

SUBMISSION TO
THE SENATE STANDING COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS

ON
THE VALUE OF A JUSTICE REINVESTMENT APPROACH
TO CRIMINAL JUSTICE IN AUSTRALIA



NATIONAL CONGRESS
OF AUSTRALIA'S FIRST PEOPLES

MARCH 2013

TABLE OF CONTENTS

INTRODUCTION	3
RECOMMENDATIONS.....	3
1. THE DRIVERS BEHIND THE GROWTH OF THE AUSTRALIAN IMPRISONMENT RATE.....	4
2. THE ECONOMIC AND SOCIAL COSTS OF IMPRISONMENT	5
3. THE OVERREPRESENTATION OF DISADVANTAGED GROUPS WITHIN AUSTRALIAN PRISONS, INCLUDING ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES AND PEOPLE EXPERIENCING MENTAL ILL-HEALTH, COGNITIVE DISABILITY AND HEARING LOSS	6
4. THE COST, AVAILABILITY AND EFFECTIVENESS OF ALTERNATIVES TO IMPRISONMENT, INCLUDING PREVENTION, EARLY INTERVENTION, DIVERSIONARY AND REHABILITATIVE MEASURES	9
5. THE METHODOLOGY AND OBJECTIVES OF JUSTICE REINVESTMENT.....	11
6. THE BENEFITS OF AND CHALLENGES TO, IMPLEMENTATION OF A JUSTICE REINVESTMENT APPROACH IN AUSTRALIA.....	12
7. THE COLLECTION, AVAILABILITY AND SHARING OF DATA NECESSARY TO IMPLEMENT A JUSTICE REINVESTMENT APPROACH	13
8. THE IMPLEMENTATION AND EFFECTIVENESS OF JUSTICE REINVESTMENT IN OTHER COUNTRIES, INCLUDING THE UNITED STATES OF AMERICA.....	15
9. THE SCOPE FOR FEDERAL GOVERNMENT ACTION WHICH WOULD ENCOURAGE THE ADOPTION OF JUSTICE REINVESTMENT POLICIES BY STATE AND TERRITORY GOVERNMENTS	16
10. OTHER RELATED MATTERS	18
CONCLUSION	19
REFERENCES	20

INTRODUCTION

The National Congress of Australia's First Peoples (Congress) is a membership based national representative body for Aboriginal and Torres Strait Islander Peoples. Congress has 5,000 individual members and 150 member organisations, and is governed by an elected Board of Directors. As a member driven organisation, Congress is guided by the *United Nations Declaration on the Rights of Indigenous People* and draws upon the diverse and vast experiences of our members to inform our work.

Congress welcomes the opportunity to provide comment to the Legal and Constitutional Affairs References Committee inquiry on the value of a Justice Reinvestment approach to criminal justice in Australia. Whilst the benefits of Justice Reinvestment apply equally to all segments of society, the sustained and unacceptably high overrepresentation of Aboriginal and Torres Strait Islander Peoples across the justice system heightens our stake in its success.

The concept of Justice Reinvestment is not new. Embodying the principles of prevention, early intervention and diversion, it has shown to be socially and economically effective when applied in justice systems internationally. Justice Reinvestment provides a catalyst for reform regarding the overrepresentation of Aboriginal and Torres Strait Islander Peoples in the justice system.

We believe that Justice Reinvestment provides a future direction for justice policy in Australia. Consultation with Congress members has indicated that there is a high level of support for trialling Justice Reinvestment in Australia. Congress also acknowledges the valuable contribution of our member organisation, the National Aboriginal and Torres Strait Islander Legal Services (NATSILS), on this issue. There will undoubtedly be challenges in the implementation of Justice Reinvestment. A critical success factor will be ensuring that models acknowledge and accommodate the diversity of Aboriginal and Torres Strait Islander Peoples and facilitate the implementation of tailored, community-led solutions.

Congress commends the Senate Legal and Constitutional Affairs committee for instigating this inquiry, and supports the implementation of Justice Reinvestment as an Australian Government priority.

