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IS JUSTICE REINVESTMENT NEEDED  
IN AUSTRALIA?

Report and edited transcript of proceedings

Edited by Dr Jill Guthrie

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## Executive Summary

This report is an edited transcript of proceedings of a one-day forum convened on 2<sup>nd</sup> August 2012 by the National Centre for Indigenous Studies (NCIS) at The Australian National University, posing the questions, *Is Justice Reinvestment needed in Australia?*, *What does Justice Reinvestment mean in practical terms?*, and *Should Australia explore Justice Reinvestment as a policy option?* The forum was sponsored by NCIS, the Indigenous Offender Health Research Capacity Building Group and the ANU Crawford School of Public Policy. It followed a workshop convened by Dr Jill Guthrie at the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) in November 2011, which drew together service providers and policy makers from the community, ACT government, and Commonwealth government to explore the feasibility of Justice Reinvestment (JR) in the Australian Capital Territory. That workshop concluded that the ACT as an ideal jurisdiction for JR research because of its population size and government structures; that JR is a long-term systems approach requiring high levels of collaboration and rigorous evaluation including cost benefit analysis. It also identified the need to learn more from international colleagues about how JR has developed in their countries. The aim of the forum was learn more about Justice Reinvestment, to gain shared understandings of how it might be implemented in an Australian context and to consider how research can demonstrate its effectiveness.

**Associate Professor Cressida Fforde**, Deputy Director, NCIS, commenced the day with an Acknowledgement of Country welcomed participants and advised apologies of those who could not attend and handed proceedings over the facilitator for the day, **Professor Michael Levy**. **Professor Tony Butler** gave a brief introduction to the work that is being achieved through the Indigenous Offender Health Capacity Building Group. Forum facilitator, Professor Michael Levy, acknowledged the traditional owners: Acknowledging probity and the reality that there are varying understandings of Justice Reinvestment, he disclosed his understanding of the concept, stating he would not constrain discussion. Michael performed his task admirably – much of the process narrative need to do this has been edited in this report – keeping all speakers to time and topic while allowing for a wide-ranging discussion between speakers, panellists and participants.

**Dr Jill Guthrie**, the forum convenor, provided background including a précis of the AIATSIS workshop and discussion of how the forum was intended to progress the Justice Reinvestment debate and thinking from the more localised (as represented by the AIATSIS workshop) to more national and international perspectives.

**Professor Tony Butler** presented on *Australia's incarceration profile*, including that about 30,000 adults are in custody in Australia. Referring to the Australian Productivity Commission's report, Tony emphasised the need for availability, access and analysis of relevant data to underpin research that would seek to answer some of the questions raised by Justice Reinvestment philosophy. He also explored the incarceration profiles of States and Territories to suggest a narrative from each jurisdictions regarding its approach to incarceration.

**Dr Tom Calma** presented on the *Justice Reinvestment movement in Australia*, drawing parallels between it and other campaigns he has been involved in, Close the Gap, GetUp, Oxfam and UMeUnity, to stress the importance of grassroots movements mobilising for social and political change. Tom focused on how the lack of access to and equity of the social determinants of health – health, education, employment, housing – impacts heavily on the likelihood of incarceration.

In his presentation, *The Royal Commission into Aboriginal Deaths in Custody, 20 years on*, **Professor Mick Dodson**, who had been First Counsel for the Commission, spoke movingly of the lack of uptake of most of its recommendations, adding his insights about the lives of the 99 people whose deaths were considered, that 'the keepers of the records perhaps saw or recorded all but rarely did they know who they were writing about. The Commissioners knew that they could not understand the death of one life without knowing the

whole life, and the whole life couldn't be understood unless you understood the 200+ year colonial experience of the whole community from which they came.' From this standpoint, Mick endorsed the call to explore Justice Reinvestment initiatives.

In his presentation, *Safer communities, Stronger communities – the limits of criminal justice* **Professor Andrew Coyle**, Emeritus Professor of Prison Studies, University of London and Visiting Professor, University of Essex, UK, drew on some 40 years of experience in the prison context as both governor, researcher and academic, to demonstrate that the criminal justice system has an important but limited role in enhancing community and individual safety and security. He emphasised that while criminal justice deals primarily with the actions of individuals after they have occurred and that instead of concentrating exclusively on the actions of individuals, it may be that community safety and security can best be enhanced by initiatives which focus on the location, the environment and the community where crime occurs.

**Professor Vivien Stern's** presentation, *Justice Reinvestment and the politics of localism in England and Wales*, showed how Justice Reinvestment can address key political questions particularly how to allocate shrinking public funds and how power should be distributed between national government and local authorities. Vivien explored Justice Reinvestment in England and Wales and how Justice Reinvestment theories have influenced the politics of localism in those countries.

**Professor Todd Clear's presentation**, *The promise and perils of Justice Reinvestment*, examined Justice Reinvestment as a concept and in practice, identifying some of the important ways it has advanced the correctional reform agenda as well as some of the more problematic issues arising from it that need to be considered as the Justice Reinvestment movement matures.

**Mr Roger Wilkins**, Secretary of the Australian Commonwealth Attorney-General's Department described some evaluation of programs currently being undertaken within his department. He also explored three aspects of Justice Reinvestment from his perspective: firstly, that of early intervention and prevention, concentrating on the causes of crime; secondly, that Justice Reinvestment is about saving money while getting better outcomes including community safety; third, how Justice Reinvestment can create incentives for policy makers to be innovative.

The Discussion Panel comprised Dr Tom Calma; Professor Todd Clear; Professor Andrew Coyle; Professor Mick Dodson; Professor Vivien Stern; Mr Roger Wilkins; Dr Andrew Leigh MP, Federal Member for Fraser, ACT, and Senator Penny Wright, Senator for South Australia. Professor Levy sought the panel's response to the challenge confronting Australia as demonstrated by the increasing Aboriginal youth population in the 15 to 24 year age group and the current trajectory of their incarceration rates and contact with the criminal justice system.

A survey of participants which sought to gain an understanding of Justice Reinvestment and enablers and barriers to its implementation in an Australian context was sent to all participants following the Forum. A report summarising that feedback is provided separately.

## **Associate Professor Cressida Fforde – Acknowledgement of Country, Introductory remarks**

Good morning, I'm with the National Centre of Indigenous Studies at ANU. It's my pleasure to welcome you. Let me begin by acknowledging the first Australians on whose traditional lands we meet and pay my deepest respects to their Elders past and present. I welcome everyone on behalf of NCIS and Director, Professor Mick Dodson, who will be joining us later. Welcome and thanks to Senator Penny Wright. Dr Andrew Leigh, Federal Member for Fraser ACT will join us, Dr Andrew Laming Federal Member for Bowman in Queensland provides his apologies because of the early arrival of his child. I acknowledge Steve Doszpot and Meredith Hunter of ACT Legislative Assembly, Rod Little ACT Indigenous elected body and Tammy Solonec of National Congress of Australia's First Peoples. There are many organisations represented, a measure of interest in this forum, also how important it is to bring everyone together in consideration of the question, Is JR needed in Australia? Particular thanks to speakers and panellists from Australia and those who have travelled internationally – from the UK, Baroness Vivien Stern and Professor Andrew Coyle – and from US, Professor Todd Clear. We're recording the event and with permission of the speakers will make public their presentations on NCIS website. Professor Tom Kompas, Director of Crawford School and Dean of Australian Institute for Public Policy, apologises and asked me to welcome you all. I will hand over to Tony Butler then to Michael Levy, facilitator for the day.

## **Professor Tony Butler – Indigenous Offender Health Capacity Building Group**

A brief introduction to the Indigenous Offender Health Capacity Building Group: the aim is to build capacity in a bunch of researchers across Australia. There are hubs of research in WA, ACT and NSW, projects looking at alcohol interventions for offenders – JR is a key part of that; the role of Elders in the rehabilitation process and other projects. It's a pleasure to support this initiative. We have a good future in terms of building this cohort of Indigenous researchers across Australia bearing in mind that the offender health area is perhaps 20 years behind in terms of our knowledge of its population compared with the general community. We've got a long road ahead and JR is a key part of that process.

## **Professor Michael Levy – Facilitator**

I acknowledge the Elders on the land we meet and thank them for their kindness in allowing us to be here and acknowledge them and to work towards a common aim. In terms of probity I should disclose what I believe JR is, but I won't constrain discussion as the day goes on. JR ensures that justice and human service agencies work towards a common goal of reducing the number of people in custody, the number of families in communities that intersect with the criminal justice system: it gives us a framework for interventions to reduce both offending, and also importantly re-offending as two separate issues, and also the demand of custodial services, but also to transfer those funds back into communities and support communities.

## **Dr Jill Guthrie – Forum expectations and link to November 2011 Justice Reinvestment workshop**

I acknowledge the first Australians on whose traditional lands we meet, whose cultures are amongst the oldest continuing cultures in human history. I should say from the outset that my discipline is not law or criminology or economics, my academic training and experience has been in the public health field – most of us are multidisciplinary by necessity – and in fact that reflects much of the JR approach. In early 2010, representing the Indigenous Offender Health Capacity Building Group, Michael Levy and I gave evidence to the House of Representatives Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system. That Committee's report, *Doing Time – Time for Doing*, many of you will be familiar with. A section of that report focused on JR, noting 'As yet there has not been

sufficient research in Australia to demonstrate the effectiveness of JR, although some examples from US indicate a measure of success.’

My reading of JR is that its proper implementation requires independent research and overview and that, of course, needs resourcing. In our submission to the Inquiry we recommended a JR framework be adopted in Australia underpinned by a national reference group, something along the lines of the Council of State Governments Justice Centre in the US – a national non-profit organisation serving policymakers at local, State, and Federal levels, where staff provide practical nonpartisan advice and consensus-driven strategies informed by available evidence to increase public safety and strengthen communities. The Urban Institute in Washington, which runs the JR initiative, is another organisation doing much of the JR evaluation work in the US. It was founded by President Lyndon B. Johnson in the 1960s, who said when founding it that he wanted to, ‘... bridge the gulf between the lonely scholar in search of truth and the decision maker in search of progress,’ so something along the lines of what we were thinking when we made that recommendation to the Inquiry.

The aim of the forum is to learn more about JR, gain some shared understandings of what it is and how it might be implemented in an Australian context and to think about how and what research can demonstrate its effectiveness. We are thrilled to have visitors from US and UK as well as key Australian researchers and policymakers. We very much appreciate your attendance today including representatives of stakeholder groups essential in the research and implementation of JR – community organisation members, representatives from Commonwealth, ACT, NT and NSW governments, as well as non-government organisations, policy makers, and service providers, from justice, health and education sectors, judiciary, advocates, and researchers, as well as political representation. We’ve not invited you here simply as passive recipients of this information though. As part of the research process we want to find out what you see as the necessary steps that need to be in place and what are the impediments or challenges to implementing JR from your sector’s perspective. As part of that we’ll be sending an electronic survey to get your feedback about what are the necessary steps, the challenges and impediments from your stakeholder perspective.

In the process of my learning about what JR is – my reading of it is that it’s an idea, a concept, a philosophy, a methodology, an organising framework, and a policy option. JR is not just a program, and not just a collection of programs – it’s a systems approach to rethinking the criminal justice system so that large sums of taxpayer money are not spent in imprisoning people for arguably low level criminal activity but investing that money back into the community.

It’s important to say what JR *is not* as well. From my reading, in short, it’s not just restorative justice, although the philosophy and theory of restorative justice may be relevant; it’s not about creating more diversionary programs, although evaluations of those programs also can provide evidence towards that JR operating framework; it’s not about closing or downgrading prisons, at least not in the short term. JR is not short term, it’s long term, and therefore requires a collaborative, systems approach, and research to provide that evidence. Being a systems approach there are many stakeholders: in my discussions with international researchers in the field it’s evident that one of the key stakeholders is the unions – in Australia the Commonwealth Public Service Union looks after prison wardens – their ACT representative, Mr Vince McDevitt, is an apology today but in my discussions with him, he clearly understands and accepts the importance of JR and is very keen to be involved in the developmental work that will lead towards a research project hopefully and suggested that a way to do this would be to provide information to prison wardens at the AMC over this developmental period. We are very happy to engage with the authorities to allow that to happen. Another key stakeholder is the media: Mr Richard Ackland, journalist with the *Sydney Morning Herald*, has written on the value and importance of JR: unfortunately he was an apology today but he’s indicated that he’s keen to be involved in the developmental work as well. Yesterday I received an apology from ACT Supreme Court Judge Richard Refshauge, who also is very committed to it and wants to be involved in that developmental work. Mr Mick Gooda, Social Justice Commissioner, is also a late

apology but as we all know Mick is a strong advocate of JR having taken over the role of Social Justice Commissioner from Tom Calma.

In November last year I convened a workshop at AIATSIS which explored the feasibility of JR in the ACT. It drew together service providers and policy makers from the community, ACT government, and Commonwealth government, many of you here were at that. The impetus for the workshop was a newspaper article describing crime prevention and community services for 12 ACT families who had intense contact with the criminal justice system. The description of the initiative suggested it had elements of JR, however after conversations with various people it was apparent that there was no evaluation process in place to measure the impact of those services on the families or the workforce that were doing the case management. During the workshop a service mapping exercise, which sought to illustrate links between service providers, policy makers, and researchers, to a fictional family having contact with the criminal justice system in the ACT, also showed a lack of integrated services. It was evident that some work still needed to be done to coordinate and to evaluate the services, including on the workforce and the service providers working with those families. The workshop identified that the ACT is an ideal jurisdiction for JR research because of its population size and government structures; that a JR research project in the ACT should take a whole-of-community approach – and that is not just focus on the ACT Indigenous community – whilst acknowledging that the biggest impact would be on the Indigenous population because of those disproportionate incarceration rates.

The workshop also identified that JR is a long term systems approach, and requires those high levels of collaboration, and it has that evaluation component which includes cost benefit analysis. The workshop led to a research working group being established, comprising ACT Human Rights Commission, local Indigenous elected body, Aboriginal Justice Centre, ACT Chief Minister's Department, ACT Department of Justice and Community Safety and myself and other researchers. We've met several times since last November. Today's forum we hope will provide more insights into how to progress a linkage research project application to the Australian Research Council. That working group is meeting tomorrow with our three international visitors. Another outcome of the workshop was the recognition of the need for a literature review on JR particularly in the Australian context. The Australian Institute of Criminology is doing that research, expected towards the end of this year. The workshop identified that we need to learn more from our international colleagues about how JR has developed in their country and that of course has led towards today's forum. Thank you.

**Michael Levy:** First question to Michael Moore, CEO, Public Health Association.

**Michael Moore:** What you're thinking of in JR – in public health, we don't really think in these terms. Where do you see the public health link with JR? And when it's time to go to research, what level of public health research needs to go into the questions?

**Jill Guthrie:** The link with public health is around the social determinants of health in particular, drug and alcohol, and mental health factors, and as we go towards possibly an ARC application the Public Health Association would be a very key industry group that we might link up with.

**Michael Levy:** The hook is that whole concept of the social determinants of health around employment, housing, integration with community again, so reinvesting at the community end of the disentangled life, or entangled lives. I note we have two uniformed police; I'd be interested if you could introduce yourselves, and maybe you've got some introductory remarks?

**David Price:** My name is David Price, Deputy Chief Police Officer in ACT. I have Kristin Woods with me, from our Indigenous Liaison Team and does a lot of the frontline work especially youth. I guess one of the main things is the MPower Project that we do around vulnerable families – it was that article you referred to in the media on our Chief Police Officer that relates to that. We're very interested in JR. I have



responsibility in particular for the crime prevention aspects of community policing and I see a lot of opportunity here. We see crime prevention as not just dealing with issues at the frontline, it's going beyond that, trying to address issues before they hit the frontline, and then have to make difficult decisions that really, by then it's too late. I'm keen to hear what others have to say but certainly I'm keen to do more in this space around crime prevention, and really focusing on in my view Canberra's an excellent opportunity, it's geographically small, we're centrally located for our services, and it's a great opportunity for us to be able to trial and do a bit more to demonstrate the effectiveness of this. Kristin, do you want to say more, you've worked a lot closer with some of the issues here in Canberra?

**Kristin Woods:** I have though not much to say right now, I'm happy to hear what you're saying, maybe try and get some more examples of what we could do.

**Bernadette Mitcherson:** I endorse the comments in relation to your idea of what JR is. I guess I've always had the view that we need to work on stopping people coming back to gaol. I also work in probation ... probably 10 years ago we might not have heard of Corrections saying that kind of stuff – they never thought it was their business – the door closes and that's the end of it. So it's really an important move for Corrections over the last decade that's now leading to working in the level of agency work in a way that tries to prevent people coming back into custody, even perhaps be a whole family.

**Tammy Solonec:** Jill, you mentioned media was a key stakeholder. In WA we did mapping where we obtained stats of people incarcerated by local government area through a question raised in Parliament which the media then got hold of and figured out themselves what the stats were and they put some articles in the paper about those particular suburbs, it reflected badly on those suburbs, and people who are house owners in those suburbs were worried. Just wondering how you think that could be managed?

**Jill Guthrie:** Media can work for you or against you, and obviously they haven't worked in your favour there. But my thinking around this particular journalist – Richard Ackland, who's with the *Sydney Morning Herald*, he has written on the importance and the value of JR, and we asked him here today representing media as a stakeholder group in the JR debate, and it's to represent the media so that they get it right and not just use those kind of statistics as they did in your case, in a shock-jock fashion. So media are an important stakeholder group - we need those media champions.

### **Professor Tony Butler – Australia's incarceration profile**

I'll present some prisoner facts and figures, juveniles and adults; I'll concentrate mostly on adults because that's where we can get most bang for our buck. Something on the health status of this population because as Michael Moore was suggesting, *Where does public health fit into this?* Health has a role in JR – one of the potential solutions for keeping people out of prison lies in health, some of the challenges to JR, and perhaps where some of the future JR research should go. Firstly, juvenile offenders in Australia – this is total number of juvenile offenders under supervision by Juvenile Justice across Australia (referring to slide). The blue bar represents those under community supervision, not in custody, and the orange bar are young offenders in custody. What we can see is that the lion's share of juvenile offenders, over 70%, are in the community right now, they're not incarcerated. This is the total number. The second point – you'll notice that WA and the NT did not provide data for this collection, as such are quite reprehensible, and they really needed to be taken to task for that.

**Greg Shanahan:** I take opposition to that.

**Tony Butler:** Sorry? ... This is the AIHW juveniles in Australia, data wasn't provided in that ...

**Greg Shanahan:** Yes but for a reason ... We have provided that data in the past, we're in the process of changing our computer systems which is not an easy task as we go through these things. We intend to

provide it again as soon as we can get those systems aligned, so that we can provide that data. I think it's unfair to ... calling our actions reprehensible, when there's a very valid reason for not providing it.

**Tony Butler:** Apologies if I've offended you but this is a public document: I'm a punter, a researcher who goes through publically-available documents such as the Institute of Health and Welfare, a very reputable organisation, I'm sure you'd admit. I draw data from them, and when I see the data's not there, then it's... it's an issue. The totals include inferred data from previous years, but ... for the 2009, 2010, data wasn't there .... Similarly, Indigenous and non-Indigenous offenders by community based supervision, i.e. not in custody – what this shows is the rate per 1,000 of Indigenous and non-Indigenous young people, ten to 17 years old, on community supervision. Let's wait and see that for every 1,000 young people, 18 Indigenous, and 1.4 non-Indigenous people are under some community-based supervision (referring to slide). If we look at the in-custody statistic (referring to slide), we see that across Australia 4.3 young Indigenous offenders are in custody versus 0.2 non-Indigenous. The take-away point from the last three slides is that most young offenders are in the community under supervision, but the last two slides show that most of those, most young offenders in contact with the criminal justice system are Indigenous, and we obviously need to direct our efforts to that group.

If we move to adults, we've got about 30,000 adults in fulltime custody in Australia, and about 54,000 adults on community Corrections order (referring to slide). There's an estimated 500,000 former prisoners in Australia ... back of envelope calculation, but we have to go with the best data we've got. It's a fairly young population, about 35 years for men and 36 years for women, and as the population gets older, the median age, average age of offenders is increased. About 55% of offenders have been in custody before and median length of incarceration is 38 months. If we look at trend (referring to slide) over time, it's gone from about 22,000 offenders in 2001 to about 30,000 in 2010. That's the rate – very important to look at the rate – that's increased from about 153 to 172 over that time period (referring to slide). If we look at a slightly longer time period, 1989–2009, we can see the rate's gone up quite significantly from around about 100 to about 170–180 per 100,000 people (referring to slide). If we look at age distribution of prisoners - again we've got to start thinking which groups are we going to be addressing here, Is it juveniles? Is it adults? How old are these people that we're going to be trying to keep out of prison? We can see that about  $\frac{2}{3}$  are in 20-40 year age group, that's the population we would be thinking about diverting or keeping out of custody (referring to slide). If we look at sorts of offences – this is important because when we talk about keeping people out of prison and maintaining them in the community and reinvesting that money, What's the population we're talking about? Are they the sex offenders? Are they the guys that committed homicide?

