



Australian
Human Rights
Commission

Value of a justice reinvestment approach

**AUSTRALIAN HUMAN RIGHTS COMMISSION
SUBMISSION TO THE LEGAL AND CONSTITUTIONAL
AFFAIRS COMMITTEE**

13 March 2013

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1 Introduction

1. The Australian Human Rights Commission makes this submission to the Legal and Constitutional Affairs Committee in its Inquiry into the value of a justice reinvestment approach to criminal justice in Australia.
2. Dr Tom Calma, the former Aboriginal and Torres Strait Islander Social Justice Commissioner, was one of the first proponents of justice reinvestment in Australia, introducing the concept in the *Social Justice Report 2009*.¹ Since 2009, advocacy for justice reinvestment has been building and a number of authoritative reports have made recommendations about justice reinvestment. However, we are still waiting for governments to take action. It is hoped that this Inquiry will provide further guidance and resolve in this regard.
3. The Commission's submission will examine the applications for justice reinvestment in Australia, primarily in relation to Aboriginal and Torres Strait Islander communities, although some consideration will also be given to vulnerable groups including juvenile offenders, and people with cognitive impairment, people with psychosocial disability and hearing impairment.
4. Given that justice issues are largely the responsibility of the states and territories, the submission will consider ways for the Australian Government to support and encourage justice reinvestment approaches through Council of Australian Governments (COAG) mechanisms.

2 Summary

5. The Commission welcomes the Inquiry into the value of a justice reinvestment approach. Justice reinvestment is an innovative, evidence based criminal justice strategy that has the capacity to reduce imprisonment and its associated economic and social costs.
6. Justice reinvestment is a powerful crime prevention strategy that can help create safer communities by investing in evidence based prevention and treatment programs. Justice reinvestment looks beyond offenders to the needs of victims and communities.
7. Justice reinvestment should be targeted at high risk Aboriginal and Torres Strait Islander communities in the first instance due to the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.
8. The needs of other vulnerable groups such as young people who offend, and people with cognitive impairment, psychosocial disability and hearing impairment should form part of the analysis of the characteristics of the imprisoned population in the trial communities. This information can help target appropriate programs in a justice reinvestment strategy.

¹T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, Australian Human Rights Commission (2009).
[At http://humanrights.gov.au/social_justice/sj_report/sjreport09/index.html](http://humanrights.gov.au/social_justice/sj_report/sjreport09/index.html) (viewed 14 February 2013).

9. The Commission makes two recommendations to the Inquiry contained in the next section on this submission.

3 Recommendations

10. The Australian Human Rights Commission recommends that:
 - The Australian Government in partnership with state and territory governments, funds justice reinvestment trials in selected Aboriginal and Torres Strait Islander communities where there is a high level of imprisonment. Pilots should be accompanied by a robust research and evaluation strategy.
 - The Australian Government and State and Territory governments commit to justice targets as part of the Closing the Gap Strategy.

4 What is justice reinvestment?

11. Justice reinvestment is a criminal justice policy approach that diverts a portion of the funds for imprisonment to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested into services that address the underlying causes of crime in these communities.
12. Justice reinvestment was developed in the United States by George Soros' Open Society Foundation. Since 2006 the Council of State Governments Justice Centre has overseen implementation in 17 states.
13. While justice reinvestment approaches vary depending on the needs of communities, justice reinvestment does have a consistent methodology around analysis and mapping. This work is the basis for the justice reinvestment plan.² Justice reinvestment approaches also require commitment to localism and budgetary devolution.³ Justice reinvestment is made possible by political bipartisan support.⁴
14. The success of justice reinvestment in the United States has been well documented.⁵ Moves to justice reinvestment are also underway in the United Kingdom.⁶

² Council of State Governments Justice Center, <http://justicereinvestment.org/strategy> (viewed 14 February 2013).

³ D Brown, M Schwartz, L Boseley, 'The Promises of Justice Reinvestment,' *Alternative Law Journal* (2012) 37 (2) p 97.

⁴ D Brown, M Schwartz, L Boseley, 'The Promises of Justice Reinvestment,' *Alternative Law Journal* (2012) 37 (2) p 97.

