

**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**

Submitted by: Community Legal Centres NSW Incorporated

Contact details:

Zachary Armytage, Community Development Worker

Aboriginal Legal Access Program

Community Legal Centres NSW Inc.

Suite 805, 28 Foveaux Street

Surry Hills NSW 2010

March 2013

CONTENTS

1. Introduction	4
1.1 About this submission	4
1.2 About Community Legal Centres NSW (CLCNSW)	4
2. Recommendations	5
3. Drivers behind the past 30 years of growth in the Australian imprisonment rate	5
3.1 Tough-On-Crime	5
3.2 Overall Increase	6
3.3 Indigenous Increase	6
3.4 Systemic Racism	7
4. Economic and social costs of imprisonment	8
4.1 Economic cost of imprisonment	8
4.2 Social cost of imprisonment	9
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	11
6. Cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures	11
6.1 Aboriginal and Torres Strait Islander Access to Parole	11
6.2 Diversion	12
6.3 Conferencing and Diversion	12
6.4 Access Barriers to Diversionary Programs	13
7. Methodology and objectives of justice	

reinvestment	14
7.1 Methodology	14
7.2 Objectives	14
8. Benefits of, and challenges to, implementing a justice reinvestment approach in Australia	15
8.1 Benefits	15
8.2 Challenges	15
9. Collection, availability and sharing of data necessary to implement a justice reinvestment approach	16
10. Implementation and effectiveness of justice reinvestment in other countries, including the United States of America	16
11. Scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments	17

1. Introduction

1.1 About this submission

Community Legal Centres NSW Inc. ('CLCNSW') is pleased to provide a submission to the 'Value of a justice reinvestment approach to criminal justice in Australia' inquiry ('the Inquiry'). CLCNSW strongly recommends that the investigation of justice reinvestment in Australia be comprehensive and non-partisan. CLCNSW believes that increasing the capacity of communities to locally address the challenges and precursors of crime will serve the health and wealth of all local communities, state and territory governments, and the nation.

CLCNSW disapproves the use of confinement as punishment for non-violent crime.

CLCNSW's position on violent offences is that they are not to be tolerated. Confinement, rehabilitation and mental health treatment when required is an appropriate response to breaches and real threats on public safety.

The recommendations made by CLCNSW relate to the implementation of justice reinvestment in Australia. Given the severity of the 'gap' between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians, this submission pays particular attention to addressing the needs of Aboriginal and Torres Strait Islander peoples via *Justice Resolution, Reinvestment and Realignment*.

Justice Resolution, Reinvestment and Realignment:

There is 'a variety of reform strategies' that reduce the justice systems reliance on confinement facilities and serve as many people as possible in their own homes or at least their own communities when removal from home is warranted. The various strategies may be conceptualized as relying on three distinct but interrelated mechanisms: resolution, reinvestment, and realignment.

Resolution refers to the use of managerial authority and administrative directives to influence system change;

Reinvestment entails the use of financial incentives to encourage system change, and

Realignment employs organizational and structural modification to create new systems.

Douglas N Evans, Pioneers of Youth Justice Reform: Achieving System Change Using Resolution, Reinvestment and Realignment Strategies. John Jay College of Criminal Justice, Research and Evaluation Centre, July 2012

1.2 About Community Legal Centres NSW (CLCNSW)

CLCNSW is the peak body for Community Legal Centres (CLCs) in NSW. CLCs are independent community-based organisations that provide free legal information and advice to the most marginalised members of the community. CLCNSW has 40 member organisations including generalist and specialist CLCs. It plays a critical role in the law and justice sector in NSW. It supports and represents CLCs in a range of government and community forums. Our submission is informed by the work CLCs do, in particular with those people who are in prisons or coming out of prisons, as well as with local Aboriginal

communities.

2. RECOMMENDATIONS

RECOMMENDATION 1:

Address systemic racism within all federal, state and local government departments through engaging the consultative and advisory strengths of the National Congress of Australia's First Peoples to lead the development of relevant policies and implementation plans.

RECOMMENDATION 2:

Review Parole and Probation policy and procedures to ensure that Probation and Parole Officers (PPOs) are working with appropriate incentives.

RECOMMENDATION 3:

There be culturally appropriate measures taken to significantly increase access to parole for Aboriginal and Torres Strait Islander peoples. That support is given by trained Aboriginal caseworkers to assist Aboriginal inmates in every process to enter into probation. This support is to include culturally appropriate explanations of the relevant information and processes that grant access to parole for offenders, thereby increasing access to parole programs for Aboriginal and Torres Strait Islander inmates.