We need to start doing analyses that look at the sorts of offenders or offender profiles that could be diverted away from prison and maintained in the community. If we look at the sorts of offences that people come back for, these are people who've committed a burglary on a previous offence (referring to slide) – about 60% who had done a previous burglary, came back subsequently for burglary as their offence, and this is from a cohort that the ABS published data on through a period 1994–1997. If we look at the international league table (referring to slide) – and I know some of you who remember the previous slide will pick me and say that these stats are out of date, again this is a publicly available document – we see that the major incarcerators, the premier league, the US and the Russian Federation and some odd little jurisdictions like St Kitts and Nevis, and then there are some countries that are the least incarcerating countries (referring to slide), with rates per 100,000 in the 20s and 30s. The data are slightly out of date but if we assume that *all* the data are slightly out of date at least it gives some idea where Australia fits in the international picture. We're about in the middle in terms of being a country of the rate at which we incarcerate (referring to slide). If we look at adult Aboriginal prisoner population (referring to slide) there's a big Indigenous focus to this area – pertinent to comment on that. We've got about 7,500 Aboriginal prisoners in fulltime custody in Australia right now. If we look across States and Territories there's about 2,000 in NSW, 1,500 in Queensland, 1,500 in WA, but if we look at the *rates* (referring to slide) the rate of incarceration for adult Aboriginal people is over 3,000, and the stand-out state is WA.

If we compare that to some international jurisdictions, the US we know has 25% of the world's prisoners, the highest rate of incarceration in the world – that rate in WA is on a par with the rate in Wisconsin which has the highest rate of incarcerating African Americans in the US – that's from the publication, *The Ten Worst Places To Be If You're Black*. An incredibly high rate! If we look at health (referring to slide) – health has a role to play in JR – we know that prisoners have some of the worst health in the world ... issues with childhood sexual abuse, sexual coercion, poor education status, expulsions from school, that's all part of the background of adult prisoners, and these data are taken from inmate health surveys and more recently AIHW's Prisoners in Australia data collection – ¾ of women and ½ of men have histories in injecting drug use; about 1/5 have some ICD-10 diagnosis of alcohol use disorder; and 85% are current smokers; 46% of people coming into prison have some mental health problem, that's an anxiety affected disorder, or symptoms of psychosis. If we include personality disorder and substance use disorder, that figure goes up to about 90% for women and 75% for men, who have some mental health problem, if we broaden the definition, about ¼ have histories of post-traumatic stress disorder, 16% are currently on some psychiatric medication. You could argue that there's a treatment need that's been missed there, with only 16% on the psychiatric medication, given the prevalence of psychiatric disorder; ... 82% have some history of a traumatic brain injury, that's a blow to the head where you've become dazed or confused; loss of consciousness is 64%; and the rest that are associated with head injuries such as impulsive personality, headaches, personality change, high levels of psychiatric and physical or communicable diseases. Around less than 1% are HIV antibody positive in Australia, we've got the lowest rates of HIV in an injecting population in the world, incredibly low rates attributed to early engagement in needle exchange programs and harm minimisation practices; 22% hepatitis C antibody positive ranging from 4–40% across the country; 19% hepatitis B antibody positive, 42% remain unimmunised against hepatitis B for a very cheap widely available vaccine, yet 41% of prisoners that we screen in a survey that I do remain unimmunised against hepatitis B, and only 2% report being treated for hepatitis C. There are high levels of psychiatric and physical morbidity in this population. If we're talking about investment, then there's a great opportunity there to invest in the health of this population. I'm not sure we're doing that to any great extent.

Another study we did looked at mortality – a data linkage study where we took all prisoners between 1988–2002 in NSW and linked them to the national death index, a cohort of 85,000 men and women, mostly men as you'd expect – JR, we're talking mostly about men – the cohort had 7,980 Indigenous men and 1,300 Indigenous women, average age of 27, that's because the cohort went back, and now the average age is about 35. We found in about 5,000 deaths, the most common causes of death were drugs overdose and suicide, but other causes also came into it (referring to slide). 5,000 deaths between 1988–2002, and there were 558 Indigenous deaths in that cohort. Basically prisoners die at a rate 3.7 times for men and 7.8 times for women, more than their age sex matched community peers; what we found out was that cohort of Aboriginal men spent 12,000 years in prison between 1988–2002 and women had spent 1,032 years in prison between 1988–2002. For me that's quite a remarkable statistic, that's a lot of years to be spending in prison, that this cohort of Aboriginal prisoners had spent in prison. If we look at that in days – multiply it by 365-1/4 – that's four million days, wasted days – well it's not all wasted days, but – we have to acknowledge there are some people we want to be kept in prison for certain periods of time – but it's what we do with them that's important. Four million days that people are kept in prison, they're not being productive, I guess there's the personal angst of being in prison away from families, away from communities – and 376,000 women – remember that's just NSW – extrapolate that to the rest of Australia, because not all Aboriginal prisoners are kept in NSW we end up with 64,000 years!

This is back of envelope stuff and some assumptions made but around 64,000 years have been spent by Aboriginal people in Australia being kept in prison, 5,000 years for women. For men, 23 million days were spent in prison across Australia between 1988–2002. That's not going to be completely accurate but ballpark. We know it costs around \$200 a day to keep somebody in prison, that's \$200, that excludes cost of police, of courts, of health care, if we multiply our days, we end up (referring to slide), about five billion, a cool five billion! – again, gross underestimate of the total costs of this incarceration justice enterprise.

Between 1988–2002 probably about \$5billion, again gross underestimate if you include all the other costs, it would be much higher than that. The point is that we need to get very clever about our arguments about JR beyond the popular rhetoric of *You shouldn't do that, You should do this!* I'm no health economist, I'm sure a health economist could do much better job than I've done in interpreting that. We mentioned the media and it's incredibly important that we acknowledge that these guys have a role. These are shock jocks by the way who are incredibly influential that we need to engage in this process.

Jill didn't mention a project we're involved in, Citizens Juries, where we're hoping to get a group of informed citizens and find out what they would like to do in terms of incarceration, do the general public really want to send people to prison, given that there's these massive numbers and massive costs associated with it, because ultimately these guys represent the community, and we really need to engage with the community to find out what they want to do, rather than pointy headed academics telling everybody that you should do this. We've got another project looking at Citizens Juries, where we're trying to find out what the general citizenry want to do with incarceration, provided they're informed and given the right information, rather than the rhetoric that some tend to promulgate – there's some brilliant quotes in here, and we really need to be aware of the mood and temper of the public with regard to incarceration, and what they think and want. And are they ready for change? Does the public want to engage in JR? Do they want to spend that five ... maybe they're happy with the five billion being used to incarcerate people, I don't know, but somebody at least should ask these guys!

The Report on Government Services is a brilliant publication by the Productivity Commission ... they audit government services, tell us what we do with our money. It's fantastic we've got this! They do as brilliant chapter, *Corrective Services*, showing what each State's done in terms of total number of people incarcerated, how many people have died in prison – a kind of report card. I'd like to go through each of the States. I'm not a qualitative researcher but you could get the idea of the narrative that these States are buying into by looking at these chapters.

NSW was talking about community completion rates, very high, then introduced an intensive Corrections Order to replace periodic detention, very much a focus on community side of things. I thought, quite reassuring – they lodged a new Aboriginal Strategic Plan which includes offenders being engaged in building their own accommodation for when they come out of prison. It was quite impressive.

Victoria (referring to slide): I'm being very selective in what I chosen, the narrative from Victoria was a commitment for 500 more beds over four years, development of a detailed business case for a new male prison, ongoing construction of a 350 bed expansion of Ararat prison. The narrative from Victoria to me seemed to be one of planning for more and more people going to prison.

Queensland (referring to slide): completion of the first stage of redevelopment of Lotus Glen Correctional Centre delivering 300 new cells and associated services and by ensuring prisoners are securely and humanely contained in modified cells at Arthur Gorrie and Numinbah, so some expansion but also some redevelopment of existing services. Queensland wasn't too bad. SA (referring to slide) an agenda of change for improved service delivery firmly based on evidence-based practice, and enhanced public safety.

It's particularly pleasing that SA continues to report a reduction in offenders returning to prison compared to the national average. I was getting very excited reading about SA, I thought hmm, nice mindset, seems to be travelling in the right direction, but then again some commissioning of new beds here, a 36 bed new unit for low security prisons at Port Lincoln, 80 bed high security cell block at Port Augusta.

Tasmania: a nice narrative, 10 year strategic plan and breaking the cycle of incarceration and a prison infrastructure redevelopment program rather than expansion. Tasmania was quite pleasing.

NT (referring to slide): – again, quite pleasing, implementing significant policy reform and reducing recidivism under the new era in Corrections ... very pleasing, acknowledging extremely low levels literacy and numeracy, prisoners ... and all prisoners returning basic literacy and numeracy courses. The NT has entered into a project deed for the design, construction, and finance of a new Darwin Correctional precinct ... it was kind of a nice narrative, but again some expansion there, possibly Ken Middlebrook can comment on that later.

ACT: good work, you've got one prison, it's a very recent prison, everything looks quite good – I'm not just saying that to be sycophantic either so nobody will beat me up over morning tea! – it was kind of quite a positive narrative from the ACT and you should be applauded for that, it did comment on the issues such as the needle syringe program.

WA (referring to slide): it's kind of like the stand-out in its narrative ... it was to meet the predicted continual growth in the prison population is complete, and it completes an intensive construction program during 2010 to expand the capacity by 884 beds, ... therefore the custodial infrastructure program initiated in 2009 will have added 2,661 beds to the system, and it's also created a new juvenile facility. So again the State that's got the highest rate of incarceration in the OECD we believe of Indigenous people, very much had a narrative that was based around planning for more people going to prison, not less people, and it also wasn't a narrative that seemed to speak to diverting people away from prison.

If we're looking at JR across Australia, we need to be aware of what these different States are thinking and doing, if you assume that what's in the Productivity Commission Report, the one page response that each jurisdiction gets is anything to go by. The question I'd like answered is, *Do politicians have the will for JR?* There's no votes in prisons. We all like to be the State that's been the hardest on criminals – that's very much been the state of things in Australia over the last few years. Do the public have the will for JR and are they ready for it? Or are they happy with that five billion being spent on prisons and keeping people in prison? We need to see more cost effectiveness, cost benefit types analysis, a lot more modelling, to see what the potential is. Who are those that we could keep out of prison and keep in the community and therefore move down this JR road? We need a national approach to this, which is difficult given that all States and Territories look after prisoners and are very independent, have their own mindsets or approaches or philosophies. It's once you get a national approach – prisoners don't even have access to Medicare which is the pillar of health care in this country – very difficult to get national initiatives done in this justice area. We need more pilot schemes across Australia perhaps beyond the ACT, lots more evaluations. But, again, the great quote here which really speaks to the fact that whatever we might think for society in general, it's a place of retribution, the community perhaps want their 'pound of flesh' (perhaps need to be educated a little bit more) and that the prisons shouldn't be 'such nice places to go'.

**Helen Watchirs:** I noticed you called the ROGS an audit. In my view, some of the self-reporting worries me, particularly hours out of cells. The averages are said to be really high, but that's because they're in cottages or farms, and wondered if you had any comment on other stats that could be dodgy?

**Tony Butler:** It's the best we've got ... perhaps we need to be engaging with the Productivity Commission to improve some of their indicators because I'm sure most of the jurisdictions want to present the most rosy picture of their jurisdiction – nobody wants to be top of the incarceration league. It's the best we've got and it's all I can draw on. Perhaps we need to engage with them to improve some of their indicators. They are considering putting health indicators into ROGS – that's one of the things we've been working on since 2004.

**Ken Middlebrook:** From a Correctional administrator's point of view it's a fairly difficult task. I had 30 years in NSW before I went to NT: one of the stand-out things for me when I got to the Territory was the unique issues with Indigenous people – the incarceration rate in the Territory is fairly high, it's probably the highest in Australia but we are responding to that. The NT government has put unprecedented investment

into Corrections not just building a new Correctional centre, but the new era in Corrections that you mentioned in the ROGS report, we're focusing on rebuilding community Corrections and putting a lot of effort into working with communities, keeping offenders in communities where communities can see they're getting something back, rather than putting them into the prison. I hear a lot of comments from time to time about the prison we're building in the Territory, it's a 1,000 bed prison, a big facility, but it has features that I'm very proud of. We have enough facility to engage prisoners in employment and education for at least 800 prisoners at any one time; we have built in specialist areas for Indigenous people to come, for Elders, we've built Elders cottages, and we're also building 48 beds of supported accommodation, where we're looking at diversionary programs for driving offences, which make up a fair population of our prison environment there. We're building a 20 bed facility at Alice Springs for driver programs. We've opened the Barkly Work Camp in the Tennant Creek area for low security, and we're building a prison farm which is a little unique that we'll have a partnership with the Charles Darwin University at Katherine. In terms of JR, the NT government have really got behind the Department of Justice and invested very heavily and we are ticking the boxes for JR, we are trying to push the funds back into the community-based model of Corrections rather and move away from custody.

**Tony Butler:** It was a good narrative from the NT if I got it right – and I didn't know you were going to be here I wasn't trying to butter it up for you.

**Sarah Hopkins:** I'm Chair of the Working Group for the JR for Aboriginal Young People in NSW, and a solicitor at the Aboriginal Legal Service. In terms of the work you've been doing and the statistics, have you done any justice mapping of the people who are in custody and where they're from?

**Tony Butler:** I haven't, the Bureau of Crime Stats do that. We know that all we have to do is look at the prison sentencing in NSW and we can see it's ... Wollongong, Gosford, Campbelltown, Newcastle; they're the big epicentres where people go into prison.

**Sarah Hopkins:** Have you got statistics from the Department of Juvenile Justice and Corrective Services on that? We're having trouble accessing it, that's why I'm interested.

**Tony Butler:** I don't know. I just hunt around on the net. The ABS is probably the best place but they don't deal with juveniles unfortunately.

**Sarah Hopkins:** No, that's our problem.

**Tony Butler:** ... which is a real shame The ABS can't tell you how many people come out of prison every year – that's another thing which I find quite remarkable – unique individuals, and also total releases – that doesn't appear in the ABS report. I struggle like you and have to look around, and I end up with AIHW report that doesn't have something in it –that's just what we have to live with I guess.

**Shen Dycer:** I'm Policy Advisor with Senator Penny Wright, SA Green Senator. One of the challenges in SA, talking with prisoner rights advocates is that the current prison stock is already overcrowded and underfunded and there's a concern that the JR model will result in money being stripped out of Corrections and have an impact on existing prisoner rights. I'm interested in hearing about people's reflections on how you talk to the prisoner rights advocates and reassure them that, yes, JR is not going to undermine the existing human rights implications in prisons.

**Michael Levy:** Could we hold that question for Todd Clear's presentation: he can address that from experience. Can we take that on notice and address it later in the day?

**Penny Wright:** Certainly that's fine - I guess what raised that was in terms of narrative I was looking at what the SA one said ... it's always important to understand context so that on one hand, the first part of it is indeed a sign that there's a momentum for change which is exciting. The last part is about the new prison facilities – one of the difficulties is there has been such overcrowding in SA that they've been essentially long overdue – people may be aware of our infamous former Treasurer who talked about '*rack 'em, pack*

'em, and stack 'em'. In a sense, arguably, in terms of humanity it's a good thing to be having better facilities.

**Tony Butler:** I got very excited reading SA, it was looking good when I read the one page, maybe I've been a bit unfair there.

**Penny Wright:** No, but we need to think about what those statistics about a new prison may mean. If it means that it's forward planning and a sense of defeatism about bringing incarceration rates down, then it's a concern. Sometimes it will be something that is required and long overdue and will be better in the short term for humanity, I suppose, if people are going to be in prison that they should be able to be at least treated humanely.

**Michael Levy:** Welcome Dr Tom Calma, former Social Justice Commissioner, one of the key people to bring the concept of JR to Australia – it formed a very important chapter in your Social Justice Report.

### **Dr Tom Calma – The Justice Reinvestment movement in Australia**

I acknowledge the traditional owners of the land on which we're meeting and pay respects to Elders past and present. I will talk a bit about a JR campaign and how we get a campaign going so that we can progress some of those statistics we hear about, so we can look at what's happening nationally, but there is definitely a need to start to coordinate effort. I'll use the *Close the Gap* campaign which was for Indigenous health equality as the model. We have heard the statistics, and I should point out that every one of those statistics for us represents an Aboriginal person, an Aboriginal life, and it's more than just a quantum of numbers. I will talk about statistics as well ... I won't cut across what Mick's talk on the Royal Commission into Aboriginal Deaths in Custody because we can take a lot of leads back from there and ask why has not a lot happened in the last decade or so. We're also in a period of time when it might be a right to look at change – this is a quote from Kevin Rudd's Apology (referring to slide) – what it talks about is that we need to do things differently and now's the time to do it. We need to look at engagement a lot more with Aboriginal and Torres Strait Islander people or the peoples who are affected by government policies, and governments need to work a lot better together and also provide sufficient funding; we need to also consider that it's not about a top down approach, but a bottom up, an all-inclusive approach, making sure it's a coordinated approach, and that's for me is where I'll come through in a lot of this. Last year we saw the report by Dr Neil Johnson to the Department of Finance looking at expenditure in Indigenous Affairs and basically the bottom line is that they argued that policies for Aboriginal and Torres Strait Islander people for the past 40 years have failed Aboriginal and Torres Strait Islander people, principally because it's been a top down approach, across all jurisdictions including the Feds, that if we wanted to make a difference we needed to take a different approach, that is a more inclusive approach ...so they in fact build on each other. If you look at the 2012 Overcoming Indigenous Disadvantage Report from the Productivity Commission, and the Australian Institute of Health and Welfare Report of 2012 are saying very much the same things. It's important that governments across all jurisdictions hear these messages and politicians particularly hear it because they're the ones that make a difference.

For our international visitors and for others who don't look at it from a national level, which I do, we are dotted all over the country. That's both good and bad because while we have so many communities, small communities, some as small as 50, some outstations family groups up to very significant populations around Australia, they all have a different requirement and a different response. In the NT there's something like 1,300 different discrete communities from homeland movements right through to the bigger centres. They present challenges but also present a solution because they're a captive audience in a small defined area that we can work with and not a significantly large issue. What we also should remember in the statistics ... we have seen a significant increase in last year's census and that throws up a whole range of challenges. ... the median age is only 21, and we have a very significant population, almost 40% of the Aboriginal and Torres

Strait Islander population under 15, ... giving us a lot of messages and when we start to look at the statistics and who gets incarcerated, and where they fit into the system, we can see that there's every opportunity to be able to intervene at that level, very early levels, to make a difference. Michael Moore raised it, that there is a very close synergy between the determinants of health and incarceration and we need to look at them in a more holistic way if we are going to be able to make a difference. You'll see a lot of this is common across the presentation.

(Referring to slide) 2006 stats – the yellow represents Aboriginal and Torres Strait Islander people, very young population, tapers off. Tony mentioned how many people die when they come out of prison, very significant Aboriginal and Torres Strait Islander people; all the other causal effects from smoking right through inactivity and so forth all contribute to poor health. So there's a role both before people get into incarceration but also whilst in incarceration, to address a number of these issues, and we shouldn't just leave it to being a place where people who are incarcerated are held there for a period of time, but start to take a look at some of the initiatives that Ken talked about in the NT, and he could go on for a while because there's a lot of very interesting and good initiatives up there, particularly on the vocational training side, preparing people for exits, and that big challenge, which for me is one that the rest of the country need to look at, is also how do you control smoking in prisons and making them smoke free.

When you look at the disparity – this was what prompted me in 2005 to write in the Social Justice Report about health equality – that's the disparity in life expectancy – 17 years back in 2005, even though these statistics are a little bit later, but in comparable countries, six or seven years, you've got to say, Why in a country like Australia do we have such a disparity? Now ABS will argue through manipulation of their formula that it's down to about 12 years, but it's the same data, they just reinterpret it, so it's not as if programs have made a difference at this stage. In the 2005 Social Justice Report I talked about health equality. What's important to recognise is that as the Social Justice Commissioner, under legislation we mandated, now the Social Justice Commissioner's mandated to present a report to the Parliament of Australia, about how government policies and programs impact on Aboriginal and Torres Strait Islander peoples' enjoyment of human rights, so it doesn't go to the government, it goes to the whole of the Parliament, and so it's essential that – I'd argue that half the politicians may read it others will fill the bookshelf and others might just put it in the recycle bag. But none of this is new to politicians at federal level and they also get distributed to the State and Territory governments. What I advocated was that we needed to take a very strategic approach and do it differently to how we've done it in the past in health and look at a very disciplined approach. I did it from the perspective of human right which is really a community development approach, a community empowerment approach and capacity development – but it's about how do you do it strategically to make a difference, how do governments sign on, set real targets that are able to be monitored and achieved.

