

**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**



**2013**

**Contact:**

**Julia Hall**  
**Executive Director**  
National Association of Community Legal Centres Inc

W. [www.nacclc.org.au](http://www.nacclc.org.au)

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## 1. Introduction

### 1.1 About this submission

This submission is made by the National Association of Community Legal Centres (NACLC) to the Senate Standing Committee on Legal and Constitutional Affairs' Inquiry into the value of a justice reinvestment approach to criminal justice in Australia.

NACLC welcomes the Government's decision to consider the benefits of implementing justice reinvestment initiatives in Australia. NACLC believes that investment in community-led strategies, programs and services that address the underlying social issues that contribute to offending behaviour, will help to reduce the crime rate, strengthen communities and ensure that all funding allocated to criminal justice projects is directed at initiatives which will have the greatest impact on those who are at risk of coming in contact with the criminal justice system.

This submission makes recommendations in relation to the way justice reinvestment models might be realised in the Australian context. It emphasises that a federal commitment to justice reinvestment is vital to encourage State and Territory Governments to adopt justice reinvestment strategies and to facilitate the implementation of evidence-based justice reinvestment strategies. Key recommendations made in the submission include forming a national body to provide expert advice and technical support on justice reinvestment and conducting pilot justice reinvestment projects in order that data collected from these initial trials can inform the delivery of future programs.

NACLC also emphasises the importance of justice reinvestment strategies being appropriate to the needs of the communities they are targeted at and meeting the needs of groups that are over-represented in the criminal justice system. In particular, it stresses the need for meaningful involvement of Aboriginal and Torres Strait Islander peoples in determining how justice reinvestment strategies are implemented in their local communities.

NACLC believes that while there is a strong economic incentive for Governments to implement justice reinvestment strategies, the principal argument for reducing incarceration rates and investing more money in prevention, early intervention, diversionary and rehabilitation measures is the benefit such an approach has to communities with high offender rates and disadvantaged groups over-represented in the criminal justice system.

## 1.2 About the National Association of Community Legal Centres

NACLC is the peak national organisation representing community legal centres (CLCs) in Australia. Its members are the state and territory associations of CLCs that represent over 200 centres in various metropolitan, regional, rural and remote locations across Australia.

CLCs are not-for-profit, community-based organisations that provide legal advice, casework, information and a range of community development services to their local or special interest communities. CLCs provide free legal and related services to disadvantaged people and those with special needs across Australia.

This submission draws on CLCs' many years of practical experience assisting clients through the course of their contact with the criminal justice system. CLCs bring particular expertise and understanding of the value of community-based initiatives to disadvantaged and marginalised members of society.

## 2. Recommendations

1. The Australian Government, in partnership with State and Territory Governments, develop an agreement which sets out their commitment to justice reinvestment targets, defines responsibilities and sets out a strategy for achieving the identified targets.
2. The Standing Council on Law and Justice (SCLJ) or the Council of Australian Government (COAG) take a leadership role in building the foundations for a justice reinvestment approach to criminal justice to be implemented in Australia.
3. An independent national body be established to monitor, evaluate and provide expert advice and technical support for justice reinvestment initiatives in Australia.
4. Pilot justice reinvestment programs be conducted with monitoring and evaluation to inform future justice reinvestment strategies.

5. Data and analysis of justice reinvestment projects be collated and available from a centralised location.

6. Justice reinvestment strategies targeted at Aboriginal and Torres Strait Islander peoples be developed and implemented in consultation and collaboration with local communities and local ownership and self-determination are prioritised in the delivery of programs.

7. Mental Illness and disability support programs be integrated in justice reinvestment programs.

8. Specific programs and strategies targeting vulnerable groups like young people and women be developed as part of justice reinvestment strategies.

### 3. Drivers behind the past 30 years of growth in the Australian imprisonment rate

#### 3.1 Harsher sentencing

The rate of imprisonment for both males and females has increased by 97 per cent since 1984.<sup>1</sup> The total rate of imprisonment in Australia has approximately doubled over the last 30 years from 88 per 100,000 in 1984<sup>2</sup> to 168 prisoners per 100,000 population in 2012.<sup>3</sup> This growth in the imprisonment rate has not been matched by a rising crime rate. Over the last five years there has been a downward trend in the crime rate in the majority of states.<sup>4</sup> The continued growth in the imprisonment rate despite falling crime

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<sup>1</sup> Australian Institute of Criminology, *Australian Crime Facts & Figures* (2011) 116.

<sup>2</sup> Ibid.

<sup>3</sup> Australian Bureau of Statistics, *4517.0 - Prisoners in Australia* (2012). At <http://www.abs.gov.au/ausstats/abs@.nsf/Products/76EB9AA0D2742379CA257ACB00130EC5?opendocument>.

