from one year to the next, the

⁷ J Payne, [Recidivism in Australia: findings and future research](#), Australian Institute of Criminology, Research and Public Policy Series No. 80, 2007, p13

⁸ J Payne, note 7, p18ff

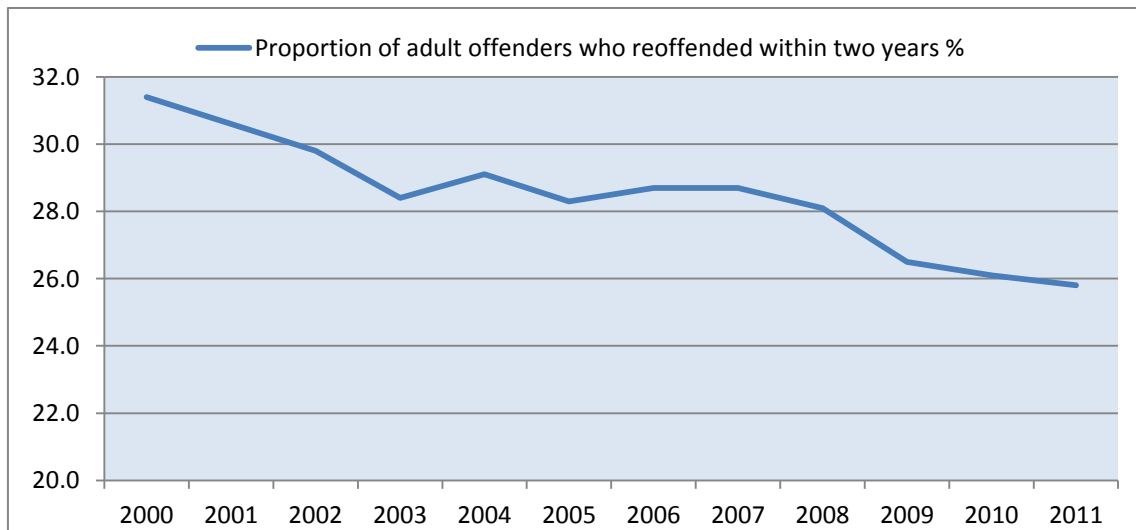
⁹ J Payne, note 7, p45

overall reconviction rate may increase, even if Government efforts to reduce re-offending are effective.¹⁰

BOCSAR has developed a statistical model, which is designed to obtain more accurate estimates of trends in re-offending by adjusting for the characteristics of offenders coming through the justice system.¹¹

2.2 Rate of reconviction within two years

BOCSAR publishes time series data on the proportion of adult offenders who are reconvicted of an offence within 24 months.¹² These rates are not adjusted for the characteristics of offenders coming before the courts. The current series is for persons convicted of offences between 2000 and 2011. There has been a general downward trend, from a reconviction rate of 31.4 per cent for adults convicted in 2000 to a rate of 25.8 per cent for adults convicted in 2011. Reconviction rates are higher for adult males (27.1 per cent) than females (20.9 per cent); much higher for adults aged 18-24 (30.6 per cent) than adults aged 45 and over (15.5 per cent); and much higher for Indigenous adults (47.9 per cent) than non-Indigenous adults (27.3 per cent).



2.3 Rate of return to corrective services within two years

The Productivity Commission's annual *Report on Government Services* reports on the percentage of offenders who are released from prison or discharged from a community corrections order and who return to prison or a community corrections order following reconviction within two years.

¹⁰ N Smith, [Why is the NSW juvenile reconviction rate higher than expected?](#), NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin No. 146*, December 2010, p1

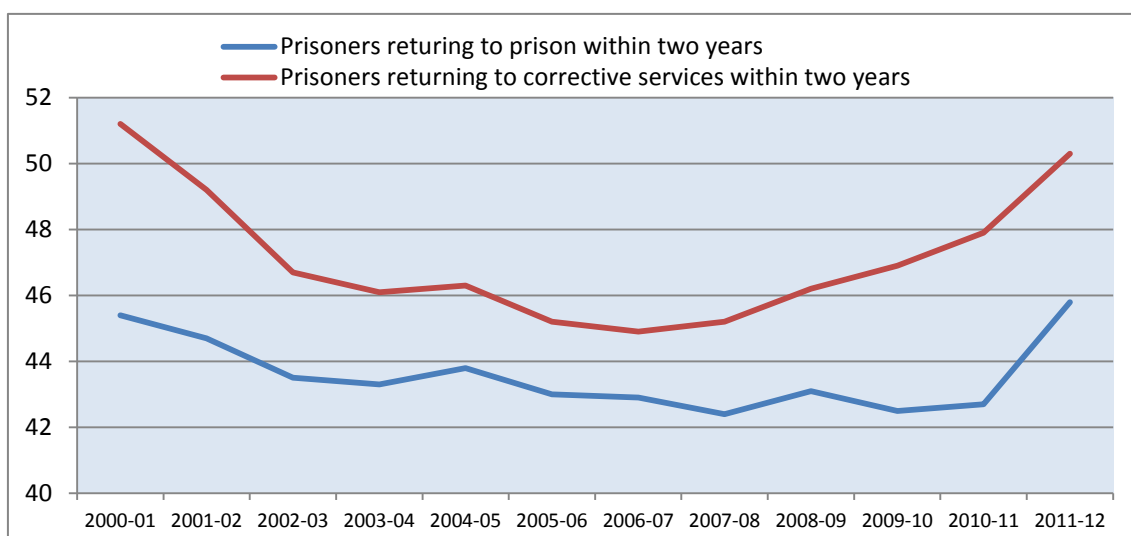
¹¹ See N Smith and C Jones, [Monitoring trends in re-offending among adult and juvenile offenders given non-custodial sanctions](#), NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin 110*, January 2008;

¹² NSW Bureau of Crime Statistics and Research, [What percentage of convicted offenders re-offend over the next years?](#), [online]

NSW rates: The chart below shows the percentage of offenders in NSW released from prison between 2000-01 and 2011-12 and:

- (i) returning to prison within two years; or
- (ii) returning to corrective services (prison or a CCO) within two years.¹³

More than 45 per cent of offenders who were released from prison in 2011-12 returned to prison within two years; and more than 50 per cent returned to corrective services within two years. While the rate of released prisoners who returned to prison within 2 years improved from 2000-01 to 2007-08, a sharp rise between 2010-11 and 2011-12 now sees it above the 2000-01 rate. The rate of released prisoners who returned to corrective services improved between 2000-01 and 2006-07 but has since returned to just under the 2000-01 rate.



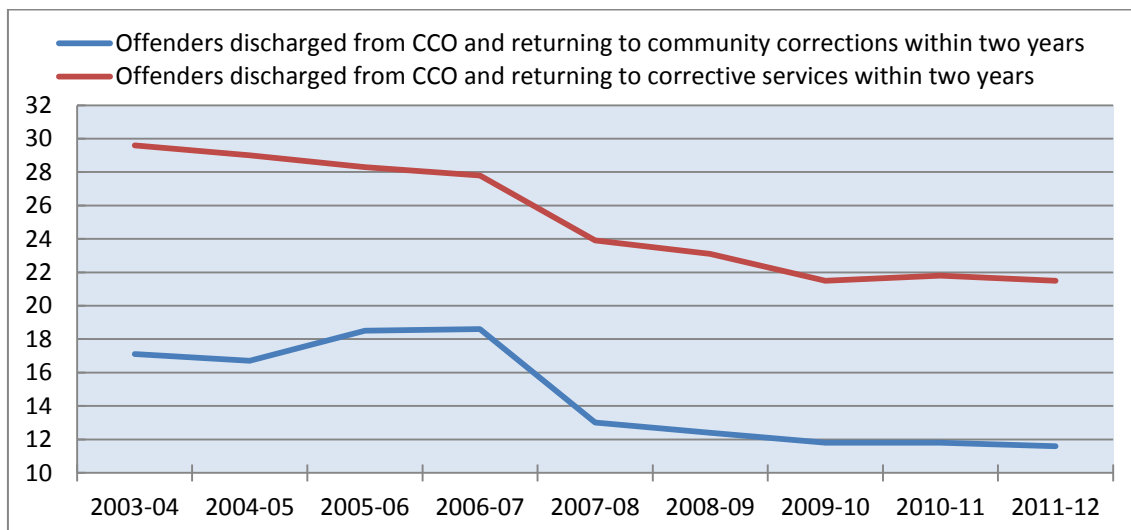
The chart below shows the percentage of offenders in NSW discharged from a CCO between 2003-04 and 2011-12 and:

- (i) returning to community corrections within two years; or
- (ii) returning to corrective services (prison or a CCO) within two years.¹⁴

21.5 per cent of offenders discharged from a CCO in 2011-12 returned to corrective services within two years. There has been a downward trend in this rate and it is significantly lower than the rate (29.6 per cent) for offenders who were discharged from a CCO in 2003-04.

¹³ These figures are from the Productivity Commission's *Report on Government Services (Justice)* for the years from 2004 to 2015. Note that the data on released prisoners returning to prison includes returns to prison resulting from cancellation of a parole order.

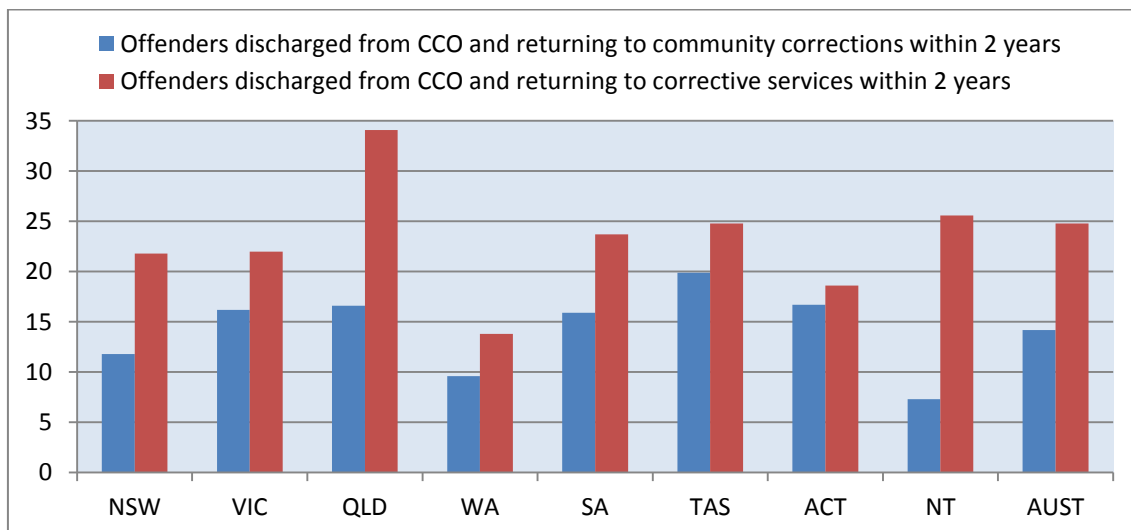
¹⁴ These figures are from the Productivity Commission's *Report on Government Services (Justice)* for the years from 2007 to 2015. Earlier reports did not provide the same data.



National comparisons: The following two charts show comparisons of these rates across all Australian jurisdictions for prisoners released and offenders discharged from CCOs in 2011-12.¹⁵ In the case of offenders released from prison (first chart below), the NSW rate of return to prison was higher than all other jurisdictions except the Northern Territory; and the rate of return to corrective services was higher than all States but lower than the Territories. In contrast, in the case of offenders discharged from CCOs (second chart below), the NSW rate of return to corrective services was lower than all jurisdictions except for Western Australia and the Australian Capital Territory.



¹⁵ Productivity Commission, *Report on Government Services 2015*, [Justice](#), p C.21 – C.22



3. WHAT FACTORS ARE ASSOCIATED WITH REOFFENDING?

3.1 General

A 2007 paper outlined the key findings from the Australian literature on the correlates of reoffending.¹⁶ In summary:

- Consistent with the early findings of the age-crime curve, reoffending peaks in the mid to late teenage years. The probability of being a recidivist is greatest between the ages of 17 and 21 years of age, and decreases into adulthood.
- There is conflicting evidence about the probability of reoffending and gender. Some studies suggest that females are less likely to reoffend, while others find no difference by gender. Studies that identified a difference are consistent in their finding that females, particularly juveniles, are less at risk of recidivism, and will commit less serious offence types.
- Criminal history is also important. The younger the age at which an offender commences offending, the more likely they are to be recidivist offenders. Similarly, more frequent and serious prior offending is linked to increased risk of reoffending, as is prior imprisonment.
- The current most serious offence is also a key indicator of recidivist behaviour, but there is little consistency between studies in the types of offences most linked to reoffending. Serious acquisitive offences, such as robbery and property offences, are clear markers of an increased risk of reoffending.
- An offender's lifestyle and drug use are also shown to be linked to recidivism. Unemployment, limited or low level education, poor residential location, a history of mental health problems, family instability and serious, prolonged drug use are the key factors identified.
- Post-release difficulties are particularly important. These difficulties, such as limited access to financial resources, limited contact with family and limited knowledge of social support and health services are all key factors identified as

¹⁶ J Payne, note 7, pxii-xiii

barriers to successful reintegration. They are factors that are subsequently linked to a higher probability of reoffending.

3.2 Mental health issues

A more recent paper by BOCSAR examined whether released prisoners with mental health diagnoses (including substance, non-substance, and comorbid substance and non-substance diagnoses) are at an increased risk of re-offending compared with released prisoners without mental health diagnoses. Data for 1,208 NSW prisoners who participated in the 2001 Mental Health Survey (conducted by NSW Justice Health) was linked to the NSW re-offending database to track their criminal history for five years prior to entering prison and 24 months following their exit from prison. As part of the study:

Adjusted prevalence estimates were calculated using a weighting method. Each of the three groups with a mental health disorder was weighted to have the same age, sex, Indigenous status, survey cohort and prior offences distribution as the group with no mental health disorders. Weighted estimates reflect the percentage of re-offending expected if the distribution of the group with mental health disorders was the same as those with no mental health disorders.

In summary, the study's findings were:

Within 24 months of their release from prison, 65 per cent of the total sample had re-offended, and their rate of re-offending was related to their mental health disorder/s. The weighted rate of re-offending was greater in prisoners who had comorbid substance and non-substance mental health disorders (67%) compared with prisoners who had: only a substance disorder (55%), a non-substance mental health disorder (49%), and no mental health disorders (51%).

The paper concluded that “these findings suggest that rates of re-offending are substantially elevated among those with a mental health disorder only where it involves comorbid substance and non-substance mental health disorders”.