RECOMMENDATION 4:

To reduce revocation rates of those sentenced through the 'Drug Court' to community based supervision, and, to reduce failures of community service orders; there be the implementation of a program that reforms the punishment mechanism of offenders on probation and parole to one that is swift, certain and appropriate to the misdemeanour.

RECOMMENDATION 5:

Federally legislate a Justice Reinvestment Body to assist the development, evaluation and implementation of Justice Reinvestment strategies.

RECOMMENDATION 6:

The federal government to lead the Commonwealth of Australian Governments (COAG) to establish state legislated non-partisan justice reinvestment authorities to work across all branches of government and inform policymakers with practical, evidence-based advice. This legislated body is to collect, analyse and evaluate all data relevant to achieving justice resolution, realignment and reinvestment objectives.

RECOMMENDATION 7:

Include 'justice targets' that bind a *'justice reinvestment approach to criminal justice'* into the national 'Closing the Gap' strategies.

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

3.1 'Tough On Crime' Approach to Criminal Justice

In the US, the explosion of imprisonment rates resulted from a range of

increasingly punitive law and order measures, particularly the 'war on drugs' and mandatory sentencing¹.

An Australia21 newsletter (April 2012) concluded that:

Attempts to control drug use through the criminal justice system have clearly failed. They have also caused the needless and damaging criminalisation of too many young people, often with adverse life-changing consequences.

In NSW, since 1990, rates of incarceration have steadily grown, despite wide ranging evidence that suggests long-term downward trends for most offences.² The overall incidence of recorded violent crimes (homicide, assault, sexual assault, and robbery (including armed) decreased in 2010. Australia-wide, incidences of homicide has decreased by nine per cent since 1990 and armed robbery by one-third since 2001.³ Kidnapping was the only recorded violent crime that increased in 2010.⁴ Reported incidents of assault and sexual assault have steadily increased since 1990, partly due to increased public awareness.⁵ Despite these figures, prison rates continue to increase, and, in particular, there is a rapidly growing over-representation of Aboriginal people in incarceration in NSW.

As of 2008/9, 2.2% of the NSW population were Aboriginal but 48.5% of young people in custody were Aboriginal. 2,303 out of every 100,000 Indigenous adults are behind bars. By their mid-20s, 40 per cent of Indigenous men have been formally charged by police with a crime.⁶ The above statistics, and the overall increasing rate of Indigenous imprisonment, is not the by-product of an increase in Indigenous offending. Rather, the over-representation of Aboriginal people in prison in NSW is *despite* the downward trend in violent crimes, much of this is due to over policing and harsher sentencing laws⁷.

3.2 Overall increase

The overall growth in incarceration is attributable to changes in sentencing law and practice, restrictions on judicial discretion, changes to bail eligibility, changes in administrative procedures and practices, changes in parole and post-release surveillance, the limited availability of non-custodial sentencing options, the limited availability of rehabilitative programs, and a judicial and political perception of the need for 'tougher' penalties.⁸

3.3 Indigenous increase

The increase in Indigenous incarceration rates has been attributed to the more

¹ Social Justice Report 2009

² Australian Institute of Criminology, 'Australian crime: Facts & figures' (2011) <<http://www.aic.gov.au/publications/facts/2011/>>; Samantha Bricknell, 'Trends in violent crime'

³ Samantha Bricknell, 'Trends in Violent Crime'

⁴ Australian Institute of Criminology, 'Australian crime: Facts & figures' (2011) <<http://www.aic.gov.au/publications/facts/2011/>>

⁵ Samantha Bricknell, 'Trends in violent crime'

⁶ Andrew Leigh, 'Private Members' Motion in The House of Representatives on Reducing Crime and Incarceration Rates', 2011, *Indigenous Law Bulletin*, Volume 7 / Issue 27

⁷ Edward Cooper, Justice Reinvestment for Indigenous People in NSW: Prospects of Success and Adoption

⁸ *Ibid*

frequent use of imprisonment for Indigenous offenders for longer periods of time.⁹ Too many Aboriginal people are being sent to prison for non-violent offences. 31 per cent of Indigenous prisoners had an expected prison time of less than two years.