<sup>4</sup> See, Australian Bureau of Statistics, *4519.0 - Recorded Crime - Offenders* (2011-12) and *4519.0 - Recorded Crime - Offenders, Selected states and territories* (2007-08). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/second+level+view?ReadForm&prodno=4519.0&viewtitle=Recorded%20Crime%20-%20Offenders~2011->

rates, has been attributed to the introduction of harsher sentencing policies and political responses to social concerns about levels of crime.<sup>5</sup>

Tighter constraints on judicial discretion for sentencing, such as mandatory sentencing laws in the Northern Territory and Western Australia, serve to exacerbate the numbers of people, particularly Aboriginal and Torres Strait Islander peoples and young people, being placed in detention.<sup>6</sup> As discussed in the submission by the National Aboriginal & Torres Strait Islander Legal Services, increasingly strict bail legislation, strict compliance approaches to parole and a lack of alternative community-based sentencing options in regional and remote areas have also contributed to the growth in imprisonment rates.

### **3.2 Social and economic factors**

The environment a person lives in has a strong influence on the likelihood of a person offending.<sup>7</sup> Criminal behaviour is closely associated with disadvantage in living standards, health, education, housing and employment.<sup>8</sup> The failure to adequately address these issues in many urban and rural communities in Australia has ensured that people in these communities are more likely to offend and be put in prison.

### **3.3 Lack of awareness among police officers, legal practitioners and judicial officers**

Insufficient training for police officers, legal practitioners and judicial officers has also contributed to imprisonment rate and the over-representation of disadvantaged groups in prison.<sup>9</sup>

Research shows that police officers engage with members of the public differently on the basis of their race, ethnic background, national origin or religious beliefs. Studies of young people's encounters with police have

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<sup>5</sup> Steering Committee for the Review of Government Service Provision, *Report on Government Services* (2013), c11.

<sup>6</sup> *Joint NGO Submission to the UN Human Rights Committee on the List of Issues Prior to Reporting for the Sixth Periodic Report of Australia*, (2012). At [http://www.naalc.org.au/resources/Joint\\_Australian\\_NGO\\_Submission\\_to\\_UN\\_Human\\_Rights\\_Committee\\_01.pdf](http://www.naalc.org.au/resources/Joint_Australian_NGO_Submission_to_UN_Human_Rights_Committee_01.pdf).

<sup>7</sup> Nkechi Taifa and Catherine Beane, 'Confronting the Costs of Incarceration: Integrative Solutions to Interrelated Issues: A Multidisciplinary Look Behind the Cycle of Incarceration' 3 *Harvard Law and Policy Review* 283 (2009).

<sup>8</sup> Melanie Schwartz, 'Building Communities, not prisons: Justice Reinvestment and Indigenous over-imprisonment', *Australian Indigenous Law Review* 14(1), (2010) p 5.

<sup>9</sup> Disability Representative, Advocacy, Legal and Human Rights Organisations, *Disability Rights Now* (2012) p 78. At [http://doc.afdo.org.au/CRPD\\_Civil\\_Society\\_Report\\_PDF](http://doc.afdo.org.au/CRPD_Civil_Society_Report_PDF).

shown that racial profiling, over-policing and differential treatment are experienced widely by Aboriginal and Torres Strait Islander and African youth in Australia.<sup>10</sup>

Inadequate police training is also a contributing factor in the high arrest rates of people with disability. A recent civil society report on the Convention on the Rights of Persons with Disabilities, explained that police training primarily deals with discrete disability issues and does not take into account the ongoing support needs of people with disability.<sup>11</sup> The report also noted that training in providing accommodation and support to people with disability is not compulsory or consistent across jurisdictions for judicial officers, legal practitioners and court staff. The resulting poor understanding of disability issues in the justice system has led to discrimination and negative attitudes which are barriers for people with disability in accessing justice.<sup>12</sup>

## 4. Economic and social costs of imprisonment

### 4.1 Economic cost of imprisonment

A total of 29,383 people were in custody in Australian prisons on 30 June 2012.<sup>13</sup> According to a recent report by the Australian National Council on Drugs, the cost per prisoner per day including net operating expenditure, capital expenditure per prisoner and transport and escort services expenditure ranged from \$243 in the Northern Territory to \$595 in the Australian Capital Territory.<sup>14</sup> The average cost per prisoner per day in Australia was \$315 or \$114,832 a year.<sup>15</sup>

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<sup>10</sup> Duff, A. (2006) 'Creating a better city for young people: The needs of young people living in Flemington, North Melbourne, Kensington and Ascot Vale,' City of Moonee Valley: Melbourne and Reside, S & Smith, B. (2010) 'Boys, you wanna give me some action? Interventions into Policing of Racialised Communities in Melbourne,' Fitzroy Legal Service, Western Suburbs Legal Service & Springvale Monash Legal Service, Victoria.