⁵ Council of State Governments Justice Center, http://justicereinvestment.org/facts_and_trends (viewed 14 February 2013).

⁶ D Brown, M Schwartz, L Boseley, 'The Promises of Justice Reinvestment,' *Alternative Law Journal* (2012) 37 (2) p 98.

5 The need for justice reinvestment in Australia

5.1 Aboriginal and Torres Strait communities

15. One of the most entrenched challenges facing Australia is the over-representation of Aboriginal and Torres Strait Islander people in the prison system. Recent data highlights this:
- The rate of adult Aboriginal and Torres Strait Islander imprisonment is 14 times higher than the non-Aboriginal and Torres Strait Islander rate.⁷
 - Aboriginal and Torres Strait Islander young people are 35 times more likely to be in detention than non-Aboriginal and Torres Strait Islander young people and almost 3 in 5 (59%) of those in detention were indigenous⁸
 - The Aboriginal and Torres Strait Islander imprisonment rate has increased by 51.5% between 2000 and 2010. At the same time, the non-Aboriginal and Torres Strait Islander imprisonment rate has increased only marginally.⁹
 - The rate of Aboriginal and Torres Strait Islander women imprisonment has grown by 58.6% between 2000 and 2010.¹⁰

5.2 Vulnerable groups

16. The growth in Australia's prison population has also brought the needs of vulnerable groups like young people, and people with psychosocial disability, cognitive impairment and hearing impairment into view.
17. The United Nations Convention on the Rights of the Child clearly states in Article 37(b) that "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only a measure of last resort and for the shortest appropriate period of time". Article 40(4) calls for the availability of "a variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care". A justice reinvestment approach is consistent with the Convention.
18. While the overall rate of juvenile detention has been decreasing, the statistics in relation to Indigenous young people are very concerning. We also know that the young people who are in detention have very complex needs and require intensive intervention. For example, data in NSW showed that 59% of young

⁷ Australian Bureau of Statistics, *Prisoners in Australia 2011*(2011), p 8.

⁸ Australian Institute of Health and Welfare. *A picture of Australia's Children 2012*. p.102

⁹ SCRGSP (Steering Committee for the Review of Government Service Provision) 2011, *Overcoming Indigenous Disadvantage: Key Indicators 2011* (2011), Productivity Commission, p 4.132

¹⁰ SCRGSP (Steering Committee for the Review of Government Service Provision) 2011, *Overcoming Indigenous Disadvantage: Key Indicators 2011* (2011), Productivity Commission, p 4.133

people in detention had a history of child abuse or neglect¹¹ and had fallen through the cracks of early intervention and child protection services.

19. Similarly, offenders with psychosocial disability, cognitive impairment and hearing impairment present a unique set of challenges to the justice system. Research from NSW shows:
 - almost half of all prisoners have been treated for a mental health problem¹²
 - 87% of juveniles in detention could be diagnosed with a psychological disorder¹³
 - 45.5% of juveniles in detention could be diagnosed with either an intellectual disability or borderline intellectual disability.¹⁴
20. Often people with disability do not receive the support, adjustments or aids that they need to begin or defend criminal matters, or to participate in criminal justice processes. Community supports, programs and assistance to prevent disadvantage, vulnerability and risk factors are often just not available. This can contribute to recidivism..
21. Specialist support, accommodation and customised programs are rarely provided to people with disability when they are considered unable to understand or respond to criminal charges made against them ('unfit to plead'). Instead, they are often indefinitely detained in prisons or psychiatric facilities without being convicted of a crime. They often do not receive the supports they need in prison, and face harmful prison management practices.
22. Aboriginal and Torres Strait Islander people with disability experience this situation in much greater numbers than other people with disability. This situation mainly happens to people with cognitive impairment and people with psychosocial disability.

5.3 Economic cost of imprisonment

23. The growth in Australia's prison population has led to an increase in spending on corrective services. Australia currently spends \$2.9 billion on adult corrective services.¹⁵

¹¹ D Indig, C Vecchiato, L Haysom, R Beilby, J Carter, U Champion, C Gaskin, E Heller, S Kumar, N Mamone, P Muir, P van den Dolder and G Whitton, *2009 NSW Young People in Custody Health Survey: Full Report*, Justice Health Statewide Service, NSW Health (2010), p 17.

