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SUBMISSION to the Senate Inquiry and Report:-

Value of a justice reinvestment approach to criminal justice in Australia.

We wish to address a number of the matters listed as well as other related matters. However, we are yet to be convinced of the advisability of following the United States of America in implementing justice reinvestment in Australia because there is no credible evidence of any reduction in the appalling numbers of African and Latino Americans still being imprisoned in the U.S. at a rate far in excess of white Americans.

Preamble and introduction

Because the justice reinvestment approach means that a portion of the public funds, that would have been spent on covering the costs of imprisonment, is diverted to local communities that have a high concentration of offenders, it is quite unlikely to address the situation and needs of the Indigenous communities or reduce the racism hidden and suppressed in white Australia policy and population. It's the quantity, "a portion," that determines its value. Imprisonment itself is the problem.

We note that the inquiry is to look at the value of the justice reinvestment approach "to criminal justice in Australia" which leaves out imprisonment of asylum seekers which is hardly justified by any Australian government this century and very few last century. Again it's imprisonment that is the problem. In practical terms imprisonment is an enormous waste of resources.

(a) the drivers behind the past 30 years of growth in the imprisonment rate

The rationale behind prison thinking is based on a confused philosophy of punishment, protecting society from its offending member, and rehabilitation at the expense of proper community education, health and social support services. Punishment is not an effective agent for modifying behaviour. The most effective and desirable tool in changing behaviour is positive incentive and education.

Using prison to protect society from the criminal is near-sighted and short-term. When the prisoner is released the consequences of incarceration are disastrous for the released prisoner and for the rest of the community. The alarming rate of recidivism proves that one term of imprisonment usually determines a tragic life-pattern for the offender. The Bureau of Crime and Statistics Research back in 1975 found that the poor and illiterate stand an infinitely

better chance of being convicted and sentenced as opposed to other lenient penalties dealt out to the more privileged. Apparently nothing much has altered.

There has been any number of conferences in an endeavour to produce a range of alternatives but punishment as locking away the offender is far too strong to countenance an alternative. Imprisonment is the easy way out and the driver for authorities even though it's inhuman and the most expensive in the long term.

(b) the economic and social costs of imprisonment

The iniquity of the prison system is simply that it bears down hardest on those least blessed by society. There is a cruel socio-economic 'selection' of prisoners, an inevitability, which depends on the circumstances of birth as well as lacking in any work skills. Governments have failed miserably to recognise the most effective and desirable tool in changing behaviour is positive incentive. The social cost is ignored. The economic cost is outweighed by a decision to build another and a bigger jail because it's always been a government's answer. The government doesn't really have to bear the cost. It's public money. The economic and social conditions faced by poor and disadvantaged indigenous and non-indigenous people in Australia feed our prisons.

(c) the over-representation of disadvantaged groups within Australian prisons etc.

Why haven't governments recognised that more taxes should have gone into a better system of education and training in the areas where the poor are forced to live? Instead, there has been a steady erosion of funds into those areas for the last 30 or so years. It's been regularly drained into private education until in this century the flow has become a flood. It's obvious that there's a new meaning to democracy in Australia. All its governments, regardless of persuasion or colour, are intent on aiding, abetting and fostering the rich to get richer and the poor and illiterate to go to jail otherwise why are they killing off public education and training while financing more private education for fee-paying students?

Has anyone bothered to discover what offences have caused such an over-representation of Aboriginal and Torres Strait Islander peoples in Australian prisons? If not, why not? Surely, it's there where positive incentives would probably make a huge difference especially if racism is the hidden cause.

Sport has recognised the potential in Indigenous players and has provided an incentive for Indigenous youth. Society in the form of industry and business has not recognised the potential in indigenous and non-indigenous youth in the socially disadvantaged parts of the country. Sport has begun to speed up its coaching of Aboriginal communities' players but it's only a trickle. Industry and business should be into the education and training fields and providing the incentive for bigger and better public schools in those rural, suburban and far country areas where they are needed most.