In that report I talked about the need (referring to slide) to look at the social determinants of health because the big thing is that governments can't make anybody healthy, that the health department isn't the only organisation responsible to make people healthy – it's how do you get everybody else involved in a joined up way to address health and the determinants of health. This was the AIHW's description of determinants of health, one of the tiers (referring to slide), you'll see that a lot of what is there is what we need to look at, and in the community capacity area we look at the criminal justice system. What it's saying is that to be healthy you need to get all of these things right, from education, to employment, to mental health responses, how you work within the judicial system and the criminal justice system. That's what the determinants of health are about, and it's well worth looking at. It was interesting that this was out in 2005: in 2006, WHO set up the Commission of Social Determinants of Health, and then they put out their report in 2008, which very much reflected the same issues that we talked about here in Australia. So while it's a relatively new discipline, looking at the determinants of health, it's something that we should all buy into.

When we look at campaigns – what's happening is that in most jurisdictions now concerned citizens are trying to influence governments and the systems to address issues of incarceration, release and prevention,



but as in their own jurisdictions they're not that successful. This was the same situation that existed in health and after I presented the report I'd invited a range of people together, peak bodies, and a number of representatives are here, to buy onto a new campaign, and that manifested into the *Close the Gap* campaign, which has over 175,000 members now. But it is 175,000 members who write to politicians and say, 'You've got to do something about it,' and they need to focus.

All that happened in the year and a half leading up to the 2007 election; as it happens it's almost the same period of time that we've got leading up to the 2013 election, so now I believe is a good time to start thinking about it. It's about how do you mobilise support groups like GetUp!, like the Oxfam *Close the Gap*, ANTaR, – these bodies all working together to help raise profile, and I believe that's what we need to do here, which as I said was the *Close the Gap* campaign to address health. But again the key message is not something that's going to happen overnight, it's something that's got to grow and develop, people have got to engage, and you've got to have a very disciplined approach to it, and that is what setting targets are about, and getting sign-on. As I said, it's a people movement (referring to slide). We now celebrate the National *Close the Gap* Day, 22<sup>nd</sup> March, and over 800 events are spontaneously held around the nation. We can do the same for the JR campaign. What we're seeing this weekend, in fact in the next couple of days over this weekend, is the 5<sup>th</sup> year of the NRL's *Close the Gap* round, where every NRL match is badged as a *Close the Gap* match, so it's well profiled. This has all developed, and this is what a people movement is all about, and how we can get engaged. It's not just about the people, it's about all of us, irrespective of whether you're in the community or a service delivery agency or you're a politician, you can all get behind it and we all need to.

The good thing about the *Close the Gap* campaign is that it's led by Aboriginal and Torres Strait Islander people – all the health peak bodies, Indigenous health peak bodies are involved, and it's led by the Co-Chair of the National Congress of Australia's First Peoples and also Justin Mohamed from NACCHO (referring to slide). You can see all the peak bodies are here. Now it's not they're saying, 'Well we have an interest from the *Close the Gap* side of it,' because justice is part of the determinants of health, but there are many others out there, NGO's, community groups and so forth, that are working in this space that that we need to mobilise, and we'll look at that. It's also not just Aboriginal and Torres Strait Islander people, mainstream organisations are getting behind it, and have got behind it since 2006, and we still meet probably every 2 to 3 months and look at the campaigning. The peak health bodies, and a number are represented here, are also members of that group.

Importantly we need to not just get the community, we need to get politicians on board. We were able in 2008 to get the government of the day, led by Kevin Rudd, to sign onto a *Close the Gap* Statement of Intent, which is really just a commitment. We got the Opposition Leader to also sign-on, and in fact it's now the only bipartisan agreement that exists in Aboriginal Affairs at the federal level, and of course it was well supported by the Greens. It's a very tangible document (referring to slide), you can have a read of this, they're available for downloading, it's about saying this is what government commits to, this is what the community commits to, this is what the sector commits to, and how we need to work together. Three of the fundamental points are – other than the commitment in setting the targets which are now the *Closing the Gap* targets – it's about a comprehensive long-term plan, an inclusive plan, looking across all sectors beyond the Health Department, and that's happening through the Strategic Advisory Group of government now led by Department of Health, but all agencies have got to get together and look at health and the determinants of health.

We're starting that process. AG's are part of it, but it's happening at the federal level and it will come down to State level, because once the Statement of Intent was signed – now signed up by every mainland State and Territory government and Opposition – we now have a national bipartisanship approach. I should say we still haven't got the new Queensland government to sign-on yet but that's only because they're still fresh and got other things on their mind – but we will get them, so that it will be a formal approach, and that's what's going to be needed in this here. Having jurisdiction by jurisdiction and then the Feds wiping

their hands and say, 'Well that's a State responsibility' – they said the same with health, but you need leadership, you need to get everybody on board, and that's what this one was about, and we've got it, and of course fundamental to all of this success is how do we engage actively and fully and legitimately with Aboriginal and Torres Strait Islander people.

In 2008 I did another report (referring to slide) looking at cognitive disabilities and how they impacted on Aboriginal youth and their relationship with the juvenile justice system. What that highlighted was what we know now and we probably knew then, that there's a lot of people in incarceration who have a mental health disorder that needs to be treated. We found with the Indigenous population the majority of people weren't diagnosed and when they were it was very sporadic treatment, and that's an issue. Then in the 2009 report that went to (referring to slide) Federal Parliament, it's been distributed widely, it was all about JR, it's what I picked up when I was in New York and various places to see how it went. We set the framework then, and it didn't get much traction, a few States and that were doing a few things, and I'll touch on that, but through Jill and the AIATSIS seminar last year we were able to give it a boost and a few people got involved.

Tony mentioned there's not much stats on juvenile justice but in a couple of weeks' time they will be released: these are the latest ABS stats (referring to slide) – last publically available stats, and just to be aware that these stats are going to be out and will tell another story about what's happening. Whilst Tony suggested for the general population we target adults, I would argue that in the Indigenous population we target young people ... because of the recidivism rate, the transfer rate from juvenile onto adult prison is an area that we need to look at. When you look at the mental health issues and implications, they're very profound across the whole population group, but particularly with young people, and they're a group that we need to work a lot more with. They're the areas we need to concentrate on, and not only whilst they're in prison, it's how do we keep them out of prison, and how do we stop them from reoffending and so forth, because every time there's an offence there's a victim and we should be looking at it also from the perspective of the victim, and how we can make sure that we can reduce the number of victims in the system.

This one (referring to slide), the age cohort, you can see it's a young population and growing, but 17% have been arrested in the past 5 years, so the recidivism rate is very significant and as is the arrest rate. We start to look at again another presentation (referring to slide), we're almost up on par with the rest of the nation on... these are old stats, but the current stats from what I saw were – they're not official yet – are very much the same reflecting, but on average it's around 50% now. What's important in this whole discussion is to look at why are people put into prison, and when we look at the Aboriginal and Torres Strait Islander population we see it's the assault and the traffic, that's 50% – that accounts for 50% of people in prison, and when analyse these data, we can look at it a lot more about where the intervention points need to be, and what we need to do to address them. Then you look at mental health (referring to slide) – a very sad story – I don't know if you saw Alan Fels yesterday at The Press Club, it's well worth looking at if you get the opportunity to have a look at it on Iview – that's reflected across the whole community. We need to do something more in relation to mental health, these figures just support that and why we need to do it. You then look at (referring to slide) females – very high, young population – very high, and so if you don't get them in early, you've got them later. 70% of those people who've got an addiction to alcohol or drugs have had a profound trauma in their life and when it's not dealt with it just manifests into an abuse of a substance. That's where some of the big results have been seen internationally.

Sarah asked about this, and I was just going to say that there is data out there, it's not necessarily prison data, but it's areas of disadvantage, and we know that from disadvantaged areas we also see higher levels of offending, and so the data – this one's from the Social Inclusion Board (referring to slide), but you might recall Tony Vincent did a lot of work on disadvantage, and whilst there's not conclusive studies, they give an indication of where the hot spots are that we need to look at.

I wanted to talk about some of the lessons we learnt – that presentation on the *Close the Gap* – and how we can make sure that we don't replicate, but we can use the lessons and the principles behind that approach to addressing JR: these are two areas that are working (referring to slide) – Sydney Uni through their injury area and in conjunction with the George Institute are doing a lot of work. Rebecca Ivers is doing that research, in NSW and NT, some in SA, looking at alternative ways to address the issue of no licences, because it's not only people offending because they're driving without a licence, it also restricts their employment opportunities, and that then looks at economic empowerment, which then looks at disadvantage. If we can intervene early and start to redirect some of our effort into that area, and funding, to support these programs, the better. And the bottom one down there is about an empowerment program that's being rolled out across Australia (referring to slide), it was designed for suicide prevention and what we're working on there, but it's going to have an impact across a whole range of other areas including the justice area. (Referring to slide) ... very recently Queensland prison population stats came out about mental health – they're frightening when you look at who's out there and what happens – Tony mentioned this – we have got to intervene at some stage and make sure that the treatment takes place, the diagnosis initially, and then the treatment, pre entry to any of the systems, and if we can address mental health – we've got an Indigenous Mental Health Advisory Group and an Indigenous Suicide Prevention Advisory Group, and we're doing a bit of work around that.

Queensland, also led by ANTaR (referring to slide) – they've got the *10% Project* campaign, looking at trying to reduce people in gaols down to 10%, they also look at the cost per day. WA (referring to slide) – have been going for a couple of years, and again in their own way addressing some of the deaths in custody recommendations, but looking at the incarceration. NT (referring to slide) – you heard a bit from Ken and Greg about what's happening up there – we've had some very meaningful discussions with them, in how we can address particularly smoking in prisons and their new initiative coming into effect next year, but looking at some of the very innovative approaches that they've got within the system up there.

SA (referring to slide) – a delegation there in March this year led by Senator Penny Wright and her colleague, Tammy Franks, to address the SA government, the Attorney General and a number of other parties, and we involved the fairly significant community group to talk about JR, to try and get a bit of interest going. It's still a way to go but at least that discussion is starting. I should say that whilst I touch on a few things, there are a lot of good things happening within all jurisdictions – my position is that it's not coordinated, and it's not a real systemic movement, it's just about doing some things, and that we can get a lot more bang for the buck if we can start to get a few people together. ... it's about how do you mobilise existing money as much as how do you create new money, and if you can start to get programs working together we will make a difference.

The NSW JR campaign for young people (referring to slide) – started this year, trying to raise awareness within NSW. We talk about the cost, if you look at your \$230,000 to incarcerate one youth, that's about 5 youth worker positions, 4 or 5 out in the community that could be working before people offend, and so you'd only need to reduce a few to get into that (referring to slide), it's led by Marie Bashir, Governor of NSW, and prominent people from former High Court Judges and others. The judiciary are interested in this – senior magistrates, judges and so forth all wanting to get behind it, but we need to try and pull it together – it's all about engagement, development and so forth (referring to slide), but targeting the NSW government.

**Fergus Thompson:** My name is Fergus Thompson, barrister, I work at ... the coalface of interaction between Indigenous people and the courts ... having seen a flood of statistics over the morning which are extremely useful, but I suggest reflective of the situation rather than instrumental as to the way that the problem can be addressed. It took me back several years ... to 1987 when I was involved with the then Australian Human Rights Commission as CEO. I became aware of a statistic that stayed with me since, namely Aboriginal people are 'put down' on average seven times a day; women 6.7 times a day. When you combine those two statistics, and look at the figures for the mental health in Indigenous women, then it

seems to me that the potential for impact is exponential if you're looking at ways of addressing this more attention might be paid to instrumental statistics the things that bring about the situation of the mental health of Aboriginal women, especially young Aboriginal women.

**Tom Calma:** ... that's right ... there's a lot of players that have a role here, including media ... it's a fairly significant effort to try and get them to change their approach, part of it is through the reconciliation movement and the UMeUnity site – I'd urge you to have a look at and become members .... There's another growing movement championed by Mick Gooda and others, about addressing lateral violence, both overt and covert abuse that happens within groups and so forth: it's part of the determinants, we've got to address all of these together. Part of what our presentations are about is making sure we don't duplicate what everybody else says ...

**Tammy Solonec:** Thanks Tom, a great presentation. I agree with everything you said in particular the need to coordinate grassroots movements. You've noted in WA we've been pursuing a JR approach through the legal service, the Deaths In Custody Watch Committee, Outcare and various other agencies, for some time. However, the current WA government, who I note is not represented here, is very much against JR, stuck on a tough on crime approach. They've actively held up JR and other national initiatives that provide some hope, including incorporation of justice targets in the *Close the Gap* agenda, and the implementation of OPCAT at a national level. JR is not seen as feasible in WA due to the fact that many incarcerated in WA are Aboriginal and from remote and rural areas, so it's very expensive to do. How do we overcome this?

**Tom Calma:** The expense is saved if you can work with people within the communities, and one of the interesting slides Tony had was how many people are in the system but not incarcerated ... and I guess it's the same in WA. Part of what the campaign is about is the weight in numbers, getting the community to influence politicians in the way that they think, and to show them that people care. The tough on crime agenda which will come up again in this coming election – we've got to show that you don't have to be tough on crime, you don't have to be tough on asylum seekers ... there's a human rights way to look at it, something that treats people, (referring to slide), with dignity. It's about ... existing services and bureaucrats across all jurisdictions understanding that it's not just about the job that they do, it's about how that job fits into the broader sphere of Aboriginal and Torres Strait Islander affairs. One of the discussions I'm having within the Department of Health, where you've got a mental health branch, a suicide prevention branch, an alcohol and other drugs branch, a tobacco branch, an Indigenous tobacco branch – do they all talk? Maybe sometimes. FaHCSIA has similar ... they've got... mental health, they fund a lot of mental health – they don't necessarily talk. How do we work together to maximise impact? We'll hear a bit more about how JR can save money through reforming the system, but I'd argue that we can do a lot already without even following on a more disciplined JR – that's by getting people to start to work together. We need a hybridised version of what suits us over here and it's not going to be the one size, it's going to be a whole lot of different approaches, and we've just got to look at ways to work together on it.

**Todd Clear:** Two statistics I want to put together – one is the enormously larger expectancy of going to prison for Indigenous youth and the 40% of that population under the age of 15. I would suggest there's a big bubble down the road and without planning for it it's going to be paid for!

**Michael Levy:** It's my pleasure to welcome Professor Mick Dodson.

### **Professor Mick Dodson – The Royal Commission into Aboriginal deaths in custody, 20 years on**

The program notes that I'm talking about the Royal Commission into Aboriginal Deaths in Custody, 20 years on. What I really want to talk about today is the history and hopefully illustrate why 20 years later we haven't learnt from it, and secondly to reinforce the call for initiatives such as JR. This term wasn't around

when the Royal Commission conducted its Inquiry. What the Commissioners talked about in their report was diversion from custody and looked at some basic areas in which they thought prison numbers could be reduced, particularly the enormous over representation of Aboriginal and Torres Strait Islanders in custody could be reduced. And they looked first at the level of law reform, and they thought that was the first group of diversion schemes that should be looked at, and those that first confront people even before a defendant goes before the court, and it concerned the interaction with police, and questions about arrest ... or charge on summons and questions of bail and how they could be reformed. They also talked about diversionary schemes that a court could resort to, and there was a proliferation according to the Commission of creative ideas and innovative schemes which provided the courts with further and better sentencing options. It's about 22 years ago not 20 years ago. And the Commission also felt at the time that there was greater amongst judges and courts to adopt these alternatives to locking people up. One of the things that they particularly singled out was the Community Service Orders, and that were particularly prevalent in the NT. I don't know where they are now – as I said, I'm not here to tell you what's happening today, but what was said back then.

There were many people who died in custody because they were unable to pay their fines, they died because they were poor essentially, and the Commission looked at that, about what options could a court have to sentencing people for non-payment of fines, and of course this applied to Aboriginal and non-Aboriginal people alike, and the report gives numbers about people who are locked up for not being able to pay fines. But there was at that time coming into operation increasingly diversionary schemes with respect to breaches of things like non-custodial orders and non-payment of fines, and really questioned the need to put people in gaol because they were poor and couldn't afford to pay a fine, there must be alternatives and perhaps things like Community Service Orders at that time was an option. The other area of diversion that the Commission looked at was this novel idea that perhaps the community ought to have some say in, particularly discrete communities, on what happens to a member of their community, and how they might be utilised in some way in keeping people out of prison. And they finally looked at options of what they called community custody options around parole etc.

There were 339 recommendations in the Royal Commission. The federal government adopted 338 and promised to implement those. They were specifically directed to the Commonwealth, and promised to assist other jurisdictions, States and Territories, to implement recommendations as they affected them, and promised to report every year on their progress. I was Social Justice Commissioner when the 1st Commonwealth report came out in 1994: it reported on the years 1992–93, post the report of the Royal Commission, so we were three years out from the report. I said some things then, I'll leave it for you to judge how things have gone since, but this is not really a reminiscing on my part, it's just reminding me what I said about that 1st report. What we had was this favourable reception by all governments and largely bipartisan support, giving rise to great hope for, particularly for Aboriginal and Torres Strait Islander people, and families in our communities. We hoped it also would improve relations not just with government but with people involved within the criminal justice system and its administration, particularly police. I hoped that the hope that had been generated would be maintained, and I said that if the promised implementation didn't take place it would fuel a great deal of cynicism by many Indigenous peoples whose expectations had too frequently been raised in the past only to be met with disappointment.

The Royal Commission was conscious that its recommendations like those of many inquiries before it, might be welcome with apparent enthusiasm, but then pigeon-holed and gradually forgotten. I'm glad to hear from Tom that at least one person is thinking about the Royal Commission recommendations in this country but sadly it seems that that's the way it's gone. As I said, the first recommendation of the Commission was that there should be annual reporting. I haven't seen an annual report from any flavour of government for a while – the reporting was to be on adoption or otherwise of the recommendations. They also said that the Aboriginal and Torres Strait Islander Commission should be given special responsibility for monitoring the process of implementation, setting up the Government Response Monitoring Unit. It was their report that I was looking at which they produced during 1994. The report, it has to be said, is an

exercise in monitoring or reporting these results to approximately 2,000 Indigenous communities to which it was sent, and the general public, two volumes, 768 pages document, what could be said about it – it was a failure. It was my view at the time it should not be accepted as a model for future reporting and monitoring, whether it be Commonwealth, States or Territories, and I'd given them a recipe at the time as to how they ought to do these reports: my recipe could be found in a submission, in a Working Paper which my office presented to the House of Representatives Standing Committee on Aboriginal affairs, and I expressed my criticisms of their lack of take-up of that submission and the Working Paper in pretty unequivocal terms. I didn't do it to be destructive but to attempt to draw attention to the serious flaws within the Commonwealth report and unless these flaws were clearly identified I thought that they would continue to be repeated and the value of the monitoring process would be totally wasted and the work of the Royal Commission would be lost.

What the Commonwealth Report was, that first report, it was essentially a self-serving account of bureaucratic activity. Many of you have watched the television series *Yes Minister* and the widespread tendency of bureaucracies to put the best face on their activities so as to not invite scrutiny and to bury problems in a sea of words, reports, committee meetings, rather than put them up for gaze and discussion. The first Commonwealth Report on the deaths in custody implementation was a monument to the worst tendencies of bureaucracy which had run wild. There was no reason why at the Commonwealth level their report should not have been a very readable, coherent narrative of historic, exciting, an urgent task to which the Commonwealth had committed itself. Around this time the Prime Minister of Australia, Paul Keating, had made his visionary speech at Redfern Park in December 1992, and he did pretty much the same thing in presenting the report to Parliament in June that year. If you read this report – all that vision, passion, urgency, statesmanship that he articulated so well, should not have degenerated into this report, a mishmash of bureaucratic nonsense. The report recounted extensively, repetitively and irritatingly, that the motions that had been gone through, committees established, referring of questions to those bodies, meetings if any that had been held, reports written, programs adopted and funds allocated – but really, did it tell the reader the results of those motions, what the meetings decided, what conclusions the reports reached or how the programs are working? I had cause to remark at the time that it reminded one of ... likening a bureaucratic activity to the sex life of elephants – much trumpeting, a lot of activity at high level and no outcome for three years. Unfortunately three years after the Royal Commission report had ... in many cases there was simply too much trumpeting about high level activity.

What was specifically wrong with it? I make a number of points. Most readers will give up on trying to read the report because it's complex, disjointed, unindexed, much of it is written in repetitive, padded, vague, and uninformative language, the lack of editing, it was not a substantially self-contained document – it was 768 pages – and the readers of this didn't have access to the documents they were relying on. It spent a great deal of space reiterating usually non-essential matters. There was a level of generality about critical issues. In some places it was misleading, or gave unduly favourable account of what had happened, which inevitably classed out on the credibility of other uncorroborated assertions. And it missed the point of some of the recommendations repeatedly, and there are other criticisms I made. For two years I was Counsel assisting the Royal Commission into Aboriginal deaths in custody, and between 1980, June 1980 and May 1989, 99 Aboriginal and Torres Strait Islander people died in custody in various jurisdictions throughout Australia.

This is the reason we need JR and I'll illustrate why. They died in prisons, police watch houses and lock ups, and in juvenile detention institutions. There were 88 males and 11 females. Their average age at death was 32 years; the median age was 29 years at death, the range of their ages from 14–62 years. They died from varying causes, but common to them all was abuse, neglect and racism. Overwhelmingly their Aboriginality was the most significant factor in their being in custody in the first place and in them dying there and all of these deaths were premature.