¹² D Indig, L Topp, B Ross, H Mamoon, B Border, S Kumar and M McNamara, *2009 NSW Inmate Health Survey: Key Findings Report*, Justice Health Statewide Service, NSW Health (2010), p 17.

¹³ D Indig, C Vecchiato, L Haysom, R Beilby, J Carter, U Champion, C Gaskin, E Heller, S Kumar, N Mamone, P Muir, P van den Dolder and G Whitton, *2009 NSW Young People in Custody Health Survey: Full Report*, Justice Health Statewide Service, NSW Health (2010), p 15.

¹⁴ D Indig, C Vecchiato, L Haysom, R Beilby, J Carter, U Champion, C Gaskin, E Heller, S Kumar, N Mamone, P Muir, P van den Dolder and G Whitton, *2009 NSW Young People in Custody Health Survey: Full Report*, Justice Health Statewide Service, NSW Health (2010), p 15.

24. Imprisonment is an expensive intervention, costing around \$315 a day for an adult.¹⁶ On the other hand, programs to address the underlying causes of offending such as drug and alcohol abuse cost significantly less. A recent cost-benefit analysis by the National Indigenous Drug and Alcohol Committee has shown that the long term savings for diversion to community based rehabilitation compared to prison are as high as \$111 458 per offender.¹⁷ This sort of modelling supports the justice reinvestment argument that imprisonment simply does not make good economic sense.

5.4 Community cost of imprisonment

25. Justice reinvestment has a very strong community focus. It recognises that imprisoning or otherwise detaining a large proportion of the population weakens the community, creating the conditions for further crime.
26. Research indicates that a ‘tipping point’¹⁸ may occur in communities once crime and incarceration reaches a certain point so that:

high rates of imprisonment break down the social and family bonds that guide individuals away from crime, remove adults who would otherwise nurture children, deprive communities of income, reduce future income potential, and engender a deep resentment toward the legal system. As a result, as communities become less capable of managing social order through family or social groups, crime rates go up.¹⁹

27. This is what we are seeing in many Aboriginal and Torres Strait Islander communities. For instance, research has shown that 20% of Aboriginal and Torres Strait Islander children have a parent or carer in prison.²⁰ This can have intergenerational effects. Aboriginal and Torres Strait Islander prisoners are

¹⁵SCRGSP (Steering Committee for the Review of Government Service Provision) , *Report on Government Services 2012* , Productivity Commission (2012) p 8.2. At http://www.pc.gov.au/_data/assets/pdf_file/0019/114940/24-government-services-2012-chapter8.pdf (viewed 14 February 2013).

¹⁶ National Indigenous Drug and Alcohol Committee, *An economic analysis for Aboriginal and Torres Strait Islander offenders: prison vs residential treatment*, Australian National Council on Drugs (2013) p vii. At http://www.nidac.org.au/images/PDFs/NIDACIpublications/prison_vs_residential_treatment.pdf (viewed 14 February 2013).

¹⁷ National Indigenous Drug and Alcohol Committee, *An economic analysis for Aboriginal and Torres Strait Islander offenders: prison vs residential treatment*, Australian National Council on Drugs (2013) p xi. At http://www.nidac.org.au/images/PDFs/NIDACIpublications/prison_vs_residential_treatment.pdf (viewed 14 February 2013).

¹⁸ D Rose and T Clear, ‘Incarceration, Social Capital and Crime: Implications for Social Disorganization Theory’ (1998) 36 (3) *Criminology* pp 441-80.

¹⁹ D Stemen, *Reconsidering Incarceration: New Directions for Reducing Crime*, Vera Institute of Juvenile Justice, 2007. At http://www.vera.org/sites/default/files/resources/downloads/veraincarc_vFW2.pdf (viewed 14 February 2013).