<sup>11</sup> Disability Representative, Advocacy, Legal and Human Rights Organisations, *Disability Rights Now* (2012) p 77. At [http://doc.afdo.org.au/CRPD\\_Civil\\_Society\\_Report\\_PDF](http://doc.afdo.org.au/CRPD_Civil_Society_Report_PDF).

<sup>12</sup> *Ibid*, p 78.

<sup>13</sup> Australian Bureau of Statistics, *4517.0 - Prisoners in Australia* (2012). At <http://www.abs.gov.au/ausstats/abs@.nsf/Products/76EB9AA0D2742379CA257ACB00130EC5?opendocument>.

<sup>14</sup> Australian National Council on Drugs, *An economic analysis for Aboriginal and Torres Strait Islander offenders: prison vs residential treatment* (2012) 46.

<sup>15</sup> *Ibid*.



Young people cost more than double this amount to imprison. The average daily cost of supervising and caring for juvenile offender in detention in 2011 was \$652 per person per day, or \$237,980 per person annually.<sup>16</sup>

According to the most recent Productivity Commission *Report on Government Services* the total real recurrent expenditure (less revenue from own sources) on corrective services by State and Territory governments in 2011-2012, was over \$3 billion.<sup>17</sup> The average growth rate of this expenditure is 2.9 per cent, an increase of approximately \$90 million a year.<sup>18</sup>

## 4.2 Social cost of imprisonment

Imprisoning members of society for periods of their life can have a harmful effect on their physical and mental health. A report by the Australian Institute of Health and Welfare found that in the period from 2009 to 2010, prisons were used at 105 per cent of their capacity which led to prisoners spending an average of 13 hours a day locked in their cells with few opportunities for fresh air and exercise.<sup>19</sup> Another issue for incarcerated women is stress relating to being unable to be involved in their children's lives, as many are the primary caregivers for children upon entry to prison.<sup>20</sup>

The social costs of imprisonment are far-reaching and are not limited to those who experience imprisonment but also to their families and communities. According to a report by Defence for Children International, there are 38,500 children in Australia who experience the incarceration of a parent per year.<sup>21</sup> The report found that children with an incarcerated parent commonly experience a similar pattern of traumatic events, often witnessing their parent's crime and arrest, losing a parent, the disruption of their family environment, and the difficulties associated with visiting their parent within the prison system. The family members left behind when a person is incarcerated, often have limited support to tackle the social and financial problems arising

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<sup>16</sup> Justice Reinvestment Campaign for Aboriginal Young People, *Fact Sheet*. At [http://justicereinvestmentnow.net.au/wp-content/themes/justicereinvestment\\_new/downloads/fact\\_sheet.pdf](http://justicereinvestmentnow.net.au/wp-content/themes/justicereinvestment_new/downloads/fact_sheet.pdf).

<sup>17</sup> Steering Committee for the Review of Government Service Provision, *Report on Government Services* (2013), c9.

<sup>18</sup> *Ibid.*

<sup>19</sup> Australian Government: Australian Institute of Health and Welfare, *The Health of Australia's Prisoners*, (2010) p 10.

<sup>20</sup> Defence for Children International, *Response on behalf of Defence for Children International: mothers in prison and their children* (2010).

<sup>21</sup> *Ibid.*

from the incarceration.’<sup>22</sup>

The removal of parents, siblings and other members of kinship groups from their homes due to imprisonment has a particularly pronounced effect on Aboriginal and Torres Strait Islander communities because it continues the separation and dislocation experienced by members of the Stolen Generation and their families.<sup>23</sup> Around 20 per cent of all Aboriginal and Torres Strait Islander children under the age of 16 have had one of their parents incarcerated at some point in their lives.<sup>24</sup>

## **5. Over-representation of disadvantaged groups within Australian prisons, including Aboriginal and Torres Strait Islander peoples and people experiencing mental ill-health, cognitive disability and hearing loss**

### **5.1 Aboriginal and Torres Strait Islander peoples**

Aboriginal and Torres Strait Islander peoples are chronically over-represented in the criminal justice system. Aboriginal and Torres Strait Islander peoples are incarcerated at a rate 14 times higher than non-Indigenous people, the rate has increased from 2000-2010 by almost 59% for Aboriginal and Torres Strait Islander women and 35% for Aboriginal and Torres Strait Islander men.<sup>25</sup> The total Aboriginal and Torres Strait Islander adult population is 2% of the Australian population.<sup>26</sup> On 30 June 2012, Aboriginal and Torres Strait Islander prisoners comprised just over a quarter (27 per cent) of the total prisoner population.<sup>27</sup>

### **5.2 Mental illness and cognitive disability**

Australian prisoners face far higher levels of disability, injuries, chronic and

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<sup>22</sup> Defence for Children International, *Response on behalf of Defence for Children International: mothers in prison and their children* (2010).