The weight of public opinion at the time forced the Royal Commission – many thought that there was foul play afoot and expected such findings from the Inquiry – many thought these were murders committed at the hands of the State. The Commission had to inquire not only into the circumstances of each individual death, but also any subsequent action taken in respect to each of those deaths, including the conduct of the Coronial Police or other Inquiries, and any other things that were not done that ought to have been done. And the letters patent to the Commission were altered after it started to allow the Commission to also look at the underlying issues surrounding the deaths, and the Commission was authorised by that amendment to take into account social, cultural, and legal factors that may have had a bearing on the deaths, and the inquiries by the Commission were very thorough and exhaustive. The conclusions reached by the Commissioners did, in accord with the public sentiment that was expressed at the outset of the Inquiry, namely that there be evidence of foul play and that foul play would be rife – this is not what they found. The Commissioners didn't find that the deaths were caused by deliberate and violent acts of police or prison officers.

However the Commission did find that custodial officers had little idea, in fact some of them no idea or appreciation of the duty of care that they owed to people in their custody. They found many system defects in relation to care, many failures to exercise proper care, and in general a poor standard of care, and they also found that in many cases the defects and failures were causally related to the deaths. They also found that the inquiries into the deaths up to that time were rather nothing more than perfunctory. Of the 99, 30 died from hanging, 23 through trauma other than those caused by hanging, trauma like head injuries, gunshot wounds, or other external trauma, 9 died as a result of substance abuse and 37 from natural causes. Sixty-three, roughly  $\frac{2}{3}$  died while in police custody, 33 in prison, and three in youth detention. These were people who had lives and families, they had hopes ... and struggled against the State, who had historically ordered them, controlled them, and much of what they did in their day-to-day lives and their very existence. As Counsel assisting, I saw their files that were compiled by the State's apparatus, they were not just records of the life history of the particular person, but were also often replete with prejudice, ignorance, and paternalism of those making the records. There was ever present the familiar pattern of State intervention in the control of Aboriginal lives. Nothing much has changed I should say, at least for some people in some parts of the country.

This is what the Commissioner said about the files: 'The files start from birth, perhaps recording a child adopted out, perhaps its birth noted as a costly additional burden, they go through childhood, perhaps forcibly removed from parents after having been categorised as having mixed racial origins, and therefore being denied a loving upbringing by parents and family. Through' – and the files he's talking about – "they go through encounters at school, they are kids that are probably described as truant or intractable and unteachable, on to Juvenile Courts, Magistrates Courts, possibly even the Supreme Court, through the dismissive entries in medical records, 'drunk again' and in the standard entries, in the notebooks of police investigating, 'death in a cell, no suspicious circumstances.' The keepers of the records perhaps saw or recorded all but rarely did they know who they were writing about. The Commissioners knew that they could not understand the death of one life without knowing the whole life and the whole life couldn't be understood unless you understood the 200 plus year colonial experience of the whole community from which they came. There's never been an inquiry like the Royal Commission into Aboriginal Deaths in Custody – not before and not since. 'The whole range of societal and historical factors which impact on Aboriginal lives came into focus from the investigations into the deaths of so many of them which occurred while ostensibly under the care and protection of the State' – that's a quote from the Commission.

Of the 99, 83 were unemployed at the time they were last imprisoned, they were generally uneducated in any formal or western sense, or at least undereducated; only two had completed secondary school education; 43 had separated from their natural families during childhood, they were separated by State intervention or via missionaries or other institutions; 43 had been charged with offence at or before they were 15 years of age; for 74, it was at or before they were aged 19; 43 were taken to their last custody for reasons associated with alcohol consumption. The standard health of the 99 was bad to very bad. The average age of those

who died of natural causes was a little over 30 years, their economic position was disastrous, and their social position was at the margin of society, and they misused alcohol to a grave extent; 22 died by hanging in police cells; at the time of their deaths, 19 of those had a blood alcohol reading of 0.174% or more. There were some exceptions to this picture but overall what was common and universal to all of them is that they'd all had early and repeated contact with the criminal justice system. So I'll leave you that, for you to ponder and the relevance of what you're doing here today. Thank you.

**Michael Moore:** Thanks Mick. These days we often talk about root-cause analysis and the Royal Commission was one of the first methodical root-cause analysis projects that went into Aboriginal health generally rather than just deaths in prison. We hate to use the word in Australia, racism, but when we look at what's happening in a structural sense, how do we get the message through that we have a structural racism as opposed to that daily racist that was much more common 20 years ago prior to the Royal Commission, and how do you see us moving forward in those terms?

**Mick Dodson:** Adopting 116(a) of the recommendations of the Expert Panel on Constitutional Recognition would be a very good start. When you talk about structural it gives licence to the non-structural because ... it was this third piece of legislation passed by the Federal Parliament after federation was their Immigration Restriction Act that introduced for 70 years the White Australia policy. I don't think we're over that yet. Subsection 26 of Section 51 which was altered in 1967 by overwhelming referendum has not been kind to Aboriginal people. It's only been used to – anybody can correct me if they know otherwise – discriminate against Aboriginal and Torres Strait Islander people and presently being used in the NT to discriminate against Aboriginal people there. ... A lot of people don't know this ... people know very little about our Constitution, it's not a barbeque-stopper ... we don't walk around with the Senate's Little Handbook on the Constitution in our back pockets. But nevertheless it marks us out as against any other western democracy. We have a provision or two in our Constitution – Section 25 is the other – which allows the States to disenfranchise people on the basis of race. A lot of people don't know that exists either. Subsection 26 has been used by successive governments – not just this government, the previous government and governments before them – to discriminate against Aboriginal people, mainly Aboriginal people but Torres Strait Islanders are caught in the net too sometimes. Until we deal with that we're not going to deal with our overall problem of racism. The Royal Commission didn't just talk about health either, it was very, very comprehensive. The underlying issues covered every aspect of the life and existence of Aboriginal and Torres Strait Islander peoples including history, and one of the key things that wasn't and never has been implemented in this country, is the right to self-determination, because therein lies the remedy, and that's been ignored, and we get more of the same. What we have ... with the so called *Stronger Futures* is another exercise in arrogance, paternalism and race assimilation, that's all it is.

**Michael Levy:** It's my pleasure to welcome Professor Andrew Coyle.

### **Professor Andrew Coyle – Safer communities, stronger communities – the limits of criminal justice**

Thank you Michael. It's a great pleasure always to come to Australia, particularly Canberra, and my thanks especially to the organisers who've invited us here to the Australian National University and Crawford School of Public Policy and especially the National Centre for Indigenous Studies. It's lovely to see so many old friends and also to meet people whom I hope will become new friends. I want to keep what I have to say very short to allow maximum time for discussion because in a gathering such as this the most important part of the session, I hope, will be discussion and comments. Let me be very clear from the outset that JR is not the magic bullet which will solve the problem of excessive use of imprisonment in Australia, and particularly the grotesque overuse of imprisonment for Aboriginal and First Nation people. However, I would like to suggest that it does have some potential as a tool to achieve this aim.



It might be helpful if I say a word or two at the outset about my own personal background. I have the dubious distinction of having worked in and around prisons for the last 40 years. In 1973 I first walked through the gates of Edinburgh Prison in Scotland and I found myself in a world of which I had no previous knowledge, a world which existed in parallel with but quite separate from the world which I and millions of my fellows understood, and from the very first day I found myself asking the question, What is the purpose of imprisonment? Throughout the following 25 years I moved from prison to prison ending up as governor or superintendent of some of the most iconic prisons in the UK. In my early days I worked in a prison for young men, then called a borstal. Twenty years later I was appointed governor of the high security prison in Scotland which held all the men who had been assessed as the most difficult and dangerous in the country. All the prisoners there had been involved in riots, in hostage taking, or in attempted escapes. On my first day there as governor I didn't know what to expect as I set off to walk around the prison. What did I find? I found that the vast majority of these very difficult and very dangerous prisoners had been with me 20 years before in the borstal. They greeted me like a long lost friend, 'Hello Mr Coyle, you've come a long way in the last 20 years.' 'Yes,' I replied, 'and so have you.' I went back to my office and I asked myself, Why was it that these young men were in that dark outpost of a prison identified as the most difficult and dangerous men in the country? Had this been an inevitable progression or had the system made them what they had become? Again I asked my first question, What is the purpose of imprisonment?

For many years now the main focus of my work has been in the international arena with the International Centre for Prison Studies, and I have been a close observer of prisons and imprisonment in every region of the world. In the 1980s I spent a lot of time in prisons in Central Europe, Eastern Europe, and Central Asia, in the countries of what had formally been the Soviet Union. I visited prisons in Sub Saharan Africa and South East Asia, prisons built in the 19<sup>th</sup> Century by colonial powers and still in use today, prisons where there was no running water, where there is a drastic shortage of resources, where prisoners languish for years awaiting trial because the authorities have no transport to take them to court. I've seen prisons in Western Europe which are in medieval castles, quite unsuitable for the 21<sup>st</sup> Century. I've seen prisons in Latin America where violence is endemic, prisons where the staff do not dare to go inside the prison where the prisoners are, where gang battles result in several murders each week, and where the response of staff is to be equally violent in their dealings with prisoners. I've been in prisons in the USA where prisoners spend their entire day locked in complete isolation with no human contact, and some of them will be in that situation for the rest of their lives. So after 40 years in and around prisons I'm still asking the question, *What is the purpose of imprisonment?* Increasingly I come to realise that if I, with all my experience, am still uncertain about the answer to that question, is it any surprise that courts, politicians, and the public are even more uncertain about the answer.

At the outset, when prison began, when prison was first introduced, it was seen simply as the punishment which is implied in the deprivation of liberty. That was what the sentence of the court intended and at that time an important element of that deprivation of liberty was separation and segregation, prisoners living in individual cells on their own with no contact with anyone else. It was a very individual form of punishment, based on a notion of exile from society. While in some respects appearances in the prisons may have changed over the last 200 years, the fundamental features have not changed; the prison remains a very recognisable and iconic institution with its roots based firmly in the 19<sup>th</sup> Century.

Let me conclude this brief overview of imprisonment by making two important points. The first, to quote a very famous prison reformer from the early 20<sup>th</sup> Century, is that you cannot train people for freedom in conditions of captivity. The notion that prison itself somehow is a place of reform is a flawed concept. That's not to deny of course that on occasion some people can be reformed when they are in prison, but the prison itself is not an obvious place to begin the work of personal change. Putting this in other terms, the best way to make sure that someone doesn't return to prison is not to put them there in the first place. The second goes back to my earlier comment about imprisonment being based on the premise of segregation and separation. The prison system focuses on the prisoner as an individual, and more importantly it focuses on him or her primarily as an offender. In England and Wales the combined prison and probation system is now known as the National Offender Management Service. It's concerned with people only in so far as

they are offenders, and its main task is to manage them. Increasingly in prison systems, particularly in the English speaking world, the term now used is Correctional Service, or Corrective Service. That's a term which is also based on the concept of managing people, only in so far as they are offenders. These two points bring me to the need to deal with men and women who are in prison as human beings, as citizens, who should not be identified solely by their offences, but also by the fact that they are parents, children, partners, and that they have many other positive characteristics. By dealing with people purely as offenders the prison focuses on reducing their negative characteristics. A much more productive approach might be to focus instead on increasing and improving their positive characteristics.

That brings me directly to the subject of our conference today. In a number of countries, particularly developed countries, the overuse of imprisonment is now placing an intolerable financial and social burden on communities and people are beginning to search for what one commentator has called 'another way of dealing with certain things,' and what is described as JR is one such attempt. It seems to me that there is great potential for this change to come within societies which do not have an indigenous concept of imprisonment, where there is not the emotional attachment to prison which exists in many western countries. As we've heard several times in the course of today, the concept of Justice Reinvestment begins to move the focus from the individual person, to locality and environment. It does this by going back to first principles, by asking the question about what is it that communities and the people who make them up really want? The answer to that is often that they want to be safe, and they want to feel safe, they want to have a greater sense of social inclusion. In terms of responding to these desires, the criminal justice system does have a role to play, but it is a very limited role, and this is because the criminal justice system deals primarily with the actions of individuals after they have occurred, its influence is largely retrospective. The fact is that most crime is local, it is committed locally, and its negative effects are experienced locally. It may just be the case that the solution to crime is also to be found locally. So instead of focusing on the actions of individuals, it may be that community safety and security can best be advanced by initiatives which focus on the location where this crime occurs, on the environment, and on the community. And one method of achieving this is by redistributing some of the resources which are currently expended on dealing with individuals inside the criminal justice system, and diverting these resources to improve the quality of life for the communities from which these people come.

Let me illustrate in practical terms what I mean by saying a few words about the UK. In the UK there are three separate jurisdictions – Scotland, England and Wales, and Northern Ireland. Vivien Stern will shortly say a few words about the situation in England and Wales. I would like to explain briefly a few things about arrangements in Scotland. In the mid-1960s there was a growing awareness that a relatively small number of families in Scotland depended excessively on a wide range of social and welfare institutions, and that they were supported by a wide range of separate officials from each of these departments. Legislation was introduced which set up what were called generic social work departments. The idea was that families would have a single identified social worker who would oversee their involvement with all of these separate agencies. This social worker also dealt with anyone in the family who was under any form of community court supervision. This meant, for example, that there were to be no specialist probation officers. Another very important feature of this legislation was an acknowledgement that particularly in respect of young people there is a very close overlap between those who get into trouble with the law and those needing welfare support. So, predating the Convention on the Rights of the Child, the Scottish legislation acknowledged that in all cases the interest of the child should take priority, although in this case the upper limit was set at 16 years of age. The idea was that all issues in which children were involved, whether of welfare or criminal nature, were to be dealt with by panels of volunteer lay persons who were to take decisions in the interest of the child. These changes took place 45 years ago, long before anyone thought of the term JR, but the principle underlying them was a similar one; it was that there had to be a holistic or generic approach to problem solving which was focused on families and on location, rather than on individuals, and wherever possible decisions were to be made by skilled members of the community, rather than by anonymous public officials.

Ten years ago in England and Wales the prison and probation services were brought together under the banner of the National Offender Management Service, which I've mentioned. The Scottish government held a public consultation to decide whether there should be a similar approach in Scotland. There was virtually unanimous opposition to this, with a marked preference for retention of these generic social work departments. The main concern at the time was that if there were to be a single agency, as had been decided in England, that would be dominated by the prison service and the local input would be severely weakened. The Scottish government, to its credit, listened to this advice and decided to retain the various agencies. But it also decided to oblige them, and it's written into legislation that they have a statutory duty to cooperate and work with each other, and this was to be done through setting up a series of local community justice authorities. The name is significant – they're not criminal justice authorities, they are community justice authorities. Their membership was to come from the local authorities who were responsible for social work, for housing, to come to include the local health authorities, the local judiciary, police, and the prison service. It was hoped that in due course the budgets of the local criminal justice social work department and of the prison service, would be channelled through the community justice authorities, and that this would result in a redistribution of resources from the prisons to the community.

Six years on the performance of the community justice authorities has been mixed. There have been several reasons for this, one was the election of a new government which did not oppose the community justice authorities, it left them in place, but it didn't really have ownership – this was an idea of the previous government. And more importantly at a pragmatic level, the various agencies involved, and you won't be surprised to hear this, have been most reluctant to concede any control over their budgets. We had reference to this this morning, and that is a nettle, if you're going to go down this road in Australia, it is a nettle which will have to be grasped, and will have to be grasped first and foremost by politicians. Despite these cautionary remarks, it remains a fact that the principle underlying this development has been a sound one, and there is no improved cooperation between the various agencies involved. In addition, these practical developments have been assisted by some sound academic work. For example, in 2003 there was a ground-breaking piece of research which found that ¼ of all prisoners in Scotland came from just 53 out of 1,200 electoral wards, and all of these 53 wards were in the most economically and socially deprived parts of the major cities.

As we heard this morning, that evidence is a useful starting point for JR work. Now of course that finding comes as no great surprise to anyone who knows anything about who is sent to prison. There's a well-known saying that if one wishes to know who are the marginalised and disadvantaged groups in any society, then one only has to look in its prisons. In the US it's predominately black and Hispanic people, in Central Europe the Roma, in New Zealand the Maori, in Australia it's – you don't need me to tell you who it is. Let me end by returning to what I said at the beginning – JR is not a single answer to the problems which blight some of our communities. Its importance lies in the fact that it is a tool which allows us to redefine the fundamental issues of safety and security, and cohesiveness in our communities. Following on from what I'm saying now about Scotland, Vivien will talk about England and Wales, and Todd will talk about the US. None of these are models which can be lifted off the shelf and used to resolve the problems of this country, of Australia, but they do offer a number of principles which can be translated into the Australian context. We offer them to you in this spirit, and look forward to observing how they will be applied here. Thank you very much for listening to me.

**Helen Watchirs:** I was wondering if you could compare England and Wales to Scotland, just as a preparation for Vivien's talk, in terms of your experience of the prison system. I got the feeling visiting Kibble in Scotland it didn't feel like anywhere here, whereas Polmont was worse than anything I'd seen here.

**Andrew Coyle:** Yes. Polmont was the borstal that I started in when we met the people 20 years later. I mean this simple statement of fact of course, that Scotland has a population of 5 million people, England and Wales has 60 million, so there's clearly a difference in scale, which has disadvantages but also has

advantages, because things are much more immediate and much more locally accountable. And your experience about the Kibble School for young people and Polmont Young Offender Institution is a significant one. In a way part of me is embarrassed to hear your view of it, but part of me is reassured that you did feel that way, because it is a terrible place. Polmont is a young offenders institution run by the national Prison Service – that’s the first thing to say about it – and it has, I don’t know what the latest statistics are, but I would hazard a guess probably something like 400-500 young people in it, several hundred certainly. People sent to Polmont are aged between 18-21, but a number are younger than that, and they will all have been sent there by the Criminal Courts. The young men in Kibble will have been dealt with through the Children’s Hearing System, which I described. So that they will have been diverted, the Children’s Hearing System diverts people from the criminal justice system, and does not only deal with children who’ve got problems with the law, but also children who have welfare problems. Polmont is run and managed by prison staff. In a way working in Polmont as I knew it was more difficult than working in Peterhead, a maximum security prison, because in Peterhead I knew what my challenge was, I knew it was to deal with very high security prisoners and to keep them detained and to do it in a decent method as I had, as I could. It was difficult to implement but actually very straightforward. The problem when you’re dealing with young people is so much more complex, and how can you expect a man or a woman who’s given six weeks training, then sent into a place like Polmont where there are 200-300 youngsters, to deal with them? Whereas staff in Kibble were trained youth workers – and that’s the big difference, that’s the message – these problems will not be resolved by the criminal justice system.

**Sean Costello:** I lived in Edinburgh for a couple of years and did some work with the Scottish Legal Aid Board, part of that work was bringing together various levels of government on a project – you alluded to this, the social worker work you referred to – it sounds like part of the challenge may have been those multi levels of government, the Councils, the Scottish Executive, and I assume perhaps the UK government as well, was that some of the challenge? It strikes me that could be a challenge for us here in Australia as well, those multiple levels of government.

**Andrew Coyle:** It didn’t affect the UK government because on the criminal justice front Scotland is totally devolved and the criminal justice in England and Wales is under the UK dimension. But you’re absolutely right to make the point that the different levels were important. There was a determination on the part of the national government, the Scottish government, which was at that time was Labour Liberal, and that’s Liberal in the liberal sense, not in the Australian sense. They were determined to show leadership, and the important thing, the difference between England and Wales which I mentioned, was that the government listened to the public consultation. There was a consultation in England and then it was put on the shelf and the Government went ahead and did what it was going to do anyway. The delivery in Scotland was to be at a more local level, and that was where, to be blunt, it didn’t proceed as well as we hoped that it might do for practical issues like budget, ”This is my budget, it’s not your budget, and I’ve still got the work to do, I’m not going to share it.” But there was an attempt to deal nationally, locally, and at community level.