²⁰ M Levy, *Children of Prisoners: an issue of courts to consider in sentencing* (Presentation to Federal Criminal Justice Forum, Canberra, 29 September 2008).

three times as likely as non-Aboriginal and Torres Strait Islander prisoners to have had a parent in prison as a child.²¹

28. The negative impact of imprisonment of Aboriginal and Torres Strait Islander women on their children has also been noted as a concern by the United Nations Committee on the Rights of the Child in its Concluding Remarks on Australia's progress in implementing the Convention on the Rights of the Child.²²
29. When imprisonment is normalised to the extent that it becomes a rite of passage, it is likely that imprisonment loses any deterrent effect.²³ For instance, a NSW Bureau of Crime Statistics and Research study found no evidence that full time imprisonment has any more deterrent effect than a suspended sentence.²⁴
30. Justice reinvestment looks beyond offenders, to the needs of victims and communities. On one level, justice reinvestment is a powerful crime prevention strategy that can help create safer communities by investing in evidence based prevention and treatment programs. At another level, it can also help victims because there is the scope to reinvest funds into victims' services in these communities.

6 Support for justice reinvestment is Australia

31. Since 2009 justice reinvestment has been the subject of recommendations in a number of reports.²⁵ Notably, the Commonwealth Government has indicated support for justice reinvestment in response to the *Doing Time-Time for Doing* report:

A justice reinvestment approach, as proposed under Recommendation 40, has the potential to significantly improve the rates of offending

²¹M Levy, Children of Prisoners: an issue of courts to consider in sentencing (Presentation to Federal Criminal Justice Forum, Canberra, 29 September 2008).

²² Committee on the Rights of Child, *Consideration of reports submitted by States parties under article 44 of the Convention- Concluding observations: Australia*, UN Doc CRC/C/Aus/Co/4 (2012) p 17. At http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf (viewed 14 February 2013).

²³ D Brown, 'The Limited Benefit of Prison in Controlling Crime', (2010) 22 (1) *Current Issues in Criminal Justice*, p 142.

²⁴ R Lulham, D Weatherburn and L Bartels, *The recidivism of offenders given suspended sentences: A comparison with full-time imprisonment*, NSW Bureau of Crime Statistics and Research (2009). At [http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb136.pdf/\\$file/cjb136.pdf](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb136.pdf/$file/cjb136.pdf) (viewed 14 February 2013).

²⁵ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time, Time for Doing: Indigenous youth in the criminal justice system* (June 2011). At http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=atsia/sentencing/report.htm (viewed 14 February 2013); Noetic Solutions, *A strategic Review of the New South Wales Juvenile Justice System: Report for the Minister for Juvenile Justice* (April 2010). At <http://indigenousjustice.gov.au/db/publications/285011.html> (viewed 14 February 2013). Legal and Constitutional Affairs References Committee, *Access to Justice* (December 2009). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/co_mpleted_inquiries/2008-10/access_to_justice/report/index.htm (viewed 14 February 2013).

behaviour and victimisation in the long term and is likely to be examined in the context of the Safe Communities Strategy. Place based approaches to address offending and reoffending, diversion and early intervention are an opportunity to identify where significant outcomes may be achieved through redirecting resources across a broader range of activities.²⁶

32. Justice reinvestment has been the subject community advocacy. The Social Justice Commissioner, along with other high profile community members including NSW Governor Marie Bashir, is a champion for the *Justice Reinvestment Campaign for Aboriginal Young People* in NSW.²⁷ Campaigns are also underway in Victoria, Western Australia, Queensland and the ACT.²⁸

7 Australian applications of justice reinvestment

7.1 Aboriginal and Torres Strait communities

33. To date the thinking around justice reinvestment in Australia has been in relation to Aboriginal and Torres Strait Islander communities.
34. There are persuasive arguments for trialling this approach with Aboriginal and Torres Strait Islander communities given the high levels of over-representation and disadvantage faced by these communities. The principles of a justice reinvestment approach including: localism, community control and better cooperation between local services, also align with what we know about human rights based practice in Aboriginal and Torres Strait Islander service delivery.
35. Beyond these reasons, the reality is that if we were to map the locations with the highest concentrations of offenders, many of these locations also have very high Aboriginal and Torres Strait Islander communities.²⁹
36. While Aboriginal and Torres Strait Islanders remain so over-represented any meaningful action to reduce overall imprisonment and reduce spending should be targeted at these communities.