RECOMMENDATIONS

As next steps in the implementation of Justice Reinvestment in Australia, Congress calls for:

- 1. A statement of commitment for Justice Reinvestment by the Federal and all State and Territory Governments.***
- 2. The establishment of a national approach to data collection on justice indicators.***
- 3. Federal funding to be made available for first phase of mapping and analysis as part of Justice Reinvestment pilots.***
- 4. Provide operational support and resources for the commencement of community-led programs to implement Justice Reinvestment in targeted communities.***

1. THE DRIVERS BEHIND THE GROWTH OF THE AUSTRALIAN IMPRISONMENT RATE

Recent evidence shows that Aboriginal and Torres Strait Islander adults are incarcerated at 14 times the rate of non-Aboriginal and Torres Strait Islander adults, and Aboriginal and Torres Strait Islander young people are almost 24 times more likely to be in youth detention than non-Aboriginal and Torres Strait Islander young people.¹

One reason why Aboriginal and Torres Strait Islander peoples are imprisoned more often than non-Aboriginal and Torres Strait Islander people is that they are disproportionately affected by an increasingly rigid approach to offending. Current rates of incarceration reflect the cumulative effect of two decades of criminal justice policies, practices and legislation that have been counter to the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), including but not limited to:

- Adverse changes in sentencing law and practice
- Restrictions on judicial discretion
- Changes to bail eligibility
- Changes in administrative practices
- Changes to parole and post-release surveillance
- Limited availability of non-custodial sentencing options, and
- Judicial and political perception of a need for tougher penalties.²

At the most extreme end of the spectrum, these approaches include mandatory sentencing laws such as those that exist in Western Australia and the Northern Territory.

One study that examined the substantial rise in the Aboriginal imprisonment rate in New South Wales between 2001 and 2008 noted that there had not been a corresponding rise in the conviction rate for Aboriginal and Torres Strait Islander Peoples over this period. As a result, it concluded that “the substantial increase in the number of Indigenous people in prison is mainly due to changes in the criminal justice system’s response to offending rather than changes in offending itself.”³

Additionally, rates of diversion from formal criminal justice procedures for Indigenous juveniles were around one-half to two-thirds for non-Indigenous juveniles where data was made available by States and Territories.⁴ Regardless of the methodology used, in each jurisdiction the rate of diversion and caution was consistently lower.

¹ Australian Institute of Health and Welfare, 2010

² Cunneen 2011, p11.

³ Fitzgerald, J 2009, p6.

⁴ Productivity Commission, 2011

2. THE ECONOMIC AND SOCIAL COSTS OF IMPRISONMENT

In relation to justice, there are multiple forms of disadvantage faced by Aboriginal and Torres Strait Islander Peoples. The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) acknowledged that there are many social drivers that lie outside the direct responsibility of the justice sector that impact on justice outcomes. Cross-sectoral research has consistently affirmed that ‘social determinants’, which include a person's social and economic position in society, early life experiences, exposure to stress, educational attainment, employment status, and past exclusion from participation in society, can all influence their social and emotional wellbeing and interaction with society throughout life. The Royal Commission into Aboriginal Deaths in Custody has also emphasised the devastating impact that disconnect with Country and culture has on self-identity, and consequently risk taking behaviours in young people. International research has found a strong relationship between cultural discontinuity and the risk taking behaviours in Canadian First Nations youth.⁵ The RCIADIC and the Canadian research both conclude that a connection to culture can serve as a preventative measure against risk taking behaviours.

Additionally, the Aboriginal and Torres Strait Islander Healing Foundation has identified the devastating impact that unresolved trauma has on Aboriginal and Torres Strait Islander people and communities caused by removal from Country, culture and family. Citing the work of Aboriginal academic Judy Atkinson, they state:

*“While trauma is not an excuse for criminal behaviour... many of the problems prevalent in Aboriginal and Torres Strait Islander communities today — alcohol abuse, mental illness and family violence (which themselves perpetuate the cycle of trauma) — have their roots in the failure of Australian governments and society to acknowledge and address the legacy of unresolved trauma still inherent in Aboriginal and Torres Strait Islander communities”.*⁶

Current policies aimed at overcoming these barriers and closing the overrepresentation gap fail to recognise the complexity of such issues and the links between justice and other social determinants.

Custodial-based corrections policy is expensive. In 2010-11, prison expenditure totalled \$3 billion, equating to \$315 per prisoner per day.⁷ With prison expenditure increasing in real terms (i.e. over and above the rate of inflation) at a rate 1.9% per annum, there are real questions as to whether the current corrections policy of continuing to build and fill prisons can be sustained economically.

Justice Reinvestment provides an economic alternative as well as social alternatives. Prevention, early intervention and diversion programs implemented internationally under a Justice Reinvestment banner show significantly high returns on investment. For example, a study in the United Kingdom found that support-focused alternatives to prison for women offenders generated value at a rate 14 times the investment over a ten year period.⁸

⁵ Chandler and Lalonde, (2008).