**Michael Levy:** It’s my pleasure to welcome Baroness Vivien Stern.

### **Professor Vivien Stern – Justice Reinvestment and the politics of localism in England and Wales**

Good afternoon it is a great pleasure to be at this really famous University, should I remind you, and when you walk round it you feel you’re in a really famous University, and this very important conference. And I’m very happy to be in Canberra, and we – I speak on behalf of the foreigners here – we all much appreciated a meeting yesterday with the ACT Attorney General Simon Corbell, and we heard about some very exciting work that’s going on here in Canberra which set us up well for today. It’s very good to see such a range of people here. There’s already a success, you have the police and public health in the room, and when talking about justice it’s a step forward, you’re halfway there, and there are also politicians in the

room, so that should really... that should do it, I would think – I would hope! I want to thank everyone who's spoken so far, because I'm learning a lot, so that certainly fulfils my expectations. I'm very pleased that we're talking about JR. For Andrew and I it goes back a long way. We went to Brooklyn in the US to a conference, we went back to the UK, we saw its relevance to the work of the International Centre for Prison Studies, whose mission is to study the use of imprisonment and its nature. JR was very relevant to the use of imprisonment. We raised some money from a foundation and started some work, and the idea is still on the agenda in England, much talked about, and used as the basis for new approaches. So the first question I want to unwrap a bit is, *Why is this idea such a strong one? Why do people get very enthusiastic about it – as we all are – in countries like the US, the UK, and Australia?*

The first answer I will give for England and Wales is it's related to what's happening in the criminal justice system in England. We have a lot of people in prison. We have the highest imprisonment rate in Western Europe – 154 per 100,000. In 1997 the Labour Government came in, the prison numbers were 61,500; when they left in 2010 there were 85,000. Every year saw the prison population go up. I was here in May in Melbourne, talking about policies of the British Government on rape and sexual assault, and I just want to put it on the record I said many good things, because the policies we have on rape and sexual assault are excellent. I'm not the person who travels abroad to criticise our country and our government, but I have to say, being really objective, the last Labour government was in many respects a disaster for criminal justice. Then a new government came in, a Coalition of Conservative and Liberal Democrat Parties, and they came in with a commitment to use prison less, and to have a policy that concentrated on getting people out of crime by helping them. That went very well for a while, because a truce was called in the destructive and irresponsible bidding war that goes on between political parties to say, "Our policies will make the prison population higher than your policies; you're soft on crime and we're tough on crime." And to call that destructive and irresponsible is the polite version. The leader of the Opposition at that time supported the government in the aim of having less use of prison. The truce collapsed because of elements in the Conservative Party that persuaded the Prime Minister to go back to the old ways.

The first reason for the interest in JR in England is the very high imprisonment rate, and the difficulty of getting political agreement to do anything about it. Another is the analysis of who is in prison, and indeed we have some, as everyone does, some dangerous, violent people who need to be confined, but most of the people in prison are not like that at all. They're people who have been failed by the health and the welfare services, failed by the education system, didn't get the help they needed when they needed it, but then they come to the attention of the Police and the Court, they get to Court and suddenly State money is available to be spent on them, but it's punishment money, not help and support money.

When we were in Perth four years ago the Welcome to Country was given by a very impressive speaker, who told us how well WA was doing economically, lots of mining, lots of money coming in, lots of development, and then he said ruefully, 'With all this money what do we get? We Aboriginals are going to get a nice new prison!' Also in WA, I read in the WA newspaper, they're having to make budget cuts, the axe has fallen on prisoners going to funerals! 40% of prisoners in WA are Aboriginal and there are a lot of deaths, and a lot of funerals. As Dennis Eddington from the Aboriginal Legal Service said, 'Aboriginals have a low life expectancy,' as we learnt this morning, from those devastating slides from Tom Calma. The Prisons Commissioner, Correctional Commissioner in WA said, he had to explain the decision, he said, 'Attending funerals is important, but the bottom line is you are a prisoner first and foremost.' I make no comment.

A lot of prisoners in every country come from the social groups that have a low life expectancy, and I must say Tony Butler's devastating presentation about health was one of the most stark and shocking I have seen on that subject. It showed to me how legitimate, lawful punishment can be turned into a selective and discriminatory human rights abuse, and if the Australian Federal Parliament had a Human Rights Committee, and many people wish they had, they might want to look at a subject like this, and how such a human rights abuse can go on for such a long time. So that's the second reason for the interest in JR in

England. The people in prison would clearly be helped much more effectively if they had inputs other than the prison, and if the prison money was spent on something else.

Politicians haven't had the courage to take that action, when they've tried they've been defeated by nasty politics and a very nasty press. So talking about JR in a sense is a Plan B, and I do want to say that – we're in Plan B territory. It's a way of getting a sensible and more just social policy by the backdoor. There is also Plan A, and that's called having a sensible social policy to start with, and I imagine if the Green Party for example was in power, you might be able to look at a Plan A, but there you go.

In Finland, for example, they've got 4 or 5 under-18s in prison at any one time, sometimes 3 or 2, and huge adolescent mental health services. In Denmark and Norway imprisonment rates are 74 and 73 respectively, and they have very highly developed health and social services that everyone can access. That's Plan A: a good level of welfare spending and health spending and a much smaller budget allocated to criminal justice and imprisonment. That's a dream for you and for us, we're a long way from that, and that's why JR is so attractive as a concept in countries like ours. It has wide appeal politically, it's got the money word in it – investment, so you've got a lot of types who think of the world in terms of money and they could be brought in. It addresses the fact that we now have a shortage of money – you don't in Australia really, you're very well off, but in Europe we're just a bit poor, we need to spend our money well – and it looks at how power is distributed between central authorities and local authorities, and that appeals to a lot of people who are involved and who are activist in the cause we're talking about here.

So very briefly, what have we been doing in England? Has this idea been turned into reality anywhere? In 2005 the International Centre for Prison Studies launched the idea in a medium sized town in the north of England called Gateshead. After two years we managed to get the information on how many people went to prison from Gateshead, for how long, and which part of the town they came from. We discovered, no surprise, they were concentrated in certain areas, we worked out how much money they cost to send to prison, and we produced a set of recommendations of what Gateshead could do to deal more effectively with these crime problems, and we did find, as somebody in the back row mentioned this morning, a huge reluctance to publish the data on where convicted people lived and were concentrated. We never got over that reluctance to publish the data. In the end, the main outcome of that project was to start a discussion about the role of local government in dealing with people involved in crime in their area. That discussion led to substantial change in the attitude of local authorities towards people in their area who'd been through the system. Local government in some places didn't know they had a local prison, they discovered they had a prison, they went to visit the prison, they started employing people to work for local government, to reintegrate into that community the people who came out of the prison, and they started adding up the implications of not doing it, and becoming much more involved at a national level as well in this debate.

So JR – it is definitely a tool for getting things talked about. The focus moved to Parliament, the Justice Select Committee of the House of Commons produced a report on JR, their definition was, 'Approaches which channel resources on a geographically targeted basis to reduce the crimes which bring people into the criminal justice system, and into prison in particular'. They called for a gradual program of disinvestment in prison building and in prisons, and a transfer to local activities that were preventive and community based. The government reply was one of those that Mick talked about this morning –bureaucratic, a long list of bureaucratic things that they were doing already that were not relevant to the recommendations that had been made. Basically, that's what it was.

Then a different committee in parliament, the All Party Group on Local Government, set up a working party on JR, and invited me to be a member. The report ended up with the title *Primary Justice*, taken from health and looking at the distinction between primary care and hospitals. And the report saw as primary all the crime that happens day-to-day in local communities where people are living together – break-ins, minor assaults, fights, drunken brawling, drugs, shoplifting, theft – and in dealing with all of this the report called for an approach that's local, community based, and focused on prevention. And ours was the only report

that ever put a figure on the amount that should be moved. We said that primary justice should be funded by taking 35% of the prison and other justice services budgets to a local level, an interesting and radical plan not implemented, but still discussed and on the agenda. Then came a few practical developments – a case study was carried out suggesting how justice investment could work in one London Borough, an area of a quarter of a million people. They eventually worked out a sum of money of 4.2 – I converted all this – Australian dollars that could be used by that local area if all the people who went to prison for less than 12 months, for that many people – the answer was a definite yes. That wasn't implemented but it was a useful exercise.

I've got two more: the Youth JR Pathfinder Initiative – this project aims to reduce levels of youth custody. The Youth Justice Board is a national body that 'buys' places to lock up children and young people. They buy many of them from the National Prison Service, they also buy them from private security companies like G4S, and they buy them from other providers of secure care. The project is a pilot in four local authority areas. They would each get \$AUD3.9 million from the government, on the basis that that money would have been spent on incarcerating children from their area, and they have to reach a target of reducing the number of children from their area who are incarcerated to that nominal amount, and then they can keep the money. And if they don't do it they have to give back the money. One more project, my last one. The government is going to give half of the money saved by a very big area, Greater Manchester, if they substantially reduce the use of the criminal justice system. If they reduce Suspended Sentence Orders, Community Orders, short prison sentences, and all other convictions and associated disposals at a low level, when compared with the baseline of 2010 and 2011, they will get the money. So that's how far, an absolute synopsis of how far we've got as of December 2011, and as you can see it's a complete mishmash of all sorts of ideas about localism, and various ideas about incentivising people to take actions you want them to take by giving them money. I hope you found it interesting and helpful.

Let me conclude. JR, clearly from what I've said, is a hopeful promising tool; it can lend itself to a very wide range of reforming activity. It looks at what is clearly a huge failure of public policy, a bad use of public money, and a system that produces little benefit to the public. For all those reasons we should support it, and aim at its success. I want to end on a very hopeful note, which came to me at breakfast this morning when I was reading the newspaper – I read in the newspaper this morning that Chief Justice Tom Bathurst from NSW said, 'It may be time to trust in the well informed public to prefer a criminal justice system that honestly and transparently seeks to reduce crime and protect communities. Rather than more prison, evidence suggests public money is better spent on community based prevention schemes.' That is a very hopeful basis for going forward. I wish you enormous luck with this, and I hope the campaign is a huge success, and that I read about it in my press cuttings at least once a week. Thank you very much indeed.

**Michael Levy:** Thank you. If I could ask Peter Bailey, ANU Law School, you might give some reflections to this presentation by Baroness Stern?

**Peter Bailey:** My principle focus has been on human rights, and it seems to me that there is... there are some risks, and this is not to say I don't support JR, it's a marvellous idea, but it could for instance take to one possible risk that it would be identified say with doing something for Indigenous people and we might forget the poor whites and those other people that are in prison. Another thing it could do is in the hands of the Department of Finance it could say the only way you'll get money is to take money from something else that you're already doing. Now that, we all know, is a very strong tool for finance departments, and in times of stress that can often mean you simply don't get any money, and even if you can show that you're trying to do it, it doesn't work. And so what I then reflect on is that our ethos of course is now, isn't it, to say well, you have to test it by finance, if it isn't financially beneficial, it won't work, it won't do, we won't adopt it, and that perhaps we have to keep in the background a kind of recollection of the fact that there are human rights which are agreed to around the world, which emphasise that everyone is equal and deserving of rights and their protection, and that perhaps what I would... I mean just to use something that's not very apt, but

what I could imagine saying is that if we called this a JR and restoration project, in the sense that it would then be a tool that you could see was chiming in with the human rights values, like to have rehabilitation as the primary objective in imprisonment.

**Vivien Stern:** Most grateful for that question. The long version of this speech had another six or eight pages about human rights, and that was to say something else, which is not only is this a financial question, and I personally, temperamentally, are not totally in love with a title for something that is so closely tied to money, rather than starting with values, but unfortunately there's a bit of real world here. But it does seem to me from a human rights perspective that in any case the incarceration of people who are in huge numbers, totally disproportionate numbers, poor, from an identifiable minority, and very often sick, is in itself a human rights abuse, a discrimination, and an outrage that human rights activists should be as concerned about as the many other outrages that we read about and have to face every day. So I'm very much coming to it from that human rights perspective, that imprisonment has become, not because of the way people are treated, and the people here who work in correctional systems I have no doubt respect the human rights of the people in them, and that's not what I'm saying, I'm talking about how the State is using incarceration to sweep up the people who are not needed by the global market economy, and who have been abandoned to the point where their social problems will cost money and the solution is incarceration, and it seems to me that must be a human rights abuse, and it should be seen as such. When we talk about this, we forget that there is a court that will pass a proportionate sentence in a trial which will have all the safeguards of a proper trial, and the prison sentence is at the end of that line. We can't talk about moving money from a sentence of the court to another form of treatment until we have brought onboard Chief Justice Bathurst, and the other judges, to understand that they, too, through this sentencing are participating in a gross human rights abuse, and it seemed to me he does see that, and therefore that discussion will have to take place. But it's naive to talk about this without realising we're in a framework of the operation of law which sanctions people on proper grounds through a proper process, and those decisions must be made by independent Judges. So the whole discourse needs to be handled in a way that doesn't cause uproar amongst their Lordships and their Ladyships, who will not understand that it all means very well. But they will have to be brought onboard at some point, or we won't get anywhere. That's my considered opinion. Thank you for that great question.

**Tom Calma:** It's interesting that this forum was not promoted as an Indigenous only program. What's happened is that Aboriginal and Torres Strait Islander people have taken the initiative to try and address an issue that the non-Indigenous community in Australia haven't taken for the rest of the prison population, and I'd urge Law Faculties, and I'm involved with the NSW, Uni NSW Law Faculty, and we'll be coming onboard there as we do, as a social justice issue. But human rights is about equality for all, and this is what we've got to address, is the disparity that exists in our prison systems, where Aboriginal and Torres Strait Islander people are far in excess over represented in the system. So it's not denying anybody human rights, it's about making sure that we are on a path to equality for all Australians.

**Vivien Stern:** Yes. That's right. Yes, certainly.

**Jill Guthrie:** I mentioned that one of the outcomes of the November workshop last year was that we need to take a whole-of-community approach – we know that the biggest impact will be on the Indigenous population, and it finds a natural home in that way, the impetus for this has come from the Indigenous community, but it does have to have that whole-of-community approach and collaboration.

**Michael Levy:** Now the final of our international speakers, Professor Todd Clear from Rutgers.



## Professor Todd Clear – The promise and perils of Justice Reinvestment

Thank you, I'm delighted to be here. Let me begin by thanking NCIS particularly Jill for being such a great travel host. I've long admired your work at the Centre for Prison Studies, and this trip I gained some new people to admire and I thank the other speakers this morning for what you said. I'm mindful that we speak on land that has been loaned to us and I want to acknowledge and honour the people who have come before us in this land. I want to talk about JR (referring to slide) the title says *Pitfalls and Possibilities*. I'm one of the people who was involved in the origination of the JR idea. I've been involved from the beginning. I'm an advocate, so you can take whatever I say with a grain of salt. I've been involved a bit in the work in the US, not a lot – so I'm interestingly at arm's length from much of it, so I can talk about it a bit with disinterest, although this is in a way a baby that I've watched become an acting-out teenager.

I'm going to talk about JR (referring to slide). JR treats all correctional costs as public safety investments, that's the central concept: we've already decided we're going to spend some money on public safety, we've already decided we're going to spend this amount of money on public safety, the question really on the table is, what distribution or allocation of those funds is the most sensible given our public safety agenda and what we're trying to accomplish? By definition it de-emphasises confinement, for a couple of reasons. One is that there is now an extensive literature that indicates that focusing interventions on high-risk have the most chances of pay-off: putting in interventions, spending money on people who are low-risk not only is a waste of funds in terms of recidivism rates but also has a tendency to increase their risk level, thereby exacerbating the public safety problem. Even more important, we also know that length of stay in prison settings is not related to recidivism rates, if you want to teach people a lesson you don't give them more prison – they don't learn anything by more time in prison. In fact there's a slight negative impact of spending more time in prison, your chances of engaging in new crime increase slightly. There's also a good amount of literature now looking at the difference between going to prison and not going to prison, holding constant all other kinds of effects. Sending a person to prison has a slight chance of increasing their chances of being a public safety risk after they're released and most people who go to prison come out – so when you think of this as a very expensive dysfunctional timeout for where you are spending a lot of money to put people away so that they can come back to you worse. So when you think about all of the public safety investments, the reason you de-emphasise prison is not that there's anything... I mean you can make a moral argument about prison and I'm attracted to those, but you really are trying to make a very practical public safety argument which is saying, we have limited dollars, so what is the best way you get public safety bang for this buck, and incarceration doesn't come up very high on that list for a variety of reasons.

What you're going to do with that money is in turn you're going to invest it in high incarceration places – why high incarceration places; because of what I just said, which is that if you can do something about the dynamics in those places that are sending a lot of people to prison, they're not just sending a lot of people to prison, they're cycling people through the prison system. There are neighbourhoods in the US, for example, where ¼ of the adult men are locked up on any given day, but if you look at different days, it's different sets of men and over a period of time it's almost every man. So it's this cycling process and its effects are on those communities. You're going to focus on those communities from a public safety standpoint, asking the question, *How can we improve public safety in those locations?* and you're going to also think about the infrastructure in those places. No surprise, the places that produce the most people who are costing the most money flowing through their criminal justice system have very problematic social capital infrastructures, and the idea is that we're going to do something about that. The last point I'll make is that we're interested in community quality of life, not just from a human rights standpoint, although that's a particularly useful one to think about, but because places that are better places to live, work, and raise your children, are safer places. They are the places we all want to live in and for good reason.

There are three kinds of JR that have developed. Again, this is a concept that's barely a decade old (referring to slide). One is JR through policy analysis, something talked about as a top down strategy. This is the most common in the US. In this policymakers come together from a bipartisan point of view,

Democrats and Republicans sitting at the same table equally interested in JR, they analyse the pressure points, the flow in and out of the prison system.

I'm going to say an important fact, the most important prison fact you'll hear today – which is prison populations are produced by only two numbers – how many people go there, and how long they stay – everything else is noise. If you want to do something about a prison population you've got to do something about one of those two numbers, or both, or you won't change the prison population otherwise. And policy analysis flows... looks at those two numbers and tries to identify pressure points, places where you can make a difference through changing policy. For the most part it's not new legislation, it's simply changing decision-making strategies.

A second kind of JR is through creating local incentives. In this case money attaches to an individual, in the US context again, which by the way let me say... it's been said, and I want to emphasise it, that some of this may be relevant to what's going on here, I've been touched by the all parallels in the circumstances you face to the ones we face, except our numbers are higher, but some of these may not apply here at all, like the conversation about distances in the rural parts of Australia, that we simply don't have those very much in the US. But the idea that a person who is convicted of a burglary, who's going to be locked up for three years in the US, is worth \$180,000 from a JR standpoint – in other words we're going to spend \$180,000 on that person. If you can create a local incentive to keep that person, the money follows the person, and you and I both know that we could do something for \$180,000 with most people, a year with most people. That's the second idea. There are multiple mechanisms for this, of which I'll talk about in a minute. The third is JR through private sector bonds (referring to slide). In this model the government sets aside a large pot of money, challenges the private sector to beat the government's recidivism rate, the private sector does whatever it does – that we just magically all know that whenever the private sector gets involved, magic occurs – and those recidivism rates are beaten, and then the governments... the private sector goes and gets that money. It's a win/win. The money coming into the private sector is all profit, the government saved money because of the reduction in recidivism rates – that's the bond model. So let's talk about policy analysis (referring to slide). We're analysing flow in and out of prison; we're identifying the key, as I said the key points to be targeted. There are two kinds of strategies here, there's the frontend strategy which – let me just say, that where you can save the most money is don't put somebody there in the first place – and so there's a lot of potential savings to be made by diversionary strategies. There's also backend strategies, most of these focus on recidivism. There's a third kind of backend strategy in the US, which is letting people out earlier, length of stay, and these have been kind of problematic.

I'll give one story: remember what I said about size of prison population, if you let a bunch of people out early, but don't change anything else, then the average earliness of letting them out is how long you'll have a benefit. In the State of Kentucky, they were overcrowded, they let out a thousand people who were incarcerated an average of three months early, didn't change anything else; how long do you suppose they had a lower prison population? Three months. But all of those thousand people, everything they did was... attached to this policy decision. So let me just say yes, it's not a good idea that strategy, although it's an extremely popular one because what, you first think if you've got your prison, it's overcrowded, let some people out – seems like it'll solve your problem, but you don't have a temporary problem, you have a permanent structural problem. As we heard earlier, the State policies have created the prison population, and if you want to recreate it you have to change the State policies. Recidivism rates are an attempt to do it by... say if 2/3 of people are coming back and you can beat that by getting half to come back, you gradually reduce the prison population through reducing recidivism rates. In the policy analysis you develop a plan to change the flow rate, you then project the savings of that plan. If you reduce the number of burglars by 800 that's x number of gaol days, then you reinvest those savings into the community. That's the policy model that was used in the State of Michigan and they closed 22 prisons, and savings of a half a billion dollars, about 300 million of that was reinvested in the city of Detroit, primarily in drug treatment programs. So JR through local incentives (referring to slide), you create a fiscal incentive to keep the case locally by attaching dollars to the people. This is very interesting because it's a frontend option typically, although

you can do it as a backend option by removing people who are currently there – very interesting idea; you've got an existing prison population, ask an employer to go in and interview people and bring them out early, and for the period of time they would have served they get the money. You use some of ... with these you always end up using some cost formula – that sounds like a small thing, but turns out to be the entire thing; the actual numbers that go into the formula are very, very important to get right, and not so easy to get right. You directly fund the local structures that keep people locally by attaching those funds to the people ..

There are two types of these structures, there's State operated pay through structures where the State says, 'This is how much a case is worth – you get the case and I'll give you the money.' The second is private sector incentive structures. These have been thought about conceptually, and I've written a paper describing how it would work, nobody's been willing to try it yet. Social Investment Bonds is a third model – the government creates these Social Investment Bonds. Often times they're done in private, in partnership with the private sector as well, because the private sector can do an investment as well. The bonds specify recidivism targets, they also identify target populations to be worked with, in the UK it's an institution in a community. The private companies mount programs, the program recidivism outcomes are determined, and they figure out how big the bond payout is. So if you beat them by a little, you get a little bit of a payout, you beat it by a lot you get a lot of payout. There are different versions of this being tried, and right now we're such early days on Social Investment Bonds that really, the sky's the limit, you can think about these in almost any way you want. Lots of critics of this model, but ... when you think about entrepreneurial investing, it's hard to beat this idea.

