



FLAT OUT INC. SUBMISSION
TO THE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

INQUIRY INTO THE VALUE OF A JUSTICE REINVESTMENT APPROACH TO
CRIMINAL JUSTICE IN AUSTRALIA

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INTRODUCTION

The following submission was prepared for Flat Out Inc. by the Centre for the Human Rights of Imprisoned People (CHRIP), a project of Flat Out. Flat Out is a state-wide advocacy and support service for criminalised and imprisoned women in Victoria. Flat Out's vision is that women are not imprisoned; women's rights are understood and upheld; and there is a compassionate response to personal and social trauma. Flat Out's work with women includes providing access and referrals to appropriate and affordable housing; and linking women with support, education and information to re-establish them in the community post-release, and prevent their re-incarceration.

The Centre for the Human Rights of Imprisoned People (CHRIP) is a project of Flat Out focusing on education, community capacity building, and systemic advocacy. The work of Flat Out and CHRIP builds on the intrinsic connections between service delivery and systemic social change work that has been present since Flat Out's inception. This model ensures that the individual needs of women who are criminalised, imprisoned or recently released from prison are met alongside work to address broader structural issues such as poverty, institutional racism and violence against women. The CHRIP project is generously funded by the W.C.F Thomas Charitable Trust and the Sidney Myer Fund.

This submission focuses on women in prison, and in particular the Victorian context.

THE DRIVERS BEHIND THE PAST 30 YEARS OF GROWTH IN THE AUSTRALIAN IMPRISONMENT RATE:

The overall rate of imprisonment in Victoria has risen by almost 43% since 1999, with the rate of women's imprisonment growing faster than that of men (Corrections Victoria 2009; Corrections Victoria 2010). According to the Victorian Ombudsman and the Sentencing Advisory Council, these numbers can be attributed to changes in sentencing practice and a generally more punitive approach to law and order (Smart Justice 2011).

Consistently, women imprisoned in Australia have vast experiences of discrimination, marginalisation and disadvantage, including in the following areas:¹

- 68-98% of women in prison have a history of abuse by others, and many women were

¹ Statistics taken from Kilroy et al. (*Forthcoming*) Decentering the prison: abolitionist approaches to working with criminalized women. *Women Exiting Prison Critical Essays on Gender, Post-Release Support and Survival*. Routledge

- incarcerated and institutionalised as children;
- The majority of women in prison have a history of substance abuse;
- Women in prison are typically economically disadvantaged, face unemployment and homelessness when in the community, and lack access to formal education beyond a secondary level;
- It is widely recognised that about two-thirds of all women prisoners are mothers of dependent children. This has long-term, multi-generational consequences with the children of prisoners criminalised as adults at around five times the rate of children in the general population;
- Many women, particularly those who are sent to prison unexpectedly, exit prison having accumulated debts and a poor credit rating. Many have lost most of their household items and personal belongings, including essential items such as personal papers and identification;
- Housing instability and homelessness are common among women who are criminalised and imprisoned.

THE ECONOMIC AND SOCIAL COSTS OF IMPRISONMENT:

Imprisonment is harmful and disruptive for those imprisoned, their families, and their communities, and can worsen the conditions of poor mental and physical health, drug and alcohol addiction, homelessness, violence, and poverty that lead to criminalisation. Even short sentences mean separation from family and community, loss of income, inability to meet caring responsibilities and potential loss of housing. Prisons contribute to poor physical health, and there continues to be a high rate of deaths in custody and post-release, particularly Indigenous deaths, despite the 1991 Royal Commission into Aboriginal Deaths in Custody (CHRIP 2011).

In the coming years there are plans for Victoria's prison beds to grow by the hundreds, at a huge expense. Annual state spending on Victorian prisons has increased by 186% over the past decade to \$640 million in 2010/2011 (Smart Justice 2011). It costs, on average, \$240.66 per day to hold someone in prison; while the average amount spent per day on a Community Corrections order is only \$18.50 (Department of Justice Victoria 2010).

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:

People who experience the impacts of multiple forms of oppression are particularly vulnerable to policing and the likelihood of imprisonment. For example, Indigenous women are one of the fastest growing prison populations in Australia. Living in the dangerous intersection of gender and race, Indigenous women are more likely to be arrested and re-incarcerated at a higher rate than non-Indigenous people for 'crimes' of disturbing the 'good order,' i.e.: offensive behaviour, sleeping in public places, failure to pay fines resulting from dog-control or parking infringements, or drinking in public places. The criminalisation of Indigenous women occurs in the context of ongoing dispossession of Aboriginal people and the repression of resistance to structures of colonisation (Russell and Barton 2012).

Mental illness and cognitive disability are contributing factors to people's criminalisation and imprisonment. Numerous studies over the past decade have documented the high rates of psychological, psychiatric and intellectual disabilities among women prisoners (Kilroy et al. *forthcoming*).

In material terms, the intersectionality of oppression creates conditions of limited employment, education and healthcare; high incidences of poverty and homelessness; vulnerability to physical and sexual violence; and police surveillance and harassment. The ways that policing practices disproportionately target marginalised communities, such as Indigenous, refugee, migrant, LGBTQ, and homeless communities, reflect the impacts of intersecting systems of oppression (Russel and Barton 2012).