⁶ The Aboriginal and Torres Strait Islander Healing Foundation, (2012)

⁷ National Indigenous Drug and Alcohol Committee, (2013)

⁸ Ibid.

3. THE OVERREPRESENTATION OF DISADVANTAGED GROUPS WITHIN AUSTRALIAN PRISONS, INCLUDING ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES AND PEOPLE EXPERIENCING MENTAL ILL-HEALTH, COGNITIVE DISABILITY AND HEARING LOSS

Reducing Aboriginal and Torres Strait Islander overrepresentation in the criminal justice system requires national recognition that the causes of overrepresentation are multi-dimensional, cross-generational and interrelated. The multiple disadvantages experienced by Aboriginal and Torres Strait Islander Peoples are well documented. Research^{9 10} has identified key socio-economic factors shown to increase the risk for Aboriginal and Torres Strait Islander people of being charged or imprisoned include:

- financial stress;
- living in a crowded household;
- being a member of the Stolen Generations;
- being unemployed or not having completed secondary school;
- drug or alcohol misuse; and
- family violence

Additional research on the factors that have a strong relationship to reoffending has identified a similar range of factors, including:

- living in a socio-economically disadvantaged area;
- limited family attachment; and
- poor mental health.¹¹

Overrepresentation is also perpetuated by the disproportionate impact that a tough law and order regime has on Aboriginal and Torres Strait Islander Peoples such as mandatory sentencing, which removes the ability for the judiciary to consider circumstances.

Undetected or untreated hearing and cognitive impairments have been shown to lead to an increased risk of delayed language and literacy skills, which in turn increases the risk of youth incarceration.¹² Without intervention, hearing and cognitive disorders in early childhood manifest into developmental language disorders, which in turn becomes a barrier to education, which in turn generate behavioural problems in adolescence. Lacking the language skills needed to resolve conflicts with police, young people with language disorders are at risk of incidents escalating and resulting in detention where cautions or diversion may be a more suitable and just alternative.

The high prevalence of hearing impairment compounds the risk for Aboriginal and Torres Strait Islander Peoples. Over half of Aboriginal and Torres Strait Islander children have experienced some

⁹ The Australian Feminist Law Journal 151, 152,

¹⁰ Weatherburn et al 2006, p1.

¹¹ Payne 2007, p97. (This research was not specific to Aboriginal and Torres Strait Islander offenders.)

¹² Snow, 2012.

form of hearing loss, with 11% having chronic otitis media, almost three times the prevalence that the World Health Organisation determines is a “massive public health problem”.¹³ It should be noted that hearing impairment is just one aspect of disability, and when considering the relatively under-developed diagnostics capabilities for other conditions such as Foetal Alcohol Spectrum Disorder and acquired brain injury, the link between developmental language disorders and overrepresentation in the justice system is likely to be significantly greater than is acknowledged.¹⁴

The 2010 Senate Community Affairs References Committee Report *‘Hear Us: Inquiry into Hearing Health in Australia’* acknowledged the impact of hearing impairment on the risk of miscarriage of justice and unsafe convictions. This report made a number of recommendations in reference to reform of the justice system:

- The provision of resources to conduct hearing assessments for all Australians serving custodial sentences who have never received such an assessment, including youths in juvenile detention, and facilitate prisoner access to those hearing assessments (Recommendation 27);
- Provide funding and resources to manage a national biennial Indigenous ear health conference; and make the outcomes of those conferences publicly available to assist researchers and practitioners in the field of hearing health (Recommendation 29);
- Guidelines for police interrogation of Indigenous Australians in each State and Territory be amended to include a requirement that a hearing assessment be conducted on any Indigenous person who is having communication difficulties, irrespective of whether police officers consider that the communication difficulties are arising from language and cross-cultural issues (Recommendation 31);
- That the National Judicial College of Australia work with State and Territory jurisdictions to develop and deliver accredited professional development programs for judges, lawyers, correctional officers, and court officials on the effects of hearing impairment on Indigenous engagement with the criminal justice system, and effective evidence-based techniques for engaging effectively with people with a hearing impairment in courtroom environments. (Recommendation 32);
- That hearing loops are available in interview rooms and public counters of all police stations, and in all courtrooms, and that loop receiver devices be made available for people without hearing aids. (Recommendation 33);
- That correctional facilities in which greater than 10% of the population is Indigenous review their facilities and practices, and improve them so that the needs of hearing impaired prisoners are met. (Recommendation 34)

There has been little to no progress in implementing these recommendations, with the Australian Government referring them as matters of States and Territories.¹⁵ However these are the initiatives needed to intervene in the pathway from early childhood developmental disorders and juvenile incarceration.

