



**Submission to Senate Legal and Constitutional Affairs  
Committee:**

**Inquiry into the value of a Justice Reinvestment  
approach to criminal justice in Australia**

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### **About ANTaR**

ANTaR is the pre-eminent non-Indigenous national advocacy organisation dedicated specifically to supporting the realisation of Justice, Rights and Respect for Aboriginal and Torres Strait Islander people.

ANTaR's focus is on the education and engagement of non-Indigenous Australians so that the rights and cultures of Aboriginal and Torres Strait Islander people are respected and affirmed across all sections of society.

ANTaR seeks to persuade governments, through advocacy, to show genuine leadership and build cross-party commitment to Aboriginal and Torres Strait Islander policy.

ANTaR works to generate in Australia a moral and legal recognition of, and respect for, the distinctive status of Aboriginal and Torres Strait Islander Australians as First Peoples.

ANTaR is a non-government, not-for-profit, community-based organisation.

ANTaR campaigns nationally on key issues such as constitutional recognition, justice, health equality, native title and other significant issues.

ANTaR has been working with Aboriginal and Torres Strait Islander organisations and leaders on rights and reconciliation issues since 1997.

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## **1. Introduction**

ANTaR strongly supports this parliamentary inquiry into the potential for a Justice Reinvestment approach to criminal justice in Australia and we thank you for the opportunity to contribute to this inquiry.

ANTaR continues to be committed to a Justice Reinvestment approach.

In the first section of this submission ANTaR discusses the unacceptable over representation of Aboriginal and Torres Strait Islander peoples in our prison system and the drivers of this imprisonment rate. We raise serious questions about the economic and social cost of imprisonment in the face of what appears to be an ineffective measure to reduce crime and make safer communities.

In the second section of this submission, ANTaR outlines what we mean by Justice Reinvestment and the purported economic and social benefits of reinvesting justice funds. We look at the methodology behind Justice Reinvestment and the initial costs and long-term savings associated with it.

The third section summarizes the growth of the Justice Reinvestment movement in Australia, with particular focus on some State and Territory campaigns.

The fourth section looks at the Justice Reinvestment experience overseas, specifically in the USA and the UK and the benefits that these communities are experiencing as a result of having implemented Justice Reinvestment.

The final sections of this report address issues that are specific to Australia, such as our federal system, the implementation of Justice Reinvestment within the context of Aboriginal and Torres Strait Islander communities and the important relationship between Justice Reinvestment and community development principles.

## 2. The Australian Context

### 2.1. Representation of Aboriginal and Torres Strait Islander peoples in our prison system

The over representation in our prison system has been well documented. Despite making up only 2.5% of the Australian population, in June 2012 Aboriginal and Torres Strait Islander peoples made up 27% of the total prison population.<sup>1</sup>

The *Royal Commission into Aboriginal Deaths in Custody* reported the degree of over representation of Aboriginal people in police cell custody in 1988 as being 29 times that of Non-Indigenous Australians.

It has been over 20 years since the *Royal Commission into Aboriginal Deaths in Custody Report* and yet Aboriginal and Torres Strait Islander adults are still incarcerated at 14 times the rate of non- Aboriginal and Torres Strait Islander adults;<sup>2</sup> and Aboriginal and Torres Strait Islander young people are 24 times more likely to be in youth detention than non-Aboriginal and Torres Strait Islander young people.<sup>3 4</sup>

The House of Representatives Report *Doing Time - Time for Doing Indigenous youth in the criminal justice system* reports that Indigenous juveniles and young adults are more likely to be incarcerated in 2011 than at any other time since the release of the *Royal Commission into Aboriginal Deaths in Custody* final report in 1991.

This over-representation in the criminal justice system is a national shame that must be addressed.

The *Doing Time - Time for Doing Indigenous youth in the criminal justice system* report notes the rise in incarceration since the Royal Commission had occurred despite increased funding and the concern and efforts of community members, government officials, non-government organisations and the judiciary around Australia. Clearly this indicates the need for some rethinking about how we address this problem.