I wanted to say a word about focusing on using recidivism as a way of getting JR money back. The first is that everything we know about reducing recidivism tells us that risk is the most important idea, that you don't reduce recidivism rates by focusing on low-risk cases; you have to focus on high-risk cases. There are lots of reasons for this, but it's easiest to explain on the basis of math alone. If you have a high-risk population – let me do it the other way – if you have a low-risk population, that's out of a group of a hundred, maybe ten people will fail, you can mess 90 of them up, you can only get better with ten, the odds are not in your favour, right? If you've got a high-risk population of whom 60 will fail out of that 100, you can go in the wrong direction 40 cases, but you can go in the right direction 60 cases. There's other reasons why working with a high-risk population is important, but almost all the time we violate this principle – someone says, 'I have a new program, I want to prove it works, I want to work with first time property offenders and I'll show you how well my program works,' and almost always the program fails because if you don't have a program that has a high enough recidivism rate, you're probably not working with the right people in your program. But it's very difficult ... it's interesting conceptually, it's very difficult to do practically because programs that have high recidivism rates don't really look that good, even if they're working quite well. Often times you're dealing with less than 1/3 of the cases, maybe sometimes much less than 1/3 of the cases, and yet somehow create imaginative policies that allow you to 'ignore' the rest of the tail, the rest of the distribution, and you have to design your programs attached to criminogenic needs – what that means is this is a need which if met will reduce my risk, because I have a lot of needs, meeting many of them won't change my risk at all. This is true of a large proportion of the people who engage in criminality, they have lots of needs, only some of those needs relate to their likelihood of engaging in future criminality.

This suggests that there's limited or no generic programming – I got the perfect program, everybody fits – in fact what's really true is I've got a program that only fits a segment of the population, and got to make sure I'm getting that segment, the high-risk people with this criminogenic need which I am attaching my program to. You have to make purposeful program assignments; you can't just say everybody from this... everybody coming through this Court goes to this program. I know that's attractive, because it's easy to do, but it just doesn't fit what we know about what works. And then you mount evidence based programs that enable you to reduce recidivism rates, and what do they suggest, if all those things I just said apply, you've got... you're working with high-risk cases, you're dealing with criminogenic needs, and you're matching

people to the programs that are responsive to their needs, you can reduce recidivism rates by say upper end of 40% – that doesn't mean 40 percentage points, that means 40% of the recidivism rate, so working with a group that has a 50% recidivism rate you will get a 42% recidivism rate. Now that's not a bad thing, that's a very good thing, we will take it any day, but you're going to... it's going to be years before you reduce the prison population just by working on recidivism rates. A long time; it's a long term investment. It's very popular, by the way, because nobody disagrees with trying to reduce recidivism, there's not a single Politician who is opposed to reducing recidivism. If you're going to focus on prevention, prevention is not an individual risk recidivism program, it's more of a generic way of trying to do business, and then you're going to develop community based programs that work on strengthening infrastructure. So for example, one of the programs we know that is most successful at reducing rates of youth involved in the justice system is Nurse Home Visitation programs, and they don't have anything to do with ... they're working with at-risk families, on health-related issues, and as an aside what they found was they reduced enormously the rate at which young people got involved in the justice system, since supporting families and children, trying to strengthen bonds between parents and children, trying to make those bonds effective, and saving enormous amounts of money downstream.

Creating economic activity in the community, so for example infrastructure development strategies that produce jobs, where the money changes hands in the neighbourhood, have high impact. If you have a... most of the investments we do in neighbourhoods, we put a dollar in the neighbourhood, it goes immediately out, we hire a professional to go in and work in that neighbourhood to do some work, and that professional buys lunch in that neighbourhood and then leaves, right, so that... and the actual economic activity we created in that neighbourhood was lunch, a little lunch stand, but if you create a job in that neighbourhood where a person's buying things in that neighbourhood, and living in that neighbourhood, you produce rent that might be local, but you certainly produce other kinds of shopping, and any dollar that changes hands once in a neighbourhood is \$2 of economic activity in that neighbourhood. So you want to advantage that kind of economic activity locally, and of course you want to promote health and safety because we know that these are very important predictors of subsequent criminal activity.

The good news is that we now know an awful lot about doing this kind of prevention, and with those investments you can get those results. The bad news is that the length of time between the investments and the savings is very... is quite long – years, maybe even a decade. All of this is evidence based. There's a tremendous amount of literature out there, and you don't have to look very long to find it, you just can't be reading criminology journals, you have to look in other areas. And where... what you're doing is instead of targeting risky individuals, which is what the recidivism programs do, you're targeting... you're trying to produce social capital in communities where that social capital doesn't exist.

I'm going to give some examples of some principles of JR using Brooklyn as an example. This is a map of Brooklyn (referring to slide), and you can't see it very well, but it's block by block, and every block in here has a colour, and the colour is associated with the amount of money spent in a single year incarcerating residents of that block. There are 20 million dollar... \$1 million blocks in Brooklyn, there are about another 25 or 30 that are \$750,000 to a million. The phrase is million dollar blocks – that's the phrase that people have used. This is Eric Cadora and me (referring to slide) – this was the original work that started us thinking down the road toward JR as an idea. And I want to tell you, if you went to these blocks and said to the people on this block, 'I'm going to spend a million dollars on your safety, what would you like to do,' they would not say, 'Exactly what you're doing now.' Right? So let me tell you what this is, this is a million dollars of money that people in midtown Manhattan make, given to residents of upstate New York, who work around Auburn, and Attica, and so on, to watch residents of Brooklyn for a couple of years and send them back worse. That's the current Justice *Investment*... that's the current justice *investment* model that this map represents.

JR says we can think of some different things to do with that same existing ... we've made a commitment to those neighbourhoods, let's think about we're going to buy with that commitment – that's what the JR idea

is in its most simple form. It is focused on neighbourhoods. So these are those same neighbourhoods in Brooklyn (referring to slide). This is... this side here, they're not really neighbourhoods, they're Council districts, there's like 25 or 30,000 people in them, in something like that, so they're bigger than what you would think of as neighbourhoods, but I'm using Council districts, and you can't see the things here, but the darker the colour, the smaller the ratio between the number of people going to prison in a given year for every person, every male aged 25 to 40... sorry, 20 to 40. So in this darkest (referring to slide), it's eight to one. That means for every eight males aged 20 to 40, one person went to prison that year. Right? One out of eight, single year, entering the prison system, not counting gaols, gaols the rates are much higher.

Now, the entire focus of the criminal justice system in the City of New York is to try to get that number down to seven in one, six in one would be better, five in one would be pretty good, one for one not so bad, right? It's as though we just haven't caught enough of them yet, is the logic we have. I'm not going to go through all of the research on the collateral consequences of high rates of incarceration in neighbourhoods, except to tell you that the news is not good, there's impact on families, children, the economy, housing, and so on, that is all problematic, and it's produced by those very high rates. But look at the difference (referring to slide), 64 to one, 44 to one, in other words where you live in Brooklyn determines the likelihood that you're going to be living next door somebody who's got a missing adult, for the most part male – what we know is that the impact of women being removed is significantly... is bigger per woman, so even though you remove far fewer women, the impact of removing them is more significant on the social family.

So what's the overarching philosophy then that you would have if you tried to do something along the community justice idea in here, doing a JR model in which you're going to invest in community justice rather than criminal justice? And that... this is ... arguably one set of principles – you're addressing public safety priorities within a context of long term community improvement. Not thinking short term, thinking long term. These are four principles – you're going to share decision making between criminal justice professionals and community leaders, you're going to involve people who live there in thinking about public safety priorities that you're going to spend resources on. The second principle is you're going to coordinate cross agency criminal justice responses to community priorities. I love saying that, it just sounds so nice, but what it means is, the point we were hearing, which is you get a lot of agencies involved and we just map criminal justice costs, if you map welfare costs, and school costs, and you'd have \$10 million on those blocks, you're going to try to get those agencies to start working together on the quality of life in those blocks. You're going to merge criminal justice investments in community resources locally, you're going to take dollars that community criminal justice has and get them involved in local kinds of infrastructure development. And then fourth –and this is the most important even though it's the most radical – you're going to view a people who've been convicted of crimes as untapped community assets. You're going to say part of the solution to the problem is the people who start out as we thinking of as the problem, and that... I know that sounds radical, but every successful community justice intervention that has been done treats that as a true principle, because part of what you're investing in is change, right? So what does that mean? ... this is a map of (referring to slide)... of Brooklyn – Council District Four is right up there in the corner (referring to slide), that's that area (referring to slide), Cypress Hills, City Line, East New York, and Spring, so you all know the rap group Cypress Hills, right? – I don't know them, I'm told they exist, and they're from that neighbourhood. These are the same colours of the blocks, there's about five million dollar blocks in Cypress Hills ... when we started working with Cypress Hills the Cypress Hills Neighbourhood Association didn't want to have anything to do with us – you're talking about people who break the law, we don't want to work with people that break the law. We showed them this map (referring to slide), we showed them another map of everybody who's on probation; 'Well this is just incarceration.' Everybody's on probation or parole, every block had at least one person who's on probation or parole in prison, they said, 'Oh, I guess we're already working with them.' Well if you're going... if you want to be a neighbourhood association, this is your neighbourhood, right? So these things here are (referring to slide) they're descriptions of local – they're local organisations that have grown up from the ground up, they're not funded by the City of New York or the State of New York, they get money from various sources and they

operate as community based partners trying to do kinds of social development things – they're Ma and Pa type stuff operating out of these housing projects, and every single one of them could use a grant to get better at what they do. You could have them start being accountable for some of their work, you could start measuring their performance. There are lots of things you could do if you were willing to invest resources in those existing crying infrastructures here. Now, I've heard a lot of talk about problem neighbourhoods in Australia – I want to tell you that this is a map that exists in this country, and those are organisations that you are choosing not to fund because you're funding the prison system. It's a choice you've already made. JR is about ... allowing yourself the room and space to make a different choice. There are some pitfalls (referring to slide). Recidivism oriented strategies have a very low ceiling, as a point I made, they're the easiest ones to pull off politically, everybody's in favour of reducing recidivism, so by the way so am I.

If you map the cost of crime of recidivism events in these poor neighbourhoods, you'll see that the same people who live in these neighbourhoods suffer enormously the cost consequences of their crime rates, and if you can reduce recidivism rates you can improve their quality of life. So let's not be sanguine, here. I mean the point is if you can make community streets safer, you will improve the quality of life for the people who live there, and that should be our focus, right? But, so recidivism strategies just aren't meaningless, it's just that they're... you're going to... they have a low ceiling, it's going to take you a long time to get... to realise a lot of savings. The meta analysis suggests that the ceilings are quite low, I won't go through that math, and of course you're only working on the... certain risk levels, and you're only trying to do programs that fit, which means that a lot of programs that you would like to do, a lot of those boxes up there won't meet your effectiveness criteria. And the effect size is, even at the best of all possible worlds, is only 20 to 40% reduction point I make.

Second pitfall of JR is that once money gets loosened up in a tight environment it gets snatched up very quickly. Oklahoma's JR law that was passed about a month ago, the savings are all going to the Police. Now I'm a big fan of police, let me just say I work in Newark, New Jersey, we need the Police, and they are underfunded. But if you're trying to reduce the prison population, I would suggest that giving money to the Police is not necessarily the first strategy. In other areas the money got snatched up by the general public, you reduce the prison budget by \$20 million and then that money was just gone. Fair enough. Thank you very much. But ... the JR idea involves reinvestment, it's not just a savings idea, it's a reinvesting idea. Police get in line, but everybody else in line. Drug treatment gets in line. By the way, it's much easier to move money from one governmental sector to another Governmental sector, from the Corrections to social work, social services, from Corrections to somebody else, right. To get it into the infrastructure of that community is very, very difficult. Funding State services and not local infrastructure, and funding community surveillance strategies, so in the State of Kansas, they took the money and created intensive supervision programs in probation parole, which I can just tell you the literature says was going to produce high rates of failure and return to recidivism. So it's... so you've got to think about this thing, there are... once there's money available, stuff gets very complicated. Of course getting money available is also very complicated, so, right. And then of course when doing nothing is often the wisest strategy from an investment point of view, there's not much public support for doing nothing, and the creative political strategy is to do nothing that looks like something. Good luck. But what about the possibilities? (referring to slide) If you do this and do it well, you will move money from a prison system that is arguably over... has been the first place in line – and I mean I'll say the US story, I don't know what your story is here – but in the US story has been the first sector to get in line when the budgets are handed out, to community partners that have been the last ones in line for many, many years. If you follow the principles of risk and needs you will realise long term... immediate reductions in recidivism, and long term savings from those reductions in recidivism, including lives saved, victimisations prevented, and community costs averted. If you build proven community prevention programs you will have done something that we have been trying to figure out a way to do for a long time, because it's easy to talk about it, but it's very difficult to pull it off, and you will implement policies that reflect what we know about public safety, with the lowest risk cases, where we are often getting into their lives in ways that create ... make their lives worse, not better, and you'll be implementing effective programs with high-risk cases. If you could do those things on that list

(referring to slide), you would sign up tomorrow, and I want to suggest to you that JR is one of the ways to get to that list. Thank you very much.

**Michael Levy:** Adam Tomlinson, what would you like to ask Todd Clear?

**Adam Tomlinson:** It's a question as a comment as well. When thinking about how to apply this in Australia I take the point that's been made by a few speakers, which is you can't just take something off the shelf and bring it in, and we've had that experience many times in this country where we've tried to do that, and usually fail pretty dismally. I guess some of the precursors, looking at your data, Todd, I would question the degree to which we could match that with our current systems, and this also came up this morning in terms of some of the Correctional data that is available. You need a pretty good picture of what's going on before you try and do these things, and in some jurisdictions we could get that with a bit of work and others it would be much harder. Do you want to make some more points I guess around what you think are the precursors around the mapping that needs to be done to make this... give it a good foundation to work?

**Todd Clear:** From what I've seen here the two... aside from the fact that your political structure is different than ours, the two biggest facts that are foundational facts that make things different, is you have a low rate of sentencing to incarceration to begin with, you sentence under 20% of your cases to prison, where we sentence 75% of ours to prison, which means that you're working with a different group. Although I want to say the recidivism rates I've seen suggest to me that your risk, if you assess risk, your distributions would look pretty similar. The second big fact is that the communities that are the high producers are not blocks in Brooklyn, they're big swaths of rural areas. I'm sure there's Sydney, and I'm sure in every one of your cities there are areas, but there's like... there's these large rural producers, and figuring out how to invest in those infrastructures is something you've already been thinking about a great deal, and it just adds onto that. ...the main thing is you start with the principle, and the principle is we're already making a lot of investments, and we're willing to ask ourselves critically are these the right investments? And you can do that without any data. You can make a decision that that's going to be your philosophical frame of reference about your public safety investment today. The next stage, which is let's think about the better array of investments, requires some data. I also want to say I'm a... even though I'm a big member of this evidence based movement, I have my own concerns about it. My guess is that you will get a lot of benefit from existing literature on what kinds of programs work and what don't, but there's a, again I'll use the word ceiling, there's a ceiling on what you can do here, that the cultural differences are both about first Australians as a community, but also... who are a major target here, but also about Sydney as a city, and the legal structure, all the differences between Australia and where these principles have grown up, which was in Canada and the US, suggest to me that you're going to need to innovate. You're going to need to think out some Australian specific strategies and then evaluate them. It's easier to do the first one, it's harder to do the second one, but I would suggest that you've really got to evaluate them, because eventually you want to be evidence based.

**Michael Levy:** I invite Nicole Wiggins, Canberra Harm and talk perhaps around the issue of local advocacy and community based initiatives where this may link in.

**Nicole Wiggins:** You were saying one of the downfalls can be the money getting grabbed, you mentioned drug treatments, but considering the high rates of drug related crime, and people that are incarcerated for drug related crime, particularly if that money was invested in the local community, and I suppose just secondly would you see an area of JR being drug law reform, so money being spent perhaps on catching people for using drugs and ... so moving money from supply reduction, more into harm and demand reduction areas? We spend around 80% on supply reduction, and a lot less on other programs, particularly harm reduction in Australia, which shows good evidence outcomes.

**Todd Clear:** I'm a big fan of the harm reduction model; it's not my specialisation, so I only talk about it as a fan, but I don't understand why any western law nation wouldn't be thinking about a harm reduction model, given all that we've learned about in the last 50 years about the alternative. On the first issue about investing in drug treatment, so from what I know and what I've read, which is not as much as I wish I had, there's an awful lot of drug related, particularly alcohol related criminal activity – this is true in the US, it's also true here – we focus a lot of other drugs, but alcohol ... the most legal drug, and the one that probably half this room will use today, or if you haven't already, is the one that produces the most harmful outcome, so regulating that is particularly problematic.

But I won't get into that whole philosophical, only to say this, the problem is that the effectiveness literature about drug treatment is not particularly helpful to the money saving argument. What we know about drug treatment is that voluntary groups like AA have high rates of long term success, but very high rates of short term failure. So what you're doing with AA particularly is you're just cycling a person through until they get sober, and you're trying to link them to periods of time they're not using, and reduce the periods of time they're using, but if you want really to have a long term impact you're looking at there's a cut off in the literature on therapeutic communities and on drug related communities of about 18 months – I don't know what your median length of stay is here, but 18 months is a lot of time, and drug treatment programs are very expensive. So the literature on that is you don't want to have widespread drug treatment facilities. I recommend Mark Kleinman's book on Project Hope. He makes the point that you want to triage as much as you can, and focus the drug, those very expensive drug treatment programs on people who are not... who can be just managed without any ... with minimal kinds of treatment, and that's a small number, and that's a classification problem, and that's a risk problem, and that requires having technology in place. I want to say that on the drug use side, the JR argument here I believe doesn't make a strong evidence based argument for investing in a lot of drug treatment. It's politically attractive but I don't know that the evidence is there, I'm sorry to say.

**Jacque Phillips:** Managing Director, ANTaR. In terms of JR in the US, to what extent have law reform initiatives been badged as JR, along with the economic reinvestment measures, the spending and the savings part?

**Todd Clear:** That's a very good question. It's hard to keep the conversation on community investment when it hits the legislatures and a whole bunch of interest groups come to the table, you're building compromises, it becomes problematic, and the big winners have been law enforcement agencies, probation, parole, Community Corrections, and the police. That leads me to say something I often say in these contexts which is – we're in the justice reform business, when we start talking about JR, and if we ask ourselves to get it perfect we will not get anywhere. We don't have to get the perfect set of reforms, we just have to beat the current system, we have to improve on the current problem. Just remember that! Whatever you do, this is the criminal justice system we're talking about, these are people who break the law, they break the law regularly, they do it a lot, they hurt people, there's a morass of public opinion about it, whatever we do is going to have its own set of problems. A problem-free solution doesn't exist in this arena. You're trying to beat the current model. So in that case it might be better set of issues to have to deal with to have a law enforcement community that has gotten more money and try to change the... I heard some stuff about law enforcement here that's been very impressive, and very optimistic about having Police involved in these issues, and that might be a better set of problems than the current set of problems. Is that an answer?

**Jacque Phillips:** My question was more to what extent they were legislative reforms but not necessarily spending measures, for example, changes to bail and parole laws which would presumably make a big impact on imprisonment rates, as opposed to spending initiatives. Just in terms of what we call JR, where it ends and begins.



**Todd Clear:** ... it's easier to get the policies changed ... there's been some movement on the legislative side, not as courageous as I would like to see, but some, particularly on bail reform and also on recidivism enforcement issues and then there's been limited success on moving the money.

**Michael Levy:** Our final speaker is Mr Roger Wilkins from Attorney-General's Department.

### **Mr Roger Wilkins – Secretary, Commonwealth Attorney-General's Department**

When Tom said, 'Would you mind talking about JR' how could I say no? This is a man who's been a champion of this concept in this country and it is an important concept, so I want to talk a bit about that, but I thought I might give you a bit of context just by throwing up a few figures. This is all government expenditure by Closing the Gap building blocks in 2008–2009. The interesting thing is the safe and supportive communities, a huge number ... most of that's expenditure by the States and Territories – so when you think about the criminal justice system and what is involved in that, that's a very large number, \$6.1 billion. Because there has been a lot of growth in funds in terms of health and early childhood but ... getting this safe and supportive communities thing right as part of the COAG agenda is a precondition for a lot of the other things that you want to do there. If people don't feel safe in their communities then I'm not quite sure how you can deliver a lot of this other stuff. You might think that we have a pretty good handle on why Indigenous people are in prison but we don't. It took my guys quite a long time to find this amount (referring to slide), which is fairly modest. One of the problems is the way information is held at State level. We had a discussion at the National Justice CEOs and people said, Well there were a lot of Indigenous people in prison because they've committed some fairly minor offence and ended up through a process of escalation, if you like to think of it that way, couldn't pay their fine or whatever, in gaol'. I said, 'Let's test that proposition because if it's true we should be doing something about fine enforcement and that type of offence.' But it appears from what we've been able to figure out that the majority of people who end up in gaol are in there for violent offences but there's probably quite a turnover of people going through for minor offences, so I don't want to discount the importance of that, and Todd's probably talked to you something about that phenomenon in terms of recidivism, but this is giving you a bit of context for what I want to say on it.