<sup>23</sup> Boyd Hamilton Hunter, *Factors Underlying Indigenous Arrest Rates*, Centre for Aboriginal Economic Policy Research, The Australian National University (2001) 25.

<sup>24</sup> Defence for Children International, *Response on behalf of Defence for Children International: mothers in prison and their children* (2010).

<sup>25</sup> Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2011*(2011) 4.12.1.

<sup>26</sup> Australian Bureau of Statistics, *4512.0 - Corrective Services, Australia, September Quarter* (2012). At

<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4512.0Main%20Features2September%20Quarter%202012?opendocument&tabname=Summary&prodno=4512.0&issue=September%20Quarter%202012&num=&view=>

<sup>27</sup> Australian Bureau of Statistics, *4517.0 - Prisoners in Australia* (2012). At <http://www.abs.gov.au/ausstats/abs@.nsf/Products/76EB9AA0D2742379CA257ACB00130EC5?opendocument>.

communicable diseases, mental illness, and higher mortality rates. 3 in 4 prisoners suffer from mental illness, harmful drug use, or both.<sup>28</sup> Almost half to 78 per cent of prisoners have experienced a 'psychiatric disorder' compared with 11 per cent of the general population and 20 per cent of prisoners have an intellectual disability compared with 2 to 3 per cent of the general population.<sup>29</sup> Among Aboriginal and Torres Strait Islander prisoners, 73 per cent of men and 86 per cent of women have a diagnosed mental illness.<sup>30</sup>

People with disabilities often experience difficulty with access to legal aid services, court processes and provision of court support.<sup>31</sup> This has led to a steady increase in the number of people with mental health issues in prison.<sup>32</sup> However despite these rising numbers there has not been a corresponding increase in mental health resources to address this need. Health problems for prisoners continue after release with high rates of death after release.<sup>33</sup>

### 5.3 Hearing loss

A study conducted with inmates from the Darwin Correctional Centre and Alice Springs Correctional Centre found that 94 per cent of Aboriginal inmates had significant hearing loss.<sup>34</sup> The study found that hearing loss had impacted inmates both inside and outside the correctional environment. 10.2 per cent of inmates reported that they had experienced problems communicating with their families and communities because of their hearing and many reported that their hearing loss had resulted in violent altercations with others over misunderstandings.<sup>35</sup> 76 per cent reported difficulties in the correctional or criminal justice environment and said that they had trouble hearing officers' instructions or communicating with people in court.<sup>36</sup>

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<sup>28</sup> AIHW 2011. *The health of Australia's prisoners 2010*. Cat. no. PHE 149. Canberra: AIHW at 3.

<sup>29</sup> Disability Representative, Advocacy, Legal and Human Rights Organisations, *Disability Rights Now* (2012) p 79. At [http://doc.afdo.org.au/CRPD\\_Civil\\_Society\\_Report\\_PDF](http://doc.afdo.org.au/CRPD_Civil_Society_Report_PDF).

<sup>30</sup> Heffernan et al, 2012, *Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland prisons*, Medical Journal Australia.

<sup>31</sup> Legal Aid Queensland, *Legal Aid Queensland submission: Developing a national disability strategy* (2008) p 8.

<sup>32</sup> Between 380 and 527 ex-prisoners died in 2007-8 within one year of release and, of those, up to 30% died in their first four weeks out of jail: Kinner, 2011 "High rate of Death Among Ex Prisoners", *Medical Journal of Australia*.

<sup>33</sup> Kinner, "High rate of Death Among Ex Prisoners", *Medical Journal of Australia* (2011).

<sup>34</sup> Troy Vanderpoll and Damien Howard, 'Massive Prevalence of Hearing Loss among Aboriginal Inmates in the Northern Territory', *7 Indigenous Law Bulletin* 28 (2012), p 4.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

## 5.4 Youth

Aboriginal and Torres Strait Islander young people are 22 times more likely to be in detention than non-Aboriginal and Torres Strait Islander young people.<sup>37</sup> This situation has been deemed a 'national crisis' by the Australian House of Representatives inquiry into Aboriginal and Torres Strait Islander youth and the criminal justice system.<sup>38</sup> The UN Committee on the Rights of the Child also recently determined that this over-representation was the result of serious and widespread discrimination.<sup>39</sup>

Interaction with the criminal justice system amongst young people is often the result of issues such as homelessness, disability, drug and alcohol use, poverty and a lack of services.<sup>40</sup> Children who face disadvantage are also more likely to be imprisoned. Aboriginal children and youth aged 10-17 are 24 times more likely to be jailed than non-Aboriginal children.<sup>41</sup> Young people with disabilities are also over-represented in the juvenile justice system with up to 40 per cent of imprisoned children exhibiting symptoms consistent with clinical psychological disorders.