### 2.2. Drivers of imprisonment rates

Analysing the drivers of imprisonment rates is extraordinarily complex. It could not be a robust enough investigation unless it considers the impact of colonial invasion, the dispossession of land and waters, the loss of culture and the dismantling of customary law.<sup>5</sup>

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<sup>1</sup> Australian Bureau of Statistics, Aboriginal and Torres Strait Islander Prisoners (2012) <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/F1D32866F5634F83CA257ACB001316BA?opendocument> (Viewed March 9, 2013)

<sup>2</sup> Australian Bureau of Statistics 2011, p8 via National Congress Policy paper

<sup>3</sup> Australian Institute of Health and Welfare 2012(2) p7. via National Congress Policy Paper

<sup>4</sup> Steering Committee for the Review of Government Service Provision Factsheet Report on Government Services 2013 Youth Justice Services (CHAPTER 15), Productivity Commission, [http://www.pc.gov.au/data/assets/pdf\\_file/0018/121752/16-government-services-2013-factsheet-chapter15b.pdf](http://www.pc.gov.au/data/assets/pdf_file/0018/121752/16-government-services-2013-factsheet-chapter15b.pdf) (Viewed March 9, 2013)

<sup>5</sup> Royal Commission into Aboriginal Deaths in Custody (1998) Vol 1 - 5 <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/124.html> (Viewed March 9, 2013)

The dispossession of land and imposed cultural change has had untold impact on the social fabric of our nations First Peoples. This dispossession has and continues to be an attack on the cultural fabric that held Aboriginal and Torres Strait Islander Peoples in good stead for over 50,000 years.

As has been experienced in many countries colonised by the British, Aboriginal and Torres Strait Islander peoples had the British system of law imposed on them and were and continue to be effected by the lack of recognition for Aboriginal Customary Laws.

The imposed legal system and those empowered to enforce the system in the front line has created a legacy of distrust, a racial hierarchy and a relationship dynamic of discrimination and repression. It is therefore a logical leap to understand Aboriginal resistance to the authority enacted by the police forces.<sup>67</sup>

“...a deep animosity and often hatred developed between Aboriginal people and police.”  
(RCIADC 1.4.17)

Compounding on the impacts of invasion, Aboriginal and Torres Strait Islander peoples faced decades of systemically entrenched disadvantage and racially perverse policies.

*The Royal Commission into Aboriginal Deaths in Custody* reported almost half of those who had died in custody between 1980 and 1989 had been forcibly removed from their families.

Referring to ABS statistics, *The Bringing them Home Report* noted that those removed in childhood were twice as likely to have been arrested more than once in the 5 years prior to the report. The authors drew linkages between the rate of incarceration and the evidence they heard of the damaging effects of institutionalisation on emotional development and on the individual’s sense of self-worth.<sup>8</sup>

Dr Jane McKendrick in her submission to the Bringing Them Home Inquiry cites a three-year longitudinal study undertaken in Melbourne during the mid-1980s which revealed that those who were removed were,

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- less likely to have undertaken a post secondary education;
- much less likely to have stable living conditions and more likely to be geographically mobile;
- three times more likely to say they had no-one to call on in a crisis;
- less likely to be in a stable, confiding relationship with a partner;
- twice as likely to report having been arrested by police and having been convicted of an offence;
- three times as likely to report having been in gaol;
- less likely to have a strong sense of their Aboriginal cultural identity, more likely to have discovered their Aboriginality later in life and less likely to know about their Aboriginal cultural traditions;
- twice as likely to report current use of illicit substances; and much more likely to report intravenous use of illicit substances. “

<sup>6</sup> National Congress of Australia’s First Peoples (2013) National Justice Policy

<sup>7</sup> Royal Commission into Aboriginal Deaths in Custody (1998) Vol 1 - 1.4  
<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/13.html> (Viewed March 9, 2013)