According to the director of the Centre for Innovative Justice, RMIT University, "the law is supposed to be a system charged with solving people's problems, keeping people safe from violation and tyranny; and regulating their interactions with each other." So, shouldn't the law and the prisons, where the law has placed the offender, be employing restorative mechanisms in rehabilitation for the prisoner during incarceration before release? It seems to us that political courage is required to provide greater funds within and without prisons to invest in education and training, social support services and public housing so that the prisoner knows that he or she is going to be better off on release than before imprisonment.

(d) the cost, availability and effectiveness of alternatives to imprisonment including prevention, early intervention, diversionary and rehabilitation measures

It's useless to talk about the economic and social costs of imprisonment (b) or the cost of alternatives because governments will merely cut services somewhere else to accommodate new or current imprisonment costs and leave the social cost to be met by the next government as has been done for countless decades. The problem is exacerbated by the big social cost outside the prison.

One has to wonder why Australian governments are always prepared to increase the wealth of the few of its citizens, and particularly their enterprises, who have far more money than they need. Yet they make little effort to secure a better existence for the majority the rich have used to amass their wealth.

It seems to us there is an ideal way of achieving a better outcome for the under-privileged: *a wealth tax* on excessive assets of an individual and *removal of tax concessions and tax-free status* from companies, institutions and organisations which cannot prove to be a charity. The windfall for government should be channeled into more public schools, better wages for teachers and social support services.

For instance, a higher rate of tax for *super earnings* of the rich would help to level out the glaring imbalance in the current flat rate. The Age newspaper's economics correspondent Peter Martin (9.2.2013) says that "the select few Australians earning more than \$290,000 per annum – a mere 1 per cent of the workforce – rake in an astounding \$2 billion in superannuation tax concessions." He goes on to reveal that "although there are just 130,000 such Australians, they gain 6 per cent of all the Australian government superannuation tax concessions. The high earners include executives on multimillion-dollar contracts who get a disproportionately large share of the pool."

It is also the flat tax rate with super that is the biggest inequity and it is less known, so the Government should crack down on the 130,000 and double the tax rate for those earning over \$290,000 and leave the rest on the flat rate.

Here's one example of gifted concessions which should be dealt a blow without delay. *Petrol credits* are particular government tax concessions which ought to be removed from the rich mining companies. They complain and lobby against the present mining tax but they seem to forget about all the concessions they don't acknowledge publicly including this undeserved concession.

Australia's clear G20 commitment in 2009 was to the rationalisation and phasing-out of inefficient fossil fuel subsidies. It still hasn't yet begun happening. The largest subsidy is the Fuel Tax Credits programme. It is worth \$5 billion each year of which mining gets \$1.7 billion annually (ACF Media Brief). These *petrol credits subsidies* provide the power for those mega-sized mining trucks one sees on television news nightly to go screaming around the big mining sites.

A wealth tax could be used very successfully to *out* the exceedingly wealthy half-a-dozen or so world-class religions in Australia. It is their *tax-free status* which has made them the exclusive hidden giants of the economy. Religious institutions and their organisations should be accountable for their income like other business corporations. Priests, pastors and bishops

should be treated for taxation purposes like other taxpayers. But they aren't. All of them are virtually unaccountable.

The Business Review Weekly (24-30 March 2005) estimated that the five big churches in Australia had revenue of more than \$21.7 billion in year 2004 (quoted by Max Wallace in his book, *The Purple Economy*, published in 2007)). Wallace says: "Quite obviously, without the general public being aware, the tax-free status enables faith-based religion to be advanced by the state in Australia." An example here is "the Catholic Church does not consolidate its accounts and it is in its interests not to do so." It has 200 religious orders which control assets worth many billions of dollars. In fact, the Catholic Church is the largest property owner in Australia and even the States and Local Governments mostly treat the federal tax-free status in regard to church buildings and services as having equal tax-free standing.

It stands to reason that where a religious body can prove that one of its organisations is legitimately a charity with the same accountability as secular charities then a tax-free status should apply.

For religions as a whole, the tax-free status should be lifted and a wealth tax applied.