¹³ Productivity Commission 2011

¹⁴ National Congress of Australia’s First Peoples 2012

¹⁵ Australian Government Response to the Senate Community Affairs References Committee Report, 2010

Mental Health

Approximately one third of all entrants into prison report some form of mental health condition (AIHW, 2011). Poor mental health is associated with poorer school attainment, higher unemployment rates and higher rates of substance use and frequency of imprisonment.

The association between mental health conditions and imprisonment rates is higher for Aboriginal and Torres Strait Islander Peoples. A recent study of Aboriginal and Torres Strait Islander people in Queensland prisons found that 72.8% of men and 86.1% of women had at least one mental health disorder, compared to a prevalence rate in the general community estimated at 20%¹⁶. The study concluded that the overrepresentation of Aboriginal and Torres Strait Islander people in prison, the high prevalence of mental disorder, and the frequent transitioning to and from prison, would inevitably affect Aboriginal and Torres Strait Islander communities.

¹⁶ Heffernan, et al, 2012.

4. THE COST, AVAILABILITY AND EFFECTIVENESS OF ALTERNATIVES TO IMPRISONMENT, INCLUDING PREVENTION, EARLY INTERVENTION, DIVERSIONARY AND REHABILITATIVE MEASURES

Given the many factors that may influence involvement within the criminal justice system, attempts to reduce the gap in incarceration rates cannot focus on the traditional criminal justice system alone; they must be based on a spectrum of potential interventions, encompassing prevention, early intervention and diversion. These terms have different meanings in different areas of service delivery but for the purposes of the Congress submission:

- Prevention refers to measures that are likely to prevent Aboriginal and Torres Strait Islander people committing crimes or being victims of violence;
- Early intervention refers to measures that are targeted at people very early in their contact with the justice system, with the aim of mitigating the negative impacts of contact with the justice system and reducing the likelihood of repeat contact; and
- Diversion refers to alternatives to traditional criminal justice system responses for offenders (including options such as warnings, cautions, conferencing, specialist courts and court-ordered treatment programs).

The evidence base about effective approaches to prevention, early intervention and diversion is limited. However, the research that is available provides a solid foundation for the prioritisation of prevention, early intervention and diversionary strategies across the sector.

We recognise that an obvious opportunity for diversion occurs during the early stages of involvement in the criminal justice system by young people. Most jurisdictions provide diversionary options specifically for young people but Aboriginal and Torres Strait Islander young people are diverted from formal criminal processes at about one-half to two-thirds the rate of non-Aboriginal and Torres Strait Islander young people.¹⁷ This may help to explain why rates of incarceration of Aboriginal and Torres Strait Islander young people defy the downwards trend for non-Aboriginal and Torres Strait Islander young people. Whereas the rate of detention of non-Aboriginal and Torres Strait Islander young people dropped by 27.6% from 1994 to 2008, the rate of detention for Aboriginal and Torres Strait Islander young people increased by 1.6%.¹⁸ If the rates of diversion were increased, this could reduce the likelihood of reoffending, reduce the rates of incarceration for adults and young people, and decrease incidents of suicide and self-harm.

Broader studies proving the cost-effectiveness of alternatives to prison are being replicated in Australia. The National Indigenous Drug and Alcohol Committee (NIDAC) recently commissioned a comparison of the economic benefits of residential care to prison for non-violent drug offenders, which found financial savings *and* improvements in mortality and quality of life resulting from the use of residential rehabilitation instead of prison, including:

- Reduced rates of recidivism;
- Mental health service usage;
- Hepatitis C treatment costs;

¹⁷ Productivity Commission,(2011).

¹⁸ Richards, K. (2011)

- Lower rates of drug relapse;
- Improvements in premature mortality; and
- A total net benefits resulting from using residential care instead of prison of \$204,471 per offender (comprising \$111,458 in financial benefits and \$892,759 in quantified benefits through improvements to quality of life and longevity).¹⁹

With the research supporting the common-sense proposition that prevention and early intervention deliver significantly higher economic and social outcomes when compared to incarceration, it is our view that the case for Justice Reinvestment is well proven. Instead of wasting resources to further assess the feasibility on Justice Reinvestment in an Australian context, we believe that the next step is to dedicate resources to community needs audits to support the development of community solutions to community-specific issues, and support emerging models for local implementation of Justice Reinvestment programs in targeted areas.