The increased use of remand has had a significant, negative, impact on Indigenous imprisonment rates. For example, the NSW Bureau of Crime Statistics and Research (BOCSAR) found that 25 per cent of the increase in Indigenous imprisonment rates in NSW between 2001-2008 was due to more Indigenous people being remanded in custody and for longer periods of time.¹⁰ The other 75 per cent of the increase was due to more Indigenous people being given a prison sentence rather than a non-custodial sentence, and being sentenced for longer periods of time.¹¹

3.4 Systemic Racism

It is well documented that in the criminal justice system, Aboriginal people are the most over-represented group of people in Australia.¹² BOCSAR estimates that more than 80 per cent of Indigenous defendants currently appearing in court will at some stage return, most within less than 2 year¹³.

The over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system provides the basis to critique the current punitive trends as being racial and class bias, skewing who goes into prison.

Systemic racism in the criminal justice systems is not isolated to Australia, however, as far as international standards are concerned, Australian Aboriginal and Torres Strait Islander incarceration rates are shameful, and represent deep systemic racism:

“... the incarceration rate of our Mob, (is) 5 times higher than that of South Africa under the apartheid regime.”¹⁴

The overwhelming majority of prisoners are poor, and their prior employment levels are exceptionally low. Related to these observations “are criticisms of the criminal justice system for being racist in its day-to-day operations of arresting, indicting, convicting and sentencing offenders”.¹⁵

Over the two centuries since colonisation, the criminal justice system has frequently served further to entrench the disadvantage of Aboriginal people. Rather than protecting them from unlawful violence, the legal system often criminalised and subjugated Aboriginal people.¹⁶ Aboriginal people have also

⁹ Jacqueline Fitzgerald, 'Why are indigenous imprisonment rates rising?' (2009) 41 *Crime and Justice Statistics: Bureau Brief*

<[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)>

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Reducing Indigenous Contact with the Court System December 2010 BOSCAR

¹⁴ Tiga Bayles, Biri Guba Elder, manager of Brisbane's 98.9FM radio station

¹⁵ Michael Jacobson, 2005, *Downsizing Prisons*, page 43.

¹⁶ The experiences of Aboriginal people have been depicted in several studies, for example, E Eggleston, *Fear, Favour or Affection: Aborigines and the Criminal Law in Victoria, South Australia and Western Australia*, (ANU Press, Canberra, 1976); K Hazelhurst, *Ivory Scales: Black Australians and the Law*, (UNSW Press, Kensington, 1987); P Hanks and B Koen-Cohen, *Aboriginies and the Law: Essays in Memory of Elizabeth Eggleston* (Allen and Unwin, Sydney, 1984); G Bird, *The "Civilising Mission": Race*

faced legal, institutionalised racism, in relation to freedom of movement, employment, education and welfare.¹⁷

The implementation of all recommendations resulting from the 'Royal Commission into Aboriginal Deaths in Custody' may have diverted much of the current over-representation.

Recommendation 1: Address systemic racism within all federal, state and local government departments through engaging the consultative and advisory strengths of the National Congress of Australia's First Peoples to lead the development of relevant policies and implementation plans.

4. Economic and social costs of imprisonment

4.1 Economic cost of imprisonment

Incarceration has very little effect on crime rates at best. Creating a 10% increase in incarceration through sentencing policy only produces a 3% reduction in theft:

"Current research on the relationship between incarceration and crime provides confusing and even contradictory guidance for policymakers. The most sophisticated analyses generally agree that increased incarceration rates have some effect on reducing crime, but the scope of that impact is limited: a 10 percent increase in incarceration is associated with a 2 to 4 percent drop in crime. Moreover, analysts are nearly unanimous in their conclusion that continued growth in incarceration will prevent considerably fewer, if any, crimes than past increases did and will cost taxpayers substantially more to achieve."¹⁸

In reflecting on the US experience, Michael Jacobson, current President of the VERA Institute of Justice states:

"Over the last few decades both the probation and parole systems have worked with the wrong incentives. There is almost every incentive in both these systems to violate as many people as they can, to get them off their caseloads, and send them back to prison. And in some ways, it's a rational response to the system they (Parole Officers) find themselves in. It's a way for (probation and parole) agencies and officers to manage risk, to deal with overwhelming caseloads, and it's a way for them to deal with the complete lack of resources that they have. They are by far two of the most under-resourced parts of the criminal justice system, and, from a policy maker point of view, and from a budget maker's point of view, the thing about those parts of the system, is that you can never really starve them because they will always spend the taxpayers money in prison and jails. They [corrections] can't spend it on probation and parole (because) they have no money; there are very few well-funded probation and parole agencies... But they will spend billions of dollars, which they do, on

and the Construction of Crime (Monash University, Melbourne, 1987); J Basten et al, *The Criminal Justice System* (Australian Legal Workers Group, 1982).

