



**Submission to the Senate Standing
Committee on Legal and Constitutional
Affairs**

**Inquiry into the Value of a Justice
Reinvestment Approach to Criminal Justice in
Australia**

March 2013

Historical

Justice Reinvestment (JR) has existed in some shape or form in the United States of America (USA) and other jurisdictions since the 1970s, although a number of different names have been given to the concept. In Youth Justice, various reform strategies have been adopted in the past 30 years in the USA. These strategies have been referred to as Resolution, Reinvestment and Realignment. Resolution refers to the use of managerial authority and administrative directives to influence system change; reinvestment entails the use of financial incentives to encourage system change; and realignment employs organizational and structural modifications to create new systems.¹ This clearly demonstrates that there must be a multi faceted approach when dealing with offending, appropriate and effective punishment and community safety. A 'one size fits' all model for Australia, whether it be in urban, rural and remote locations of the same state or Territory is not in itself a solution.

The value of a Reinvestment Approach To Criminal Justice in Australia

There are many reasons why a reinvestment approach should be considered within the Australian context. One major reason is that our Indigenous population is grossly overrepresented in the prison population, and in the criminal justice system as a whole. This is of particular concern in the Northern Territory, where Aboriginal people comprise 30% of the general population and approximately 84% of the prison population for adults and 90% for juveniles.² Another reason why reinvestment should be considered in the Australian context is the high level of alcohol and drug related offending here, and the fact that this offending is concentrated in particular geographical areas. Again, this is particularly the case in the Northern Territory.

Currently, a majority of offenders are serving a custodial sentence for traffic infringements, namely driving unlicensed, unregistered and uninsured. Corrections NT are looking at ways to provide licensing and other programs for offenders to limit their contact with the criminal justice system in the future, Notwithstanding the good intent of these programs, it is well established that a person's likelihood of reoffending increases with each subsequent contact with the criminal justice system.

If prison is to punish the worst of the worst and protect the community, then the simple question is how is this being achieved under our current regime? The benefits of a Justice Reinvestment system does more than simply benefit an offender and save vital tax-payers dollars in the long run. *'Justice reinvestment purports that if the money that would have been spent on*

¹ 'Pioneers of Youth Justice Reform: Achieving System Change Using Resolution, Reinvestment, and Realignment Strategies' by Douglas N. Evans, Research and Evaluation Center, July 2012, page 1.

² Australian Bureau of Statistics- Year Book of Australia, 2012, released 24/5/2012: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1301.0~2012~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20population~50>

keeping individuals in prison is spent on rebuilding human resources and physical infrastructure in neighbourhoods – such as schools, support services, public spaces and housing – not only will the communities benefit, but so too will Government, prisoners themselves and the whole community.’³

Moreover, from an economic perspective, how could spending massive taxpayers funds arguing community safety and as an effective strategy to managing crime be maintained when statistics prove otherwise. In a simple commercial context, if this was a business, sinking significant funds into a project that does not yield the desired results, and in fact the problem is only exacerbated, would have shareholders demanding explanations and carefully consider their investment. However, we are not arguing that currently Government funded programs should be revoked as a means to curtail or manage funding. Effective and carefully considered alternative programs that are more community based should be implemented as suggested above or existing programs more effectively utilised.

Accordingly, such a system deserves serious consideration and how it might work in Australia.

Mandatory Sentencing and the Growth in imprisonment in the NT

In recent decades the Northern Territory has made attempts to address its high rate of offending by implementing mandatory sentencing regimes aimed to act as a deterrent. This submission will argue that these measures have not been successful and should not be pursued in the future, and that what is needed is for the underlying causes of offending behaviour to be addressed, which has been argued on many occasions and forums, in order to prevent the continuation of the same behaviour by the same individual or community in the future.

As mentioned, Mandatory sentencing has long been a feature of the NT criminal justice system, and in February 2013 further mandatory sentencing provisions were introduced to NT legislation, despite the fact that these were introduced in the 1990’s and subsequently abolished. This proved effective not in controlling crime or acting as a deterrent, but in building our prison inmate numbers.