¹⁹ National Indigenous Drug and Alcohol Committee (NIDAC), 2013

5. THE METHODOLOGY AND OBJECTIVES OF JUSTICE REINVESTMENT

As summarised by the Australian Human Rights Commission, Justice Reinvestment is:

a criminal justice policy approach that diverts a portion of the funds that will be spent on imprisonment to local communities where there is a high concentration of offenders. The money that might be spent on imprisonment is reinvested in programs and services that address the underlying causes of crime in these communities.²⁰

The 2009 Social Justice Report authored by the Human Rights and Equal Opportunity Commission (HREOC) identifies four clear steps for the implementation of a Justice Reinvestment strategy:

1. Analysis and Mapping
2. Development of options to generate savings and improve local communities
3. Quantify savings and reinvest in high needs communities
4. Measure and evaluate impact

These dual objectives—to reduce the cost to government of the corrective services system and to use these savings to reinvest in strategies to decrease crime and improve community safety—are core objectives of Justice Reinvestment. In this regard, Congress acknowledges that there are other bodies more equipped to provide detailed advice as to the methodology of Justice Reinvestment within Australia.

²⁰ Australian Human Rights Commission 2010, p1.

6. THE BENEFITS OF AND CHALLENGES TO, IMPLEMENTATION OF A JUSTICE REINVESTMENT APPROACH IN AUSTRALIA

There is a strong economic case for better investment in programs to assist offenders, with a view to reducing recidivism. The NSW Bureau of Crime Statistics and Research has compared the economic benefits of reducing Aboriginal and Torres Strait Islander reoffending, as compared to the benefits of reducing the numbers of new Aboriginal and Torres Strait Islander prisoners. Its research found that a 10% reduction in the rate of Aboriginal and Torres Strait Islander prisoners returning to prison would reduce the number of Aboriginal and Torres Strait Islander prisoners by an estimated 365 inmates, saving the New South Wales Government more than \$10 million per annum. In contrast, a 10% reduction in the rate at which new Indigenous sentenced prisoners arrive in custody would reduce the number of Aboriginal and Torres Strait Islander prisoners by 166, saving \$4 million.²¹

There are many misconceptions regarding Justice Reinvestment. It is important to note that Justice Reinvestment does not advocate for reduced police intervention and protection for victims of crime. Justice Reinvestment involves using limited resources in a more efficient manner and in doing so, seeks to address both the causes and symptoms of overrepresentation of our Peoples.

Violence against Aboriginal Women and Children

Violence against Aboriginal and Torres Strait Islander women is a serious issue in Australia. Aboriginal women experience family violence at a rate of 45 times that of non-Aboriginal women, with 69% of assaults being committed by partners.²² As mentioned previously, Justice Reinvestment does not advocate for reduced police intervention and protection in cases of violence, especially against women and children – protection does need to occur. Justice Reinvestment provides the rare opportunity to focus on both preventing victimisation as well as offending. If diversionary programs are only directed towards the potential offending and not the potential victimisation, then such programs will only address half the issue.

²¹ Weatherburn et al (2009).

²² The Australian Feminist Law Journal 151, 152,

7. THE COLLECTION, AVAILABILITY AND SHARING OF DATA NECESSARY TO IMPLEMENT A JUSTICE REINVESTMENT APPROACH

Congress acknowledges that the collection, availability and sharing of data is essential to the successful implementation of a justice reinvestment approach. The first step of analysis and mapping requires standardised and efficient data collection about offending and offenders. Congress has previously identified the many inadequacies in data collection in the Australian criminal justice system, especially on a national level.

In response, Congress has identified key priorities for improved data collection that include but are not limited to:

- A nationally consistent approach to identification of Aboriginal and Torres Strait Islander people across all national justice data collection projects, based on identification by the individual rather than subjective assessment by criminal justice system personnel.
- Nationally consistent data on the length of time taken to finalise criminal matters in court.
- Nationally consistent data on rates of assault for crime victims who report to police.
- Nationally consistent data collection in relation to family violence.
- Nationally consistent evidence on the effectiveness of programs for perpetrators of family violence, to inform the development and delivery of these programs.
- A nationally consistent approach to measuring the effectiveness of diversionary programs, including warnings, cautions, conferences and treatment programs that seek to address drug, alcohol and mental health issues.
- National consistent data on the health and housing status of people released from prison and youth detention.
- A nationally consistent approach to Aboriginal and Torres Strait Islander inmate health data