4. WHAT WORKS IN REDUCING REOFFENDING?

4.1 Does deterrence or incapacitation work?

Does prison deter offenders from reoffending? In a 2010 paper, BOCSAR examined whether prison deterred an individual from reoffending.¹⁷ The study did not deal with other ways that prison might prevent reoffending: i.e. through incapacitation, or as a result of rehabilitation programs offered in prison. The paper commented on the existing evidence as follows:

Although the research conducted to date provides few grounds for thinking that custodial sentences reduce the risk of re-offending by adult offenders (and may even increase it), the issue cannot be regarded as settled. There are two main

¹⁷ D Weatherburn, [The effect of prison on adult re-offending](#), NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin 143*, August 2010

reasons for this. Firstly, most studies of the deterrent effect of prison have been conducted in countries other than Australia...Secondly, as we have just seen, existing Australian research on the specific deterrent effect of prison is both limited and open to question.¹⁸

The study compared re-offending among persons given custodial sentences for either burglary or assault with persons given non-custodial sentences for the same offences. The methodology involved:

...comparing time to re-conviction among 96 matched pairs of convicted burglars and 406 matched pairs of offenders convicted of non-aggravated assault. One member of each pair received a prison sentence, while the other received some form of non-custodial sanction. All offenders were matched on offence type, number of concurrent offences, prior prison experience, number of prior appearances in court and bail status at final appearance. Cox regression [analysis] was used to control for age, age of first conviction, gender, race, plea, number of counts of the principal offence, legal representation and prior breach of a court order. In the case of non-aggravated assault an additional control was included: prior conviction for a violent offence.¹⁹

The dataset from which the matched cases were drawn consisted of 171,969 cases finalised in the NSW courts between 2003 and 2004 (inclusive). The matched samples drawn from this dataset were followed up for a minimum of five years or until their first proven offence, whichever came first. In summary, the results of the study were stated as follows:

...prison exerts no significant effect on the risk of recidivism for burglary. The effect of prison on those who were convicted of non-aggravated assault seems to have been to increase the risk of further offending. These findings are consistent with the results of overseas studies...²⁰

Three limitations of the study were noted.²¹ First, some unmeasured factor may have been responsible for the higher re-offending rate among those who were sent to prison. Second, if a larger sample of cases of convicted burglars was used, it might have resulted in the difference for these cases being statistically significant. Third, the findings may not generalise to other offences.

Mindful of these limitations, the paper concluded that:

The consistency of the current findings with overseas evidence on the effects of prison on re-offending suggests that it would be unwise to imprison offenders when the only reason for doing so is a belief in the specific deterrent effect of prison. This argument applies with special force to short sentences (e.g. sentences of six months or less) which are hard to justify on the grounds of deterrence or incapacitation and which provide little opportunity for prison

¹⁸ D Weatherburn, note 17, p4

¹⁹ D Weatherburn, note 17, p1

²⁰ D Weatherburn, note 17, p10

²¹ D Weatherburn, note 17, p10

rehabilitation. As it happens, substantial fractions of the prison population in NSW (6.8 per cent), Victoria (11.4 per cent) and Queensland (7.2 per cent) are serving sentences of six months or less...On the available evidence...it would be more cost effective to place many of these offenders on a community based program which combines intensive supervision with drug, alcohol and/or mental health treatment...[T]he NSW Government recently introduced a new form of intensive corrections order that seeks to achieve this goal.²²

Similarly, a 2011 paper by the Sentencing Council of Victoria, which reviewed the evidence on imprisonment and deterrence, concluded:

Research into *specific* deterrence shows that imprisonment has, at best, no effect on the rate of reoffending and often results in a greater rate of recidivism. Possible explanations for this include that: prison is a learning environment for crime, prison reinforces criminal identity and may diminish or sever social ties that encourage lawful behaviour and imprisonment is not the appropriate response to many offenders who require treatment for the underlying causes of their criminality (such as drug, alcohol and mental health issues).²³

To what extent does incapacitation work? A 2012 paper by the Sentencing Council of Victoria discussed the evidence on the extent to which increasing the use of imprisonment can prevent crime through incapacitation.²⁴ The paper distinguished between two forms of incapacitation: collective and selective. Collective incapacitation involves:

...increasing sentence severity for all offenders convicted of a particular offence, and preventing crime through traditional forms of sentencing, focusing on the seriousness of the offence in question without attempting to gauge an individual's future risk. A collective incapacitation strategy would require similar sentences for offenders convicted of the same offence.²⁵

On the other hand, selective incapacitation "seeks to identify those offenders who pose the greatest risk of reoffending and select them for imprisonment (or for longer terms of imprisonment) on the basis of that prediction".²⁶

The paper noted that models measuring the impact of incapacitation on crime needed to account for a range of variables, including the rate at which offenders commit crimes; the fraction of crime avoided as a result of incapacitation; the probabilities of being apprehended, convicted and sentenced to imprisonment; the commission of offences in prison; and the criminogenic effect of prison. The paper provided this summary of the evidence:

²² D Weatherburn, note 17, p10

²³ D Ritchie, [Does Imprisonment Deter? A Review of the Evidence](#), Sentencing Advisory Council, *Sentencing Matters*, April 2011, p2

²⁴ D Ritchie, [How Much Does Imprisonment Protect the Community Through Incapacitation?](#), Sentencing Advisory Council, *Sentencing matters*, July 2012

²⁵ D Ritchie, note 24, p6

²⁶ D Ritchie, note 24, p6

The findings...suggest that a system of collective incapacitation that increases the use of imprisonment or the length of prison terms without distinguishing between offenders who exhibit varying degrees of risk of future offending will generally be ineffective in achieving significant long-term reductions in crime. The findings indicate that the costs of such policies may outweigh the initial benefits, and that, as the imprisonment rate increases, those benefits may even be reversed to a point where the crime rate begins to *increase* due to the criminogenic influence of imprisonment.

Research findings suggest that policies of selective incapacitation might be more effective in reducing crime. Such policies attempt to identify those offenders who are likely to commit numerous serious crimes in the future and sentence them to lengthy prison terms. However, there are a number of legal, moral and practical difficulties in determining which individuals should be selectively incapacitated, and estimates of the future risk of offending are not precise.²⁷

4.2 Australian evidence on offender interventions

The Australian literature on what works in reducing reoffending is fairly limited and no paper could be found that presents a complete summary of the evidence. This section draws upon some relatively recent publications that summarise the evidence in relation to particular groups of programs.

Police diversion programs: A 2008 paper reviewed police drug diversion initiatives targeted at the use or possession of cannabis and, in the case of some initiatives, other illicit drugs or pharmaceuticals.²⁸ It reported generally very positive findings in relation to reoffending; but also noted marked differences in reoffending levels from one program to another, for the most part attributable to variations in program structure and client characteristics.

Court intervention programs: BOCSAR has published evaluations of various diversionary and other court intervention programs in NSW; and these are discussed in Section 6 below. Similar programs have also been evaluated in other States and Territories.²⁹ A 2009 Western Australia Law Reform Commission report on court intervention programs stated (in part):

The Commission referred throughout the Consultation Paper to positive evaluation results such as reduced reoffending for drug court participants in various jurisdictions, reduced post-program offending for participants of other court intervention programs, and studies that found that some court intervention programs were cost-effective.

...

²⁷ D Ritchie, note 24, p2

²⁸ J Payne, M Kwiatkowski and J Wundersitz, [Police drug diversion: a study of criminal offending outcomes](#), Australian Institute of Criminology, *Research and Public Policy Series No. 97*, 2008

²⁹ See Australian Government, Australian Institute of Health and Welfare and Australian Institute of Family Studies, [Diverting Indigenous offenders from the criminal justice system](#), Closing the Gap Clearinghouse, Resource sheet no. 24, December 2013, Appendix A.

The Commission acknowledges that there have been methodological difficulties in some evaluations. There have been problems in relation to inadequate data collection and, in some cases, evaluators have been unable to contrast the performance of program participants with a suitable comparison group. Moreover, the Commission has not suggested that *all* court intervention programs achieve or will achieve positive outcomes...

Nonetheless there is, in the Commission's view, sufficient evidence to demonstrate that court intervention programs can be effective...³⁰

Diversion programs for Indigenous offenders: A 2010 report on diversion programs for Indigenous women stated that "there is a relative paucity of programs and reliable information of the effectiveness of programs".³¹ A 2013 paper on diversionary programs for Indigenous offenders concluded (in part):

The benefits of diversionary programs...vary significantly for Indigenous and non-Indigenous offenders. The former are often not able to fully access, participate in and complete mainstream diversionary programs. The long-term, tangible outcomes for Indigenous clients of these programs have also been limited.

This issue is now being partially addressed by Indigenous-specific programs. Aboriginal courts in particular have been instrumental in improving court appearance rates which helps Indigenous defendants avoid some of the overly strict requirements of the judicial system. Other Indigenous-specific diversionary programs have also reported better participation and completion rates. These strategies have led to improved relationships between the court and Indigenous communities, as well as greater fairness and cultural appropriateness in the justice system. However, the effectiveness of these Indigenous-specific diversionary programs in reducing recidivism has not been unequivocally demonstrated.

Research suggests that to be effective diversionary initiatives need to include well-resourced, culturally appropriate rehabilitation programs that address the underlying causes of offending behaviour, take a holistic approach and have intervention periods of adequate duration. There is also a need for targeted interventions to cater for young repeat offenders.³²

Restorative justice programs: A 2014 paper examined Australian restorative justice programs: i.e. programs that involving meetings of victims, offenders and communities to discuss and resolve an offence. It concluded:

The evidence on the impact of restorative justice on reoffending is mixed but research suggests positive impacts for both victims and offenders. That is, a growing body of research indicates that restorative justice may be more effective

³⁰ Law Reform Commission of Western Australia, [Court Intervention Programs](#), Final Report, June 2009, p8

³¹ L Bartels, [Diversion programs for Indigenous women](#), Australian Institute of Criminology, Research in Practice No. 13, December 2010, p10

³² Australian Government, Australian Institute of Health and Welfare and Australian Institute of Family Studies, [Diverting Indigenous offenders from the criminal justice system](#), Closing the Gap Clearinghouse, Resource sheet no. 24, December 2013, p18

for more prolific offenders, more effective for more serious offenders and more effective post- rather than pre-sentence.

While the ability of restorative justice to reduce reoffending is still contested, a focus on reoffending outcomes alone fails to capture the extent of other benefits, such as victim satisfaction, offender responsibility for actions and increased compliance with a range of orders, among others.³³

Prisoner rehabilitation programs: A 2011 report on prison-based correctional offender rehabilitation programs in Australia stated:

The current study aimed to review the effectiveness of prison-based offender rehabilitation programs. This was not possible given the paucity of research reports/evaluations and research reports that are currently available. All jurisdictions, however, recognise the need to evaluate the effectiveness of their rehabilitation programs (especially the more intensive programs), with most having commenced evaluations (process and/or outcome) since the last review. The dilemma for jurisdictions surrounds the political sensitivity of these reports, which in turn inhibits dissemination beyond the jurisdiction. In some cases, release is only to a select few who are directly associated with program development and management.³⁴

4.3 International evidence on offender interventions

There is a vast amount of international literature on what works in reducing reoffending.³⁵ This section draws upon a 2013 paper by the United Kingdom Ministry of Justice, which presented a summary of the evidence in relation to adult offenders.³⁶ One section of this paper outlined “some of the key learning about what works in supporting offenders rehabilitation through the supervisory relationship and case management”. These included:

- *Applying Risk-Needs-Responsivity principles:* ensuring interventions are targeted where they are most needed; accurately assessing individual offenders’ needs; and providing tailored responses.
- *Skilled supervision:* the skills of practitioners in supervising offenders and delivering interventions contribute to reducing reoffending.

³³ J Joudo Larsen, [Restorative justice in the Australian criminal justice system](#), Australian Institute of Criminology, *Research and Public Policy Series No. 127*, 2014, pvii

³⁴ K Heseltine, A Day and R Sarre, [Prison-based correctional offender rehabilitation programs: The 2009 national picture in Australia](#), Australian Institute of Criminology, *Research and Public Policy Series No. 112*, 2011, p37-38

³⁵ See for example E Latessa, S Listwan and D Koetzle, *What Works (and Doesn't) in Reducing Recidivism*, Anderson Publishing (Elsevier), 2014; L Craig, L Dixon, T Gannon, *What works in offender rehabilitation: an evidence-based approach to assessment and treatment*, Wiley-Blackwell, 2013; E Drake, [Inventory of Evidence-Based and Research-Based Programs for Adult Corrections](#), Washington, State Institute for Public Policy, December 2013; M Sapouna, C Bisset and A Conlong, [What Works to Reduce Reoffending: A Summary of the Evidence](#), Scottish Government, October 2011

³⁶ UK Ministry of Justice, [Transforming Rehabilitation: a summary of evidence on reducing reoffending](#), 2013

- *Addressing offender needs in a holistic and sequenced manner:* Multi-modal interventions which address a range of problems are viewed as effective in reducing reoffending. The sequencing of interventions can also be important: e.g. taking steps to stabilise a drug dependent offender before engaging them in an offender behaviour program.
- *Integrated offender management and multi-agency partnership:* Integrated case management and multi-agency working can play an important part in addressing the complex needs of offenders and reducing reoffending.
- *Quality:* Delivering an intervention in the way it was designed and quality of delivery are necessary for successful outcomes.³⁷

Another section of the paper examined the evidence base for specific types of interventions. It noted that “while evidence in some areas is of good or sufficient quality to demonstrate an impact on reoffending”, “many gaps exist in our evidence base”.³⁸ The findings are outlined in brief below.

Intervention target	Summary of evidence
Drug misuse	Good evidence that a wide range of drug interventions, both community-based and custody-based, have a positive impact on reducing reoffending.
Offending behaviour - cognitive skills	Good evidence supporting the impact of cognitive skills programs on reoffending. International reviews have found that these programs have reduced reconviction rates by around eight to ten percentage points.
Offending behaviour - Violence	Good evidence that violence can be reduced through psychosocial interventions, such as anger and emotional management, developing interpersonal skills, and social problem solving.
Employment needs	Mixed/promising evidence on effectiveness of employment/education programs in reducing reoffending.
Offending behaviour – sex offences	Mixed/promising evidence. Meta-analysis indicates that, overall, sex offenders who receive treatment, in prison and community settings, have a somewhat lower sex offence reconviction rate.
Offending behaviour - domestic violence	Mixed/promising evidence. The most recent systematic review of US evidence indicated that one model (Duluth) had no effect on recidivism but this review also identified substantial reductions in reoffending by offenders who attended other interventions. These interventions varied widely in their approach.

³⁷ UK Ministry of Justice, note 36, p10-11

³⁸ UK Ministry of Justice, note 36, p28

Intervention target	Summary of evidence
Restorative justice	Mixed/promising evidence. Seems most effective when it follows the face to face conferencing model and when it is applied to certain offences (property and violence offences) and certain types of offender.
Mentoring	Mixed/promising evidence. May be most beneficial when it begins in prison and lasts beyond release.
Alcohol misuse	Insufficient evidence to determine the impact on reoffending of alcohol treatment for offenders.
Family relationships	Insufficient evidence that specifically focuses on the impact of this type of intervention on adult reoffending.
Peer relationships	Insufficient evidence on the impact of reducing negative peer influences on adult reoffending. Insufficient evidence on impact of interventions aimed at improving peer relationships on reoffending.
Mental health issues	Limited evidence on interventions targeted specifically at offenders with mental health needs, and it is often inconclusive. Insufficient evidence to determine impact on reoffending of diversion-based approaches for offenders with mental health problems.
Accommodation needs	Insufficient evidence to determine the impact of offending of various forms of help for offenders to find or sustain accommodation.