The age of criminal responsibility in Australia is 10 years old. The Government has been urged to raise this to an internationally accepted standard, most recently by the Committee on the Rights of the Child.<sup>42</sup>

## 5.5 Women

Of the total prisoner population, approximately 7 per cent (2,201) is female.<sup>43</sup> However the rate at which the female prisoner population is growing is much faster than the rate for male prisoners. Between the 2011 and 2012 Prisoner Census dates the number of male prisoners remained stable with an increase of only 0.4 per cent but in one year the number of female prisoners jumped by 8 per cent.<sup>44</sup>

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<sup>37</sup> Australian Institute of Criminology, *Australian Crime: Facts and figures* (2009) 113.

<sup>38</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing* (2011), 2.4.

<sup>39</sup> Committee on the Rights of the Child, *Concluding Observations*, 60<sup>th</sup> sess, [29 (a)] UN Doc CRC/C/AUS/CO/4 (2012).

<sup>40</sup> Justice Reinvestment Campaign for Aboriginal Young People, *Fact Sheet*. At [http://justicereinvestmentnow.net.au/wp-content/themes/justicereinvestment\\_new/downloads/fact\\_sheet.pdf](http://justicereinvestmentnow.net.au/wp-content/themes/justicereinvestment_new/downloads/fact_sheet.pdf).

<sup>41</sup> *Listen to Children: Child Rights NGO Report Australia* (2011).

<sup>42</sup> CRC, *Concluding Observations*, 60<sup>th</sup> sess, [81 (a)] UN Doc CRC/C/AUS/CO/4 (2012).

<sup>43</sup> Australian Bureau of Statistics, *4517.0 - Prisoners in Australia* (2012). At <http://www.abs.gov.au/ausstats/abs@.nsf/Products/76EB9AA0D2742379CA257ACB00130EC5?opendocument>.

<sup>44</sup> *Ibid.*

The growth rate is particularly high for Aboriginal and Torres Strait Islander women with the number of women in custody increasing by 15 per cent between 2011 and 2012, while the number of men increased by only 4 per cent.<sup>45</sup>

Research shows that the percentage of women prisoners with disability is greater than the percentage of men with disability.<sup>46</sup> Women with disability consist of between 30 to 50 per cent of the prison population.<sup>47</sup> Women with an intellectual, psychiatric or learning disability are more likely to be classified as maximum-security prisoners.<sup>48</sup>

## **6. Cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures**

There are many existing prevention, early intervention, diversionary and rehabilitation initiatives running throughout Australia. It is difficult to evaluate the cost availability and effectiveness of these services because throughout the course of their operation they tend to rely on more than one funding source and are often funded project to project. A variety of offender support programs, diversion programs, residential drug and alcohol programs are available in all states, but the reach and capacity of these services are limited by inadequate, sporadic funding. Rural and remote areas generally lack access to many programs that would benefit their communities. These programs rarely have the resources for high quality monitoring and evaluation.

A program for Indigenous youth, funded under the Attorney-General's Department's Indigenous Justice Program, assists young people who had been detained or had other contact with police. The program employs Indigenous caseworkers and worked closely with the local Indigenous community. In the 2010-11 financial year, approximately 75 per cent of the

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<sup>45</sup> Australian Bureau of Statistics, *4512.0 - Corrective Services, Australia, September Quarter (2012)*. At <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4512.0Main%20Features2September%20Quarter%202012?opendocument&tabname=Summary&prodno=4512.0&issue=September%20Quarter%202012&num=&view=>

<sup>46</sup> Disability Representative, Advocacy, Legal and Human Rights Organisations, *Disability Rights Now (2012)* p 79. At [http://doc.afdo.org.au/CRPD\\_Civil\\_Society\\_Report\\_PDF](http://doc.afdo.org.au/CRPD_Civil_Society_Report_PDF).

<sup>47</sup> Ibid.