Further, Mandatory sentencing is controversial for a number of reasons, including its perceived interference with the separation of powers, curtailment of judicial discretion and perpetuation of the prison industrial complex. The continuing trend towards mandatory imprisonment and the imposition of ever increasing sentences flies in the face of an emerging body of research indicating that prison is largely ineffective both as a deterrent and as a rehabilitative measure.

³ Bode, A. ‘What is Justice Reinvestment’ in *Of Substance*, Vol. 9, no.1, 2011, p.14-15

For many years, sentences of imprisonment have been imposed for a wide range of offences with the intention of carrying out the dual purposes of effecting 'specific deterrence' and 'general deterrence.' However the number of people going to prison has continued to rise, with a 31 per cent increase in the number of people behind bars in the last decade.⁴ The Northern Territory has the highest rate of imprisonment in the country with 826 per 100,000 adults incarcerated with the overwhelming majority of prisoners coming from an Indigenous background. The unavoidable inference to be drawn from the ever-growing number of prisoners is that prison does not in fact act as either a general or specific deterrent, nor does it rehabilitate. Rather it entrenches social inequality, perpetuates the over-representation of minorities in prison and further disadvantages the already disadvantaged. The potentially disastrous unintended consequences of mandatory sentencing legislation can be seen in a 1999 case where under the (no longer extant) mandatory sentencing regime for property offences, a homeless man was sent to jail for 12 months for stealing a towel to keep himself warm.⁵

When mandatory sentencing provisions were again introduced this year in the NT, courts are required to impose a term of not less than three months of actual imprisonment for an aggravated assault where a weapon is used and the victim suffers harm (Section 78D), and no less than twelve months for the second offence of that nature (Section 78DA). These additions to the Sentencing Act are likely to greatly increase the length of sentences imposed for violent offences and to significantly increase the population of a prison already beyond capacity.

It has been estimated recently by NT Correctional Service that by the time the new prison is opened in Darwin in July 2014, it would already be 140 beds short. Currently, Darwin prison holds approximately 860 prisoners in a facility that was built for less than 200. How long can you go on shoving people inside before you realise that this is not in itself a solution?

A Justice Reinvestment approach to criminal justice in the Northern Territory could halt the increase in the prison population and promote greater recognition of the underlying issues leading to criminal behaviour amongst a community that is currently fixated on punitive sentencing measures. There are many factors unique to the Northern Territory that make the implementation of a justice reinvestment model both challenging and beneficial.

There is a chronic shortage of affordable housing in the Territory, and extremely long wait periods apply to applications for government housing.

⁴ *Prisoners in Australia*, ABS, December 2012.

⁵ 'Homeless man, pink towel and twelve months jail' *The Guardian*, 19 May 1999.

Persons who are imprisoned for medium to long terms are likely to forfeit their rental property, and be subject to at least a five-year waiting period for government housing. This places many people exiting prison in a position either of primary homelessness or of reliance on transient and substandard accommodation making re-entry to the workforce and avoidance of further criminal charges very difficult. Diverting offenders away from the prison system is therefore a priority in reducing the number of people at risk of homelessness.

Homelessness is also a factor in many types of offending, with public order and trespass offences often occurring when people are sleeping rough, thefts of food and other items necessary for survival and anecdotal evidence that at times offences are committed with the intention of seeking shelter in prison, with regular meals, a bed to sleep in, education, health treatments and reconnection with family. Policies made with the intention of imposing imprisonment as the ultimate punishment seem misguided in light of the unavailability of other forms of accommodation. In short, prison should not be regarded as an alternative to homelessness or a better option than ones liberty and remaining within the community.

Addressing Drug and Alcohol Related Offending

The Territory has a very high level of alcohol related violent offending, particularly among the Aboriginal community. High levels of cannabis and volatile substance related offending are also present in certain communities. Until recently, offenders had the option of being sentenced by the SMART (Substance Misuse Assessment and Referral for Treatment) Court and placed on an Alcohol Intervention Order, with conditions such as refraining from drinking, attending rehabilitation programs or individual counselling.