<sup>8</sup> Human Rights and Equal Opportunity Commission. (1997) Bringing them Home Report  
[http://www.humanrights.gov.au/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](http://www.humanrights.gov.au/pdf/social_justice/bringing_them_home_report.pdf) (Viewed March 9, 2013)

(Submission 310 - Bringing them Home Report page 22).<sup>9</sup>

The underlying drivers of the imprisonment rates can be found in this harrowing history.<sup>10</sup>

ANTaR acknowledges the multidimensional and intergenerational nature of imprisonment rates and supports the following statement made by the National Congress of Australia's First Peoples in their submission to this Inquiry.

“Current policies aimed at overcoming these barriers and closing the over-representation gap fail to recognise the complexity of such issues and the links between justice and other social determinants. The 2009 Social Justice Report noted that, “*taking people out of communities through imprisonment weakens the entire community*” (National Congress of Australia's First Peoples page 42).”

### **Link between disadvantage and the criminal justice system**

There is a strong indication reported in both the *Royal Commission into Aboriginal Deaths in Custody* and the *Doing Time - Time for Doing Indigenous youth in the criminal justice system* reports that the core underlying factors of disadvantage including alcohol and substance abuse, poor education, unemployment, inadequate housing and entrenched poverty are the drivers of the disproportionate imprisonment rates of Aboriginal and Torres Strait Islander peoples.

I refer this inquiry to the extensive discussion and analysis of these driving factors within these two reports.

It is unacceptable with such extensive research and analysis that has led to sound and robust recommendations that consecutive state and federal governments fail to implement and resource such advice. So much so that we are now facing a crisis where imprisonment rates continue to increase decades later.

### **Link between mental health and the criminal justice system**

ANTaR acknowledges the significant relationship between mental health illness and rates of offending. The Productivity Commission reports that prison facilities are becoming the default setting for those with mental health problems. This is clearly not appropriate and must be addressed.<sup>11</sup>

Quoting AIHW's Prisoners in Australia data collection, Professor Tony Butler at the *ANU Forum – Is Justice Reinvestment Needed in Australia* reported 46% of people coming into prison having some diagnosed mental health problem, that being an anxiety affected disorder or symptoms of psychosis and further, if personality disorder and substance use disorder, is included as a mental health problem he reported the figure goes up to about 90% for women and 75% for men.<sup>12</sup>

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<sup>9</sup> *ibid*

<sup>10</sup> Royal Commission into Aboriginal Deaths in Custody (1998) Vol 1 - 1.4  
<http://www.austlii.edu.au/au/other/indigLRes/rciadic/national/vol1/13.html> (Viewed March 9, 2013)

<sup>11</sup> NSW Government (2012) NSW Commission of Audit Final Report Government Expenditure  
[http://www.nsw.gov.au/sites/default/files/uploads/common/CommissionofAudit-FinalReport\\_RPT\\_v01.pdf](http://www.nsw.gov.au/sites/default/files/uploads/common/CommissionofAudit-FinalReport_RPT_v01.pdf)  
(Viewed March 9, 2013)

<sup>12</sup> Guthrie (2012) ANU Forum - Is Justice Reinvestment needed in Australia? Report and Edited Transcript of proceedings [ncis.anu.edu.au/\\_lib/doc/jrf\\_proceedings.pdf](http://ncis.anu.edu.au/_lib/doc/jrf_proceedings.pdf) (Viewed March 10, 2013)

These figures are similar to Queensland research undertaken by Heffernan (2012) into the prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland prisons, with 72.8% of male participants of the research and 86.1% of female prisoners suffering from at least one mental health disorder in the preceding 12 month period.<sup>13</sup>

I refer the Committee to the report published by Justice Health, Victorian Government Department of Justice and the National Justice Chief Executive Officers' Group. (2010) *Diversion and support of offenders with a mental illness guidelines for best practice* for an overview of the extent and complexity of mental illness in the criminal justice system.<sup>14</sup>