5. NSW GOVERNMENT POLICY TO REDUCE REOFFENDING

5.1 State Plan 2021 targets

As noted earlier, one of the goals of the NSW Government's State Plan, *NSW 2021*, is preventing and reducing the level of reoffending.³⁹ One of two targets is to reduce adult and juvenile reoffending by 5 per cent by 2016. The Plan lists the following priority actions to help achieve this target:

- Expand the Drug Court by opening a second location in the Sydney metropolitan area to ensure offenders with drug addictions have access to appropriate rehabilitation services
- Establish dedicated metropolitan drug treatment facilities focused on treatment, rehabilitation and keeping drugs out of prisons
- Improve effectiveness of literacy and numeracy education programs provided to inmates
- Encourage greater use of non-custodial punishment for less serious offenders and create availability and access to diversionary programs

³⁹ NSW Government, [NSW 2021: A Plan to Make NSW Number One](#), 2011, p35 (Goal 17)

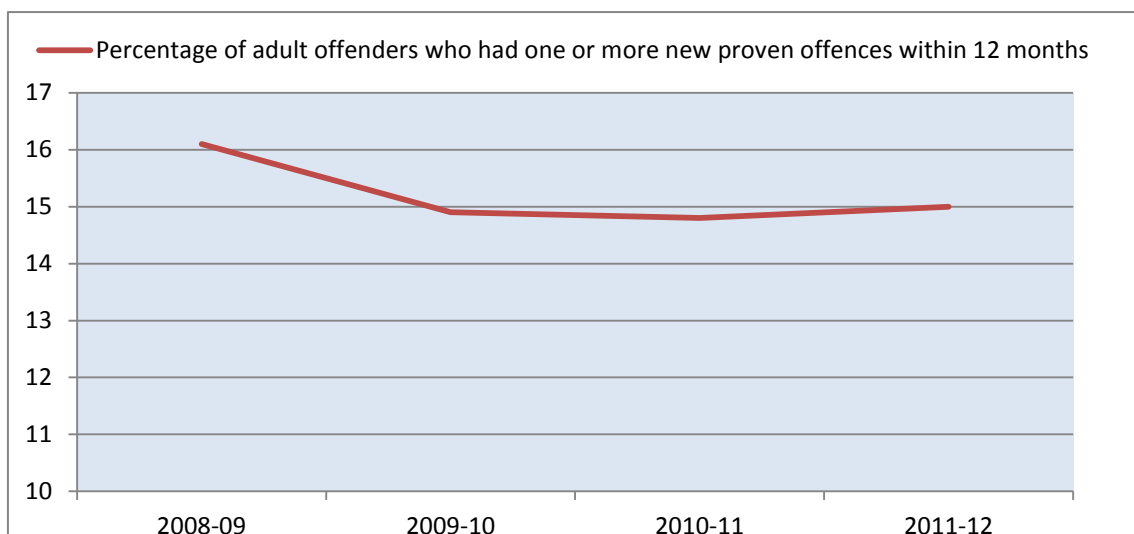
- Develop an effective strategy for reducing juvenile re-offending through improved early intervention and post-release support
- Expand the options available to courts and Police to reduce repeat traffic offenders.

The other target is to increase completion rates for key treatment and intervention programs. These priority actions would help to achieve this:

- Review treatment and intervention programs to identify ways to increase completion rates
- Improve the way government agencies share information to deliver integrated services and management of offenders
- Assist in diverting people with mental health problems out of the criminal justice system and into services which meet their need

5.2 State Plan performance results

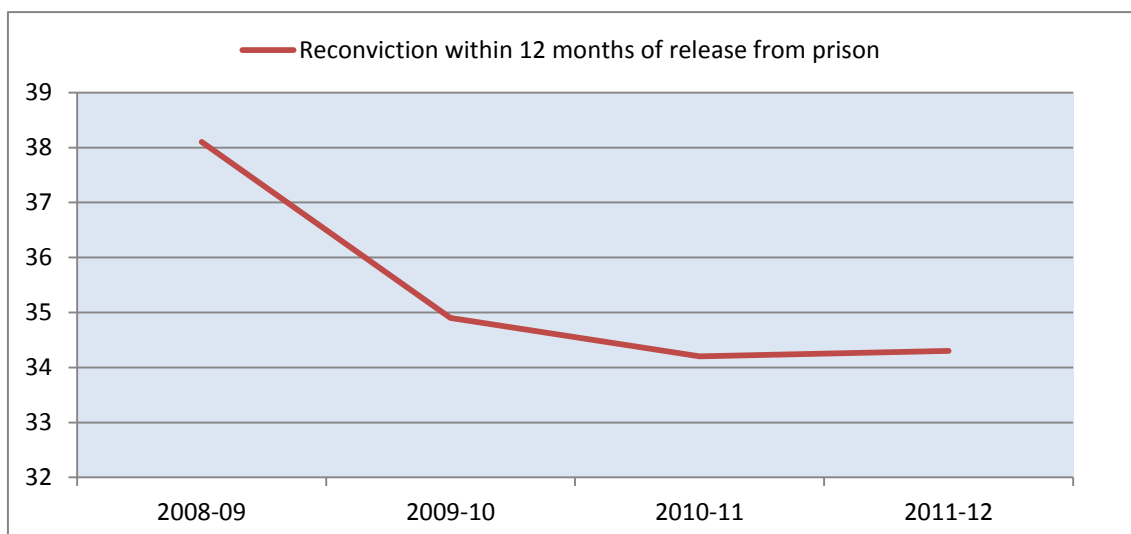
Progress in implementing these and other new initiatives is outlined in the NSW 2021 annual performance reports, along with progress against a range of performance measures.⁴⁰ In relation to the target to reduce adult reoffending by 5% by 2016, all of these measures use a time period of 12 months (in contrast, the reoffending rates outlined in Section 2 of this briefing paper use a two-year period). One measure included in the performance report is the percentage of adult offenders who had one or more new proven offences within 12 months. As shown in the chart below, between 2008-09 (baseline) and 2011-12, this rate decreased from 16.1 per cent to 15.0 per cent.



Another performance measure is the percentage of adults released from sentenced custody who had one or more new proven offences within 12

⁴⁰ See [NSW Budget Papers](#), [online] for 2012-13, 2013-14 and 2014-15: the latest is [NSW 2021 Performance Report 2014-15](#), p6-12ff. See also NSW Government, [2021 State Plan Measures Report 2013, 2014](#)

months. As shown below, between 2008-09 (baseline) and 2011-12, this rate decreased from 38.1 per cent to 33.8 per cent.



Further measures are the median seriousness of most serious proven offence within 12 months for all adults, and for adults released from custody. Both of these measures remained unchanged between 2008-09 and 2011-12.

Also reported was the median time to first new proven offence committed within 12 months for all adults, and for adults released from custody. Both of these measures improved between 2008-09 and 2011-12: e.g. the median time for adults released from custody improved from 149 days to 171 days.

The following data was reported on in relation to the second target: namely, to increase completion rates for intervention programs:

Programs	2010-11	2011-12	2012-13	2013-14
MERIT	69.7	65.0	61.8	66.0
Alcohol/drugs/addiction	-	61.9	66.9	70.0
Aggression and violence	-	56.3	61.7	60.0
Sex offender	-	97.5	97.7	98.0

5.3 Strategy to reduce Aboriginal reoffending

In 2014, Corrective Services NSW released *A Strategy for supporting Aboriginal offenders to desist from re-offending*. It states that the Department will:⁴¹

⁴¹ Corrective Services NSW, [A Strategy for supporting Aboriginal offenders to desist from re-offending](#), April 2014, p4

- actively seek the formal involvement of Aboriginal community representatives in devising policies and programs as well as CSNSW responses to new legislative initiatives
- explore and apply modern communication technology which allows families to maintain meaningful contact with an Aboriginal offender in custody
- collaborate with regional non-government agencies so that they can deliver rehabilitation and community integration programs and services which complement the work of CSNSW
- provide staff development programs with a focus on the practical application of cultural awareness and appropriateness
- align the duties of Aboriginal identified positions with CSNSW offender management and supervision priorities
- promote the expansion of diversionary programs and facilitate the increased participation of Aboriginal women in all non-custodial sentencing options
- provide post-release referrals for Aboriginal women with a focus on stable accommodation and health
- make available practical resources/guides for all employees who deliver offender programs to enhance the active involvement of all Aboriginal participants
- collaborate with other government and community agencies to meet the complex support needs of Aboriginal offenders leaving custody

5.4 Development of Strategy to Reduce Reoffending

The Department of Police and Justice Annual Report 2013-14 notes:

In 2014, the Department commenced leadership of an inter-agency, cross-Cluster project to develop the NSW Strategy to Reduce Re-offending. The Strategy aims to develop a plan to assist delivery on the NSW Government's priority in NSW 2021 to reduce re-offending by five per cent by 2016.

Involving all Justice agencies and key justice-related stakeholders, a Strategy is being developed through detailed consultation and review. The Strategy will create a connected criminal justice system to collectively prioritise re-offenders and implement a response to them that is swift, certain and tailored. This will mean that re-offenders are appropriately punished for their offending as soon as possible and in a way that supports them to avoid future offending.⁴²

6. NSW COURT INTERVENTION PROGRAMS

6.1 Traffic Offenders Program

The Traffic Offenders Program (TOP) has been available in the Local Court since 2008.⁴³ It aims to provide traffic offenders with the necessary skills and information needed to develop positive attitudes and safer behaviours when driving. The scheme operates under the *Criminal Procedure Act 1986*, Part 4; the *Crimes (Sentencing Procedure) Act 1999*, Part 8C; and the *Criminal Procedure Regulations 2010*, Parts 6-8. A person is eligible to participate in the program if he or she has pleaded guilty to, or has been found guilty of, a traffic offence and has not yet been sentenced. The courses are typically run by non-Government organisations including the Police Citizens Youth Club (PCYC). As

⁴² NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p57

⁴³ See NSW Law Reform Commission, [Sentencing](#), Report 139, July 2013, p355-356; and P Rourke and C Jones, [Risk of reconviction among offenders who commence the Blacktown Traffic Offender Program](#), NSW Bureau of Crime Statistics and Research, *Bureau Brief* no. 81, September 2012

of 30th August 2012, the program was operating at 51 locations in NSW. In 2012, BOCSAR published an evaluation of the Blacktown Traffic Offender program, which noted that it was “not possible to make any assessment of whether [the program] is effective in reducing re-offending”.⁴⁴

6.2 Aboriginal Drivers Licence Project

The Aboriginal Drivers Licence Project is a new program that:

...provides a coordinated support, assessment, referral and information service to Aboriginal people attending court for traffic offences and regulatory driving offences aimed at reducing these offences in Aboriginal communities.

In the first 12 months of the project, over 800 Aboriginal people have been identified with driving and licence offences and had referral plans developed to address underlying issues that led to offending.⁴⁵

6.3 Magistrates Early Referral into Treatment (MERIT)

MERIT is a court-based early intervention program that provides adult defendants who have substance abuse problems with the opportunity to access treatment and rehabilitation services whilst on bail.⁴⁶ Treatment is generally prior to any pleas being made with the adjournment of court matters, and granting of bail, until the completion of the program.

MERIT commenced in July 2000 on a trial basis at the Local Court at Lismore and the program now operates in 65 Local Courts across NSW, providing access for more than 80 per cent of defendants coming before magistrates. All of these courts offer treatment for illicit drug use and seven also offer treatment where alcohol is the primary drug of concern (Alcohol MERIT).

Defendants can be identified by the Magistrate, solicitor, police or the defendants themselves as suitable for assessment for the program. To be eligible for the program, a defendant must:

- be an adult
- be charged with an offence that is not a sexual offence or a strictly indictable offence
- be eligible for bail or not require bail consideration
- voluntarily agree to participate in MERIT
- be suspected of using drugs or be known to have a history of drug use or alcohol misuse.

⁴⁴ P Rourke and C Jones, note 43, p7

⁴⁵ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p29

⁴⁶ See NSW Justice, [The MERIT program](#), [online]; M Howard and K Martie, [Magistrates Early Referral Into Treatment: An overview of the MERIT program as at June 2011](#) (2012) *Crime Prevention Issues* 1; NSW Law Reform Commission, [Sentencing](#), Report 139, July 2013, p345-349; and NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p34

The final hearing and sentence generally coincide with the completion of the MERIT Program. Magistrates are then able to consider the defendant's progress in treatment as part of final sentencing.

Between 1 July 2000 and 30 June 2011, a total of 25,714 defendants were referred to MERIT.⁴⁷ Of these, 16,046 (62%) were accepted into the program and a total of 10,156 of participants (63% of acceptances) were recorded as having successfully completed it. Howard and Martie note:

There are considerable differences between the principal penalty outcome for program completers and non-completers. For the 2008 cohort, the most common sentence outcome for MERIT program completers was a bond with supervision (18.2%) or a bond without supervision (17%). The most common sentence outcome for program non-completers was a fine (28.9%) or a term of imprisonment (18.6%).⁴⁸

A 2009 BOCSAR paper examined the impact of program participation on re-offending by defendants with a drug use problem.⁴⁹ The study period for the evaluation was the three-year period between 1st July 2002 and 30th June 2005. The end date for the study period was chosen so that all participants had a minimum two-year follow-up period. The paper stated that "completion of MERIT was estimated to reduce the numbers of defendants committing any offence by 12 percentage points and any theft offence by four percentage points".⁵⁰ The paper noted that because the study was not a randomised controlled trial there were some potential limitations with the study.⁵¹

A more recent study by the National Drug and Alcohol Research Centre examined the impact of the program on reoffending within 12 months for offenders who exited the program in 2008.⁵² In summary, it reported:

Our results are consistent with those from the only other study to have examined recidivism outcomes for both program participants and a comparison group (Lulham, 2009), in that exposure to MERIT was found to offer no protective effect against the likelihood of any reconviction, but program completion did.⁵³

⁴⁷ M Howard and K Martie, [Magistrates Early Referral Into Treatment: An overview of the MERIT program as at June 2011](#) (2012) *Crime Prevention Issues* 1 at 2.

⁴⁸ M Howard and K Martie, note 47, p3.