This would assist abortion to be recognised as a fully legalised operation by our public hospitals and health clinics. It would enable drug addiction to be treated as a health issue not a law and order issue. A courageous government could provide full legalisation of drugs and remove the profit motive. These issues are problems more often than not caused by governments pandering to faith-based religious attitudes and lobbying by multi-national corporations and the big miners. Government needs to realise it is not the role of the state to advance religion or allow its natural resources to be squandered.

(e) the methodology and objectives of justice reinvestment;

The implementation of the methodology of justice reinvestment would probably cost more than the *portion of public funds* that the Government of the day would be prepared to allocate from that which is being spent on covering the costs of imprisonment. It would be more worthwhile for the government to fund a complete overhaul of its taxing and fund allocation systems to make them more equitable in benefiting all its citizens.

Other more recent drivers in the growth rate of imprisonment

One of the issues that is adding to the continuing increase in the prison population is longer terms of imprisonment for certain offences. These longer terms are due to agitation by the public and the media being acceded to by state governments. This centres mostly around sexual offences. But there are also some worrying instances of 'statelessness' amongst asylum-seekers which keeps them incarcerated for long periods because ASIO hasn't provided a safe-conduct surveillance report and refuses any explanation or reason for the delay. The use of some anti-terrorism laws which allow authorities to remain silent shouldn't be applied to stop a person from knowing the reason for their continued detention.

In reference to increased penalties for some sexual crimes, a recent Monash University paper raises concerns about legislation entitled *Extended Supervision and Detention*. We quote from the paper as follows:-

“The prospect of known sex offenders re-offending sexually is a significant concern. Recently, governments, both domestically and abroad, have enacted legislation providing for the continued detention or community supervision of sex offenders whose sentences have expired but who are still considered to be dangerous. Collectively known as ‘preventative detention’ legislation, the laws are an attempt to reduce the risks of repeat sexual violence. “Of additional concern is the degree to which preventative detention legislation relies on risk assessment testimony provided by mental health professionals. Under the laws, psychologists and psychiatrists are required to prepare reports that assess the level of risk or likelihood that the offender would commit further sexual offences if released from prison or if not supervised in the community (Sentencing Advisory Council 2006.

“The role of the mental health professional in preventative detention proceedings is central and this raises concerns regarding the validity and precision of risk assessment approaches and technologies.”

We know of a case in New Zealand which is a prime example of the risk outlined in the Monash paper. New Zealand has had this preventative detention legislative penalty in place for several decades. A prisoner who is gay has been fighting the sentence by a judge who died a few months after the sentencing of this offender for a victimless crime 17 years ago. He continues to be assessed by the Department’s psychologist in Wellington as ‘at a high risk of offending’ despite the fact that he has never been interviewed by this psychologist. Reports from other prison health professionals over the years since 1995 have disagreed with the assessment and with the original sentence but the Parole Board must abide by the Prisons Department assessment. So the prisoner remains in limbo while others who have committed savage physical crimes serve out their sentences and are released. He is left to contemplate the possibility that sheer prejudice keeps him imprisoned.

This is an indictment of punishment legislation and imprisonment and of its current rehabilitation schemes and of its failure as a deterrent.

CONCLUSION

We believe that there is *little* justice in reinvestment because the prison system needs a different approach, a new goal and more funding to achieve it. All Australian governments need to face up to and get their heads around the idea that prison should be a positive revision process of education and incentive, not a source of punishment. Governments have to be prepared to provide exceptional, on-going funding inside and outside prison. We have suggested a means to this end –for the Australian Government to introduce a Wealth Tax plus removal of all Taxation Concessions and withdrawal of the Tax-free status of religion as well as the withdrawal of all funding to private educational institutions and schools with fee-paying students.

We urge this Inquiry to recommend that huge amounts of funding from more equitable taxation be provided inside and outside the prison for education, training, social support services, new public housing stock, new public schools and TAFEs in all disadvantaged areas so that the prisoner knows that he or she is going to be better off on release than before imprisonment. Don’t just cut costs elsewhere, put the new money where it can do the most good for the most people –those in disadvantaged communities.

KCL & EJDS.