¹⁷ M Lucashenko, *Policy and Politics in the Indigenous Sphere: An Introduction for Bureaucrats* (Aboriginal Politics and Public Sector Management, Griffith University, June 1996) <www.cad.gu.edu.au/capsm/Lukashen.htm>

¹⁸ Reconsidering Incarceration: New Directions for Reducing Crime January 2007 By Don Stemen, Director of Research, Center on Sentencing and Corrections

prison and jails. ... one of the things I have been saying for years, is in a lot of ways ... is:

“No one in government can spend money like a parole officer; they do it every day, they do it in an incredibly unsupervised, unoversightable way, they make those decisions to violate someone, anywhere from 10 to 100s’ of times a year... and it not only costs, in the aggregate, I would argue, many billions of dollars, but there is not a shred of empirical evidence that it does anything to protect the public safety. In fact, there is probably more evidence, and we’ve just done some work on this at the New York State Parole at VERA, that the opposite is true.”

Sending people back to prison for an accumulation of technical violations (as opposed to serious violent new crimes) due to a lack of resources and options for PPOs a fiscally irresponsible policy as the practice fuels incarceration rates and produces excessive spending of taxpayer dollars for a relatively benign effect on public safety.

Recommendation 2: Review Parole and Probation policy and procedures to ensure that Probation and Parole Officers (PPOs) are working with appropriate incentives.

QUICK FACTS

- It costs \$542 per day to incarcerate a young person in NSW, plus court and police time.¹⁹
- Nationwide, the total cost of Australia’s prisons is nearly \$3 billion a year or about \$100,000 per prisoner. By spending money on the underlying costs of crime, society gets to avoid the costs of both the crime and the punishment.²⁰
- On average, in 2012–13, the cost per prisoner per day was \$315 in Australia. The Australian Capital Territory had the highest cost per prisoner per day (more than \$500).

Recent government expenditure on incarceration

In 2010–11, more than \$3 billion was spent on Australian prisons — \$2.3 billion in net operating expenditure (excluding revenue from prison industries and excluding transport/escort services) and \$0.8 billion in capital costs (Steering Committee for the Review of Government Service Provision 2012)

4.2 Social cost of imprisonment

The social costs of imprisonment, for instance children of prisoners have a high risk of delinquency and school failure²¹, cause further economic costs in other areas of service delivery, as in a higher risk of long-term welfare dependency, as well as an absence from economical participation.

In some remote communities with very high incarceration rates, more

¹⁹ ANATaR Fact Sheet- Juvenile Justice and Aboriginal Young People in NSW

²⁰ Andrew Leigh, ‘Private Members’ Motion in The House of Representatives on Reducing Crime and Incarceration Rates’, 2011, *Indigenous Law Bulletin*.

²¹ Locked Up, Locked Out: The social costs of incarceration Bruce Western from the July 2011 issue

incarceration leads to more crime, this is known as a 'tipping point'. Time spent in prison can become a rite of passage, a time to be with family, a means to be accommodated with 3 meals a day, and even a social norm.²²

Australia has ratified the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The Declaration's foundational rights confirm that Aboriginal and Torres Strait Islander peoples have both collective rights and rights to be treated equally without discrimination including: The right to enjoy all human rights that all other individuals and groups can enjoy.²³ Clearly communities that suffer from 'tipping point' incarceration levels reflect a breach of the Australian government ratification of UNDRIP.