⁴⁹ R Lulham, [The Magistrates Early Referral Into Treatment Program: Impact of program participation on reoffending by defendants with a drug use problem](#), NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin* 139, July 2009

⁵⁰ R Lulham, note 49, p9

⁵¹ BOCSAR has conducted a review of Alcohol-MERIT but not in relation to re-offending: see S Spratley, N Donnelly and L Trimboli, [Health and wellbeing outcomes for defendants entering the Alcohol-MERIT program](#), *Bureau Brief No. 92*, December 2013

⁵² T McSweeney, C Hughes and A Ritter, [Tackling 'drug-related' crime: Are there merits in diverting drug-misusing defendants to treatment? Findings from an Australian case study](#) (2015) *Australian and New Zealand Journal of Criminology*, [online]

⁵³ T McSweeney, C Hughes and A Ritter, note 52, p17-18

In the 2014-15 year, the Department of Police and Justice and the NSW Ministry of Health “will complete a review of the effectiveness, efficiency and cost-effectiveness of the MERIT program”.⁵⁴

6.4 Court Referral of Eligible Defendants into Treatment (CREDIT)

CREDIT is a court-based intervention program that aims to reduce re-offending by encouraging and assisting defendants to engage in education, treatment or rehabilitation programs and receive social welfare support: e.g. accommodation, drug and alcohol treatment, mental health assessment.⁵⁵ Like MERIT, the scheme operates under the court’s power to adjourn proceedings and to grant bail to allow the defendant to participate in the program.

The program began in August 2009 as a pilot program in two local courts in NSW – Burwood and Tamworth. In August 2010, the program was also made available in Quirindi in response to a request from a magistrate.

Persons can self-refer to the program prior to entering a plea, or be referred by a magistrate at any time. To be eligible for the program, a person must:

- be an adult
- be charged with a Local Court offence that is not a sexual offence (and not have committed a sexual offence in the past five years)
- not be refused bail

Prior to sentencing a CREDIT caseworker prepares a report that advises the magistrate about what the person did to address the areas that were identified. Magistrates can then take this into account as part of final sentencing.

Over the two-year pilot period, CREDIT received 719 referrals, conducted 637 assessments and had 451 participants. A 2011 BOCSAR evaluation of the program based on interviews with stakeholders and participants found that there were “high levels of satisfaction” amongst both groups.⁵⁶ However, a 2013 BOCSAR study found no evidence that CREDIT achieves its aim of reducing reoffending.⁵⁷ The study concluded:

These results suggest that defendants referred to the CREDIT program are as likely to re-offend as defendants who are dealt with through the normal court process. However, these results may reflect the very small number of defendants referred to the program over the study period, the short follow-up period involved and the inability to match treatment and control defendants on key variables

⁵⁴ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p34

⁵⁵ See NSW Department of Justice and Attorney-General, [Credit Brochure](#), 2009; and L Trimboli, [NSW Court Referral of Eligible Defendants into Treatment \(Credit\) pilot program: An evaluation](#) (2012) 159 *Crime and Justice Bulletin* 1.

⁵⁶ L Trimboli, note 55, p20–21.

⁵⁷ N Donnelly, L Trimboli and S Poynton, [Does CREDIT reduce the risk of re-offending](#) (2013) 169 *Crime and Justice Bulletin* 1 at 12–13.

related to offending (e.g. drug use, mental health issues).

The Department has recently stated that it “will consider how to better align CREDIT with other re-offending programs to ensure consistency, appropriate targeting and accessibility of services for defendants”.⁵⁸

6.5 Life on Track

Similar to CREDIT, the Life on Track pilot program offers “person-centred support and case management to eligible and suitable defendants appearing at the Local Court”.⁵⁹ It is “primarily aimed at defendants with a medium to high risk of re-offending or medium to high level needs and provides assistance to identify and address the broad range of issues that contribute to a defendant’s likelihood of re-offending”. The program commenced at two start up sites: one covering Bankstown, Sutherland, and Kogarah Local Courts; and the other covering Lismore, Ballina, Casino and Kyogle Local Courts. By 30 June 2014, Life on Track” screened 353 defendants, assessed 175 defendants and accepted 159 participants for case management”.

6.6 Diversion under Mental Health (Forensic Provisions) Act 1990

Magistrates can divert offenders with a mental illness or developmental disability under sections 32 and 33 of the *Mental Health (Forensic Provisions) Act 1990*. Section 32 provides (in part):

- (2) The Magistrate may do any one or more of the following:
 - (a) adjourn the proceedings,
 - (b) grant the defendant bail in accordance with the [Bail Act 2013](#),
 - (c) make any other order that the Magistrate considers appropriate.

- (3) The Magistrate may make an order dismissing the charge and discharge the defendant:
 - (a) into the care of a responsible person, unconditionally or subject to conditions, or
 - (b) on the condition that the defendant attend on a person or at a place specified by the Magistrate for assessment of the defendant’s mental condition or treatment or both, or
 - (c) unconditionally.

The NSW Court Liaison Service provides comprehensive assessments and where appropriate provides recommendations to the Magistrate for diversion to appropriate treatment.⁶⁰ It operates in 20 NSW Local Courts. It was first piloted in 1999 and is part of the Justice Health and Forensic Mental Health Network.

In 2009, BOCSAR published an evaluation of the Service (which was referred to

⁵⁸ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p34

⁵⁹ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p34

⁶⁰ See Justice Health and Forensic Mental Health Network, [Courts](#), [online]

as the Statewide Community and Court Liaison Service, or SCCLS).⁶¹ One part of the evaluation examined “court outcomes and re-offending for adult clients of the Justice Health SCCLS versus comparison groups of individuals appearing at local courts in NSW”. Two analyses were conducted:

... For the first set of analyses, the treatment group consisted of individuals with SCCLS contact in 2004 or 2005 whose closest finalised local court appearance to SCCLS contact resulted in a dismissal under the *Mental Health (Forensic Provisions) Act 1990* in a local court provided with SCCLS services in 2004/2005. The control group included individuals who had a mental health dismissal in a local court not serviced by the SCCLS in 2004 or 2005. The second set of analyses compared the remainder of unique individuals with recorded contact with the SCCLS in 2004 or 2005 (who had a finalised local court outcome), with a random sample of offenders receiving supervised bonds in 2004 or 2005 in local courts not serviced by the SCCLS.⁶²

The observation period for the analyses was from 18 months prior to the index court appearance to 18 months after that appearance. In the case of the first set of analyses, the study found:

...there was a significant decrease in the mean number of offences per month from the pre-period to the post-period observed for the treatment group, but not the control group. This difference between treatment and control groups persisted after adjusting for age, gender and Indigenous status, with findings showing that relative to the pre-period, there was a significant decreasing trend in the mean number of offences per month in the postperiod for the treatment group, while the trend in monthly offences for the control group remained stable.⁶³

The findings for the second set of analyses were that:

When adjusted for age, sex and Indigenous status, the treatment and control groups showed equivalent decreasing trends in the post-period relative to the pre-period. However, analyses investigating the number of offences recorded in the month immediately following the index court appearance revealed a large decrease (relative to the end of the pre-period) in the number of offences recorded for the treatment group that was contrasted by a small, but significant, increase for the control group.⁶⁴

The paper noted several limitations with the study including: the absence of diagnostic mental health information for people in the treatment and control groups; not controlling for hospital admissions, which would have affected a person’s capacity to offend; not examining whether individuals referred to health

⁶¹ D Bradford and N Smith, [An evaluation of the NSW Court Liaison Services](#), NSW Bureau of Crime Statistics and Research, 2009

⁶² D Bradford and N Smith, note 61, p57

⁶³ D Bradford and N Smith, note 61, p58.

⁶⁴ D Bradford and N Smith, note 61, p58-59

services actually engaged in treatment, or the duration of any such treatment; and the selection of non-equivalent control cases.⁶⁵

6.7 Residential rehabilitation

There are a couple of residential treatment programs that are used in conjunction with bail and a court's power to adjourn proceedings (as well as being used as part of a sentence imposing a good behaviour bond). One program is Balund-a at Tabulam in Northern NSW, which has been available to male and female offenders but was recently closed to female offenders due to low numbers of females participating.⁶⁶ Miruma at Cessnock is a residential program for female offenders with mental health and drug and alcohol abuse issues.⁶⁷ In 2013–14, 52 women participated in the Miruma program, up from 42 participants in 2012–13.⁶⁸ Sixty-three per cent completed the program and, of these, 79 per cent were released to stable accommodation. Biyani at Parramatta was another residential program for female offenders but, following an evaluation, it was due to be closed in 2014.⁶⁹

6.8 Drug Court program

The Drug Court of NSW aims to address underlying drug dependency that has resulted in criminal offending by facilitating treatment programs as part of the court process.⁷⁰ It has been operating at Parramatta since 1999. In 2011, a second Drug Court was set up in the Hunter region and in 2013 a Drug Court was established at the Downing Centre in Sydney. There is currently capacity to assist 280 participants across the three courts.⁷¹ The Drug Court program operates under the *Drug Court Act 1998*.

Eligible drug dependent offenders are referred to the Drug Court by the Local and District Courts. To be eligible for the Drug Court program, a person must:

- be an adult
- be charged with an offence that is not a violent offence, a sexual offence or an indictable offence under the *Drug Misuse and Trafficking Act 1985*
- be highly likely to be sentenced to full-time imprisonment if convicted
- have indicated that he or she will plead guilty to the offence
- be dependent on the use of prohibited drugs
- be willing to participate

⁶⁵ D Bradford and N Smith, note 61, p60

⁶⁶ See NSW Justice, [Balund-a \(Tabulam\)](#), [online]; and NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p28

⁶⁷ NSW Justice, [Miruma](#), [online]

⁶⁸ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p28

⁶⁹ K Needham, [Mental health centre for women to be shut down](#), *SMH*, 9 March 2014.

⁷⁰ See *Drug Court Act 1998*, s 3; [Drug Court of NSW](#) [online]; and NSW Law Reform Commission, [Sentencing](#), Report 139, July 2013, p320-324

⁷¹ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p39.

After the assessment stage the offender appears before the Drug Court where he or she enters a guilty plea, receives a sentence that is suspended, and signs an undertaking to abide by his or her program conditions. The Drug Court program lasts for at least 12 months unless terminated sooner:

A Drug Court program can be terminated when the:

- court decides that the participant has substantially complied with the program
- participant applies to have it terminated
- court decides that the participant is unlikely to make any further progress in the program, or that further participation poses an unacceptable risk to the community that the offender will re-offend.

When a program is terminated, the court must reconsider the initial sentence. If appropriate that sentence can be set aside and another sentence imposed in its place. In deciding the final sentence the court will take into consideration the nature of the offenders participation in the program, any sanctions that have been imposed and any time spent in custody during the program. The initial sentence cannot be increased.

When the court finds that a participant has substantially complied with a program a non-custodial sentence is the usual order...⁷²

In a 2008 paper, BOCSAR published the results of a re-evaluation of the Drug Court.⁷³ It compared reconviction rates (time until re-conviction) amongst participants in the Drug Court program with those amongst a statistically matched comparison group deemed eligible for the program but excluded either because they resided out of area or because they had been convicted of a violent offence. The sample consisted of all offenders who made it into the eligibility assessment phase of the program between February 2003 and April 2007. There were 645 offenders in the Drug Court Group and 329 offenders in the Comparison Group. In summary, the study found:

Compared with those in the Comparison Group, Drug Court participants in the present study were 17 per cent less likely to be reconvicted for any offence, 30 per cent less likely to be reconvicted for a violent offence and 38 per cent less likely to be reconvicted for a drug offence at any point during the follow-up period.⁷⁴

The paper noted a qualification to these results, namely that there may have been some unmeasured factors that influenced both selection into the Drug Court program and the risk of further offending.⁷⁵

In a separate paper, BOCSAR estimated that the Drug Court provides a net

⁷² Drug Court of NSW, [When we terminate a program](#), [online]

⁷³ D Weatherburn et al, [The NSW Drug Court: A re-evaluation of its effectiveness](#), NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin 121*, September 2008

⁷⁴ D Weatherburn et al, note 73, p1

⁷⁵ D Weatherburn et al, note 73, p13

saving of \$1.758 million per year relative to conventional sanctions (i.e. imprisonment).⁷⁶ The paper concluded:

Since Drug Court participants have demonstrated better effectiveness in terms of time to first offence...and the total cost of the Drug Court relative to conventional sanctions is negative, we can say from a cost-effectiveness perspective the Drug Court program dominates usual incarceration. In other words it is cheaper and produces better outcomes than the alternative. This conclusion means that the NSW Drug Court is likely to be a cost-effective approach.⁷⁷

6.9 Forum Sentencing

[Forum Sentencing](#) is a restorative justice scheme that involves bringing together at a conference the offender, the victim(s) and a Forum facilitator. Together they develop an intervention plan for the offender.⁷⁸ If the court accepts the intervention plan, it may adjourn proceedings or impose a non-custodial sentence in order to enable the intervention plan to be completed. Like the Traffic Offenders Program, this program operates under the *Criminal Procedure Act 1986*, Part 4; the *Crimes (Sentencing Procedure) Act 1999*, Part 8C; and the *Criminal Procedure Regulations 2010*, Parts 6-8.

Forum Sentencing commenced in September 2005 at two sites (Liverpool and North-East NSW) and was recently available at 13 sites, servicing 50 Local Courts across Sydney and Northern NSW.

To be eligible to participate in the program, the person must:

- be an adult
- be charged with an “eligible offence” (excludes serious offences)
- plead or be found guilty of the offence
- be likely to serve a sentence of imprisonment, or be subject to a community service order or good behaviour bond
- be willing to participate in the program

If a final sentence has not been imposed, the completion of an intervention plan can be taken into account upon sentence.

In a July 2013 paper, BOCSAR examined rates of reoffending for offenders referred to Forum Sentencing in 2011.⁷⁹ These offenders were matched with offenders who would have been eligible for Forum Sentencing if it was

⁷⁶ S Goodall, R Norman and M Haas, [The Costs of the NSW Drug Court](#), NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin* 122, September 2008

⁷⁷ S Goodall, R Norman and M Haas, note 76, p13

⁷⁸ See NSW Lawlink, [Forum Sentencing](#), [online]; NSW Local Court *Practice Note Crim 1: Case management of criminal proceedings in the Local Court*, 8 August 2014; and NSW Law Reform Commission, [Sentencing](#), Report 139, July 2013, p356-358

⁷⁹ S Poynton, [Rates of recidivism among offenders referred to Forum Sentencing](#), NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin* 172, July 2013

operating at the relevant Local Court. All offenders in both groups were followed up for a minimum of 6 months after finalisation of their index offence. The study found that there was no evidence that offenders referred to Forum Sentencing were less likely to re-offend than offenders who were dealt with through the normal sentencing process.⁸⁰ However, it noted that:

...the evidence presented here is not sufficient to conclude that the program, as it currently operates in NSW, is not meeting its intended aims. Reducing re-offending is just one of six objectives of the Forum Sentencing program...⁸¹

In 2013–14, 500 matters were referred to Forum Sentencing, with 381 conferences held and 497 intervention plans successfully completed by offenders.⁸² The Department of Police and Justice's 2013-14 annual report discussed some recent reforms to the program:

In 2013–14, Forum Sentencing commenced transitioning to a new centralised operating model in Parramatta. This involved the closure of 11 of a total 13 sites. The new operating model streamlines administrative process and moves program delivery from local court-based staff to local facilitators and a centralised team. It ensures better links between program expenditure and conferences delivered to victims and communities. This model has a strong focus on victim satisfaction and engagement with the broadening of the eligibility criteria to include offenders who are found guilty of a wider range of offences.⁸³

6.10 Circle sentencing

Circle sentencing is an alternative sentencing court for adult Aboriginal offenders.⁸⁴ It involves local Aboriginal people in the process of sentencing offenders, with the key aims of making it a more meaningful experience for the offender and improving the Aboriginal community's confidence in the justice system. This program also operates under the *Criminal Procedure Act 1986*, Part 4; the *Crimes (Sentencing Procedure) Act 1999*, Part 8C; and the *Criminal Procedure Regulations 2010*, Parts 6-8.