I was going to take you through some of those but I don't think I will because I'm time constrained, but these are interesting in terms of the type of evaluations that we've been doing in some of these areas. The empirical basis for a lot of the work and a lot of thinking we're doing needs vast improvement. I've spoken to various forums about that, I'm not going to repeat everything I said, but I'm underwhelmed by the way in which we evaluate our programs, and I'll say a little bit about that. These are some of the areas (referring to slide), and Todd has spoken to you about some of these things which in terms of the international and national intelligence we have about what might work, are the ... types of programs that might work best, and there are some serious evaluations of some of these things going on. As Tom has said to me ... there seems to be a lot of disparate activity going on, it would be useful to pull this together and begin to get a more coordinated and philosophically more robust approach. But for example, cognitive behavioural therapy is done in NSW in the prison system, they are doing proper evaluation of it, BOSCAR is doing that. These are some of the problems that I pointed to in the past about the way we do evaluations (referring to slide).

I don't want to unpack all of those but I will say a little bit about it in the context of JR. That's a list of programs that the Attorney General's Department is currently having evaluated (referring to slide). By the end of this year we should have some better data on that range of programs which might enable us to come up with some better ideas about what works. I found it frustrating, but people who know these things tell me that a proper evaluation requires that length of time, and so I'm hoping that progressively we'll be in a better position to make some judgement based on good empirical evidence. That's simply the Commonwealth Attorney General's Department's expenditure (referring to slide). The interesting thing is the amount of money, it's not vast, but it is a large component of our grant monies. The interesting thing is

how much we're spending in the criminal justice process here, and how it's skewed towards Indigenous Legal Aid, if you like, and things which instead of prevention, I would like to see a lot more money spent on prevention and early intervention, and things which mean that we don't have to spend money in terms of the criminal justice process which you can see. I suspect that if you looked at State budgets it would look even worse in terms of where the money is being spent.

I want to make a few remarks, and I know we want to have a panel discussion, so I'll keep them fairly brief, and people can ask questions or we can expand on them about JR. What I put there is (referring to slide) ... one diagram that depicts how JR might work using a Social Impact Bond, it's similar to what's been done in the UK, and I've had some long discussions with my counterpart in the UK about that, and it's also similar to what's being done in NSW. They're about the only two live examples that I know of, except there's some obviously that Todd would have talked to you about in the US. I personally haven't paid a lot of fine grained attention to what's happening there, but I'm sure Todd's talked to you about that.

You've talked about the concept of JR— it's one of those ideas that mean different things to different people in different contexts. Even when it is clearly understood it probably is a cluster of different, importantly different aspects and ideas, and it's useful to disentangle those to get clear about what we mean here. In the Senate Estimates Committee where I often get grilled, I have been asked questions about JR that indicate that Senators are interested in quite a lot of different things under this rubric: some are interested in the efficacy of intervention programs; some, judging on the questions, are interested in additional funds; others seem to be worried about the relationship between the Commonwealth and the States, and at least one other question I recall was about innovation and whether that's forthcoming. Now all of these issues are legitimately part of thinking through this notion of JR, and interestingly I got the same diversity of views when I discuss this with my colleagues at the National Justice CEOs. I notice Greg Shanahan's here ... he was part of that discussion and doing extremely important and useful work in the NT on a lot of stuff that we're not ... not a Social Impact Bond, Greg, but there's some very important initiatives that he's taking in terms of intervention at a particular point to prevent people getting into gaol through alcohol consumption. But when I talked to the National Justice CEOs, some of them didn't want to use the term JR because it was seen as an American concept, Todd, and didn't want that. But they were happy to talk about treating the causes of crime rather than the effects of crime; others wanted to talk about early intervention. Very few wanted to, if you like, empower the private sector to intervene here, so they saw it very much as a government thing, that government could do it ... it is worth contemplating and I will get to that, what the private sector can bring to this.

I want to talk about three aspects of JR – the first is that very important idea of early intervention or prevention or concentrating on removing or addressing the causes of crime, if you want to see it that way. That's the first important aspect or thought that lies behind JR and it's a powerful and important idea. Better for everyone if crime does not occur in the first place ... it's more effective and more efficient and it's not just a policy idea in the justice sphere, it's a motif in that area as a policy such as health, for example. Importantly it depends on a few significant conditions. Let me talk about a couple of them: firstly, we can figure out what the underlying causes or at least conditions of crime are or that we have some sound reason for hypothesising a causal connection. Causality of course is a difficult and slippery notion. Alcohol consumption may be in a sense a precipitated cause of crime, certainly statistically correlated, but you might also say lack of education and employment is an ultimate cause, and maybe we should not get too caught up on the theology of causation, but that is a problematic notion, and getting clear about what the causes, or if you're going to use that term. I know that a lot of people here understand statistics and – I'm speaking to you as a philosopher – it's a very slippery concept and I don't think we should get too caught up on the theology of causation. But at the very least, and this is the second point I want to make and one that I've made previously, we need to have some better empirical basis for our hypothesis, that by treating one thing we can have an effect on the other, and I just took you through some of that very quickly, critique of evaluation, the things we're trained to do, and the rigour and discipline I'm trying to inject into that, and that is a precondition probably for any sensible system of JR.

More critically, we need to be able to measure whether what we are doing works and whether it makes a sustainable difference, and sustainability is quite important here particularly when you're talking about paying people money for doing things, you've got to make sure that what they did is sustained. But even that measurement has been problematic in the area of Indigenous policy. As I've said evaluation is rarely rigorous in this area – that's a big claim, but I've yet to see really rigorous assessments – and that's a confluence of small p politics, and big P politics. Politicians don't really want to be presiding over a program where an evaluation comes in and says, 'You just wasted a whole lot of money, it's not working,' ... and small p politics, a lot of the people who tend to get drawn in to supply the evidence or even to do the evaluation, are people who have a stake in this program, they thought of it, they've been involved in it, they built it, the last thing they want to do is say that the last four years has been a waste of time. So you don't get the confluence of big P and little p politics is a problem in terms of getting rigorous evaluation. Nevertheless being able to measure outcomes and having sustainable outcomes that you can measure, having that definition is very important. If you're going to write a contract with somebody you better be able to measure whether they should get their money if it succeeds.

The second thing, JR is about saving money and getting better outcomes, and that's an important thing. This is another important aspect of JR funding in budgets. In a world of increasingly constrained government budgets it would be good to use our limited funds more efficiently and effectively, and you saw \$6.1 billion is being poured into the criminal justice system. You can imagine how much might be saved if people were diverted from the criminal justice system, or at least the prison system, looking at those numbers. And that's just money! That's not even talking about the imponderables of the effect on human beings! Better still if we could leverage, and I'm talking as a senior bureaucrat here, if we could leverage private investment to do that, so that the private sector takes the risk of the measure working, and the taxpayer only has to pay if the outcome's materialised. There are a number of things to say about this, and I'm drawing on my experience, I worked for Citibank for quite a long time, so I've seen bankers in action, I've seen investment bankers in action, I learnt quite a lot. It was a very steep learning curve. The first and most significant thing is in a sense you cannot contract out political risk. If a program fails, the community and the media will still be critical of the government that allowed it to occur, even if the government can say that it's not taxpayer money at risk. And that's not exactly wrong either, that the government is still held to account, because particularly in the area of social policy, because the idea that the government can trade off people's wellbeing or a community's safety for somebody else to take ultimate responsibility isn't really possible in a liberal democracy, I don't think anyway. There is an important responsibility, important political obligations to make sure the program is feasible, viable and reasonable, so you can't really contract out that stuff in that a way. The second thing is gaming. There is a propensity for the private sector and government departments to game the system, and so to minimise their obligations and to maximise their returns or profits. That's not a reason not to do JR, it means however that outcomes need to be well defined so that they can include sustainability, they represent a real saving and not just net widening, and that the program itself needs to safeguard the rights and wellbeing of the participants, these are human beings at the end of the day, they're citizens of the State, so you can't... you've got to make sure that however they're being treated, they're being treated fairly, and they're being treated according to the canons of rights and decency, etc. You can't just say, OK well, if you... here's a bunch of people that have got a problem, you sort it out, you get your money, and there's a few more constraints required than that. It's in that area, too, that gaming can occur, and we need to be careful about that.

The other side of this is that officials are reluctant to take risks to endorse or underwrite bold programs that perhaps have some prospect of success, and also that this type of program is complicated by federalism. Somebody put a question on notice about that, but where beneficiaries could be not only State or Territory taxpayers, but federal taxpayers ... or where maybe it's the taxpayers of one jurisdiction, and beneficiaries of the work of another jurisdiction. Where the Commonwealth, however, and the federal system has very little leverage over the criminal justice system, and there are problems of coordination and gaming are

exacerbated in that a federal system, and we could talk a bit more about the problems of federalism, I'm sure Greg can give you another point of view on that as well.

It's a particularly difficult area, and I don't know whether Todd talked about the US, it creates quite a few difficulties in terms of coordination. Nevertheless I come back to the idea that when we look at the billions of dollars flowing into the criminal justice system, and in community services and social security if you want to add that, then there is a very powerful reason to attempt to overcome these problems, and JR seems to me to recommend itself as something that we should be backing.

The third notion I want to point to about JR is – maybe the most important one – it creates an incentive for people to innovate, to come up with new ways of addressing the problem or even understanding what the problem is: this is full blown JR, when you go to the private sector. This it seems to me is a powerful reason to adopt the full blown form of JR. The profit motive is a powerful incentive, also a way of discovering new things. I've never been overly impressed with the capacity or inclination, with some exceptions I must say, of public servants to go and search out innovation. I don't think that's the same when I'm comparing them now when I worked at Citibank, those guys were all over it, they would trawl through things. I don't detect that same hunger to come up with some alpha in terms of the public sector; you get people who want to do it for whatever personal reasons or commitment to ideals and values and things like that, but profit's quite a powerful motive. I see with some regularity we're all reinventing the same wheel all the time or just failing to find novel and fresh ways of doing things. I suspect it's something to do with the nature of bureaucracy and the sorts of capabilities that bureaucracy needs to have. We attract people who have superb analytical ability, I mean that sincerely, and you don't find that stuff in the private sector either. If you want a problem taken apart, analysed, probably trucks driven through it, and held up to the light and seen every which way in which it doesn't work, you should go to the bureaucracy, they do it extraordinarily well. That's something the banks can't do in my view, don't do it particularly well, they're too busy just trying to cut a deal. But we don't recruit in the public sector for what I call entrepreneurial flair, in fact that could be viewed as a bit risky and dangerous and in the realm of the administration, in fact it can be dangerous.

So innovation and innovative thinking or entrepreneurial thinking maybe is a better concept, is something that tends to exist out there as far as the public sector is concerned. What investment banks are good at is not innovation, but discovering innovation, finding it, marketing it, and turning it a buck, basically. I mean there's nothing particularly creative except in terms of the way in which they organise finances. Banks and financiers and profit are all on the nose currently, and that does not help. I don't think, Tom, we should be leading off with investment bankers, but there are some interesting emerging areas of philanthropy and some NGOs where there is similarly this type of entrepreneurial flair. It's not based on a profit motive in that case but people who think innovatively, outside the square, if in a somewhat undisciplined thinking. But some what we need to do in government is probably sitting across the table from people with that type of imagination and flair and trying to figure out how you inject greater discipline and definition and measurement into what they've come up with. But it might require a greater amount of public sector input in terms of doing due diligence around those ideas.

**Panel Discussion – Professor Michael Levy (facilitator) Dr Tom Calma, Professor Todd Clear, Professor Andrew Coyle, Professor Mick Dodson, Dr Andrew Leigh, Professor Vivien Stern, Mr Roger Wilkins, Senator Penny Wright**



**Michael Levy, facilitator**

I will take my prerogative as facilitator to ask the first question. We don't have preconceived ideas of the rules of this: it doesn't have to be that each panellist has to respond to every question, so you might want to nod to each other and nominate at least a first respondent. This is the graph that Tom put up (referring to slide) the demographic profile of our Indigenous and our non-Indigenous populations. Todd pre-empted a question and my question to the panel is, *How can Australia respond to this very challenging predicament, that we've got a large Aboriginal population that is very young, that it's now moving through the education system, they're going to engage in employment, and they're going to be taxpayers, and the other force that is going to face them is the current trajectory of incarceration of Aboriginal citizens, and we as a community aren't even going to benefit from these human social resource?*

**Penny Wright:** I don't have an answer really, so I'll start by saying that it's these sorts of statistics that have made me embrace the idea of JR with a lot of passion and a lot of hope, because I've only been in the Senate for a year, and I was only introduced to the concept of JR a couple of years ago in the lead up to the election, it was a Greens Policy. I have been concerned about Indigenous disadvantage for many years, and when I look at those statistics, and I'm hearing statistics coming in on a regular ... essentially a weekly basis from various sources in the last year, what absolutely strikes me is what a squandering of human potential that represents, that every time we as a community or a society basically say we've failed you and we're giving up on you and we're going to put you away, particularly the incarceration rates of juveniles, it's such a waste, and we risk whole generations now. I guess that's why a totally new approach is required ... and JR helps to illuminate that. One of the things that struck me when I was hearing Roger speak – Roger, I'm probably one of those offenders who's asked you questions in Estimates about JR – was that rigorous evaluation is really important, but what strikes me in considering this is something we haven't applied to our criminal justice policy over many years, and that's come out again and again today – that we haven't evaluated this, and is this good policy and is it working? So we now have \$3 billion a year or more being spent on locking people in prisons and we haven't thought about why are we doing it: as Andrew Coyle pointed out earlier, why are we doing it, is it good value and is it good policy?

**Andrew Leigh:** One of the things that strikes me when I look at that age structure is that when you're dealing with young people, the number one thing that we know about teens – that they are impatient. For me the biggest insight of the criminology literature I've been reading over recent years is the trade-off between certainty and severity. It is really important we realise that if you are 16 and you're committing an offence, what really matters to you is whether your probability of being caught is 1 in 10, or 5 in 10, not whether if you're caught you're going to go to gaol for 10 or 15 years. Frankly we know that the future doesn't mean very much to you by the very fact that you're committing an offence and we know this from other indicators that suggest that young people are pretty present-focused. That's why we force them to stay in school – we wouldn't need a school leaving age if they weren't impatient. So let's get away from thinking that raising sentences is going to affect behaviour. Now that affects how you think about parole, it affects how you think about policing, but you want an environment where young people are really sure about the consequences of what they do, not in which you're trying to make the stick bigger and bigger.

**Andrew Coyle:** I was struck by Penny's description about squandering potential. JR is shorthand, and Roger may well be right that the actual term can be misinterpreted and may not be helpful. JR isn't about finance and – when you talked about investment bankers – you may have a different experience of bankers in Australia but I have to say in Europe we really don't turn to them for a model of how to do it! The serious point is that it isn't just about finance, it isn't about saving money, the term is Reinvestment – it's about *reinvesting resources*. Resources sometimes are financial resources – but people resources and social resources ... I was thinking as I was listening to Roger, but also in the course of the afternoon ... in a way, Jill and Michael, you've missed a trick by asking people like us from another group of big prisoners, the US and UK, to talk about JR. Instead you might choose to look at other jurisdictions which have never made this mistake, who don't need to reinvest because they did not invest wrongly in the first place. The traditional countries one would look at are some of the Northern European countries, Scandinavian countries, but not exclusively, there are also some very interesting examples in the developing world who haven't made the mistake of investing so much in justice, particularly in criminal justice – they have invested in, and there is an evidential base for saying that the money which is invested upstream in social and welfare issues saves money downstream. Now, one of the reasons you've asked that I suppose is because you're almost where we are and therefore you do need to reinvest. Before we look at those options, it might be worth taking a few moments to stand back and ask what is the best way of doing it, which countries have invested properly in the first case, and therefore never have not had to face the problem of reinvestment – because one of the big things about the JR is that it takes the debate beyond the parameters of the usual suspects – the criminal justice experts, the police, the prisons, the probations, and all the people who work in that field – one of the strengths for example of what was done originally was that people who became involved were urban geographers, the mapping people weren't criminal justice people, they were urban geographers, they were interested in ethnography, they were interested in anthropology – yes, they were interested in economics and finance, and that's where we need to take the debate. The people who are already in the criminal justice system are not going to resolve the system because we've got too much baggage in it already. We need to move the debate to a whole new set of people.

**Russell Taylor:** In a way Andrew has already gone to my question but ... we've all already agreed, ... that the evidence base probably doesn't exist, so my question is, What should be the research focus to create that evidence base? Where should we start that might create at some stage a tipping point where we could convince governments and other stakeholders, including community, politicians, and bureaucracy, as well as of course the media, that this is a beneficial thing to do from a whole range of perspectives, including safety, community benefits, of financial savings? I know it's a broad question, but where should we start to create the evidence base? What should be the focus of research?

**Andrew Leigh:** I'm one of those politicians who is an exception to Roger's rule, I really do want to know our programs that don't work because we can save the taxpayer huge amounts of money that we then deploy elsewhere. I moved a Private Members motion in the House last year calling for more evidence based

policy, and at the heart of that for me is randomised policy trials. You wouldn't get a drug approved on the PBS without a randomised policy trial, but somehow we think it's OK to roll things out across the country based on nothing more than theory and anecdote, and that's been enormously destructive. Take the example of *Scared Straight*, a program that everyone in the US thought worked, the documentary that's kicked it off won the 1978 Academy Award, a whole bunch of US States are doing it, and the idea is that for a kid who's been running with the wrong crowd, they spend a day in gaol, realise how bad gaol is, and they're scared straight. Then they run a randomised trial on it – it turns out the kids in the treatment group are more likely to offend. *Scared Straight* is increasing incarceration rates, and if we weren't being recorded I could give you examples of other programs as well of this kind. So we've got to do more of these randomised trials. The NSW Drug Court randomised trial, a great example of this, cuts through the ideology that is dominating that debate, and gets you good hard evidence. And so, like Roger, Social Impact Bonds are a useful way of driving that evidence base forward. We might also want to encourage more innovation through rewriting the private prison contracts. Currently private prison contracts look a lot like sheep agistment contracts, we'd like you to lock them up for a certain period, and we'll punish you if some get loose. That's a crazy way to write a private prison contract. It should say something about post-employment rates, earnings, all those sorts of things, and that would get innovation, and maybe more of these randomised trials.

**Todd Clear:** There's a sizeable literature base on both prevention and on intervention post... recidivism prevention, intervention, strategies, and you can take advantage of that, and you can differentiate programs that fit what we know from that literature, and programs that are really innovation. But you want to set aside some money for innovation. There's context here in Australia that doesn't exist in the other countries where the research has been done. I agree with the randomised trials, inside baseball kind of thing, I agree with that. But I also think it can become a constraining limitation, and in the context where you have things that ... where you have situations that are hard to develop experimental designs, given the technical requirements of experimental designs, you're going to want to use other designs to do studies and evaluate. I'm thinking particularly where the numbers are small in the rural areas, and it'll take you a while to get a randomised trial going, and get enough numbers that you can find a statistically significant difference. That's an inside baseball way of saying, yes you want to take advantage of what we know, and yes you want to study it, but you can study it in other ways as well, and the best solution is a randomised trial, but you don't want to not do something just because you can't study it, that is promising, in my opinion.

**Roger Wilkins:** Probably the best way of doing that is to reward good behaviour, in other words a lot of the stuff that we're now evaluating ... if there's a rigorous evaluation, to pick up Andrew's point, and it's shown to work, then it gets funding ... it should be a condition of funding in relation to a whole lot of programs, whether they're under private ... grants to private organisations or done by government departments. It's 'Government 101' in a way, we should be just doing much more rigorous evaluations ... it's beginning to happen. Maybe it's because ... people are just getting a bit more sophisticated, maybe it's because of the constraints in terms of the fiscal constraints, but I'm hoping that those evaluation of those various attempts to do something about this problem lead to further work or adoption of some of those things, and they are probably random groups, because they're pilots basically, they're fairly place based type of programs, most of those ones, yeah. So we can have a... anyway, it is beginning to happen, and I was responsible for the Drug Court one you suggested, and there are some good things happening in the States and Territories as well. I know that Greg in the NT is looking at evaluating that program in terms of restriction of alcohol consumption, it's getting some very interesting statistical results out of that.

**Mick Dodson:** Two things puzzle me here: it seems on the evidence the program that needs the most evaluation is, *How we do Corrections in this country?*, because that clearly is not working. And secondly, it really matters particularly to Aboriginal people, who exactly is doing the evaluation. And what's been missed here also is that, at least from my perspective, we're primarily looking to community based initiatives, not initiatives that governments say are good or aren't good. Certainly government has to be accountable for our money, but in the end this isn't entirely about money. I mean before we had prisons.