To provide a more detailed picture of progress towards addressing the gaps in data collection the Steering Committee for the Review of Government Service Provision should review the headline indicators that form the basis of the annual *Overcoming Indigenous Disadvantage Reports*, to incorporate a broader range of justice-related indicators. Additional indicators that would help to measure progress across the justice system for Aboriginal and Torres Strait Islander people are:

- the number of Aboriginal and Torres Strait Islander people engaged in Aboriginal and Torres Strait Islander justice groups, in collaboration with government, at the local level;
- the numbers of Aboriginal and Torres Strait Islander young people who are subject to both child protection orders and youth justice orders;
- the number and proportion of sentenced Aboriginal and Torres Strait Islander prisoners whose most serious offence is:
 - a public order offence;
 - a traffic or vehicle regulator offence; and
 - an offence against justice procedures, government security and operations.

- the gap between the average age of Aboriginal and Torres Strait Islander young people and non-Aboriginal and Torres Strait Islander young people in youth detention;
- the rate of Aboriginal and Torres Strait Islander adults and young people who are granted bail, as compared to non-Aboriginal and Torres Strait Islander adults and young people;
- the rate of reoffending by Aboriginal and Torres Strait Islander young people; and
- a range of qualitative measures on the experiences and perceptions of Aboriginal and Torres Strait Islander people in accessing and utilising legal and justice systems, which will help explain movements in the justice targets.

Despite these challenges, there is sufficient data available to support the mapping that is the first step in developing Justice Reinvestment strategies. Based on this mapping, high-risk communities are identified (based on the number and severity of crimes in communities, and the number of offenders that come from communities), and prevention and diversion programs are then implemented in those communities (with strong local involvement) to address the most serious and common types of offending in those communities.

8. THE IMPLEMENTATION AND EFFECTIVENESS OF JUSTICE REINVESTMENT IN OTHER COUNTRIES, INCLUDING THE UNITED STATES OF AMERICA

Justice Reinvestment programs first emerged in states with high prison populations. They have proved successful in reducing rates of detention and improving conditions within targeted communities. The concept is simple and is attracting growing support and interest in the United Kingdom and New Zealand. The definition adopted by the United States Government's Bureau of Justice Assistance emphasises the importance of data in the planning and delivery of Justice Reinvestment approaches:

Justice reinvestment is a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and strengthen neighborhoods. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost-effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable. States and localities engaging in justice reinvestment collect and analyze data on drivers of criminal justice populations and costs, identify and implement changes to increase efficiencies, and measure both the fiscal and public safety impacts of those changes.²³

As of March 2013, there are 27 states implementing Justice Reinvestment approaches.²⁴ In the United States, Justice reinvestment is underpinned by a partnership between the Bureau of Justice Assistance (BJA) and the Public Safety Performance Project (PSPP) of the Pew Centre; a non-partisan private think tank.

Technical assistance provided to state government agencies from the Pew Centre generally involves:

- Comprehensive analysis to determine the drivers of prison growth
- Collaboration with state policy makers and criminal justice stakeholders
- Recommending strategies to reduce costs and increase public safety
- Training
- Improvement of practices in community supervision and offender accountability

Congress believes there is value in the notion of underpinning justice reinvestment with partnerships between the public and private spheres. There are currently groups involved in attempting to build community support for Justice Reinvestment in a number of States and Territories within Australia but such groups are not well coordinated at a national level and lack government support. In considering the failure of previous policies to address increasing incarceration rates and the devastating intergenerational and interfamilial consequences of incarceration on Aboriginal and Torres Strait Islander peoples, Aboriginal and Torres Strait Islander organisations must be preferred service providers and equipped with adequate funding and resources to deliver the services and programs needed to achieve just outcomes.

²³ https://www.bja.gov/ProgramDetails.aspx?Program_ID=92 (accessed 22 August 2012)

²⁴ <http://www.ncsl.org/issues-research/justice/justicereinvestment.aspx> (accessed 10 March 2013)

9. THE SCOPE FOR FEDERAL GOVERNMENT ACTION WHICH WOULD ENCOURAGE THE ADOPTION OF JUSTICE REINVESTMENT POLICIES BY STATE AND TERRITORY GOVERNMENTS

Congress acknowledges that while the Commonwealth has responsibility under international law for the human rights of Aboriginal and Torres Strait Islander Peoples, the areas of law that have the greatest impact on Aboriginal and Torres Strait Islander People—including most criminal law, child protection law and family violence law—are primarily the responsibility of State and Territory Governments. This means that national action on any issue requires the agreement and cooperation of nine separate governments.