The program commenced in Nowra in 2002 and has since expanded to other areas: Dubbo, Walgett, Brewarrina, Bourke, Lismore, Armidale, Kempsey and Mt Druitt. To be eligible to participate in the program, an Aboriginal person must:

- be charged with an eligible offence (excludes serious offences);
- plead guilty or be found guilty of the offence;
- be assessed as suitable for the program by the Aboriginal Community

⁸⁰ S Poynton, note 79, p11

⁸¹ S Poynton, note 79, p12

⁸² NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p30

⁸³ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p30

⁸⁴ See NSW Department of Justice and Attorney General, [Aboriginal Programs - Circle Sentencing](#), Fact Sheet, 2009; and NSW Law Reform Commission, [Sentencing](#), Report 139, July 2013, p359-361

Justice Group;

- be likely to serve a sentence of imprisonment, or be subject to a community service order or a good behaviour bond;
- agree to participate in the program.

A circle sentencing group must include a Magistrate, the offender and his or her legal representatives, the prosecutor, the project officer, and at least 3 Aboriginal persons chosen by the project officer. The circle sentencing group meets: (i) to determine an appropriate plan (if any) for the treatment or rehabilitation of the referred offender, and (ii) to recommend an appropriate sentence for the offender. The court that referred the offender may, if it agrees with the consensus of the circle sentencing group, impose a sentence on the offender in the terms recommended by the group.

A 2008 BOCSAR paper examined whether people who participated in circle sentencing: (1) showed a reduction in the frequency of their offending; (2) took longer to reoffend; and (3) reduced the seriousness of their offending.⁸⁵ The first question was examined by reference to people circle sentenced before January 2006; and the second and third questions were assessed by considering people circle sentenced up to June 2007. The findings of the study indicated that circle sentencing had “no effect on the frequency, timing or seriousness of offending”.⁸⁶ However, it was noted that:

It should not be concluded that circle sentencing has no value simply because it does not appear to have any short-term impact on reoffending. Reducing recidivism is just one of several objectives of the process. There is nothing in this analysis to suggest that circle sentencing is not meeting the other objectives...⁸⁷

7. NSW ALTERNATIVE CUSTODIAL SENTENCING OPTIONS

In NSW, courts can have a range of custodial and non-custodial sentencing options available to them.⁸⁸ This section considers two custodial sentencing options that were introduced in the last ten years with the aim of reducing reoffending: compulsory drug-treatment orders and intensive correction orders. Other custodial sentencing options are: imprisonment, suspended sentences of imprisonment, and home detention.⁸⁹

7.1 Compulsory drug treatment orders

Compulsory drug treatment orders (CDTOs) were introduced in 2006 to “target a hard-core group of offenders with long-term drug addiction and an associated

⁸⁵ J Fitzgerald, [Does circle sentencing reduce Aboriginal offending](#), NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin* 115, May 2008

⁸⁶ J Fitzgerald, note 85, p6-7

⁸⁷ J Fitzgerald, note 85, p7

⁸⁸ See *Crimes (Sentencing Procedure) Act 1999*, Part 2

⁸⁹ Suspended sentences and home detention are discussed in NSW Law Reform Commission, [Sentencing](#), Report 139, July 2013, Ch9-10

life of crime and constant imprisonment”.⁹⁰ A metropolitan Local or District Court that sentences a person to imprisonment has a duty to ascertain whether there are grounds on which the Drug Court might find the person to be an “eligible convicted offender”; and, if so, to refer the person to the Drug Court to determine whether the person should be subject to a CTDO.⁹¹ The Local or District Court makes this assessment on the basis of five eligibility criteria:

- (1) been sentenced to imprisonment between 18 months and 3 years,
- (2) been convicted of at least two other offences in the past 5 years,
- (3) not been convicted of some specified offences (e.g., attempted murder, sexual assault, firearm, or supply/manufacture offences),
- (4) resides in metropolitan Sydney, and
- (5) is over 18 years of age.⁹²

The Drug Court considers three additional eligibility criteria:

- (1) has a long-term drug dependence,
- (2) the facts and antecedents of the offence indicate long-term drug dependence and associated lifestyle, and
- (3) must not suffer from a serious mental condition that may lead to violence or restrict active participation in the Program. Psychiatric and nursing assessments by CDTCC staff assist the court in this determination.⁹³

If the Drug Court finds the person to be an “eligible convicted offender”, it may impose a CTDO, requiring the person to serve the term of imprisonment by way of compulsory drug treatment detention.⁹⁴ There are three stages of such detention: Stage 1 involves closed detention in the Compulsory Drug Treatment Correctional Centre in Parklea, Stage 2 involves semi-open detention; and stage 3 involves intensive supervision while living in the community.⁹⁵ After the Drug Court has imposed a CDTO, the Commissioner of Corrective Services, in consultation with Justice Health, prepares a drug treatment person plan, which comes into operation after the Drug Court approves it.⁹⁶

According to the Department’s 2013-14 Annual Report:

In 2013–14, the Drug Court of NSW received 63 referrals from Local and District Courts (compared with 68 in 2012–13 and 57 in 2011–12) for Compulsory Drug Treatment Order (CDTO) assessments. Of these referrals, 43 offenders met the eligibility criteria for a CDTO. Thirty-three were assessed as suitable for a CDTO,

⁹⁰ *Compulsory Drug Treatment Correctional Centre Act 2004*, which commenced in July 2006; and G West, *NSW Parliamentary Debates*, [23 June 2004](#).

⁹¹ *Drug Court Act 1998*, s 18B

⁹² NSW Justice, [Compulsory Drug Treatment Correctional Centre](#), [online]

⁹³ NSW Justice, [Compulsory Drug Treatment Correctional Centre](#), [online]

⁹⁴ *Crimes (Sentencing Procedure) Act 1999*, s 5A

⁹⁵ *Crimes (Administration of Sentences) Act 1999*, Part 4A

⁹⁶ *Crimes (Administration of Sentences) Act 1999*, Part 4A. See also NSW Law Reform Commission, [Sentencing](#), Report 139, July 2013, p329-333

an increase from 23 in 2012–13.⁹⁷

A 2010 BOCSAR evaluation of the CDTP noted that “the small number of offenders deemed eligible for the CDTP...made it impossible to investigate the effectiveness of the program in reducing re-offending”.⁹⁸

7.2 Intensive correction orders

Introduced in October 2010, Intensive Correction Orders (ICOs) are “designed to reduce an offender’s risk of reoffending through the provision of intensive rehabilitation and supervision in the community”.⁹⁹ ICOs replaced periodic detention, which was abolished. A court that has sentenced an offender (other than persons committing prescribed sexual offences) to imprisonment for not more than 2 years may make an ICO directing that the sentence be served by way of intensive correction in the community.¹⁰⁰ There are a range of standard conditions of an ICO, including to: reside at approved premises and receive home visits by a supervisor; and, as directed by a supervisor, to submit to a curfew; submit to alcohol and drug testing; complete 32 hours per month of community service work, and participate in rehabilitation programs.¹⁰¹

According to the NSW Sentencing Council:

During the period from 1 October 2010 to 31 December 2013, 2804 offenders were sentenced to 4784 ICOs. However, ICOs represent a small proportion of all offenders. In 2012, 0.92% of all NSW offenders (898 people) were sentenced in the Local, District or Supreme Courts to an ICO as their principal penalty.

Although being an infrequently used sentencing option, ICOs tend to be used more readily than periodic detention orders were used for sentences longer than 12 months...5% of all ICOs imposed from 1 October 2010 to 31 December 2013 were for the maximum duration of 2 years.¹⁰²

The Sentencing Council also noted that “the most common offences, for which ICOs were imposed during the period from October 2010 to December 2013, were traffic and vehicle regulatory offences (29.9%), acts intended to cause injury (27.7%), and illicit drug offences (8.4%)”.¹⁰³

In a 2013 paper, BOCSAR examined the effectiveness of Intensive Correction Orders (ICOs) in reducing re-offending compared to the alternatives of periodic

⁹⁷ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p29

⁹⁸ J Dekker, K O’Brien and N Smith, [An evaluation of the Compulsory Drug Treatment Program \(CDTP\)](#), NSW Bureau of Crime Statistics and Research, 2010, p7

⁹⁹ *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010*; and J Hatzistergos, *NSW Parliamentary Debates*, [30 June 2010](#)

¹⁰⁰ *Crimes (Sentencing Procedure) Act 1999*, s 7

¹⁰¹ *Crimes (Administration of Sentences) Act 1999*, s 81 and *Crimes (Administration of Sentences) Regulation 2014*, cl186

¹⁰² NSW Sentencing Council, [Sentencing Trends and Practices Annual Report 2013](#), 2014, p28

¹⁰³ NSW Sentencing Council, note 102, p30

detention and suspended sentences with supervision.¹⁰⁴ Offenders who received an ICO as a principal penalty in a NSW court between 1 October 2010 and 30 September 2012 were matched to two comparable groups of offenders who received periodic detention between 1 October 2007 and 30 September 2009 and suspended sentences with supervision between 1 October 2010 and 30 September 2012. The paper explained the methodology:

These comparison groups were chosen because these sanctions are also alternatives to imprisonment, and past research had shown considerable similarity between offenders given these sanctions and offenders given an ICO. All groups were carefully matched on a wide range of factors likely to have influenced penalty choice and/or re-offending.¹⁰⁵

In summary, the findings were:

Regardless of whether offenders receiving ICOs were compared with a matched sample of offenders receiving a sentence of periodic detention or a matched sample receiving a suspended sentence, lower rates of re-offending were observed for offenders receiving ICOs...From the time of the index finalisation an offender on an ICO had around 30 percent less risk of re-offending than an offender on periodic detention...From the time of the index finalisation an offender on an ICO had 33 per cent less risk of re-offending than an offender on a supervised suspended sentence.¹⁰⁶

An “important caveat” was placed on these findings.

In the case of the ICO-suspended sentence comparison, it was possible to match offenders on LSI-R [risk assessment] variables as well as on demographic and offending variables. When matched on all variables, the difference between the two groups in re-offending rates ceased to be statistically significant. In the case of the ICO-periodic detention comparison, it was only possible to match offenders on demographic and offending variables. We do not know whether the lower rate of re-offending among offenders given ICOs compared with offenders given sentences of periodic detention would have disappeared or been attenuated, had it been possible to match the two groups in terms of their LSI-R scores.¹⁰⁷

The Sentencing Council is required to conduct a review of ICOs as soon as possible after 1 October 2015 and to report to the Minister by October 2016.¹⁰⁸

¹⁰⁴ C Ringland and D Weatherburn, [The impact of intensive correction orders on re-offending](#), NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin 176*, December 2013

¹⁰⁵ C Ringland and D Weatherburn, note 104, p12

¹⁰⁶ C Ringland and D Weatherburn, note 104, p12

¹⁰⁷ C Ringland and D Weatherburn, note 104, p12

¹⁰⁸ *Crimes (Sentencing Procedure) Act 1999*, s 73A

8. NSW MANAGEMENT OF SENTENCED OFFENDERS

8.1 Case planning

Corrective Services NSW prepares case plans for all prisoners with six months or more remaining until their earliest release date, and for offenders who are being supervised as part of community-based orders.¹⁰⁹ In the case of prisoners with less than six months remaining until their earliest release date, officers “are required to identify any immediate risks and needs and refer offenders to services as required”.¹¹⁰ Case planning starts with an assessment based on the Risk–Needs–Responsivity model.¹¹¹ Risk is primarily assessed by using the Level of Service Inventory – Revised (LSI-R) assessment tool. Corrective Services NSW notes that the LSI-R results

...indicate which areas need to be targeted to reduce the risk of re-offending, whether through the provision of services (such as assistance with finding stable accommodation), or programs (such as alcohol and other drug rehabilitation programs).

Services are available to all offenders, but [Corrective Services] provides **programs** only for offenders with an LSI-R of “medium” or above.¹¹²

It noted that there were exceptions to the rule that programs were only provided for offenders with an LSI-R of “medium” or above. The number of offenders by risk categories as identified using the LSI-R in 2013-14 are shown below.¹¹³

Risk categories	Low	Low – medium	Moderate	Medium – high	High	Total
Offenders	4,386	7,955	9,796	3,874	740	26,751

8.2 Rehabilitation programs

Programs: Corrective Services NSW provides a range of group rehabilitation programs to offenders in custody and, to a more limited extent, to those serving community-based orders.¹¹⁴ The programs target:

- readiness for other programs
- aggression and violence
- drug and alcohol use

¹⁰⁹ NSW Justice, [How do we make the case plan](#), [online]; NSW Justice, [Community-based orders](#), [online]; and NSW Law Reform Commission, [Parole Question Paper 4: Reintegration into the community and management on parole](#), November 2013, p2

¹¹⁰ NSW Law Reform Commission, note 109, p16

¹¹¹ NSW Justice, [How do we make the case plan](#), [online];

¹¹² NSW Justice, [How are offenders assessed for referral to services and programs](#), [online]

¹¹³ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p35

¹¹⁴ These are set out in a [Compendium of correctional programs](#).

- sex offenders
- young adult offenders

The following tables outline program types and participation in 2013-14 (the bracketed percentages show variation from the 2012-13 figures).¹¹⁵

Readiness programs participation

Program	All individuals attending programs	Individuals attending in custody	Sessions attended in custody	Individuals attending in the community	Sessions attended in the community
Managing Emotions (men)	981 (-30%)	600 (-27%)	4,785 (-13%)	381 (-36%)	2,528 (-26%)
Managing Emotions (women)	62 (-61%)	35 (-66%)	150 (-75%)	27 (-53%)	138 (-51%)
Personal Effectiveness	80 (+40%)	80 (+40%)	1,028 (+51%)	N/A	N/A
IDATP Readiness	138 (+207%)	138 (+207%)	1,274 (+122%)	N/A	N/A
Seasons for Growth	108 (-25%)	108 (-25%)	548 (+9%)	N/A	N/A
RUSH	67 (+29%)	67 (+29%)	972 (+12%)	N/A	N/A
Offender Induction program*	Discontinued	Discontinued	Discontinued	Discontinued	Discontinued
All readiness programs	1434 (-50%)	1028 (-15%)	8,757 (0%)	408 (-75%)	2,664 (-62%)

*discontinued for resource efficiency reasons.