The SMART Court was abolished in 2012, for what appeared to be an effort to cut costs, and reduce the Territory's debt level, and alcohol related offending is now dealt with by the mainstream court system. Sentences imposed usually include a term of imprisonment, which may be partly suspended upon entry into a conditional order. One of the desirable conditions for such an order is participation in a drug or alcohol program, however intake is based on a case-by-case basis, which may exclude persons with a criminal record for violence. This means that those in the most desperate need of rehabilitation – and those whom society has the greatest interest in rehabilitating - are not necessarily able to access these programs. Currently, there are few opportunities for inmates of Berrimah Prison to undergo drug and alcohol programs whilst in prison, and depending on the term of their sentence or classification. Most prisoners therefore exit prison with their substance issues unaddressed and resume a lifestyle of substance abuse that quickly brings them back into contact with the criminal justice system.

If a portion of the funding currently used to imprison violent offenders were diverted into creating an alcohol and drug rehabilitation program specifically for violent offenders, these people could have the opportunity to address the issues leading them to offend within the parameters of a program specifically designed to meet their needs.

If an alcohol and drug court were reintroduced in the Northern Territory, offenders could have the opportunity to address their substance abuse issues as part of a conditional order and reduce the likelihood of further offending. Whilst the cost of operating such a specialist court is greater than the cost of mainstream sentencing processes, it is a cost effective option when weighed up against the potential cost of allowing offenders with persistent substance abuse related offending issues to go untreated. The respective costs of imprisonment versus rehabilitation through a suitable program were analysed in the Deloitte Access Economics study of 2013⁶, which compared the difference in costs between prison and drug treatment for non-violent indigenous offenders across Australia. This Research concluded that we could save \$110,000 per year for every Indigenous offender who is incarcerated as opposed to entering an appropriate rehabilitation program.⁷

The report found that, nationally, the average cost of imprisoning a non-violent indigenous offender was nearly \$115,000 annually compared with a cost of about \$18,000 for residential drug treatment. Alcohol and drug treatment works and more than half of offenders that enter drug treatment will not re-offend.

Recommendation: That a portion of the funding currently used to imprison violent offenders be diverted into creating or to existing and effective alcohol and drug rehabilitation program specifically for violent offenders.

Recommendation: That a proper evaluation and model of a drug or drug/alcohol court be reintroduced in the Northern Territory as an alternative to the mainstream court for sentencing in appropriate cases. This is imperative in view of the high involvement of alcohol and drug related offending in the NT.

⁶ Australian National Council on Drugs's National Indigenous Drug and Alcohol Committee released the report, An Economic Analysis for Aboriginal and Torres Strait Islander Prisoners: Prison v Residential Treatment, prepared by Deloitte Access Economics, See: <http://www.canberratimes.com.au/opinion/jail-costly-way-to-tackle-scourge-20130211-2e8qp.html#ixzz2OjgG3euE>

⁷ Clare Rawlinson, 'Push for rehab instead of prison in the NT', ABC, 4 February 2013.

Justice Reinvestment and Remote Communities

Many people enter the criminal justice system from communities where there is a dearth of programs to address violent behaviour, alcohol and drug abuse and mental health issues. Courts are limited when sentencing people from communities by the unavailability of many alternatives to imprisonment such as Community Work Orders and Supervised Orders in some communities. We understand that in some instances, community service orders and work orders are not utilised as effectively as they could be, Courts on occasions instead opting for a custodial sentence.

Many communities are rife with offending of a particular kind because of circumstances specific to that community, for example the prevalence of petrol sniffing among youth in Oenpelli. If offenders were sentenced to non-custodial orders and allowed to remain in their own communities and access such programs, they would have the opportunity to learn how to modify their behaviour within the environment they are going to live in, provided there is sufficient support from both family and community in which to do this. Currently, when a person from a remote community wants to address substance abuse issues it is necessary to travel to one of the major centres to undergo a program. This means that when a person returns to their own community and is exposed to their usual social environment and influences they commonly return to their old patterns of behaviour. For a young person this is of particular concern.

It is also critical that family and community are involved in the programs and reintegration of a young offender. It is noted that this was a strong recommendation at the February 2013 Consultation forum with the NT Government in Darwin regarding the 'Youth Boot Camp' proposal.

Recommendation: That a Justice Reinvestment approach should be adopted to offending in remote communities with a focus on implementing drug and alcohol programs in communities to eliminate the need for people to relocate in order to undertake a program.