### **Link between oral language impairment and the criminal justice system**

Given the reported prevalence of ear infections in Aboriginal and Torres Strait Islander children and the long term hearing impact of infections, coupled with being educated in a second or third language, Aboriginal and Torres Strait Islander children are at a higher risk of having an oral language impairment.<sup>15</sup>

Oral language competency forms a foundation upon which individuals develop social cognition and the acquisition of language and literacy skills. Snow and Powell (2011) found a link between offending patterns and the presence of oral language impairment. The study investigated the link between oral language functioning and histories of personal violence in incarcerated young offenders.

Responding to evidence of the same arising from the *Hear us: Inquiry into hearing health in Australia*, the Senate Committee recommended that a hearing assessment be conducted on any Indigenous person who is having communication difficulties, irrespective of whether police officers consider that the communication difficulties are arising from language and cross-cultural issues.<sup>16</sup>

### **Link between Fetal Alcohol Spectrum Disorders and the criminal justice system**

A body of research is developing around the impact of prenatal exposure to alcohol and the likelihood of an individual to enter the justice system.

The Fetal Alcohol Spectrum Disorders Centre for Excellence have identified that those with Fetal Alcohol Spectrum Disorders (FASD) suffer cognitive impairment resulting in

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<sup>13</sup> Heffernan et al (2012) Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland prisons, *Medical Journal Australia* 2012; 197: 37–41 doi: 10.5694/mja11.11352

<sup>14</sup> Victorian Government (2010) *Diversion and support of offenders with a mental illness Guidelines for best practice*, Justice Health, Victorian Government Department of Justice and the National Justice Chief Executive Officers' Group.  
[http://www.aic.gov.au/media\\_library/aic/njceo/diversion\\_support.pdf](http://www.aic.gov.au/media_library/aic/njceo/diversion_support.pdf) (Viewed March 11, 2013)

<sup>15</sup> Snow P and Powell M (2012) Youth (in)justice: Oral language competence in early life and risk for engagement in antisocial behaviour in adolescence. *Trends and Issues* 435. Australian Institute of Criminology

<sup>16</sup> Australian Government (2011) *Response to the Senate Community Affairs References Committee Report HEAR US: INQUIRY INTO HEARING HEALTH IN AUSTRALIA MAY 2011*  
[http://www.health.gov.au/internet/main/publishing.nsf/Content/7E68BD1FF06F2839CA2578A8007365D3/\\$File/SenateInquiryResponseMay2011.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/7E68BD1FF06F2839CA2578A8007365D3/$File/SenateInquiryResponseMay2011.pdf) (viewed March 12, 2013)



- Stunted impulse control and decreased ability to link actions to future consequences
- Difficulty planning and identifying causal relationships,
- Emotional immaturity, difficulty experiencing empathy and taking responsibility
- Tendency for explosive episodes
- Vulnerability to peer pressure

This cognitive impairment places those individuals at risk of engaging in criminal activity.<sup>17</sup>

The House of Representatives Report *Doing Time - Time for Doing Indigenous youth in the criminal justice system* noted the link between FASD in Aboriginal and Torres Strait Islander Young People and contact with the Justice System.

Quantifying the prevalence of individuals with FASD in contact with the Australian justice system is currently difficult with a lack of investment and inconsistent data collection methods taking place across jurisdictions.