Aggression and violence programs participation

Program	All Individuals attending programs	Individuals attending in custody	Sessions attended in custody	Individuals attending in the community	Sessions attended in the community
CALM	517 (+10%)	362 (+36%)	6370 (+50%)	155 (-25%)	2438 (-14%)
Domestic Abuse Program	760 (+9%)	93 (+39%)	1249 (+50%)	667 (+5%)	8282 (+10%)
Violent Offenders Therapeutic Program (VOTP)	93 (+15%)	93 (+15%)	4396 (+27%)	n/a	n/a
VOTP – maintenance	159 (-15%)	98 (-12%)	567 (+10%)	61 (-19%)	358 (0%)
Self Regulation Program	15 (N/A)	15 (N/A)	418 (N/A)	N/A	N/A
All aggression and violence programs	1544 (+7%)	661 (+26%)	13,000 (+44%)	883 (-3%)	11078 (+4%)

The Self Regulation Program is for offenders with cognitive impairment who commit violent offences. The program can provide intensive treatment for up to 10 violent offenders with cognitive impairment within an 18-month treatment plan. The program's first participants are expected to graduate in 2014–15.¹¹⁶

¹¹⁵ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p37-40, 51

¹¹⁶ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p54

Alcohol, drug and addiction programs participation

Program	All offenders attending programs	Offenders attending in custody	Sessions attended in custody	Offenders attending in community	Sessions attended in community
Getting SMART	2,691 (-5%)	1,859 (+8%)	17,734 (+25%)	832 (-24%)	6,540 (-20%)
Sober driver	694 (-7%)	19 (n/a)	147 (n/a)	675 (-9%)	3,833 (+15%)
Pathways – Criminal Conduct and Substance Abuse	226 (+9%)	226 (+9%)	6,915 (+49%)	-	-
Ngara Nura	55 (-2%)	55 (-2%)	7,285 (+46%)	-	-
SMART Recovery	573 (-18%)	573 (-18%)	3,264 (-27%)	-	-
Alcoholics Anonymous	642 (-17%)	642 (-17%)	2,191 (-18%)	-	-
Narcotics Anonymous	409 (+4%)	409 (+4%)	1,646 (+25%)	-	-
The Best Bet...is the one you don't have	86 (-25%)	86 (-25%)	669 (-21%)	-	-
Drugs: the impact of dependence	29 (-24%)	29 (-24%)	456 (+20%)	-	-
Drug and Alcohol Addiction (DAAP/RPP)	21 (-62%)	21 (N/A)	88 (N/A)	-	-
Total alcohol, drugs and addictions	5,426 (-8%)	3,919 (-2%)	40,395 (+21%)	1,507 (-20%)	10,373 (-10%)

Not included in the above list is the [Intensive Drug and Alcohol Treatment Program](#), which commenced in 2012, and operates at new purpose built facilities at the John Morony Correctional Complex (near Windsor).¹¹⁷ The facilities were built in stages; a fourth stage is planned for 2014-15.¹¹⁸ The program is a residential program for male and female offenders who have a drug and /or alcohol problem which is linked to their offending behaviour. It can take up to 12 months to complete and incorporates a range of therapeutic, health, education, vocation and pre-release interventions aimed at addressing substance dependence, offending behaviour and reintegration. In 2013-14, 237 offenders participated in the program.¹¹⁹ Corrective Services NSW will provide data for BOCSAR to undertake an evaluation of the program.¹²⁰

Sex offender programs participation

Program	All offenders attending programs	Offenders attending in custody	Sessions attended in custody	Offenders attending in community	Sessions attended in community
Custody-based Intensive Treatment Program (CUBIT)	77 (+20%)	77 (+20%)	4,988 (+47%)	-	-
CORE Moderate	55 (+72%)	55 (+72%)	2,472 (+117%)	-	-
Custody-based PREP	64 (-2%)	64 (-2%)	647 (-3%)	-	-
Deniers Program	9 (+13%)	9 (+13%)	361 (+48%)	-	-
Community-based treatment	106 (+26%)	-	-	106 (+26%)	1,910 (+33%)
Self-Regulation Program	17 (-32%)	17 (-32%)	1,042 (-33%)	-	-
Maintenance Program	110 (-13%)	14 (-7%)	91 (+11%)	96 (-14%)	1,169 (-7%)
All sex offender programs	438 (+8%)	236 (+13%)	9,601 (+36%)	202 (+4%)	3,079 (15%)

¹¹⁷ NSW Justice, [Intensive Drug and Alcohol Treatment Program](#), [online]

¹¹⁸ NSW Government, [NSW 2021 Performance Report 2014-15](#), 2014, p6-5

¹¹⁹ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p81

¹²⁰ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p110

Young adult offenders programs participation

Program	All offenders attending programs	Offenders attending in custody	Sessions attended in custody	Offenders attending in community	Sessions attended in community
Adventure-Based Challenge ABC – women	56 (+12%)	56 (+12%)	418 (+8%)	N/A	N/A
Gumang Life Challenge	267 (+6%)	267 (+6%)	3,783 (+2%)	N/A	N/A
Young Adult Preparation Program (YAPP)	46 (-75%)	46 (-75%)	117 (-77%)	N/A	N/A
Young Adult Satellite Program (YASP)	68 (-14%)	68 (-14%)	591 (-18%)	N/A	N/A
Total	437 (-22%)	437 (-22%)	4,909 (-8%)	N/A	N/A

Access to programs: A 2013 NSW Law Reform Commission consultation paper on parole reported that:

Stakeholders have informed us that there can be problems with the availability of in-custody programs. Offenders may be on a waiting list for a program for some time and may reach the end of the non-parole period without being able to get onto the program. Availability of certain in-custody programs may be dependent on the particular correctional facility where an offender is held and also the offender's security classification. There are also limited in-custody programs that are tailored for particular groups, like Aboriginal and Torres Strait Islander offenders or female offenders.

Stakeholders interviewed by the Law and Justice Foundation of NSW in 2008 reported that offenders with cognitive or mental health impairments were often found ineligible or unable to participate in relevant programs...¹²¹

A separate consultation paper noted that “the Statewide Disability Service can provide advice on an intellectually disabled prisoner’s capacity to participate in group programs”; and that “no prisoner with a disability can be excluded from any program without contacting Statewide Disability Services”.¹²²

Reform of programs: The 2011 NSW Commission of Audit Report recommended “that the Department of Attorney-General and Justice should evaluate the effectiveness of offender management programs with a view to consolidating and rationalising less effective programs and investing in the more successful ones”.¹²³ The Department recently noted that reforms that are being implemented in relation to offender management programs:

The content of the existing accredited programs was reviewed in line with the current research evidence around what works in correctional programming, specifically for violent offenders and those with substance use problems. Consistent with the Commission of Audit report, the intention was to reduce the existing number of programs and create a new suite to meet the risk and needs of more offenders including those with short sentences.

¹²¹ NSW Law Reform Commission, [Parole Question Paper 3: Discretionary parole decision making](#), September 2013, p11

¹²² NSW Law Reform Commission, note 109, p13

¹²³ NSW Commission of Audit, [NSW Commission of Audit Final Report: Government Expenditure](#), May 2012, p139

A new program suite called EQUIPS (Explore, Question, Understand, Investigate, Practice, Succeed) has been developed for offenders identified at a medium to high risk of re-offending and is to be implemented in 2014–15.

The suite consists of the EQUIPS Foundation program and, according to the needs of the participating offender, EQUIPS Aggression, EQUIPS Addictions or EQUIPS Domestic Abuse programs. Each of these modules is 20 sessions each of two hours and will enhance the intensity of programming for moderate risk offenders. All modules target the empirically derived risk factors for offending. Offenders will develop an offence map and self-management plan specific to their individual needs.

The EQUIPS program suite will replace Personal Effectiveness Program, Managing Emotions, The Best Bet, Dealing with Debt, Impact of Dependence and the current forms of Controlling Anger and Learning to Manage it [CALM] and Getting SMART.¹²⁴

8.3 Mental health treatment

Services: Mental health services are provided in correctional centres by Corrective Services and the [Justice Health and Forensic Mental Health Network](#).¹²⁵ There are a number of facilities within the correctional system that provide specialised assessment and treatment of mental health issues. At the Long Bay Correctional Complex at Malabar, there is: the Long Bay Hospital containing a 40-bed mental health unit; and a Forensic Hospital which has 135 beds “for those found not guilty by reason of mental illness, those unfit to plead, mentally disordered offenders or those at risk of offending”.¹²⁶ The Metropolitan Remand and Reception Centre at Silverwater has a Mental Health Screening Unit for males. Silverwater Women’s Correctional Centre provides a range of services for females with mental health issues. In 2013-14:

...the Mental Health Screening Unit treated 143 women (increased from 229 in 2012–13). The Mental Health Step Down Unit assisted 72 female offenders (increased from 64 in 2012–13). Staff at the Mum Shirl Unit, a specialised unit for female offenders with complex psychological, behavioural and personality issues, admitted 293 women (increased from 292 in 2012–13).¹²⁷

Issues with services: According to the NSW Mental Health Commission, there are barriers to properly addressing mental health problems in prison:

Efforts to address mental health problems while a person is in custody are hampered by the limited availability of specialist mental health staff within the correctional system and the fact that these services are concentrated in the Sydney metropolitan region. This situation is aggravated by the fact that most

¹²⁴ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p60

¹²⁵ Justice Health, [Justice Health and Forensic Mental Health Network](#), [online]

¹²⁶ See Justice Health, [Capabilities Brochure](#), November 2009, [online], p18

¹²⁷ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p74

people are in custody for short periods and some are neither in the community nor in custody long enough to establish any links to appropriate services.¹²⁸

The Commission also noted that:

...there are discrepancies in the access to prison-based mental health services by Aboriginal inmates compared with non-Aboriginal people, such as the low rate of admission to Long Bay Prison Hospital for Aboriginal people as correctional patients. There appears to be no understanding of why this is so. It may reflect a broader failure to identify mental distress within this population.¹²⁹

8.4 Education, training and employment¹³⁰

AEVTI and TAFE courses: The Adult Education and Vocational Training Institute (AEVTI) provides accredited courses and nationally recognised education and vocational qualifications to inmates in all NSW publicly operated correctional centres. In 2013-14, the AEVTI provided a service to 8,749 inmates, including 7,743 inmates who were enrolled in one or more education and/or vocational training course as part of their case management plan. As provided in a Memorandum of Understanding, TAFE NSW also provides vocational education to inmates in correctional centres. In 2013-14, there were 7,272 individual inmate enrolments for TAFE training within correctional centres. Thirty four per cent of all inmates (of those who had access) participated in an education and/or vocational training program.

Intensive Learning Centres: Intensive Learning Centres have recently been established at four correctional centres: Wellington, South Coast, Lithgow and Mid North Coast Correctional Centres. The centres are for inmates with assessed low literacy and numeracy skills to complete a Certificate (1 to 3) in the Access Employment Education and Training framework.

Traineeship program: The Corrective Services Inmate Traineeship Program operates under the administration of the NSW Department of Education and Communities (DEC) as part of the Commonwealth Australian Apprenticeship Program. Inmate trainees engage in work with Corrective Service Industries and undertake associated recognised training for a period of 12 months or more. Upon completion, trainees receive a qualification from the registered training organisation delivering the training and assessment as well as a Certificate of Proficiency from DEC. In 2013-14, 519 inmates engaged in a traineeship or apprenticeship. Of these, 172 completed and 67 cancelled leaving a total of 280 inmates engaged in a traineeship/apprenticeship. The overall completion rate of the traineeship program is approximately 77 per cent. This compares with the national apprentice and trainees completions rate of around 55 per cent.

¹²⁸ NSW Mental Health Commission, [Living Well: A Strategic Plan for Mental Health in NSW 2014-2024](#), 2014, p80

¹²⁹ NSW Mental Health Commission, note 128, p82

¹³⁰ The information in this section is taken from NSW Department of Police and Justice, [2013-14 Annual Report](#), 2014, p41-44

Corrective Services Industries: In 2013–14, Corrective Services Industries (CSI) provided work opportunities to inmates at 106 commercial business units and 54 service industries within 26 correctional centres. In 2013–14, 5,440 inmates (or 79.7 per cent of the eligible inmate population) were employed. This compares with the national average of 2012–13 (74.4 per cent). In 2013–14, the average employment rate for inmates in Corrective Services (publicly) operated correctional centres through CSI was 84.8 per cent (there is one privately operated correctional centre at Junee).

8.5 Post-release supervision and support

Parole supervision: An offender sentenced to imprisonment for six months or more may be released on parole sometime between the expiry of the non-parole period and the end of the head sentence (sentences of six months or less do not have a parole component).¹³¹ Offenders who are sentenced to a head sentence of three years or less are generally released to parole automatically at the expiry of the non-parole period by order of the sentencing court. If an offender is sentenced to a head sentence of more than three years, release to parole is at the discretion of State Parole Authority.

After release on parole, the person serves the balance of the sentence in the community and can be recalled to prison for breaching the conditions of parole. Parole orders can be made subject to a range of conditions. Whether they are released on court based or SPA parole orders, nearly all parolees are required to accept supervision as a condition of their parole.¹³² A parolee's level of assessed risk determines the intensity of supervision. Supervision enables monitoring and surveillance of parolees by Community Corrections to deter and detect reoffending and breaches of other conditions; and it also enables case management of parolees by the supervising officer, including making referrals to programs, treatment and other services.¹³³

Support for parolees: Some rehabilitation programs are offered to inmates and to those being managed in the community (e.g. the Sober Driver Program); and some in-custody rehabilitation programs, such as VOTP and CUBIT, have community components.¹³⁴ However, not all community programs are offered in every location.¹³⁵ As outlined below, Corrective Services also funds and provides a range of services for persons exiting from custody.

Funding to community-based organisations: The Community Funding Program allocated funding to community-based non-profit organisations that provided support services to offenders, former inmates and their families.¹³⁶ It had three

¹³¹ This information is taken from NSW Law Reform Commission, [Parole Question Paper 1: The design and objectives of the parole system](#), September 2013, p1-2

¹³² NSW Law Reform Commission, note 109, p32

¹³³ NSW Law Reform Commission, note 109, p35

¹³⁴ NSW Law Reform Commission, note 109, p45-46

¹³⁵ NSW Law Reform Commission, note 109, p46

¹³⁶ Department of Attorney-General and Justice, [Annual Report 2012-13](#), 2013, p218-219

streams: inmate support, transitional support, and children and families support. In 2012-13, funding totalled \$3.3 million. In 2014, the Department noted that:

In 2013–14, a strategic review of the Community Funding Program (CFP) resulted in the launch of the Funded Partnership Initiative (FPI). The FPI provides funding to non-government and non-profit organisations with an emphasis on transitional and post release support services. The FPI's budget of \$5.57 million per annum is greater than that of the previous funding program and covers services in three streams: Transitional Support, Offenders' Children and Family Support and Victim Support...¹³⁷

The services provided under the FPI Transitional Support stream include:

- *Transitional supported accommodation*: providing up to 12 weeks supported accommodation for higher risk offenders, as well as support following exit from the service;
- *Initial transitional service*: providing up to 12 weeks support for higher risk offenders. Support services may include assisting offenders with accommodation needs, access to services (such as mental health and alcohol and other drug services) engaging in prosocial activities in the community, employment or education referrals.
- *Extended transitional re-integration*: providing up to 12 months housing and support services for higher risk offenders with significant complex needs – mental health, alcohol/other drug issues and/or cognitive impairment or borderline intellectual disability. All clients must also be homeless or at risk of homelessness.¹³⁸

In addition to the FPI, the Department's 2013-14 Annual Report noted:

In 2013–14, Corrective Services managed a number of external and/or Corrective Services NSW-funded projects, totalling over \$6 million. These projects included those funded by the Drug Summit and the National Partnership Agreement on Homelessness (NPAH).