²⁶ Australian Government, *Government Response to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report: 'Doing Time- Time for Doing': Indigenous Youth in the Criminal Justice System*, (2011) p 36. At http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=atsia/govt%20responses/doingtimereponse.pdf (viewed 14 February 2013).

²⁷ Justice Reinvestment Campaign for Aboriginal Young People, <http://justicereinvestmentnow.net.au/> (viewed 14 February 2013).

²⁸ See the Smart Justice project in Victoria- <http://www.smartjustice.org.au/> (viewed 14 February 2013); Justice Reinvestment Implementation Committee in Western Australia- <http://www.deathsincustody.org.au/prisonovercrowding> (viewed 14 February 2103); Project 10% in Queensland- <http://www.project10percent.org.au/> (viewed 14 February 2013) and Justice Reinvestment Forum in the ACT- http://ncis.anu.edu.au/events/past/jr_forum.php (viewed 14 February 2013).

²⁹ D Brown, M Schwartz, L Boseley, 'The Promises of Justice Reinvestment,' *Alternative Law Journal* (2012) 37 (2) p 99.

37. The Commission therefore, recommends that initial trials of justice reinvestment be conducted in partnership with Aboriginal and Torres Strait Islander communities.

7.2 Vulnerable groups

38. Justice reinvestment is an approach that is targeted at particular locations and communities, not specific vulnerable groups within the prison population. However, a justice reinvestment approach could analyse the characteristics of the prison population in the pilot communities and then target appropriate programs in a reinvestment strategy.
39. For instance, a high number of young people coming into contact with the juvenile justice system may be identified in a particular community. When exploring this, it may be discovered that school attendance and suspension rates in that community are also very high. This is often the case in these circumstances³⁰. Strategies to address school attendance and suspensions could then be implemented combined with specific efforts to improve future employment prospects. A justice reinvestment approach provides the means to offer location specific crime prevention strategies and customised programs for young people.
40. Similarly, analysis may identify a high level of offenders with psychosocial disability or cognitive impairment in a particular location. Efforts could then be put in place to bolster diversionary activities, programs and support in these communities.

8 The role of the Australian Government in justice reinvestment

41. The success of justice reinvestment in Australia relies on a cooperative relationship between the Australian Government and the states and territories. Although the states and territories have primary responsibility for criminal justice there are opportunities for the Australian Government to encourage and support justice reinvestment.
42. The Australian Government has two distinct roles to play in implementing justice reinvestment.
43. Firstly, the Australian Government, with the states and territories, can set a policy landscape that moves away from imprisonment and towards diversion and crime prevention. This will provide the impetus for justice reinvestment approaches.
44. The Commission has previously recommended that the Australian Government and State and Territory governments commit to justice targets as part of the Closing the Gap Strategy. Justice targets should be set to reduce the imprisonment rate of Aboriginal and Torres Strait Islander people.

³⁰ NSW Ombudsman Responding to Child Sexual Assault in Aboriginal Communities. A report under Part 6A of the Community Services (Complaints, Reviews and Monitoring) Act 1993.p.249

45. Targets should be implemented as part of a fully funded Safe Communities National Partnership Agreement as part of the Closing the Gap Strategy.
46. It is pleasing to see that the Australian Government and the states and territories have commenced some of this work through the National Justice CEOs. However, we are still waiting for progress to be made public.
47. Secondly, the Australian Government can provide the necessary support to establish trials of justice reinvestment in conjunction with the states and territories and local communities.
48. Trial sites should be communities with high concentrations of Aboriginal and Torres Strait Islander imprisonment. Local communities must be actively engaged in the process. Existing community structures such as community justice groups may form the starting point. Strong cooperation will need to be fostered between local government agencies and services providers. The initial development phase of the pilots may take some time to get right.
49. Any trials should be accompanied by a research and evaluation strategy to ensure any lessons around design, process and implementation can be used in other sites.
50. Similarly, the demographic mapping and analysis of the drivers of imprisonment that are inherent to the justice reinvestment methodology should not be overlooked. One of the great strengths of justice reinvestment is the balance between community control and evidence based research and practice. If we lose this balance we are likely to lose the integrity and strength of the justice reinvestment approach.