<sup>48</sup> *Joint NGO Submission to the UN Human Rights Committee on the List of Issues Prior to Reporting for the Sixth Periodic Report of Australia*, (2012) p 30. At [http://www.nacrc.org.au/resources/Joint\\_Australian\\_NGO\\_Submission\\_to\\_UN\\_Human\\_Rights\\_Committee\\_01.pdf](http://www.nacrc.org.au/resources/Joint_Australian_NGO_Submission_to_UN_Human_Rights_Committee_01.pdf).

program's clients had not offended or reoffended.<sup>49</sup> Another project funded under the same grant, is a diversion program which provides case management and support services to 40-60 Indigenous men referred by the local magistrates court or other justice agencies or following periods of incarceration. As at 31 December 2011, approximately 67 per cent of the Program's clients had not been charged, 95 per cent were not convicted, and 85 per cent were not returned to prison within 12 months.<sup>50</sup>

At the time of writing, evaluations of these programs are not publically available, however it is understood that the Department has invested \$2 million in evaluating 26 Indigenous justice programs under the National Indigenous Law and Justice framework with an aim of identifying what works in tackling crime and justice issues in Aboriginal and Torres Strait Islander communities. NACLC suggests that this evaluation project will provide a valuable basis for investigating the cost, availability and effectiveness of prevention, early intervention, diversionary and rehabilitation measures. The data gathered may provide a valuable basis for pilot justice reinvestment programs.

## 7. Methodology and objectives of justice reinvestment

### 7.1 Methodology

There are 4 key components to a justice reinvestment approach to criminal justice:

#### *Data gathering*

The foundations of justice reinvestment are data and evidence. Before programs are designed or implemented, a thorough audit of the data relevant to justice reinvestment must take place. This should include geographical mapping of areas where there are large numbers or high proportions of people involved in the criminal justice system. This information should be cross-referenced with data on the need for services in the area, covering both the services that are currently available and indicators of disadvantage like housing and unemployment. Even where limited data is available, this review should include an audit of past programs and policies which have been carried out in the area or areas with similar characteristics.

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<sup>49</sup> Attorney-General's Department, *Indigenous Justice Program Guidelines* (2012). At <http://www.ag.gov.au/LegalSystem/IndigenousLaw/Documents/Program%20Guidelines%20012%2013%20to%202013%2014.pdf>.

<sup>50</sup> Ibid.

### *Development of strategy*

Based on the data analysis, strategies should be developed which focus on the areas where the greatest need is identified. This will take different forms at state and local levels and will vary from state to state and region to region. At the state level justice reinvestment may involve the drafting of legislation. At the local level strategies tend to focus on addressing dynamic risk factors like mental health, substance abuse and living standards. Local community leaders and representatives from the population that programs are targeted at must be meaningfully involved in the development of strategies.

### *Implement strategies*

Local level implementers must be provided with the resources to translate strategies into practice through technical support, advice and funding. Implementation plans and progress reports will help to ensure that the delivery of justice reinvestment programs is effective. It is vital that any justice reinvestment program takes into account the needs of key-affected groups. Programs must be culturally safe, for instance, Aboriginal and Torres Strait Islander staff should be employed in the delivery of programs and Aboriginal and Torres Strait Islander people should feel comfortable in the environment in which the programs are delivered. Similarly, programs should be sensitive to the specific needs of people with mental illness or cognitive disability.

### *Monitor and evaluate progress*

The performance of justice reinvestment programs must be regularly monitored to track the impact of programs on the crime rate, recidivism and demand on the criminal justice system. This monitoring and evaluation should feed back into improving the program and into other similar initiatives. Success should be encouraged through funding incentives however it is important that funding is not tokenistic and recognises that some programs will take time to manifest positive outcomes.

## **7.2 Objectives**

Justice reinvestment has 3 main objectives:

1. To make communities safer and more secure by addressing the underlying social issues that contribute to offending behaviour.
2. To break ongoing cycles of disadvantage, reduce recidivism, youth offending and the over-representation of marginalised groups in prisons.

3. To improve the cost effectiveness of correction by directing money which would otherwise be spent on imprisonment into community-based strategies, programs and services.

## **8. Benefits of, and challenges to, implementing a justice reinvestment approach in Australia**

### **8.1 Benefits**

#### *Building supportive and secure communities*

Justice reinvestment programs benefit not only previous offenders and potential offenders but also their families and communities. Funding is directed at services and strategies that combat crime, violence, health problems, homelessness, drug and alcohol abuse and disadvantage in communities. This approach builds social capital and contributes to making communities safer and more secure.

#### *Reducing the prison population*

As discussed above, time spent in prison often has a harmful effect on those who are imprisoned and prisoners returning to society often find it difficult to reintegrate into the communities they left. Justice reinvestment aims to take offenders who do not pose a risk to society out of the corrections system and treat them in community-based programs. This approach has the potential to discourage recidivism and reduce the prison population, particularly of over-represented groups in the criminal justice system including Aboriginal and Torres Strait Islander peoples and people experiencing mental illness or cognitive disability.