Congress calls for a coordinated national commitment, strategy or agreement to address the overrepresentation of Aboriginal people in the criminal justice system. By a ‘national’ commitment, Congress means a commitment that binds the Commonwealth as well as State and Territory Governments. While there is a National Indigenous Law and Justice Framework, this imposes no particular obligations on governments and despite the issue remaining an agenda item in numerous government forums, action and progress is non-existent.

Whilst a national coordinated commitment on Justice Reinvestment is ideal, the history of implementing recommendations from the RCIADIC other numerous other inquiries has proven this to be problematic. Justice Reinvestment provides an opportunity to break the impasse between Federal and State and Territory Governments, providing a catalyst for broader reform, through direct funding by the Commonwealth.

Congress reiterates the recommendations from our *National Justice Policy*²⁵:

- A. The Commonwealth Government and State and Territory Governments commit to **Justice Targets** included in a fully-funded Safe Communities National Partnership Agreement as part of the **Closing the Gap strategy**. This commitment should be incorporated into the National Indigenous Reform Agreement and supported by significant improvements to data collection regarding Aboriginal and Torres Strait Islander people within the justice system.
- B. Funding for Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services must be increased, to allow them to respond to the full range of legal needs experienced by Aboriginal and Torres Strait Islander Peoples. This should be supported by a new **National Partnership Agreement on Aboriginal and Torres Strait Islander Legal Assistance Services**.
- C. Strategies for **prevention, early intervention and diversion** of Aboriginal and Torres Strait Islander people in the criminal justice system must be implemented. This is to be supported by the Safe Communities National Partnership Agreement and include **standardised national data collection** and pilots of **Justice Reinvestment** strategies in a number of prioritised communities.
- D. **Conditions for Aboriginal and Torres Strait Islander people in police custody and prison** must be improved. To ensure compliance with human rights obligations, Australia must

²⁵ National Congress of Australia’s First Peoples, (2013)

ratify the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as develop the required National Preventative Mechanism.

- E. The **Safe Communities** building block of the Closing the Gap strategy should be addressed through a fully funded Safe Communities National Partnership Agreement that incorporates Justice Targets and strategies for prevention, early intervention and diversion. This NPA must take a broad approach to community safety and must recognise the importance of leadership by Aboriginal and Torres Strait Islander communities and organisations.

10. OTHER RELATED MATTERS

Aboriginal and Torres Strait Islander cultures must be acknowledged and respected in the development and implementation of justice related legislation and policy and further, Aboriginal and Torres Strait Islander Peoples must be consulted in legislative changes and initiatives that specifically affect us. To this end, the current *Framework for Engagement between Australian Government Agencies and The National Congress of Australia's First Peoples*²⁶ is one example of a mechanism that recognises effective and ongoing engagement between Congress and Government is central to effective policy design, service delivery and accountability.

If we are to change the cycle of negative interactions Aboriginal and Torres Strait Islander People have had with the justice system, we must prioritise involving Elders in justice processes. Empowering Elders is crucial to reducing incarceration rates, because in working effectively with defendants, it is far more likely that useful strategies will be developed that get to why a person offends, and how to address them and prevent them recurring in the future. Elders also have a crucial role when part of court proceedings in ensuring that defendants and victims understand and have a participatory role in the matters that affect them.

Enhancing the role of Elders also is critical to improving community safety. Elders are community leaders and must be respected as such.

²⁶ National Congress of Australia's First Peoples (2012)

CONCLUSION

Overrepresentation of Aboriginal and Torres Strait Islander Peoples in the justice system, particularly in prisons and as victims of violence, has intergenerational causes and effects. Unless Australian governments make it a priority to reduce overrepresentation in these areas, it will be difficult to make significant progress to close the gaps in other areas of Aboriginal and Torres Strait Islander disadvantage.

Justice Reinvestment is built on a foundation of effective participation and self-determination, and recognizes that standardized data collection, prevention, early intervention and diversion are essential to building safe communities. The requirement for local and community owned initiatives aligns with Aboriginal and Torres Strait Islander cultural values and self-determination, than 'top down' punitive approaches which have failed our communities to date.

Justice Reinvestment presents a unique opportunity to work in partnership with Aboriginal and Torres Strait Islander communities and why the *National Congress of Australia's First Peoples* is supportive of Justice Reinvestment within Australia.