Recommendation: A family and where possible, a whole community approach is required if a young offender is to successfully reintegrate or divert from a path that leads to the criminal justice system.

Young Offenders in the NT

The Youth Justice Court sentences many young people to detention, approximately 90% of whom are Aboriginal. As with their adult counterparts, many of these offenders are led into criminal offending by drug and alcohol issues. There are limited drug and alcohol rehabilitation program in the Northern Territory that is open to persons under the age of eighteen. It is

important that any program involve the support of family and community, so that the skills acquired are not difficult to apply to their usual surroundings. In some situations support for a young offender is not available within their community and part of the reason for their offending. Therefore building the skills of family or other support persons is essential.

It is imperative that offenders, including young offenders are eligible for sentencing via specialised courts such as the SMART Court, meaning that sentences incorporating rehabilitative orders are available to young people. Youth Drug and Alcohol Courts have been trialled in New South Wales and Western Australia.⁸ The New South Wales Youth Drug and Alcohol Court was discontinued in 2012 despite having been assessed as a success because the government considered it too expensive, with 20 youths successfully completing the program in one year at a cost of \$4 million.

This decision is ironic, given that it has been found that it costs approximately \$200,000 per year to imprison a young offender⁹ (double that of adult offenders). The successful completion of 20 youths in this program is therefore equivalent to the cost of keeping them imprisoned for one year. Whilst this is not a saving in the short term, it is a more prudent use of funds than repeatedly imprisoning these young people over the course of their lives.

The Youth Drug and Alcohol Court was successful when you consider the stated objectives of the Court were to reduce the alcohol and drug dependency of children, to promote the re-integration of such drug dependent children into their families and the community, and to reduce the need for such drug dependent children to resort to criminal activity to support their drug dependencies. It is the view of TEWLS that such a specialist court is an economical alternative to mainstream sentencing when weighed against the long-term health, social and corrective costs of those youths remaining untreated and the criminal justice system processing and incarcerating them repeatedly over the rest of their lifetimes.

A 2002 evaluation of the NSW Drug Court system found the system was effective in improving health, social functioning and reducing drug use.¹⁰ These improvements were sustained over the 12-month follow-up period. This is significant when you look at the longer-term benefits of alternatives to simply incarceration.

⁸ The WA Court is still in operation while the NSW Court was abolished in 2012.

⁹ Hellhole accommodation cost a state secret', The Australian, 30/9/2011, found at: <http://www.theaustralian.com.au/news/hellhole-accommodation-cost-a-state-secret/story-e6frg6p6-1225780973415> on 15/7/11

¹⁰ The Canberra Times: <http://www.canberratimes.com.au/opinion/jail-costly-way-to-tackle-scourge-20130211-2e8qp.html#ixzz2OjgG3euE>

Recommendation: That a Justice Reinvestment model should be applied to the Youth Justice Court in the NT, with a focus on creating drug and alcohol rehabilitation and education programs for young people, which can be accessed from communities, as well as in the major centres.

Recommendation: That a Drug Court be available to young offenders as an alternative to sentencing by the Youth Justice Court.

Women and the Criminal Justice System

A growing number of women are incarcerated in Australia, and the reasons for female incarceration and its growth must be considered separately. In Australia the number of female prisoners has increased at a rate 21 times higher than the number of male prisoners in the last 12 months¹¹. Many female prisoners in the NT have been victims of domestic violence and almost half of female prisoners in Australia were sexually abused as children.¹² Female prisoners have substantially higher rates of mental health problems, socioeconomic disadvantage and substance abuse as a result of trauma than both their male counterparts and females on the outside.¹³ A growing number of women are on remand, which usually means they are denied the opportunity to participate in rehabilitation programs'.¹⁴

Women have historically had less social support from family and friends during their time of incarceration and as a result, re-connecting with significant and positive relationships may be more difficult, as may reintegration upon release where these vital links have been lacking. It is noteworthy that some female prisoners are victims of domestic violence who have been imprisoned after excessively defending themselves or taking the law into their own hands by retaliating on the assumption that police will not assist. This is a common experience for our clients - especially clients from indigenous communities - who are often intimidated by law enforcement officials, are unable to relate to them or trust them and ultimately fail to utilise their services.