#### *Ending cycles of disadvantage*

By keeping people out of prison, justice reinvestment helps to halt cycles of disadvantage that stem from the trauma experienced both by people in prison and by the families of people who are imprisoned. The injection of funds and resources into communities through justice reinvestment initiatives offers people the chance to break patterns of disadvantage.<sup>51</sup>

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<sup>51</sup> Melanie Schwartz, 'Building Communities, not prisons: Justice Reinvestment and Indigenous over-imprisonment', *Australian Indigenous Law Review* 14(1), (2010) p 3.



### *Cost effectiveness*

While NACLCLC maintains that the benefits listed above are the primary reasons for implementing a justice reinvestment approach to criminal justice, there is also an economic argument for implementing justice reinvestment strategies. Justice reinvestment is cost effective because it does not require additional funding, merely a reallocation of money that has been already assigned to corrections. It ensures that funding is spent where it will be most efficient and where it will have the greatest impact for potential offenders.

### *Utilisation of local knowledge and resources*

The focus of justice reinvestment on local solutions and community-led initiatives means that implementers can draw on the infrastructure in local communities and utilise the knowledge and resources of existing organisations and services.

### *Community ownership*

Community ownership has been included as a benefit of justice reinvestment because strategies that are driven from within communities have more success with gaining the trust of their targeted populations. Community ownership also helps to avoid the stigma often associated with outside providers. This will generally improve attendance at or uptake of programs.

## **8.2 Challenges**

### *Lack of existing trials*

Currently there is limited evidence to shape the way in which justice reinvestment initiatives might be realised in Australia. It is therefore necessary that pilot justice reinvestment projects be conducted in order that the data gathered from the monitoring and evaluation of these projects can help to inform the implementation of future projects.

### *Rural and remote areas*

In rural and remote areas in Australia, adequate trials and evaluation will be necessary to identify strategies that are suited to each community. Successful initiatives will be dependent on local consultation, collaboration and ownership.<sup>52</sup>

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<sup>52</sup> Mick Gooda, *Justice reinvestment – a new solution to the problem of Indigenous over-representation in the criminal justice system* speech at ANTaR NSW Seminar - Juvenile Justice Strategy: A Better Way (20 March 2010).

### *Technical support for local ownership*

Local ownership is a key component of justice reinvestment as it allows programs to be tailored to the specific needs of communities by those with the greatest knowledge of the community's needs. However local ownership must be paired with expert technical advice and support. Community-based justice reinvestment projects in Australia would need to be supported in areas like data collection and analysis, program planning and implementation and coordination with other service providers and the broader community.

## **9. Collection, availability and sharing of data necessary to implement a justice reinvestment approach**

Although there is limited data on justice reinvestment-style approaches that have been employed in Australia, there is a body of research documenting the successes and challenges of prevention, early intervention, diversionary and rehabilitation initiatives carried out by various government and non-government stakeholders throughout Australia.

As discussed above, the Attorney-General's Department is currently evaluating projects under its Indigenous Justice Programs and this project may provide a valuable basis for investigating the cost, availability and effectiveness of similar initiatives to those that would be implemented under a justice reinvestment framework.

There is substantial background information available from sources like the Australian Bureau of Statistics and the Australian Institute of Criminology, which provide data on the demographic of offenders, recidivism, crime rates, imprisonment, parole and supervision. For instance, the Australian Institute of Criminology recently conducted a study identifying communities that generate chronic and costly offenders.<sup>53</sup>

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<sup>53</sup> Australian Institute of Criminology, *Targeting crime prevention to reduce offending: Identifying communities that generate chronic and costly offenders* (2012).

## 10. Implementation and effectiveness of justice reinvestment in other countries, including the United States of America

### 10.1 United States

The Council of State Governments Justice Center in the US is working with 17 states on justice reinvestment projects,<sup>54</sup> and around 10 other states have independently implemented some kind of justice reinvestment strategy.<sup>55</sup>

The approach taken by the Justice Center in each of its 17 projects is a four-step process of analysis, provision, quantification and measuring. In these states policies have been put in place that are designed to control the growth of the corrections system and strengthen the accountability and integration of resources in identified communities. A portion of the savings generated from these efforts are reinvested into the communities receiving the majority of people released from prison in an effort to make these communities safer, stronger, and healthier.<sup>56</sup>

The method has yielded significant results in the majority of the Justice Center's projects with evidence of positive outcomes for communities and substantial savings on criminal justice spending. In Texas, for instance, between 1985 and 2005 the prison population grew by 300 per cent.<sup>57</sup> In an effort to halt this growth rate, the government passed a comprehensive policy package based on an analysis by the Justice Center. The analysis revealed that five counties accounted for more than half the people sentenced to prison and that reductions in funding for community based substance abuse and mental health included an investment of \$241 million into substance abuse and mental health treatment and diversion programs.<sup>58</sup> Without the need for additional prison capacity the state saved \$210.5 million in the two years following implementation of the project.<sup>59</sup>

Many state and local governments in the US have also implemented justice investment strategies targeted at treating and supervising young offenders in their own communities. The approach taken by each state varies but all offer

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<sup>54</sup> Council of State Governments Justice Center, *Work in the States*. At <http://justicereinvestment.org/states>.