Comparative studies undertaken in the US have reported 61 per cent of adolescents and 58 per cent of adults with FASD in the US have been in trouble with the law, and that 35 per cent of those with FASD over the age of 12 had been incarcerated at some point in their lives.<sup>18</sup>

In the House of Representatives Inquiry into FASD, the First Peoples Disability Network provided anecdotal evidence of a similarly high prevalence of people who had entered the justice system in Australia displaying some form of FASD.<sup>19</sup>

### **Reasons for Police and Prison Custody**

Of the reasons for police custody reported in the *Royal Commission into Aboriginal Deaths in Custody* and *Doing Time - Time for Doing Indigenous youth in the criminal justice system* the following offences were recurring themes:

Public drunkenness  
Break and enter  
Fraud and theft  
Other good order offences  
Drink driving  
Assault  
Drug offences

The *Royal Commission into Aboriginal Deaths in Custody* reported that Aboriginal people were over-represented, compared with non-Aboriginal people in custody, only in

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<sup>17</sup> Fetal Alcohol Spectrum Disorders Centre for Excellence (ND) Fetal Alcohol Spectrum Disorders and the Criminal Justice System. [http://www.fasdcenter.samhsa.gov/documents/WYNK\\_Criminal\\_Justice5.pdf](http://www.fasdcenter.samhsa.gov/documents/WYNK_Criminal_Justice5.pdf) (Viewed March 13, 2013)

<sup>18</sup> National Organisation on Fetal Alcohol Syndrome (ND) FASD: What the Justice System Should Know <http://www.nofas.org/wp-content/uploads/2012/05/justice.pdf> (Viewed March 13, 2013)

<sup>19</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs (2012) FASD The Hidden Harm, Department of the House of Representatives

the offences of assault, drunkenness and other good order offences.<sup>20</sup>

Of those cases of prison custody the *Royal Commission into Aboriginal Deaths in Custody* reported a higher proportion of Aboriginal prisoners being held for assault, sex offences and breaking and entering than equivalent proportions of non-Aboriginal prisoners, however the opposite being the case for drug offences and robbery.

Notably with respect to lesser offences, Aboriginal and Torres Strait Islander peoples were represented by a higher proportion for traffic offences, good order offences, property offences and for the group of offences known as 'justice procedures'<sup>21</sup>

### **2.3. Economic and Social Cost of imprisonment**

#### **Economic Cost of Imprisonment**

It is widely accepted that the economic costs of imprisonment are substantial. The challenge that we are posed with is creating a national picture of the absolute economic cost of imprisonment using consistent data parameters.

The productivity commission report on corrective services relies on state based reporting that differs in variables between jurisdictions and itself does not include expenditure relating to juvenile justice, prisoners held in correctional mental health facilities and prisoners in police custody. Consequently the costs expressed below provide only an element of the true economic costs of imprisonment.

The 2013 Productivity Commission report on Correctional Services indicates a real recurrent expenditure of 14 billion on the total justice system, which included Police Services, Criminal Courts, Civil Courts and Corrective services (less revenue from own sources and payroll taxes). The Corrective Services component being \$3.1 billion.<sup>22</sup>

Chapter 15 of the same report indicates total recurrent expenditure on youth justice services was approximately \$640.1 million across Australia in 2011-12. Detention-based supervision accounted for 59.7% of this expenditure.<sup>23</sup>

Geographically and methodological disparate data is a significant barrier to quantifying the absolute economic cost of imprisonment. There is an argument for devising a financial data collection system that addresses this issue as part of the Justice Reinvestment model. It is through the examining budget data that the most effective options for Justice Reinvestment can be identified whilst ensuring the maintenance of public safety.<sup>24</sup>

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<sup>20</sup> Royal Commission into Aboriginal Deaths in Custody (1998) Vol 1-7.1  
<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/135.html> (viewed March 9, 2013)

<sup>21</sup> Ibid

<sup>22</sup> Steering Committee for the Review of Government Service 2013 Justice Sector Overview, Productivity Commission [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0005/121766/08-government-services-2013-partc.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0005/121766/08-government-services-2013-partc.pdf) (Viewed March 9, 2013)

<sup>23</sup> Steering Committee for the Review of Government Service Provision Factsheet Report on Government Services 2013 Youth Justice Services (CHAPTER 15), Productivity Commission, [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0018/121752/16-government-services-2013-factsheet-chapter15b.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0018/121752/16-government-services-2013-factsheet-chapter15b.pdf) (Viewed March 9, 2013)

<sup>24</sup> Dwyer A, Neusteter R, Lachman P (2012) Data Driven Decisionmaking for Strategic Justice Reinvestment, Urban Institute.