In many cases, offences of a minor nature such as loitering or disturbing the peace are 'over-policed' and resources are diverted away from serious crimes such as sexual assault and domestic violence where they are most required. This is known as 'under-policing' or 'under-protection'.¹⁵ Conversely, whilst

¹¹ 'Prisoners in Australia' Australian Bureau of Statistics, 2012

¹² Senator Penny Wright, Senate Speech 13 September 2012

¹³ Australian Institute of Criminology, *Indigenous Justice* (14 March 2013) http://www.aic.gov.au/crime_types/in_focus/indigenousjustice.html

¹⁴ Australian Centre for the Study of Sexual Assault, *Addressing women's victimisation histories in custodial settings* (14 March 2013) Australian Institute of Family Studies <<http://www.aifs.org.au/acssa/pubs/issue/i13/i13b.html>

¹⁵ Ibid.

there are laws in place to protect victims and penalise perpetrators, enforcement of these laws is sometimes inadequate. TEWLS clients have also reported experiencing difficulty in reporting breaches of domestic violence orders to police as exemplified in the case study below.

CASE STUDY 1

Client called into a police station to report contact by her former partner. There was a full 'no contact' Domestic Violence Order in place which prohibited any contact by the ex-partner including through third parties. When our client showed the police text messages received from her ex-partner's mobile phone threatening her current partner, she was advised that as the threat was not directed at her and there was no way of knowing for sure that the text came from her ex, (despite being sent from his mobile phone), they were not able to proceed further with any alleged breach.

We consider that the police's dismissal of our client's concerns and attempts to make a formal complaint undermine the laws and their intended purpose. This attitude also contributes to a pattern of women losing confidence in the system and some instances may seek to bring about justice themselves.

Given the high proportion of female prisoners who have been victims of childhood sexual assault and/or domestic violence we consider that women in the criminal justice system are particularly in need of a reinvestment approach. This would prevent more women victims from becoming offenders, and enable them to reclaim their lives and move on rather than simply punishing them.

CASE STUDY 2

A client was in a violent relationship for most of her life. She was also the mother of a number of children. Our client became homeless and addicted to alcohol, which with the physical assaults has left her with partial memory loss. Her children were subsequently removed from her care and placed with foster carers. Over time, our client committed a number of offences, the most recent was the physical assault of a family member, for what may have been an over response to a conflict. She continues to enter and exit prison on a regular basis, sometimes due to her inability to stay clean, and breaching terms of her parole. When we visit her in prison, it is difficult to distinguish between the offender and the victim. She is covered in physical scars.

Recommendation: that a portion of the funding currently directed into women's incarceration be redirected into creating long-term support programs for victims of childhood sexual abuse and domestic violence to prevent such victims from becoming offenders later in life.

Recommendation: that police resources be directed towards dealing with complaints of domestic violence as a priority and that routine cultural competency training be provided to police, with a focus on dealing sensitively with victims of domestic violence and sexual assault.

Recommendation: The reinstatement of Larrakia Nation's funding for night patrol programs, with a broader checks and balances system to ensure transparency and justice.

Recommendation: Provide police with training in the area of assessing, with the input of the protected person (and the Defendant in some instances) the workability of a Domestic Violence Order, particularly where there are children, the parties live in a small community or are otherwise in close proximity, and where exclusion from limited and essential services, such as the only town store could result in easy breach of an order.

The Benefits of, Challenges to, implementing a justice reinvestment approach in Australia

The Impact of Domestic Violence

The NT presents with its own set and severity of problems and obstacles. This includes its harsh landscape, vast geography, the presence of many remote and dispersed communities, which provides for many challenges. However, the need for alternatives to imprisonment in certain instances cannot be ignored or overlooked. The problems are deep, the obstacles great, but the imperative exists to implement change, and change has to start somewhere.

Importantly, Justice reinvestment has a very strong community focus, and acknowledges that incarceration as a common response only acts to weaken the community, and therefore 'creating the conditions for further crime.'¹⁶ Interestingly, 'The *Social Justice Report 2009* recommended that all state and territory governments consider justice reinvestment in tandem with their plans

¹⁶ Justice Reinvestment: a new solution to the problem of Indigenous over- representation in the criminal justice system Mick Gooda, Aboriginal and Torres Strait Islander So Social Justice Commissioner Australian Human Rights Commission, ANTar NSW Seminar- Juvenile Justice Strategy: A better Way, Sydney Mechanics School of Arts NSW, 20 March 2010.

to build new prisons.’¹⁷ Australia is just getting to this now, with Darwin seeing the construction of new prison, whilst more purpose built and suitable for the local Tropical climate, it is costing approximately \$495 million, not including maintenance and ongoing costs.