The dominant features of social costs are²⁴:

1. *Former prisoners do worse economically than if they had never been incarcerated.*
2. *Formerly incarcerated fathers are less able to contribute financially to their families. Because incarceration strains marital relations, those fathers are also less involved as parents. Compared to otherwise similar kids whose parents haven't been behind bars, the children of incarcerated parents are more likely to be depressed, behave aggressively, and drop out of high school.*
3. *Shaping how the institutions of law and order are viewed in high-crime/high-incarceration neighbourhoods. The prison population is drawn overwhelmingly from low-income inner-city areas whose residents come to associate police and the courts with the surrounding social problems of violence and poverty. Police are viewed as unhelpful, and often unaccountable, contributing to what the Harvard sociologist Robert Sampson calls "legal cynicism" in troubled, crime-ridden neighbourhoods.*
4. *Drug dealing and other illegal activities are more attractive to people with prison records, many of whom have few legitimate prospects.*
5. *Children of incarcerated parents, without a secure and predictable home life, are at risk of delinquency and school failure.*
6. *A community, soured on a capricious and unaccountable police force, is less likely to call for help or assist in investigations.*

Comment:

The post GFC world, combined with Australia's current economical environment and the outlook of the mining boom, presents policy makers with a unique opportunity to move away from a 'tough on crime' modus operandi, and towards a 'smart on crime' approach to criminal justice. Through maintaining conservative economic principals throughout the public discourse, political parties can take the public with them on this system change.

²² Brown, D. 'The Limited Benefit of Imprisonment in Controlling Crime', *Current Issues in Criminal Justice* Vol 22(1) July (2010) 461-472.)

²³ E Daes, 'Striving for self-determination for Indigenous peoples' In pursuit of the right to self-determination (2000), p 58.

²⁴ Locked Up, Locked Out: The social costs of incarceration Bruce Western from the July 2011 issue

5. The 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.

See response to section 3: 'Drivers behind the past 30 years of growth in the Australian prison rates'

QUICK FACTS

- 2.2% of the NSW population are Aboriginal but in 2008/9 48.5% of young people in custody were Aboriginal
- As of 30 June 2007, Aboriginal Juveniles were 28 times more likely to be detained than non-Aboriginal juveniles.
- In 2007/8 48% of Aboriginal young people apprehended by NSW police went to court compared with 21% for non-Aboriginal young people.
- Between 200/1 and 2007/8 there was a 24% increase in court appearance rates for Aboriginal juveniles and a 71% increase in the daily average number of Aboriginal juveniles in detention in NSW.²⁵
- 2,303 out of every 100,000 Indigenous adults are behind bars. By their mid-20s, 40 per cent of Indigenous men have been formally charged by police with a crime.²⁶

6. The cost, availability and effectiveness of alternatives to imprisonment including prevention, early intervention, diversionary and rehabilitation measures

CLCNSW refers the Senate Standing Committee to the New South Wales Law Reform Commission, Report 96, Sentencing: Aboriginal Offenders, with particular reference to Chapter 5: Sentencing Options.

6.1 Aboriginal and Torres Strait Islander Access to Parole

The 'Royal Commission Into Aboriginal Deaths In Custody' (RCIADIC), found that the Aboriginal use of parole in New South Wales is extremely limited. Since the introduction of the *Sentencing Act 1989* – the so-called "truth in sentencing" legislation – the number of offenders who served parole has dropped from 56% of the prison population to 31.8%.

In response to this finding, the RCIADIC recommended that Corrective Services authorities ensure that ***Aboriginal offenders are not denied opportunities for probation and parole by virtue of the lack of trained support staff or infrastructure to ensure monitoring of such orders.***²⁷ Corrective Services NSW (CSNSW) acknowledges that, in **rural areas**, a different organisational structure will be necessary.

Recommendation 3: There be culturally appropriate measures taken to

²⁵ ANATaR Fact Sheet- Juvenile Justice and Aboriginal Young People in NSW

²⁶ Andrew Leigh, 'Private Members' Motion in The House of Representatives on Reducing Crime and Incarceration Rates', 2011, *Indigenous Law Bulletin*, Volume 7/ Issue 27

²⁷ Report 96, 'Sentencing: Aboriginal offenders', Sydney: New South Wales Law Reform Commission, 2000, at 141.

significantly increase access to parole for Aboriginal and Torres Strait Islander peoples. That support is given by trained Aboriginal caseworkers to assist Aboriginal inmates in every process to enter into probation. This support is to include culturally appropriate explanations of the relevant information and processes that grant access to parole for offenders, thereby increasing access to parole programs for Aboriginal and Torres Strait Islander inmates.

6.2 Diversion

Effective and culturally appropriate drug diversion has the ability to reduce the over-representation of Indigenous people in the criminal justice system and to decrease over-representation in custody²⁸.