Corrective Services and its non-government partners met targets for its commitments under the NPAH. These included targeted housing and support for women, sustaining tenancies in the far west, addressing the issue of offenders being refused bail on the basis of homelessness and improving outcomes for people exiting custody.¹³⁹

Community Offender Support Program centres: In 2008, the Department of Corrective Services launched the Community Offender Support Program (COSP), which was to involve the Statewide rollout of COSP centres that would provide interim accommodation for up to six months, providing stability and 24-

¹³⁷ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p67

¹³⁸ Corrective Services, [Funded Partnerships Initiative](#), [online]

¹³⁹ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p67

hour supervision for released offenders to adjust to lawful community life.¹⁴⁰ While living in a COSP, offenders would be required to participate in group work programs to reduce their risk of re-offending. In 2013, there were eight COSP centres in operation, with a total of 775 residents. Following a review of the program, six COSP centres were closed in 2013-14.¹⁴¹ The Department stated:

The resources from the Program closures have been used to enhance transition support services for offenders exiting custody to parole as part of Corrective Services new Funded Partnership Initiative.¹⁴²

Connections program: Run by Justice Health and Forensic Mental Health Network, the Connections program:

...provides patients with a history of drug and alcohol use with integrated health services through comprehensive pre-release assessments and care planning and assistance during the critical 4 to 8 week post release period, to improve health outcomes, reduce risk factors associated with reoffending and support patients in their transition back into the community.¹⁴³

In 2013-14, 801 patients were accepted into the program.

Difficulties accessing support: A 2013 report by the Public Interest Advocacy Centre outlined the findings of a study exploring the experiences and difficulties faced by 26 people from the Sydney Metropolitan region who had recently exited the prison system into situations of housing crisis or homelessness.¹⁴⁴ They reported difficulties accessing information about accommodation and support services prior to their release; difficulties accessing welfare support services prior to their release; and difficulties accessing stable accommodation following their release.¹⁴⁵ The study also involved interviews with six community workers who worked with people exiting the prison system. Common themes in terms of the difficulties the workers faced included:

- lack of resources to adequately meet demand for services from ex-prisoners;
- chronic lack of accommodation and housing support options for ex-prisoners;
- dealing with clients with particularly difficult and complex behaviours;
- lack of adequate exit planning and other support services.¹⁴⁶

Reoffending on parole: A 2014 paper by BOCSAR measured the rate of re-offending during a prisoner's parole period.¹⁴⁷ The study was based on 9,604

¹⁴⁰ NSW Department of Corrective Services, [Annual Report 2007-2008](#), 2008, p8

¹⁴¹ NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p66

¹⁴² NSW Department of Police and Justice, [2013–14 Annual Report](#), 2014, p66

¹⁴³ Justice Health & Forensic Mental Health Network, [2013/14 Year in Review](#), 2014, p49

¹⁴⁴ L Schetzer and StreetCare, [Beyond the prison gates: The experiences of people recently released from prison into homelessness and housing crisis](#), Public Interest Advocacy Centre, July 2013

¹⁴⁵ L Schetzer and StreetCare, note 144, pviii

¹⁴⁶ L Schetzer and StreetCare, note 144, pix

¹⁴⁷ D Weatherburn and C Ringland, [Reoffending on parole](#), NSW Bureau of Crime Statistics and

offenders released on parole in 2010 and 2011. To be included, the parole period had to be at least 30 days, and expiring before 1 July 2013. In brief:

Just under 61 per cent...of parolees neither re-offended nor were re-imprisoned during their parole period. About twenty-eight per cent...of the sample re-offended on parole. A further 10.8 per cent were re-imprisoned on parole without having first re-offended. Approximately 7 per cent...of the sample committed a violent offence on parole.¹⁴⁸

A separate 2014 study by BOCSAR examined the impact of parole supervision, and the frequency of that supervision, on rates of reoffending.¹⁴⁹ The study sample comprised 7,494 offenders who were released from a NSW correctional centre between 1 January 2009 and 30 June 2010 after serving a full-time imprisonment sentence of 12 months or less. Re-offending was defined as any new proven offence which was finalised in a court before 30 September 2013. On the impact of parole supervision, the study found:

...offenders who received parole supervision upon release from custody took longer to commit a new offence, were less likely to commit a new indictable offence and committed fewer offences than offenders who were released unconditionally into the community.¹⁵⁰

It was noted that this finding was inconsistent with overseas research and several possible reasons were given as to why that might be so: e.g. there are differences between jurisdictions in the quality of their supervision and support.

In considering the frequency of parole supervision, the study distinguished between compliance-focused contacts and rehabilitation-focused contacts. On this aspect of the research, the paper concluded:

...parolees with a higher than average level of rehabilitation-focused contacts take longer to commit any new offence and record fewer offences within 36 months of being released compared with their counterparts who received less frequent rehabilitation-focused contacts. No similar effect was observed for the compliance-focused supervision. It should be noted, however, that, regardless of the type of supervision, higher levels of supervision were associated with a lower risk of return to prison.¹⁵¹

8.6 Extended supervision and continuing detention orders

In 2006, the NSW Parliament enacted the *Crimes (Serious Sex Offenders) Act*,

Research, *Crime and Justice Bulletin 178*, August 2014

¹⁴⁸ D Weatherburn and C Ringland, note 147, p1

¹⁴⁹ W Wan et al, [Parole Supervision and Re-offending: A propensity score matching analysis](#), Report to the Criminology Research Advisory Council, September 2014; and for a summary version, see W Wan et al, [Parole supervision and reoffending](#), Australian Institute of Criminology, *Trends and Issues in Crime and Criminal Justice 485*, September 2014

¹⁵⁰ W Wan et al, note 149, p31

¹⁵¹ W Wan et al, note 149, p31

with the objects: “to provide for the extended supervision and continuing detention of serious sex offenders so as (a) to ensure the safety and protection of the community, and (b) to facilitate the rehabilitation of serious sex offenders” (section 3). The purpose of the legislation was explained as follows:

One particular concern that is dealt with by this scheme relates to a handful of high-risk, hard-core offenders who have not made any attempt to rehabilitate whilst in prison. These offenders make up a very small percentage of the prison population, yet their behaviour poses a very real threat to the public. These concerns are compounded where the offender never qualifies for parole and is released at the end of their sentence totally unsupervised. The bill addresses this problem by allowing this small group of high-risk offenders to be placed on extended supervision, or, in only the very worst cases, kept in custody. The Department of Corrective Services has advised that only a small number of offenders would fall into this very high-risk category.¹⁵²

Under the Act, the Attorney-General can apply to the Supreme Court for an extended supervision order, or a continuing detention order, against certain sex offenders. An extended supervision order can only be made if the Supreme Court is satisfied to a high degree of probability that the offender is likely to commit a further offence if not kept under supervision. A continuing detention order can be made in the same circumstances but with the proviso that adequate supervision would not be provided by an extended supervision order.

In 2013, this scheme was extended to serious violent offenders, in accordance with a recommendation of the NSW Sentencing Council.¹⁵³ The name of the Act was changed to the *Crimes (High Risk Offenders) Act 2006*. As at 1 September 2014, there were 36 offenders in the community subject to an extended supervision order (35 sex offenders and 1 violent offender), and no offenders were subject to a continuing detention order.¹⁵⁴

While other States have introduced similar schemes, the use of extended supervision and continuing detention orders is controversial.¹⁵⁵ Criticisms include that: it amounts to infliction of double punishment on a person who has completed their sentence; it punishes a person for what they might do not what they have done; and it is very difficult to accurately predict future offending.¹⁵⁶

A statutory review of the Act is to be undertaken in 2016.¹⁵⁷

¹⁵² C Scully, *NSW Parliamentary Debates*, [29 March 2006](#)

¹⁵³ *Crimes (Serious Sex Offenders) Amendment Act 2013*. See NSW Sentencing Council, [High Risk Violent Offenders: Sentencing and Post-Custody Management Options](#), May 2012.

¹⁵⁴ Office of Brad Hazzard, [Answers to supplementary questions asked following the Budget Estimates Hearing on Wednesday 20 August for the portfolios of Attorney General and Minister for Justice](#), 2014, p7

¹⁵⁵ See L Blayden, [Crimes \(Serious Sex Offenders\) Amendment Bill 2013](#), NSW Parliamentary Research Service, Issues Backgrounder No. 2, February 2013

¹⁵⁶ See NSW Sentencing Council, [Penalties Relating to Sexual Assault Offences in New South Wales, Volume 3](#), May 2009, p9-18

¹⁵⁷ See *Crimes (High Risk Offenders) Act 2006*, section 32

9. REFORM PROPOSALS TO REDUCE REOFFENDING

9.1 Report on people with cognitive and mental health issues

In June 2012 the NSW Law Reform Commission published its report on diverting people with cognitive and mental health impairments in the criminal justice system.¹⁵⁸ The report stated:

Taking all the evidence into account, it is our view that diversion can be an effective means of reducing reoffending and producing better outcomes for people with cognitive and mental health impairments. However, diversionary schemes need to be carefully designed to avoid some of the potential drawbacks.¹⁵⁹

The report made several recommendations including:

- Providing for a police diversion option, pre or post-charge, for persons with a cognitive or mental health impairment;
- Amending the provisions governing Local Court diversion of persons with mental illness or developmental disability to enhance their operation;
- establishing a specialist list for persons with a cognitive or mental health impairment in Local and District Courts in certain locations (see below);
- providing District and Supreme Courts with similar diversionary powers to the Local Court;
- expanding the Court Liaison Service and the CREDIT program to all Local Courts; and to support police and higher court diversions.¹⁶⁰

A defendant would be eligible for the proposed specialist list (known as a Court Referral for Integrated Service Provision (CRISP) list) if they had a cognitive or mental health impairment, they faced a serious prospect of imprisonment and they were not contesting the facts that formed the basis for the alleged offence.¹⁶¹ The CRISP list would operate in the manner of a problem solving court. When a defendant is admitted to the list a diversion plan would be prepared, and the defendant's engagement with services monitored. The court would approve the diversion plan and any major changes to it. Successful completion of the diversion plan would be taken into account at sentencing.

In May 2014, the NSW Attorney-General, Brad Hazzard stated that the Government supported "many of the recommendations"; and that it was giving further detailed consideration to some of these.¹⁶² However, it did not support

¹⁵⁸ NSW Law Reform Commission, [People with cognitive and mental health impairments in the criminal justice system: Diversion](#), Report 135, June 2012

¹⁵⁹ NSW Law Reform Commission, note 158, pxvi

¹⁶⁰ See NSW Law Reform Commission, note 158, pxviii-xxv

¹⁶¹ NSW Law Reform Commission, note 158, pxiii-xxv

¹⁶² Brad Hazzard, [Letter responding to Report 135](#), May 2014

the development of a CRISP list, on the basis that “the implementation of other measures to support diversion would limit the need for such a list”; and that “limited resources would be better addressed to those measures”.¹⁶³

9.2 Report on sentencing

In July 2013, the NSW Law Reform Commission published its report on Sentencing.¹⁶⁴ The report made a wide range of recommendations, many of which are relevant to reducing reoffending. In a section on drug dependent offenders, the report recommended:

- extending the Drug Court program to other locations as resources permit and demand justifies; and allowing offenders to participate even if they have been convicted of an offence involving violence so long as it did not involve bodily harm, or the harm was minor;
- considering extending the Compulsory Drug Treatment program to other locations as resources permit; and considering allowing recidivist offenders to be admitted to the program even if past offences are slightly outside the five-year time period.¹⁶⁵

In a section on diversion and deferral of sentencing, it recommended:

- expanding the Cannabis Cautioning Scheme to cover possession of small quantities of other prohibited drugs
- considering introducing a general cautioning scheme for adults, modelled on the current *Youth Offenders Act* scheme for juveniles;
- considering expanding the operation of the MERIT program as far as possible given resource constraints
- reconsidering the goals and scope of the Forum Sentencing in light of findings that it has not been effective in reducing reoffending
- reconsidering the scope and operation of the Circle Sentencing program with the aim of reaching a larger number of Indigenous defendants.¹⁶⁶

Turning to sentencing options, the report recommended introducing a new Community Correction Order (CCO), which would replace Community Service Orders and good behaviour bonds “with a more flexible order that can focus on the offender’s criminogenic needs”.¹⁶⁷ The Commission also proposed a new community-based custodial order to replace home detention, intensive

¹⁶³ Brad Hazzard, [Letter responding to Report 135](#), May 2014

¹⁶⁴ NSW Law Reform Commission, [Sentencing](#), Report 139, July 2013

¹⁶⁵ NSW Law Reform Commission, note 164, Chapter 15

¹⁶⁶ NSW Law Reform Commission, note 164, Chapter 16

¹⁶⁷ NSW Law Reform Commission, note 164, pxxi and Chapter 13

correction orders (ICOs) and suspended sentences.¹⁶⁸ The report stated that this new order would “increase the number of offenders who are able to serve their terms of imprisonment in the community and help to address the causes of their offending”.¹⁶⁹ Alternatively, the Commission recommended changes to home detention and ICOs to increase their use, noting they have a number of important advantages including reducing reoffending.¹⁷⁰

In September 2013, then Attorney-General, Greg Smith, released a brief interim response to the Commission’s proposals, stating that it expected to provide a more detailed response by the end of the year.¹⁷¹ It noted that the Government did not support extending the Cannabis Cautioning Scheme to other drugs. The Government has not yet published a final response to the report.

9.3 Report on sentencing child sex offenders

In October 2014, the NSW Parliament Joint Select Committee on Sentencing of Child Sexual Assault Offenders tabled its [report](#).¹⁷² The report contains recommendations in several areas including the treatment and management of sex offenders in custody and the community. These include:

- developing alternative programs to replace the Cedar Cottage diversion program for low risk offenders (which was closed in September 2012);
- allocating increased resources to ensure that all offenders who may benefit from anti-libidinal medication have been assessed, and treatment commenced, prior to being released from custody;
- increasing the use of extended supervision orders as an effective re-offender rehabilitation tool;
- establishing an inter-agency working group to devise pre-release strategies for child sexual assault offenders.¹⁷³

The Government was asked to respond to report by 14 April 2015.