REFERENCES

AIHW, *Juvenile Justice in Australian 2010-11*, Juvenile Justice Series no. 10. Cat No JUV 10, p.7, <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737422614&libID=10737422614>> (accessed 15 August 2012)

AIHW 2012. The mental health of prison entrants in Australia: 2010. AIHW bulletin no. 104. Cat. no. AUS 158. Canberra: AIHW. <<http://www.aihw.gov.au/publication-detail/?id=10737422201>>.

Australian Government Royal Commission into Aboriginal Deaths in Custody
Viewed 01 March 2013, <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>

Australian Government Response to the Senate Community Affairs References Committee Report “*Hear Us: Inquiry Into Hearing Health In Australia*”, May 2010, available from < [http://www.health.gov.au/internet/main/publishing.nsf/Content/7E68BD1FF06F2839CA2578A8007365D3/\\$File/SenateInquiryResponseMay2011.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/7E68BD1FF06F2839CA2578A8007365D3/$File/SenateInquiryResponseMay2011.pdf)> view 10 March 2013

Cunneen C & Schwarz M 2008: *The family and civil law needs of Aboriginal people in NSW* Legal Aid NSW, Sydney. <http://www.legalaid.nsw.gov.au/_data/assets/pdf_file/0016/5515/Family-and-Civil-Law-Needs-of-Aboriginal-People-in-New-South-Wales-report.pdf> (accessed 4 June 2012)

Cox, D. Young, M. and Bairnsfather-Scott, A. (2009) “*No Justice Without Healing; Australian Aboriginal People and Family Violence*” *The Australian Feminist Law Journal* 151 - 152

Fitzgerald, J 2009: *Why are Indigenous Imprisonment Rates Rising?* Crime and Justice Statistics Issue Paper no 41, Bureau of Crime Statistics and Research, Sydney <[http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/BB41.pdf/\\$file/BB41.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/BB41.pdf/$file/BB41.pdf)> (accessed 16 August 2012)

Heffernan E.B., Anderson K.C., Dev A., and Kinner S. (2012) ‘Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland prisons’. *Medical Journal of Australia* Vol 197(1).

Lawlor, E; Nicholls, J; and Sanfilippo, Lisa (2008) ‘Unlocking value: how we all benefit from investing in alternatives to prison for women offenders’ New Economics Foundation, London. At http://www.neweconomics.org/sites/neweconomics.org/files/Unlocking_Value_1.pdf).

National Congress of Australia’s First Peoples (2012) ‘*Framework for Engagement between Australian Government Agencies and The National Congress of Australia’s First Peoples*’ < <http://nationalcongress.com.au/engagement-framework/>>

National Congress of Australia’s First Peoples (2013) ‘*National Justice Policy*’ < <http://nationalcongress.com.au/wp-content/uploads/2013/02/CongressJusticePolicy.pdf> >

National Congress of Australia’s First Peoples (2012) ‘*Statement to the house of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into Fetal Alcohol Spectrum Disorder*’ 2012 <<http://nationalcongress.com.au/wpcontent/uploads/2012/08/CongressFASDStatement.pdf> >

National Indigenous Drug and Alcohol Committee, Australian National Council on Drugs (2013) 'An economic analysis for Aboriginal and Torres Strait Islander Offenders: Prison vs Residential Treatment', Canberra.
<http://www.nidac.org.au/images/PDFs/NIDACpublications/prison_vs_residential_treatment.pdf>

Productivity Commission 2011: *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission, Canberra
<http://www.pc.gov.au/data/assets/pdf_file/0018/111609/key-indicators-2011-report.pdf>
(accessed 4 June 2012)

Richards, K. (2011). 'Trends in juvenile detention in Australia', *Current issues in crime & criminal justice*, No. 416, Australian Institute of Criminology, Canberra. <<http://www.aic.gov.au/documents/D/6/D/{D6D891BB-1D5B-45E2-A5BA-A80322537752}tandi416.pdf>>

Senate Community Affairs References Committee on Hearing Health in Australia, 2010, '*Hear Us: Inquiry into Hearing Health in Australia*'. <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/completed_inquiries/2008-10/hearing_health/report/index.htm> (accessed 10 March 2013)

House of Representative Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011: *Doing Time—Time for Doing: Indigenous youth in the criminal justice system* <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=atsia/sentencing/report/index.htm> (accessed 12 August 2012)

Snow P. and Powell M. (2012) 'Youth (in) justice: Oral language competence in early life and risk for engagement on antisocial behaviour on adolescence' *Trends and Issues*. No 435, Australian Institute of Criminology.