We consider that if the Governments look to models that are successfully working both locally and in other Countries where they have a large Indigenous prison population like in Canada where they run a program called Finding Your Warrior. This Program aims to promote a ‘warrior as a protector and provider, not a perpetrator or abuser.’ This program was recently evaluated by the Canadian Government and found that up to 80% of participants did not reoffend. If the men maintain their innocence they cannot participate because a key element to the warrior course is that the men have to accept responsibility for their behaviour and to be accountable.¹⁸

For example in the NT, there is Catholic Care’s Strong Men’s Program, which is a grass roots approach that seeks to link people and resources to tackle violence and making families safe. In addition, there is the Strong Bala (Strong Man) program, men only initiative in Katherine, NT, which aims to help men deal with their drinking, associated behaviour and turn their lives around. Programs such as these that go to the core of the problem, and the offending behaviour is important not only for the offenders and their families,

17. Justice Reinvestment: a new solution to the problem of Indigenous over- representation in the criminal justice system Mick Gooda, Aboriginal and Torres Strait Islander So Social Justice Commissioner Australian Human Rights Commission, ANTar NSW Seminar- Juvenile Justice Strategy: A better Way, Sydney Mechanics School of Arts NSW, 20 March 2010.

18. Justice Reinvestment: a new solution to the problem of Indigenous over- representation in the criminal justice system Mick Gooda, Aboriginal and Torres Strait Islander So Social Justice Commissioner Australian Human Rights Commission, ANTar NSW Seminar- Juvenile Justice Strategy: A better Way, Sydney Mechanics School of Arts NSW, 20 March 2010.

but also benefits women and others who have been victims of violent and abusive behaviour, as well as the community in the long run. Furthermore, it provides men with ownership and accountability for their own behaviour.

CASE STUDY # 3

TEWLS has been involved with a fairly vicious case of domestic violence over a number of years involving the same offender and his former partner. The Offender has returned to prison on multiple occasions for the assaults inflicted against his former partner, and for constant breaches of the DVO. In this case imprisonment has failed to 'rehabilitate' him, despite his multiple custodial sentences. In the most recent case, it was found that he was suffering from severe mental health issues of his own, perhaps as a result of substance abuse and his frequent incarcerations, and was deemed a risk to himself. Our client continues to try and rebuild her life.

TEWLS believes that it is important to break the cycle of violence that continues long after one partner has left the relationship. As mentioned, this could be through the victim becoming a perpetrator, intergenerational violence, or the perpetuation of violence by the same perpetrator in subsequent relationships. In TEWLS experience, it is not uncommon to have the same offender for different clients.

CASE STUDY # 4

TEWLS was recently present in Court representing a client in a Domestic Violence Order (DVO) application, against a former partner, including a DVO application against her by the same party. During this time, it was discovered that his current partner had also taken out a DVO application against him. TEWLS was also aware that his former wife (prior to our client) had also been a victim of domestic violence.

Despite the years that had passed, the Offender had not changed his behaviour, had damaged many lives and had continued to manipulate his victim's for his own gain, including getting them to withdraw their applications. Nor had he been held accountable for his actions.

Recommendation: That alternatives to violence in conflict resolution, domestic violence and healing programs for offenders should be given serious consideration to being made available, perhaps in a residential setting. This could also involve referrals by the Court where the Offender consents to a DVO, without admissions of liability, and there is evidence to support the Application, but where Police have not laid charges.

Therefore, it is considered almost an imperative that all Governments and in partnership especially with affected communities and other stakeholders look at alternatives to imprisonment, especially for low-level offenders. Justice Reinvestment still retains imprisonment as an option for serious offenders. The Commonwealth after all has the greater responsibility of maintaining and improving the lives of its citizens including under its international human rights obligations, which does not cease when a person is in custody.