9.4 Report on Justice Reinvestment

In June 2013, the Senate Standing Committee on Legal and Constitutional Affairs tabled a report on Justice Reinvestment.¹⁷⁴ It explained that:

¹⁶⁸ NSW Law Reform Commission, note 164, pxix and Chapter 11

¹⁶⁹ NSW Law Reform Commission, note 164, pxix

¹⁷⁰ NSW Law Reform Commission, note 164, pxviii and Chapter 9

¹⁷¹ Greg Smith, [Law Reform Commission Report on Sentencing](#), *Media Release*, 12 September 2013

¹⁷² Joint Select Committee on Sentencing of Child Sexual Assault Offenders, [Every sentence tells a story – report on sentencing of child sexual assault offenders](#), Report 1/55, October 2014

¹⁷³ Joint Select Committee, note 172, Recommendations 24-29

¹⁷⁴ Senate Legal and Constitutional Affairs References Committee, [Value of a justice reinvestment approach to criminal justice in Australia](#), June 2013

Justice Reinvestment was initially developed in the United States as a means of curbing spending on corrections and reinvesting savings from this reduced spending in strategies that can decrease crime and strengthen neighbourhoods. The South Australian Justice Reinvestment Working Group noted that 'the approach is based on evidence that a significant proportion of offenders come from, and return to, a small number of communities'. It involves long, medium and short term strategies. Funding is provided for tailored programs in those communities to strengthen the community and address the causes of crime to mitigate against individuals being caught up in the criminal justice system. Those who have committed offences are diverted away from prison using other forms of punishment and those likely to reoffend are prevented from doing so through effective rehabilitation, parole supervision and after-prison support.¹⁷⁵

The Committee expressed its support for this approach, commenting:

It appears to the committee that given the significant failures of the current justice system, it is time to look at where and why crime occurs and to address the underlying drivers of offending and reoffending. The committee considers that justice reinvestment has a proven track record in achieving successful outcomes through both lowering incarceration rates and targeting the drivers of crime. It is a community focussed, evidenced-based approach that provides savings, diverts offenders, addresses the causes of crime, and strengthens communities.

The four step methodology of justice reinvestment – demographic/justice mapping and analysis of data; development of options; implementation; and evaluation – ensures that limited government resources are effectively targeted at communities where most offenders come from and return to. The evaluation mechanisms embedded within the justice reinvestment approach also ensure that the savings gained are only spent on programs which show positive outcomes in reducing offending behaviour.¹⁷⁶

The Committee recommended that the Commonwealth take a leadership role in supporting the implementation of justice reinvestment; and that it commit to the establishment of a trial in Australia in conjunction with the relevant States and Territories, using a place-based approach, and that at least one remote Indigenous community be included as a site.¹⁷⁷ Coalition senators endorsed the principle of justice reinvestment but it did not support these recommendations because it considered that there was a dearth of evidence that any justice reinvestment programs to date were sufficiently successful; and because criminal justice was a responsibility of the states and territories.¹⁷⁸

In NSW, the not-for-profit organisation, Just Reinvest, is currently undertaking a Justice Reinvestment Proof of Concept project in Bourke, which has a focus on reducing crime and reoffending by young Aboriginal people.¹⁷⁹ The concept now

¹⁷⁵ Senate Legal and Constitutional Affairs References Committee, note 174, p43

¹⁷⁶ Senate Legal and Constitutional Affairs References Committee, note 174, p114

¹⁷⁷ Senate Legal and Constitutional Affairs References Committee, note 174, pxi

¹⁷⁸ Senate Legal and Constitutional Affairs References Committee, note 174, p127

¹⁷⁹ Just Reinvest, [Justice Reinvestment in Bourke](#), [online]

also appears to be gaining more traction in NSW policy debates. In February 2015, it was reported that the Attorney-General, Brad Hazzard, said that the policy was a “potential game-changer”, while Shadow Attorney-General, Paul Lynch said that, if elected, NSW Labor would commit \$4 million over the term of the next government to develop pilot projects in NSW.¹⁸⁰

10. UNITED KINGDOM GOVERNMENT STRATEGY

10.1 Breaking the cycle strategy

In June 2011, the UK Ministry of Justice published its *Breaking the Cycle* strategy, which outlined plans for reform in relation to punishment, rehabilitation and sentencing of offenders.¹⁸¹ In relation to reoffending, it stated:

Current rates of reoffending are unacceptable. Nearly half of adult offenders released from prison are reconvicted within a year, and overall one in five offenders spent some time in custody in the year after they were released from prison or started a non-custodial sentence.

Our priorities are to get offenders off drugs and alcohol for good; address offenders’ mental health problems; get offenders into work; and reduce barriers to resettlement. We will take into account the different profile of women’s offending in achieving this.¹⁸²

The key plans in this area were outlined in more detail as follows:

Offenders in custody

The case for tackling drugs is self evident. Prisoners who had used Class A and Class B or C drugs in the month before custody had a reconviction rate of 71 per cent, compared to 30 per cent for those who had never taken drugs. We will move to a system focused on recovery which does not maintain heroin users on prescription alternatives such as methadone, unless absolutely necessary. We will pilot Drug Recovery Wings – focused on providing short-sentenced, drug-dependent prisoners with continuity of treatment between prison and the community – in five prisons. We will also increase security measures to reduce the supply of drugs and alcohol into prison and promote drug free environments. We are working across government to ensure offenders gain the skills and aptitude to work in prison, and to secure and retain employment on release. We will use the roll out of the ‘Virtual Campus’ to broaden the range of employment and learning services available in custody, enabling offenders who show a commitment to reform to access appropriate IT-based learning, employment services and job searches.

¹⁸⁰ M Whitbourn, [Just Reinvest NSW: Program to tackle indigenous over-representation in jail could be a 'game changer'](#), *SMH*, 5 February 2015

¹⁸¹ UK Ministry of Justice, [Breaking the Cycle: Government response](#), June 2011. This followed the release of a Green Paper in December 2010: [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#)

¹⁸² UK Ministry of Justice, note 181, p6

Offenders on non-custodial sentences

We will explore options for intensive drug and alcohol treatment based accommodation. We will also continue to work with the eight local areas already announced as pilots for a payment by results approach for drugs and alcohol recovery.

We must ensure offenders with mental health problems receive treatment in the most appropriate and the most secure setting necessary. We are working with the Department of Health and the Home Office to pilot and roll out liaison services in police custody and at courts by 2014. The Department of Health is investing £3 million this financial year in 54 adult sites. For young people, six pilots have been in operation for the last two years. An additional £2 million will be supplied to fund up to 30 sites, with the long term aim being to roll this approach out nationally. For those whose offending is linked to severe forms of personality disorder, a different approach is needed focusing on how to make better use of resources and increase access to treatment. A full response to the separate consultation that has been held on this will be published later this year.

Settled housing is critical to stabilising the chaotic lives of some offenders. We will work with the Department for Communities and Local Government on a scheme led by Crisis to improve access to the private rented sector for single homeless people, including offenders; work with courts to reduce the extent to which remand is used because offenders do not have stable accommodation, through wider use of Bail Accommodation and Support Service schemes; and support development of the Ministerial Working Group on Homelessness, ensuring that prisons and probation effectively play their part.

Payment by results

We will pioneer a world first – a system where we only pay for results, delivered by a diverse range of providers from all sectors. This principle will underpin all our work on reoffending. This is a radical shift. We have already started several pilots and will launch a competitive process this summer to commission further pilots. But we are clear that we want to rapidly build on these pilots. To do this we will ensure that we will no longer provide rehabilitation services directly without testing where the private, voluntary or community sectors can provide them more effectively and efficiently. We will publish a wider Offender Services Competition Strategy shortly, which will set out an ambitious timetable for taking payment by results forward and the wider competition strategy.¹⁸³

The first “payment by results” scheme commenced in September 2010. It aims to reduce reoffending by prisoners who are serving a sentence of less than one year at Peterborough prison. The Ministry of Justice entered into a contract with Social Finance UK, who obtained funding from 17 investors. Social Finance commissioned St Giles Trust to work intensively with 3,000 short-sentence prisoners, both inside Peterborough prison and after release, to help them resettle into the community. The Ministry of Justice will make payments to investors but only if reconvictions among prison leavers fall by a certain percentage compared to a control group. A recent report on the first cohort of prisoners found that there was an 8.4% reduction in reoffending rates, which

¹⁸³ UK Ministry of Justice, note 181, p6

was insufficient to trigger payment for this cohort.¹⁸⁴ A number of other “payment by results” pilots were set up but some were later cancelled.¹⁸⁵

10.2 Transforming rehabilitation strategy

In May 2013, the UK Government released *Transforming Rehabilitation: A Strategy for Reform*.¹⁸⁶ The Strategy stated:

The case for a new approach is clear. We spend more than £3bn a year on prisons, and almost £1bn annually on delivering sentences in the community. Despite this, overall reoffending rates have barely changed over the last decade and we see the same faces coming back through the system – almost half of all offenders released from custody in 2010 reoffended within a year. Over 6000 offenders sentenced to short custodial sentences of less than 12 months in the year to June 2012 had previously received more than 10 community sentences, yet gaps in the sentencing framework mean little can be done to prevent them from returning to crime once they are released back into the community.¹⁸⁷

The key measures outlined in the strategy included:

- for the first time in recent history, new statutory rehabilitation extended to all 50,000 of the most prolific group – offenders sentenced to less than 12 months in custody;
- a fundamental change to the way we organise the prison estate, in order to put in place an unprecedented nationwide ‘through the prison gate’ resettlement service, meaning most offenders are given continuous support by one provider from custody into the community;
- opening up the market to a diverse range of new rehabilitation providers, so that we get the best out of the public, voluntary and private sectors, at the local as well as national level;
- new payment incentives for market providers to focus relentlessly on reforming offenders, giving providers flexibility to do what works and freedom from bureaucracy, but only paying them in full for real reductions in reoffending;
- a new national public sector probation service, working to protect the public and building upon the expertise and professionalism which are already in place.¹⁸⁸

The new statutory rehabilitation requirements were introduced in the *Offender Rehabilitation Act 2014*. Offenders serving sentences of less than 12 months are now subject to release on licence (instead of unconditional release) when

¹⁸⁴ D Joliffe and C Hedderman, [Peterborough Social Impact Bond: Final Report on Cohort 1 Analysis](#), UK Ministry of Justice, August 2014.

¹⁸⁵ See J Bardens and G Grimwood, [Introducing “Payment by Results” in Offender Rehabilitation and other reforms](#), House of Commons Library, Standard Note, October 2013.

¹⁸⁶ UK Ministry of Justice, [Transforming Rehabilitation: A Strategy for Reform](#), May 2013. This followed a consultation paper in January 2013 [Transforming Rehabilitation: a revolution in the way we manage offenders](#)

¹⁸⁷ UK Ministry of Justice, note 186, p6

¹⁸⁸ UK Ministry of Justice, note 186, p6-7

they reach the halfway point of their sentence. The Act also created a new period of post-sentence supervision for offenders serving custodial sentences of less than two years. Under the new provisions, an offender serves half of their custodial sentence in custody, the second half under licence in the community, and a period of post-sentence supervision then applies until the offender has spent 12 months in the community since their post release date. For example, a person serving a custodial sentence of 18 months would spend 9 months in custody, would then be on licence for 9 months, and would then have 3 months post-sentence supervision. During the licence and supervision periods, offenders must comply with certain conditions: e.g. to participate in rehabilitation programs in accordance with instructions given by the supervisor.

11. CONCLUSION

The current and past governments in NSW have sought to reduce reoffending through various measures targeting the causes of offending. These include court-based interventions, alternative custodial sentencing options, prison and community-based rehabilitation programs, and post-release support. The programs that have been shown to be effective in reducing reoffending are the MERIT program, the NSW Court Liaison Service, and the Drug Court program. The NSW Government has also sought to deal with high-risk violent and sex offenders through a scheme of extended supervision and detention.

The trends in NSW reoffending rates present a mixed picture. On the positive side, between 2000 and 2011, two-year reoffending rates declined from 31.4 per cent to 25.8. More worrying are trends in rates of prisoners who return to prison or corrective services within two years. These rates improved in the first part of the last decade but, due to a sharp rise between 2010-11 and 2011-12, are now back at the 2000-01 levels. The NSW rate of prisoners who return to prison within two years (45 per cent) is higher than all other Australian jurisdictions except the Northern Territory. This trend is not revealed by progress reports on the NSW State Plan, which use a measure of reconviction within 12 months of release from prison.

The NSW Law Reform Commission has made several recommendations that are aimed at reducing reoffending. In one report, it recommended expanding diversionary options for people with cognitive and mental health impairments, including expanding the NSW Court Liaison Service and the CREDIT program. In a report on sentencing, the Commission proposed introducing a general cautioning scheme for adults; extending the MERIT program, the Drug Court program and the Compulsory Drug Treatment program; and introducing more flexible custodial and non-custodial sentencing options. The Commission is also currently examining parole. At the national level, a Senate Committee report recommended trialling the Justice Reinvestment approach in Australia.

Reducing reoffending is also being targeted by the UK Government. It has released two strategies in the past few years which contain a broad range of measures including a “payment by results” scheme, which was described as a world first. The NSW Government has since established two payment by results

schemes outside of the criminal justice system.¹⁸⁹ In February 2015, the Baird Government released its Social Impact Investment Policy, and identified its priorities for future investment opportunities, which include supporting offenders on parole to reduce their levels of re-offending.¹⁹⁰

Finally, in a recent book on Indigenous imprisonment, the Director of BOCSAR, Don Weatherburn, outlined “four key priorities in relation to the goal of reducing Indigenous recidivism”.¹⁹¹ The fourth priority is the most contentious, with Weatherburn arguing that we should cease relying on “empowerment” as a strategy for reducing Indigenous over-representation in prison.¹⁹² He disputes the theory that Indigenous disempowerment is the root cause of Indigenous disadvantage: a claim that was central to the 1991 report of the Royal Commission report on Aboriginal deaths in custody. On the other hand, he supports the notion that Indigenous disadvantage cannot be reduced without the advice and active involvement of Indigenous people. The other three priorities to reduce Indigenous recidivism are stated as follows:

The first is a comprehensive assessment of the extent to which Indigenous (and non-Indigenous) prisoners released from custody are receiving the supervision, support and treatment needed to minimise the risk of return to prison...The second key priority is a program that can be shown to be effective in reducing violent behaviour among Indigenous offenders following release from prison...[as] more than 60 percent of sentenced Indigenous prisoners have been imprisoned for a violent offence...The third is a system of screening and early intervention to limit the number of Indigenous (and non-Indigenous) juveniles who progress to the adult criminal justice system...¹⁹³

¹⁸⁹ See NSW Department of Premier and Cabinet, [Social Benefit Bonds](#), [online]

¹⁹⁰ See NSW Government, [Social Impact Investment Policy](#), February 2015; and [Statement of Opportunities 2015](#), February 2015

¹⁹¹ D Weatherburn, *Arresting incarceration: pathways out of Indigenous imprisonment*, Aboriginal Studies Press, 2014, p157

¹⁹² D Weatherburn, note 191, p158

¹⁹³ D Weatherburn, p157