Diversion can occur at four stages along the criminal justice pathway:

- Pre-arrest
- Pre-trial
- Pre-sentence
- Post-sentence

Diversion examples:

- The Magistrates Early Referral into Treatment (MERIT) program
- Residential drug and alcohol treatment
- Drug courts
- Project HOPE Hawaii's Opportunity Probation with Enforcement (see section 6.3)

Indigenous participation in diversion

A number of studies have suggested that Indigenous over-representation in prison populations could be addressed through additional and more effective diversion programs.²⁹

6.3 Conferencing and Diversion

There is a lower rate of police cautioning and youth justice conferencing of Aboriginal young people than non-Aboriginal juveniles, even though these strategies are effective in reducing re-offending. Aboriginal young people are less frequently diverted because they less frequently meet the legal requirements for diversion (e.g. had 3 prior cautions).³⁰

Justice Realignment employs organisational and structural modification to create new systems.

Todd Clear, a professor at John Jay College of Criminal Justice in New York, estimates that by “eliminating imprisonment across the nation for technical parole violations, reducing the length of parole supervision and ratcheting back prison sentences to their 1988 levels, the United States could reduce its prison

²⁸ Michael Cain, 2006, Participation of Aboriginal People in the MERIT Program

²⁹ Dr Troy Allard, 2010, Understanding and Preventing Indigenous Offending

³⁰ ANATaR Fact Sheet- Juvenile Justice and Aboriginal Young People in NSW

population by 50%”³¹.

Following is an example of Justice Realignment that has lowered incarceration and recidivism rates in Hawaii, Nevada and other states in the U.S. This was achieved by closing the gap between the actual time of the offence/ parole breach, and the actual time that punishment is administered, combined with immediate and appropriate consequences for violations.

There is a key oversight in the criminal justice system by policy makers and legislatures in regards to offenders in community management. It concerns the delay between when punishment is administered for accumulated offences by offenders whilst on probation/parole, and the actual time the offence took place.

In the minds of offenders, “receiving punishment 3 months after committing an offense is like punishing a child for spilling milk 6 weeks after cleaning up the mess”³². The Hon Judge Steven S. Alm’s project HOPE addresses the time lag between the crime and the punishment with swift, certain and immediate punishment for parole breaches, with sentences that are proportionate to the offence³³. When incarceration is the strategy for rehabilitation, as well as punishment for the crime, it is probably not the length of the incarceration, but the connection between the crime and the punishment that assists offenders to break their cycle of offending.

*In 2004, the Honourable Steven S. Alm of Hawai’i’s First Circuit Court implemented a new style of probation in an attempt to change the problem of violations and recidivism among Hawai’i’s probationers. The existing style of Probation As Usual (PAU) had a poor record of individuals making it to their probation appointments on time, staying off of drugs, and refraining from criminality upon being released. In PAU, **probationers repeatedly violated the terms of their probation for extended periods of time without consequences due to court dates deferred up to a year. In theory, individuals that experience immediate consequences were less likely to repeat offenses.** Judge Alm incorporated this theory by creating a modified system of monitoring and sentencing probationers named HOPE (Hawai’i Probation Opportunity with Enforcement).”³⁴*

Recommendation 4: To reduce revocation rates of those sentenced through the ‘Drug Court’ to community based supervision, and, to reduce failures of community service orders; there be the implementation of a program that reforms the punishment mechanism of offenders on probation and parole to one that is swift, certain and appropriate to the misdemeanour.

CLCNSW submits that the Hawai’i’s Opportunity Probation with Enforcement (HOPE) Program is a model example of reducing recidivism.

6.4 Access Barriers to Diversionary Programs

³¹ Jeffery Rosen, 2008, The New York Times, *Prisoners of Parole*, January 8, 2010

³² Judge Steven S. Alms, 23rd March 2010

³³ “Hawai’i’s Opportunity Probation with Enforcement (HOPE): An Implementation Analysis”,

³⁴ Ibid

Aboriginal and Torres Strait Islander Peoples would benefit from diversion to a residential drug treatment facility. Too many people who experience problematic drug or alcohol use and who are in prison for non-violent offences. Substance abuse and being male have been suggested as the strongest predictors of Indigenous peoples' self-reported contact with the justice system, yet the access barriers to prevention and diversion programs remain a systemic issue³⁵

The exclusion under the Illicit Drug Diversion Initiative framework of offenders who have alcohol as a primary drug of concern or who have any history of violent offences is widely viewed as having a disproportionately negative impact on Indigenous offenders. A number of Indigenous-specific court diversion programs are in place to address this issue, together with initiatives to identify a range of other barriers to Indigenous participation.

