



# **GOLDFIELDS LAND AND SEA COUNCIL**

## **Aboriginal Corporation (Representative Body)**

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### **Submission to the *Senate Legal and Constitutional Affairs Legislation Committee* - 'Inquiry into the value of a justice reinvestment approach to criminal justice in Australia'.**

#### **Introduction**

1. The Goldfields Land and Sea Council ('GLSC') is the recognised Native Title Representative Body for the Goldfields region, in accordance with s.203AD of the *Native Title Act 1993* (Cth).
2. In particular, the GLSC recognises the over-representation of disadvantaged groups within Australian prisons, and the need for redress for Aboriginal and Torres Strait Islander peoples.
3. This reflects in part the fact that people (black or white) who are economically and socially marginalised are at greatest risk of being drawn into criminal behaviour and in part the way the police and other law enforcement agencies tend to concentrate their efforts on these areas.

#### *Recognising Aboriginal Customary Law*

4. Over the last two decades there have been significant Indigenous community justice initiatives, which have shown positive results or promising potential benefits. However, for any justice reinvestment approach to be successful for the Indigenous population of Australia, there needs to be increased participation by Aboriginal and Torres Strait Islanders in the administration of justice that includes the development of their own solutions, so that procedures and practices are appropriate for their peculiar needs.

5. It is a fallacy to believe that Aboriginal law exists only in remote or so-called 'traditional' areas of Australia. Therefore, a key point that must be remembered is whether the Aboriginal person(s) is part of an Aboriginal community for which Aboriginal law is relevant: see *Walker v New South Wales* (1994) 182 CLR 45. A priori is that Aboriginal elders, communities and organisations are the local authorities best placed to coordinate the provision of housing, education, work and health care for Aboriginal and Torres Strait Islander people's rehabilitation.

### **Executive Summary**

6. The GLSC sees the need to develop measures and policies to improve the prospects not just of individual cases but of particular places. Through the adoption of a strategic approach to the prevention of offending and re-offending by collecting and analysing data to inform decisions about how and where best to allocate public funds to reduce crime.
7. Current centralised policies are costly and ineffective, as they tend to pull minor offenders (i.e. driving offences or public drunkenness) into a top heavy national/state system that provides standardised responses and is not well organised to give practical help to Indigenous offenders. This is totally inappropriate for minor offenders as it can send them on a journey round the prison system that takes them miles away from their country.

### **Justice Reinvestment Approach**

8. The GLSC supports the reinvestment of funds spent on imprisoning offenders more productively through local community based initiatives designed to tackle the underlying problems which give rise to criminal behaviour.
9. The GLSC endorses the approach to criminal justice of giving local rather than central government the power to decide how money should be best spent to produce safer local communities. Two key elements to justice reinvestment approach are:

- Developing measures and policies to improve the prospects not just of individual cases but of particular places and groups of people; and
  - Adopting a strategic approach to the prevention of offending and re-offending by collecting and analysing data to inform decisions about how and where best to allocate public funds to reduce crime.
10. Whatever justice reinvestment approach is adopted in Australia; it needs to be around Aboriginal owned/led community justice mechanisms that include:
- a strong focus on achieving sustainability, durability and resilience in structures, processes and programs;
  - a willingness to take into account Aboriginal law and culture in the way structures, processes and programs are devised and executed;
  - a commitment to nurturing the necessary governance structures; and
  - a process of capacity building, both in Aboriginal communities and in the government agencies that partner with them (Blagg, H 2006, 'A New Way of Doing Justice Business? Community Justice Mechanisms and Sustainable Governance in Western Australia', background paper 8, *Law Reform Commission of Western Australia*, Perth, 321).
11. A continued acknowledgment of the ongoing operation of Aboriginal customary law and the important role it plays in approaching justice reinvestment for Aboriginal people, by enhancing the continuation of Aboriginal culture itself.

## **Conclusion**

12. A justice reinvestment approach should be a holistic approach that utilises community development models which emphasise self-determination, community ownership and the provision of culturally sensitive treatment that respects traditional laws and customs, including women and the youth. Otherwise, Aboriginal and Torres Strait Islanders will continue to remain dramatically over-represented in the Australian criminal justice system.

13. The GLSC believes it is a given that involvement of local people in work to resettle released prisoners or mentor children at risk builds a stronger more confident community.

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