Communities did the policing, did the corrections, did the punishments. This in a sense is a return to that within modern context, and I understand the adjustments and innovation that has to be made for the modern way we live, and given the enormous size of the human population, and just going totally back to old ways isn't going to work. What ought to be something that, not this alone, but one thing that ought to be done ... perhaps do a comparative study between nations ... at least from Australia's perspective, or perhaps we can do it across State and Territory jurisdictions, is let's assess and evaluate how, if for one reason, if it's only for a financial reason, how sustainable the present approach is, and for how long can we as a society continue to build more and more prisons and put more and more people away. That'd be an interesting question I'd like to see answered.

**Penny Wright:** I agree with Mick that the question to ask is, Who's doing the evaluation, and that there's a role for an independent centre in Australia to take this challenge up. My understanding, looking across the political landscape in Australia, is that there's momentum in different States at different stages, but there's a real role now for Federal leadership in this, and I would be interested in seeing some kind of an independent centre for research and policy development, somewhat akin to the Council of State Governments Justice Centre that's been operating in the US. One of the roles of that centre could be the evaluation of existing programs. I'm aware of an independent centre associated with Columbia University that's done rigorous evaluation of many programs in the US. From memory there were about 900 programs evaluated, of which they found that 11 were proven to be efficacious, and about another 19 they were still examining. So obviously it's important that we do have rigorous evaluation but what's also really important who's doing that, because as we've talked about, various people have certain stakes in the outcome. I also think that having some kind of an independent centre that could pull together the momentum that's occurring throughout Australia, could look at developing some kind of Australian flavour methodology for the design implementation of JR, a model in Australia, and could provide the kinds of services and advice to governments across Australia to do the mapping, to develop policy options with various interested parties, and assist with ongoing evaluation. And that's one of the reasons that JR has been able to be taken up in the US, because one of the agencies there that's done that is the Council of State Governments that's been assisting States who've come seeking that support.

**Michael Moore:** My question is a bit about judiciary and magistracy. I'm going to start building on what Andrew raised before about learning from other jurisdictions, but we also learn from little mistakes in our past jurisdictions. For my sins, just a decade ago or so I was the Minister responsible in the ACT for Corrections without a prison. We decided then, and the current government has implemented it, so it wasn't a partisan thing, that we would build the best prison, and would have some fantastic programs and so forth, all of which has come to bear. But also what happened is that we increased our rate of imprisonment from 78 per 100,000 to – what is it now – about 160, give or take, per 100,000. The main reason behind it is because the magistracy is now quite relaxed. The prisoners used to be sent off to NSW and we all knew how bad the NSW system was. I wonder if there's something that we can learn about that in terms of the education of the magistracy, the structure we put around them, because every time another prison being built, that'll increase the rates.

**Roger Wilkins:** So it's supply driven I'd say.

**Todd Clear:** It is. There's good research on that.

**Michael Moore:** I also agree that we don't know what to do, how do we stop it?

**Todd Clear:** Just a comment on that, there's... real good research in the US that it was not demand leading to supply but it was the other way around.

**Andrew Leigh:** That's interesting.

**Penny Wright:** There's probably an analogy there with traffic flows and freeways and the idea that you deal with traffic congestion by building bigger, faster, wider roads, and evidence suggests that the traffic then increases to fill those roads that are available.



**Jacquie Phillips:** My question is to Tom: assuming I've understood you correctly what you see is a need for a JR campaign existing in a similar model to the *Close the Gap* campaign. I acknowledge the *Close the Gap* campaign was led by the Australian Human Rights Commission, the benefit being that it was a neutral organisation and that the campaign was based from a human rights approach. I'm wondering if you've done any thinking about who could potentially lead that type of a campaign in this area.

**Tom Calma:** Just picking up on one of the comments earlier ... Todd saying, why bring the international experts over, and if you look at the title of the forum, it's *Do We Need JR in Australia*. It's posing that question, and it's not suggesting that we apply the JR model that exists in various other countries over here, but to say OK, let's have an informed discussion about it by looking at all the various options that are available, and then relying on the experts like yourselves to be able to input into that process. As I indicated this morning, there's probably a lot of room to make a dent on incarceration rates by just looking at the existing money that goes in and better coordinate that, across jurisdictions, better target the money that's out there and coordinate it. And that's one part of what a justice reform might be in looking at incarceration, and then there's a whole lot of other approaches. So there's not saying we need any one of these models to look at, let's develop our own, hybridise it, I called it this morning, on what we need over here. That said, yes there's a lot of lessons to learn from the *Close the Gap* campaign ... we heard about the big P and the little p, and it's the big P that we need to look at, the politicians, help them be focused, and that's by getting the small p, the people, to be able to inform them about what is really needed and try and give politicians a bit of comfort in not having to feel that they have to advocate for being tough on crime all the time and to take a more humane approach to looking at these issues by saying, yes we can do things a bit differently. Who would run this campaign; I guess it's an interesting one.

When we look at what happened in the US, George Soros, a philanthropist, kicked it off, so you had a government run instrument plus a social interest instrument that kept it going. As far as the *Close the Gap* campaign went, Oxfam were the primary funders. Who would be the host? Initially if we're only talking about Aboriginal and Torres Strait Islander people, the role for the National Congress of Australia's First People is there they're starting to work in this space already, and already showing that they can coordinate those types of activities. But any measure we look at has to have broader application, and it's really the principles, and so I don't have a position on who would be the best person to work it. It's a matter of seeing who's able to do it. Penny suggested a new centre, well and good; you've got existing centres here, whether it's ANZSOG to run it or one of these other national bodies who could pick it up if they were given the right mandate by government to look at it from a national perspective. In the interest of things I *wish* I'd said – I wish I had, on the small p side, I wish I'd said something about the importance of having corrections at the table in all these discussions, they're enormously affected by this, and unless they... my... the experience in the US has been they're extremely supportive and have great ideas about how to make JR work. They're not the target problem; they're really a part of the solution to keep inside the conversation.

**Andrew Coyle:** A comment if I may about Michael's point. One of the advantages we have in the International Centre for Prison Studies is that we observe and we comment without any executive responsibility, and it's a very good position to be in. And I remember listening to the debate at the time, about did ACT need a prison, and then I was visited by John Paget who was keen to sign me up for the fact that this was going to be the first fully human rights compliant prison in the world. A human rights compliant prison is something of an oxymoron ....

**Michael Moore:** They do say apart from deprivation with it!

**Andrew Coyle:** Right, you make the correct point. The dilemma was that previously magistrates might have hesitated because people were sent out of ACT and now they are kept closer to home, and it's a nice prison, so we can do more of it. The prison world is a place of many aphorisms, one is, wherever we build prisons the courts will fill them. That seems to be what you're experiencing here. One of the issues we do need to define is, *What is the purpose of prison?* Prison is not a place of reform. The notion that prison is a

place of reform is a flawed concept. ‘Prison hasn’t reformed so far, so let’s do more of it’ really doesn’t make a great deal of sense. And that brings us back to the magistracy and perhaps the financial implications of JR. It may be for Treasury or Attorney General’s office or whoever to look at capping the prison budget. We cap the budget for schools, for hospitals, why don’t we say to the magistrate, “You’ve got 50 or 100 prison places, once they’re full, they’re full.” Alternatively, on JR you might say, you’ve got that set amount of money, you decide how to spend it. That really is lateral thinking, rather than simply saying, well so far we haven’t been doing it very well so let’s do more of it. Let’s do it better because we have 200 years of experience of not doing that and bringing in – it’s not a public sector versus private sector problem – it’s a concept problem, the concept is flawed.

**Roger Wilkins:** ... the budgets are capped.

**Michael Moore:** For the magistrate though?

**Roger Wilkins:** For the magistrate they’re capped.

**Andrew Coyle:** With prison places?

**Roger Wilkins:** No, I mean the budget.

**Andrew Coyle:** Prison places?

**Roger Wilkins:** No, budgets are capped.

**Andrew Coyle:** Which budget?

**Roger Wilkins:** The dollars.

**Andrew Coyle:** The Corrections money?

**Roger Wilkins:** Yes.

**Michael Moore:** But not in terms of the magistrate ... they’ll just crowd more people into the same prison from the same money.

**Roger Wilkins:** My point is that the budgets are still capped ... we don’t say every time you send some others we’ll send some more money with them.

**Unknown female:** ... prison population has been growing by 4% a year for the last 25 years and corresponding with that the prison budget has been growing at a similar rate ... so I don’t see that prison budgets are capped, they’ve been growing commensurately ....

**Michael Moore:** Because magistrates are overcrowding prisons.

**Roger Wilkins:** ... but health budgets have been growing at 8%.

**Andrew Leigh:** ... this comes to the question as to how you make these arguments in public. You don’t have to spend too many days listening to Alan Jones to realise that the human rights argument doesn’t have great purchase in the broader community. There’s two strong arguments that we ought to be focusing on – prisons are extremely expensive, they’re the price of a five star hotel room in a nice city, and that fundamentally they don’t have great impact on cutting crime, half the people who go into prison come out and commit a crime within a couple of years. So that then leads you to think in the advocacy space not about people with great human rights credentials, but about people with great crime fighting credentials, and there’s an important role for former police officers in leading some of these JR debates. We want to think carefully about how to use State competition: for example, in the area of literacy and numeracy there’s been some terrific squeals out of States and Territories when they’ve failed to make their targets and lost federal money and it would be nice also to see States who failed to make crime targets or reduce incarceration targets, missing out on federal money. You can also think of ways of taking a leaf from the US book and having federal money set aside for evaluation, so the political problem that Roger talked about is that no-one wants to have their own program shown to be a failure in a rigorous evaluation. You can solve that by saying that when the federal government gives justice money to States it comes with a proviso you’ve got to spend 3% on high quality evaluations, and States end up spending that money, they end up showing that programs don’t work, that learning is shared federally, and it’s quite a clever way of solving the political problem of high quality evaluation.

**Penny Wright:** If I could add that it would be very useful to have a justice target in *Closing the Gap*, along with employment, education and health targets because that way we do have a benchmark on which we can measure and hold ourselves accountable.

**Roger Wilkins:** So, we do what Andrew suggests – one of the problems is that not a lot of the programs that you're worried about here are funded by the Commonwealth, unless you start to put conditions on the GST transfer. A lot of this is funding for police and funding for their courts, etc. One of the things, just as a matter of interest, that my Canadian counterpart would say that should happen, and my German counterpart would say, you have how many criminal laws in Australia, and how many sentencing laws in Australia? In every other federal system there is one criminal law, there is one sentencing law. It is implemented at local level, but it's not set at the local level. Unsurprisingly you get a lot of local competition of us putting up penalties and whenever there's an election, and there's a competition to see who can do the worst possible thing to a potential offender. If you had a national criminal crimes Act, and you had a national sentencing law, it might alleviate some of that stuff, it would at least alleviate some of the burden.

**Andrew Leigh:** On the evaluation side is the problem that the quality bar isn't being set high enough? Are you... because you're not forcing States to do randomised trials, so what are you doing?

**Roger Wilkins:** We can't, we don't have any leverage. We put some money out the door for some programs, and when we do that, I said \$134 million went, we do insist they have proper evaluations for that money, but we're talking here about the majority of the \$6.1 billion being spent on public safety is State owned money, the question is how do you get them to do the evaluation, and some of them are, and some of them aren't.

**Andrew Leigh:** What's a proper evaluation? I mean we call things trials, but to my mind unless you've got a good control group it's not really a trial, it's just a try.

**Michael Moore:** There are certain techniques ... other research techniques, qualitative research, and so it does still have a role. Not everything's randomised controlled trials – and measuring outputs, not outcomes.

**Bill Fogarty:** I'm an education researcher: one thing I've heard very powerfully today is the word localism and the power of localism as a key concept in JR. Maybe because of my focus I see schools, educational communities, parents and citizens associations as a key part of that localism, and Todd, I don't know any of the neighbourhoods that you're talking about – but I wouldn't mind betting that they've probably got the most underfunded schools, the most inexperienced teachers, and have the worse educational outcomes. So I'm wondering, where does education mesh with JR and maybe if some of you guys from overseas, if you've got some experience there, but also some comments from anyone else on the panel.

**Roger Wilkins:** Just one comment: the focus of Attorneys and people who thought about this is ... it's not so much on recidivism and incarceration – I mean that is a problem and it needs to be sorted – it's on community safety ... on people in their communities feeling safe, that's what we want. Why do we want that? Because, as I said, it's a precondition for decent educational system and outcomes, decent stuff in terms of community services and provision of health services, it's a really important precondition, it's something which a lot of us just assume we've got. But I understand in remote communities and the Australian Crime Commission has shown me reports about the types of things that happen, and people don't feel safe in their own communities – that is an issue an important precondition. I don't know, Todd, would...

**Todd Clear:** ... in the US African American males who don't finish high school are twice as likely to be incarcerated as African American males who do, and African American males as a group are six times more likely to be locked up than white males, so there is an effect of education. One of the things that could happen – it has not happened, but could – is that you could do an assessment in a given jurisdiction, that the

key investment leverage point is keeping kids in school, and that you will use whatever reinvestment resources you get to prioritise that as a prevention strategy with a downstream effect. The thing is you're looking at 7–12 year pay-off period – it's a great example of a place where a randomised trial might be problematic, and you're going to spend a lot ... it's going to be a long time before you have good evidence that it's working. I'm not saying it's a bad idea, just saying that it raises its own issues. But it's a particularly appropriate example of the kind of innovative thinking and in a JR context you could say, I don't trust the schools to do it because if the schools could do it, they *would* do it! I'm going to ask for local innovation and I'm going to try to find that, then those innovations you could probably fund randomised trials around them to find out, 6 months out, 9 months out, 12 months out, and 2 years out, are they keeping kids in school, you might be able to get something going like that. It's a great example of where you can turn your thinking if you stop thinking the criminal justice solution. An example: community justice intervention in Bend, Oregon. Bend is a tourist community and they were having a lot of trouble with the kids doing graffiti and it was making tourists afraid. They had one camp arguing, we've got to arrest these kids and get them into detentions, but they had already agreed with the State of Oregon that they were not going to send any kids at all to detention and they were going to take all that money back and do grant money. So instead they built a big wall, and they said every few days we paint it white, free paint, the kids can come and do art there, and what it became was a tourist attraction, everybody wanted to go downtown to see what was on the wall tonight.

**Martina Wardell:** Martina Wardell, Attorney General's Department. I thought I should clarify in relation to those evaluations that are occurring, they are not randomised controlled trials, there may be some quasi-experimental elements pending access to data that we're hoping to get for the evaluators. Aside from that, I had a question for Baroness Stern: considering the discussion that's been had around private sector involvement, I was wondering if you had any reflections on the simultaneous rise of JR principles and Social Impact Bond model over there, and how they've interacted?

**Vivien Stern:** That's not the right question to ask me really because I don't like to be too negative and the Social Impact Bond certainly in the House of Lords is regarded with some scepticism in the sense that it's an attempt by conservatives to look conservative because that's been a real problem with the Coalition government and that it's not going to change policy in any substantial way. It was very difficult to find anyone to give them money, no private sector person would give them money, in order to have one in the end foundations and grant giving bodies gave them money. In order to get rewards you have to have results and there can be no agreement on what the results are which will enable you to get the profit, the bonus, etc. In the end where will the money come from? It will come from the public purse as usual. Of course the idea that they will reduce recidivism amongst one year incarcerated males by 7% is very difficult to measure, and we measure recidivism after two years. Are they going to wait for their money for two years? Probably not. Are we going to find another measure of recidivism etc?. Nobody can agree on how it's going to be measured and it is regarded as an extremely elaborate way of wasting administrative time, giving some money to a very good organisation – run by an investment banker who underwent a conversion to doing good works – I have no doubt that many of those people, those one-year imprisoned people, will be found a stable life and a job and so on, and will do very well. But they would have done that anyway! If they just got a standard grant from whoever's giving out the resettlement, the rehabilitation money, they'd have done a fantastic job, you'd have saved the money on all the administration, all the people who have to monitor it all, somebody to make up an answer what the results are, and then in the end the money will get to them afterwards. I cannot see at the moment that it's anything but a gimmick.

**Unknown female:** Back to the education question raised, and if I could get the views of any of the panel on JR working within existing government initiatives, because in NSW, with a JR position if you like, and in meeting with the NSW government, they are saying, 'Well we're already doing this and this is what we're doing.' You've probably heard about the *Connected Communities* initiative, this idea of super schools and having a special Principal allocated to high-risk communities, and beneath that super Principal a consultant, an Aboriginal specified position, and the idea is the school will be a hub to deal with literacy issues, perhaps

mental health issues, other health issues. It seems ... the potential is for a lack of long term sustainability in terms of funding and a lack of coordination of services that are going to be required outside the hub, beyond the school, again a lack of community consultation, there's a sense of top down here again. So really ... we're trying to direct the government into a JR framework so they can look towards targeting reduction of offending and reduction of incarceration, also looking at a long term sustainable funding model to do that.

**Andrew Leigh:** My view is there's two ways you can look at social policy – you can take the view of the planners that, 'really we know all the solutions we just need to fund them better, and let those knaves and fools get out of the way' – or the searchers, the view that public policy is really hard, if these problems were straightforward we would have solved them decades ago and we need to just iteratively try new things. The best thing to come out of JR would be the notion that there isn't a settled plan that just emerges from good theories but it's a philosophy which is modest and operates in the spirit of sceptical experimentation, maybe randomised trials, maybe quasi experiments, but at least raising that evidence bar from ... justice is essentially where medicine was in the 19<sup>th</sup> century, that period in which you were about as likely to get cured or killed if you went to a doctor. We need to try and improve the quality of evidence because that's how we're going to help ... those we're trying to assist.

**Tom Calma:** What interests me is as long as you don't just do one or two trials and then try and apply that across the nation – we have to look at responses to locations and they're going to vary across the nation – there's two dangers about research: one is that place specific research is then tried to be applied more broadly, and secondly research takes a long time, especially randomised trials and we can't afford just to wait until the research is done before we get into it. I know that's not what you're necessarily advocating, but we need to be conscious of that and look at what we can do. Education is a good point – I shared a report I did in 2008 on cognitive disabilities and Indigenous youth and their relationship with the justice system. Predominately it's about people not being diagnosed with a mental health issue and therefore not treated, and therefore it manifests in a whole range of different behaviours. We're seeing now the government rolling out a whole lot of Headspace centres around the nation, that's going to go a long way towards creating a situation for people to get first hand access to mental health support. There's just no one solution, it's multiple, it goes from making sure teachers are trained while they're at University to be more culturally competent and to understand how to work in a second language environment. That's not there, they're not core curriculum at the school level, so unless we start to look at this from a multidimensional approach, we're not going to gain too much.

**Andrew Leigh:** I agree Tom but you don't want to overdo differences across the country. Just as for Headspace, that is a sensible solution that can work in a variety of communities, we want to be careful with the notion that the community justice solution is different in every community in Australia – just as we discovered that strepsils were good for helping everyone's throats, there's a lot of commonality in what works on justice, a lot of potential for shared learning.

**Mick Dodson:** Tom talked about teachers – while they're at University getting their degree they should be taught about cultural differences. The Royal Commission said that 20 years ago, the Inquiry into the Stolen Generation said that 18 years ago – and not just for teachers – for police, correctional officers, bureaucrats, for a whole host of people who come in contact with Indigenous people in all sorts of situations. Nobody implements these things, they get forgotten!

**Barbie Fusitour:** I work with NSW Attorney General's as a project officer. Further to that is skilling up Aboriginal people to look after their own communities ... I have just come from Western NSW doing a review of *My Patrol* program. An issue which JR will need to be effective is for Aboriginal communities, especially remote/rural ones, is keeping people in their communities, skilling up local blackfellas to service their own people rather than having people fly in and out trying to address people's needs, whether health, social, educational. That's a key to ensuring the effectiveness of JR in Australia.

**Penny Wright:** My understanding about the essence of JR is that it's locally placed and locally owned. Where I agree we can distil the essence of those programs that seem to be effective as opposed to those that are shown not to be effective or successful ... it's crucial that particular communities where programs are going, where there's been justice mapping that's indicated high incidences of offending ... that those communities help develop and own the programs that are instituted and run by people who have an investment in it. I'd add to that one of the things that resonated for me with Andrew's presentation was something I've intuitively known but never been able to nail before I heard Andrew – that we have such a tendency, and the offender management programs that we have in Australia and elsewhere, we focus on individuals as offenders, and in fact ... offenders are human beings from communities and will go back into communities and they have so many other surrounding attachments and aspects and strengths that we could be working on. One of the things about JR is that it recognises that when people go back to communities they will be going back with those strengths and relationships, they won't just be an offender – that's the promise in relation to a concept or a tool like JR.

**Tom Calma:** One other comment about whether prisons are reformist – over the coming years if we look at the NT and some of the vocational training and education programs taking place, we'll see a very significant reduction – I'm just guessing this – a reduction in recidivism because people are starting to gain skills to be employed back in the community. My point is ... we need to make sure all government agencies are ready to receive people who are released and get them into employment and create those opportunities ... if you look across the NT, we've got a plethora of people who fly in all the time and we need to start developing up those communities.

**Michael Levy:** Thank you very much panellists, our time has come so thank you.