THE COST, AVAILABILITY AND EFFECTIVENESS OF ALTERNATIVES TO IMPRISONMENT, INCLUDING PREVENTION, EARLY INTERVENTION, DIVERSIONARY AND REHABILITATION MEASURES:

Policing, criminalisation and imprisonment are punitive and reactionary responses to social and economic inequities. Such responses risk exacerbating existing harms (poverty, histories of violence, poor mental and physical health) and adding further layers including trauma, criminal record discrimination, and family and community fragmentation. Investing in community supports and critical social services rather than expanding the criminal justice system's reach, is a more effective way of creating community safety. By community safety, we mean a world where everyone has access to housing, food, employment, education and freedom from violence (ibid).

Diverting funds from imprisonment to 'alternatives to imprisonment' that begin at the point of criminalisation (i.e.: court ordered diversion or rehabilitation programs) is cost-effective and allows people in some cases to maintain family relationships, housing and employment that may be fragmented by custodial sentences. However Flat Out strongly advocates for strategies for decarceration that are based on social change in the community to prevent criminalisation, including support, compassion, and addressing the causes of structural inequalities.

THE METHODOLOGY AND OBJECTIVES OF JUSTICE REINVESTMENT:

Justice Reinvestment involves three steps:

1. Gathering data on offending and the criminal justice system;
2. Using the data to create justice maps (areas with the greatest concentration of offenders);
3. Redirecting funds from corrective services to implement programs in 'targeted' locations to reduce offending and evaluating the effectiveness of the programs (Hudson 2013).

The underlying premise of Justice Reinvestment is to invest in communities rather than prisons.

An Australian study showed that in Victoria, 25% of people in prison came from only 2% of postcodes. Reinvesting prison spending on communities allows a broad range of programs from healthcare, housing, education or job training to be strategically implemented in these identified areas to maximise the potential to reduce crime (Smart Justice 2012).

The implementation of Justice Reinvestment in Australia has not been undertaken, and detailed information on what funds will be made available, from what budgets, and where they will be re-directed is currently unavailable. Without information about these processes it is difficult to comment on the methodology of Justice Reinvestment in an Australian context. It will be important for this Inquiry to include reviews of trial programs, and invite community input into details of Justice Reinvestment programs as they are devised and implemented.

THE BENEFITS OF, AND CHALLENGES TO, IMPLEMENTING A JUSTICE REINVESTMENT APPROACH IN AUSTRALIA:

The Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda and his predecessor Dr. Tom Calma between 2009-12 have lauded justice reinvestment as a strategy to reduce Aboriginal overrepresentation in prisons; through self-determination, access to essential services, and preventing early and cyclical criminalisation.

However, as Sara Hudson from the Centre for Independent Studies (NSW) has pointed out, "In the fight against Indigenous disadvantage and incarceration, Justice Reinvestment threatens to become a

distraction from focusing on the fundamentals such as education and employment that will lead to change... Education and employment may not sound as novel or exciting as Justice Reinvestment, but evidence shows they play a critical role in the high Indigenous incarceration rate. Improving educational outcomes should not be reliant on the diversion of funds from prison services but a basic right that states and territories should be covering in their education budgets” (Hudson 2013).

Reducing systemic poverty, racism, and gendered violence and discrimination, needs to be a basic budgetary and policy commitment of all governments, rather than a criminal justice approach to reducing crime. Ensuring access to mental health care, drug and alcohol programs, education and employment may lead to reduced prison numbers as a side-effect, but is primarily about ensuring human rights.

THE IMPLEMENTATION AND EFFECTIVENESS OF JUSTICE REINVESTMENT IN OTHER COUNTRIES, INCLUDING THE UNITED STATES OF AMERICA:

Justice Reinvestment programs in the United States have been successfully implemented in five states, with another 11 at various stages of research collection and implementation (Smart Justice 2012). Kansas has seen a 7.5% reduction in their prison population, and decreases in both parole revocation and reconviction by 48% and 35% respectively. During the same period of justice reinvestment and prison population reduction, violent crime rates have dropped by 13% in Kansas and 4% in Texas (ibid).

Yet in all the states in the United States where Justice Reinvestment strategies have been applied, prisons may have closed but correctional service budgets have continued to grow (Hudson 2013). It is critical for policies such as Justice Reinvestment to address the centrality and growth of not just the prison, but the criminal justice system, rather than extend its reach into the community through corrections-run programs. Tinkering at the edges of a system that is failing to reduce rates of imprisonment or the overrepresentation of marginalised communities cannot address structural disadvantage.

ANY OTHER RELATED MATTERS:

It is imperative that Justice Reinvestment policies do not reframe funding for basic human rights such as housing, poverty alleviation, education and employment as crime prevention. The lens of crime prevention can serve to reframe all funding that impacts on the structural drivers of crime and incarceration and in effect redirects the focus from the prevention of systemic discrimination generally, a discrimination that impacts on many more people than those who become criminalised.

Justice reinvestment as a policy must have as its basic premise a removal of funding from the system of incarceration and punishment and that funding reinvested in communities of need.

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