<sup>55</sup> National Conference of State Legislatures, *Justice Reinvestment* At <http://www.ncsl.org/issues-research/justice/justicereinvestment.aspx>.

<sup>56</sup> Council of State Governments Justice Center, *Work in the States*. At <http://justicereinvestment.org/states>.

<sup>57</sup> Council of State Governments Justice Center, *Texas*. At <http://justicereinvestment.org/states/texas>.

<sup>58</sup> Council of State Governments Justice Center, *Justice Reinvestment*. At

<sup>59</sup> Council of State Governments Justice Center, *Work in the States*. At <http://justicereinvestment.org/states>.

incentives to counties for reducing the use of incarceration for juveniles. In Pennsylvania, for instance, the government passed *Act 148* which sought to address the number of young people in prison and develop community-based programs to treat juveniles.<sup>60</sup> The Act provided fiscal incentives for counties to develop alternatives to incarceration for at-risk youth. As long as the programs were geared at this purpose, counties were given the freedom to develop alternatives based on the needs of their communities.<sup>61</sup> Within the first three years of its enactment, the number of juveniles imprisoned dropped by 24 per cent. 22 years later the trend was still continuing with only 5 per cent of adjudicated young people being imprisoned.<sup>62</sup>

## 10.2 United Kingdom

The Ministry of Justice in the UK currently has six Justice Reinvestment Pilots in Greater Manchester, Croydon, Hackney, Lambeth, Lewisham and Southwark.<sup>63</sup>

The results after the first year of the pilot program have been promising with demand on courts, prisons and probation down in four out of the six pilot locations. Demand has dropped by 12.5 per cent among adults and 29.2 per cent among youth in Southwark, 8.4 per cent among adults and 21.1 per cent among youth in Greater Manchester and 6 per cent among adults and 20 per cent among youth in Lewisham. Demand was down 7.5 per cent among adults in Hackney with no available figures for change in demand among youth. Demand was down 4.9 per cent among adults in Lambeth but had risen 13.4 per cent among youth. Croydon was the only other pilot location that experienced a rise in demand, with an 8.1 per cent rise amongst adults and a 6.7 per cent rise amongst youth.<sup>64</sup>

The UK's pilot model aims to incentivise local statutory partners to reduce the demand on the criminal justice system. The local area is rewarded if demand on the courts, prisons and probation falls. The estimated savings that this demand reduction creates for the Ministry of Justice are shared between the local partners involved to reinvest in reducing reoffending and crime locally.

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<sup>60</sup> Douglas N. Evans, *Pioneers of Youth Justice Reform: Achieving System Change Using Resolution, Reinvestment and Realignment Strategies*, John Jay College of Criminal Justice, p 16.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*, p 17.

<sup>63</sup> Ministry of Justice, *Justice reinvestment pilots: first year results* (2012). At <http://www.justice.gov.uk/information-access-rights/transparency-data/justice-reinvestment-pilots-first-year-results>

<sup>64</sup> *Ibid.*

## 11. Scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments

### 11.1 Federal law and policy

The Council of Australian Government (COAG) and Standing Council on Law and Justice are both forums where Federal and State and Territory Government representatives can work together to drive justice reinvestment reforms. For instance, the addition of justice target in the national Closing the Gap strategy would strengthen the commitment to justice reinvestment policies.

The Australian Government may also support justice reinvestment through the introduction of legislation and federal funding programs. For instance the *Second Chance Act* in the US authorises federal grants to government agencies and non-profit organisations to facilitate re-entry efforts through programs that help to reduce recidivism like employment assistance, mental health treatment and housing support.<sup>65</sup>

The Australian Government would also be able to take action where justice reinvestment overlaps into areas of federal responsibility like social security.

### 11.2 National body

The Australian Government can support the formation of an independent national body to monitor, evaluate and provide expert advice and technical support for justice reinvestment initiatives in Australia. This co-ordinating body would help to ensure that justice reinvestment initiatives are evidence-driven, by collecting and analysing data, and providing a centralised location for local and state implementers to access findings and examples of strategies in other states and locations.

A national body would have the scope to coordinate policy and programmatic efforts across government agencies, and to work with experts across a range of disciplines to provide technical assistance and support. A national body could also identify programs and strategies that are successful and promote replication in other states.

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<sup>65</sup> Council of State Governments Justice Center, *The National Summit on Justice Reinvestment and Public Safety* (2011), p 69.