7. The methodology and objectives of justice reinvestment

Justice reinvestment is the creation of financial incentives that encourage governments to reduce spending on incarceration, and instead fund community-based programs. Justice *reinvestment* is distinct yet interrelated to *resolution*: the use of managerial power to create change, and *realignment*: shifting the responsibility to manage offenders from state government to communities³⁶.

7.1 Objectives

The objective of justice reinvestment is to conserve money and improve the impacts of rehabilitation, prevention, and diversionary programs, thereby reducing incarceration costs and strengthening the resilience of communities.

Justice reinvestment is the 'grass roots' arm of multi-systemic justice reform. When combined with 'resolution' and 'realignment' initiatives, JR saves money and reduces the impact of incarceration and crime on society.

7.2 Methodology

The identification of '*million dollar blocks*' as being communities where high numbers of offenders originate from and return to, defines the geographical areas where a concerted effort is applied to address multi-layered disadvantage. A strategy is developed at a community level. In conjunction with expert assistance that draws from the evidence-base, successful rehabilitation, diversion and prevention of potential (re)offenders is achieved by the deployment and enhancement of community-led health, education and social welfare services. A few examples of the types of evidence-based programs that have been proven to achieved positive social and fiscal results are:³⁷

³⁵ 'Bridges and Barriers: addressing Indigenous incarceration and health', (National Indigenous Drug and Alcohol Committee 2009)

³⁶ Douglas N Evans, July 2012, Pioneers of Youth Justice Reform

³⁷ Aos, S., Lee, S., Drake, E., Pennucci, A., Klima, T., Miller, M., Anderson, L., Mayfield, J., & Burley, M. (2011). Return on investment: Evidence-based options to improve statewide outcomes (Document No. 11-07-1201). Olympia: Washington State Institute for Public Policy.

- Nurse Family Partnership (NFP) for low-income families that provide intensive visitation by nurses during a woman's pregnancy and the first two years after birth³⁸
- Functional Family Therapy (FFT): designed for juveniles on probation³⁹
- Drug Offender Sentencing Alternative (DOSA): chemical dependency treatment for drug offenders⁴⁰
- Pre K-12: early childhood education for low-income 3/4 year programs⁴¹

All programs apply rigorous evaluations methods to assist with the assessment and development of each initiative, this also contributes towards the greater knowledge of what does and does not work to achieve the objectives. All data is centralised at a legislated national justice reinvestment authority.

8. The benefits of, and challenges to, implementing a justice reinvestment approach in Australia

8.1 Benefits:

The benefits of well-developed and effectively implemented justice reinvestment strategies are: saving taxpayer money, enhancing public safety, and building stronger communities.

*Most states are taking an expensive, unsuccessful, and unsustainable approach to prison and corrections policies. Any real effort to contain spending on corrections must have as its centerpiece a plan to limit the growth of, or reduce, the prison population. Unless policymakers act, state spending on corrections is projected to continue to increase.*⁴²

8.2 Challenges:

As justice Reinvestment is yet to be officially adopted as a policy in Australia, there is no local precedent or evidence-base to support its establishment. The local challenges for the implementation justice reinvestment consists of:

- A lack of individuals with the relevant high level skill sets,
- The history of government failure to address over-representations of Indigenous incarceration rates
- Systemic racism, as supported by the aforementioned point
- The current inaccessibility of data by non-government organisations to government held data, as this impedes research and non-partisan policy

³⁸ <http://www.nursefamilypartnership.org/>

³⁹ <http://www.fftinc.com/>

⁴⁰ <http://apps.leg.wa.gov/rcw/default.aspx?cite=9.94A.660>

⁴¹ Aos, S., Lee, S., Drake, E., Pennucci, A., Klima, T., Miller, M., Anderson, L., Mayfield, J., & Burley, M. (2011). Return on investment: Evidence-based options to improve statewide outcomes (Document No. 11-07-1201). Olympia: Washington State Institute for Public Policy.

⁴² National Association of State Budget Officers, Fiscal Year 2008 State Expenditure Report, p. 54 (Washington, DC: National Association of State Budget Officers, 2009), <http://www.nasbo.org/Publications/StateExpenditureReport/tabid/79/Default.aspx>. Public Safety Performance Project, Public Safety, Public Spending: Forecasting America's Prison Population 2007-2011 (Washington, DC: Public Safety Performance Project, The Pew Charitable Trusts, 2007).

development by community sector organisations.

- Political point scoring by tough-on-crime rhetoric, as opposed to smart-on-crime political will, may likely present the greatest barriers to reaching justice reinvestment objectives.
- Mandatory sentencing and drug laws disproportionately effect vulnerable people, particularly young people, those who suffer from ill mental health, the homeless, and Aboriginal and Torres Strait Islander peoples.
- Logically, the pressure applied by lobby groups on behalf of corporations that supply private prison facilities also threaten the establishment of justice *resolution*, *realignment* and *reinvestment* based criminal justice systems in Australia.

9. The collection, availability and sharing of data necessary to implement a justice reinvestment approach

'Best practice' methods of data collection and program evaluation are the cornerstone of Justice Reinvestment. Non-partisan federal and state legislated justice reinvestment bodies would be the best place to provide such services. Ultimately the work of these bodies informs policy makers with an ever-increasing and up-to-date evidence-base. Much of this information is concerned with cost benefit/ return on investment data.

When one looks to the US for case studies of justice reinvestment programs, the relevant data is accessible and easy to find. The Washington State Institute of Public Policy (WSIP) is a prime example of an organisation that provides this service. The degree of data transparency in the US enables information to be easily accessed, which can then be used by various parties for analysis, program development/ modelling, strategic planning, and policy and funding decisions.

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

Methods of implementation and ample research supporting the effectiveness of justice reinvestment in the US is easily accessible from organizations that provide research and policy development support to federal, state and county governments on increasing the efficacy of fiscally and socially responsible justice policy. Some notable organisations providing these services are:

- The Washington State Institute of Public Policy⁴³
- The Council of State Governments Justice Centre,⁴⁴
- The John Jay College of Criminal Justice⁴⁵
- The Justice Mapping Centre⁴⁶
- The Urban Institute⁴⁷

⁴³ <http://www.wsipp.wa.gov>

⁴⁴ <http://www.justicecenter.csg.org>

⁴⁵ <http://www.jjay.cuny.edu>

⁴⁶ <http://www.justicemapping.org>

- The Vera Institute⁴⁸, and
- The Sentencing Project⁴⁹.

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

RECOMMENDATION 5: Federally legislate a Justice Reinvestment Body to assist the development, evaluation and implementation of Justice Reinvestment strategies.

In the U.S. the Council of State Government Justice Center (CSG) is a prime example of legislated non-partisan body:

‘The Council of State Governments Justice Center (CSG) is a national non-profit organization that serves policymakers at the local, state, and federal levels from all branches of government. Staff provides practical, nonpartisan advice and consensus-driven strategies—informed by available evidence—to increase public safety and strengthen communities. The CSG Justice Center provides technical assistance to a limited number of states that demonstrate a bipartisan interest in justice reinvestment—a data-driven strategy for policymakers to reduce spending on corrections, increase public safety, and improve conditions in the neighbourhoods to which most people released from prison return.’⁵⁰

RECOMMENDATION 6: The federal government to lead the Commonwealth of Australian Governments (COAG) to establish state legislated non-partisan justice reinvestment authorities to work across all branches of government and inform policymakers with practical, evidence-based advice. This legislated body is to collect, analyse and evaluate all data relevant to achieving justice *resolution, realignment and reinvestment* objectives.

In the U.S. the Washington State Institute for Public Policy (WSIPP) is a prime example of such an organisation:

The Washington State Institute for Public Policy was created by the 1983 Washington Legislature to carry out non-partisan research assignments. The Washington State Legislature directed the Washington State Institute for Public Policy (Institute) to “calculate the return on investment to taxpayers from evidence-based prevention and intervention programs and policies.” The Legislature instructed the Institute to produce “a comprehensive list of programs and policies that improve . . . outcomes for children and adults in Washington and result in more cost-efficient use of public resources. The current project continues a long-term effort in Washington to identify evidence-based ways to deliver better outcomes

⁴⁷ <http://www.urban.org>

⁴⁸ <http://www.vera.org>

⁴⁹ <http://www.sentencingproject.org>

⁵⁰ http://www.justicecenter.csg.org/about_us/background (2013)

per taxpayer dollar. ⁵¹

RECOMMENDATION 7:

Include 'justice targets' that bind a *'justice reinvestment approach to criminal justice'* into the national 'Closing the Gap' strategies.

⁵¹ Laws of 2009, ch. 564, § 610 (4), ESHB 1244.