Dwyer, Neusteter and Lachman (2012) in their paper *Data Driven Decision Making for Strategic Justice Reinvestment* suggests consideration of the following agency costs for various intervention points along a persons trajectory through the justice system.<sup>25</sup>

**Table 1. Potential Data for Intervention Points**

Intervention point	Data information intervention point	Associated agency costs
<b>System entry</b>	<ul style="list-style-type: none"> <li>■ Arrest/citation information</li> <li>■ Booking information</li> <li>■ Demographics</li> <li>■ Charges</li> <li>■ Risk/needs information</li> </ul>	<ul style="list-style-type: none"> <li>■ Arresting agency costs (including overtime)</li> <li>■ Jail costs (including overtime)</li> <li>■ Court costs (calendarizing, bail hearings, court staffing)</li> <li>■ Prosecutor costs</li> <li>■ Defense attorney costs</li> </ul>
<b>Pretrial</b>	<ul style="list-style-type: none"> <li>■ Pretrial release method</li> <li>■ Pretrial release information (employment, priors, etc.)</li> <li>■ Indigency procedures</li> <li>■ Release eligibility</li> <li>■ Type of release</li> <li>■ Pretrial diversion or alternative programs (drug court)</li> </ul>	<ul style="list-style-type: none"> <li>■ Pretrial diversion operating costs</li> <li>■ Specialized docket costs</li> <li>■ Community supervision costs</li> <li>■ Release condition costs</li> </ul>
<b>Case processing</b>	<ul style="list-style-type: none"> <li>■ Length of stay in detention facility</li> <li>■ Case processing disruptions (resets, continuances, failures to appear, etc.)</li> <li>■ Case processing time (time from arrest or arraignment to case disposition)</li> </ul>	<ul style="list-style-type: none"> <li>■ Court administration costs</li> <li>■ Prosecutor costs</li> <li>■ Defense attorney costs</li> <li>■ Jail costs</li> </ul>
<b>Sentencing</b>	<ul style="list-style-type: none"> <li>■ Use of alternatives to jail (e.g., community supervision, diversion programs, treatment programs etc.)</li> <li>■ Sentence length</li> <li>■ Sentence type</li> <li>■ Postrelease supervision</li> </ul>	<ul style="list-style-type: none"> <li>■ Court administration costs</li> <li>■ Alternative program costs</li> <li>■ Jail costs</li> </ul>
<b>Reentry</b>	<ul style="list-style-type: none"> <li>■ Volume of repeat bookings, arrests, and convictions</li> <li>■ Characteristics (type of charge, previous release, sentence, etc.) of recidivist population</li> </ul>	<ul style="list-style-type: none"> <li>■ Reentry service provider costs</li> <li>■ Costs from agencies involved in incarceration and case processing</li> <li>■ Costs associated with the recidivist population (disproportionate resources used across wide variety of agencies)</li> </ul>

(Dwyer, Neusteter, Lachman 2012 p.3)

### Social Cost of Imprisonment

ANTaR supports the position stated by the National Congress of Australia's First peoples in their National Justice Policy, which highlights the intergenerational effect of over representation of Aboriginal and Torres Strait Islander peoples in prisons and as victims of violence.

Project 10% discusses the erosion of health and socio economic status of not only individuals who have had been in contact with the justice system but that it extends to their families and communities. The repercussions being life long and intergenerational.

The imprisonment of Aboriginal and Torres Strait Islander peoples often many kilometers away from family results in a loss of attachment to family and culture. Thus increasing the stress felt by families left behind and adding to the erosion of community.<sup>26 27</sup>

<sup>25</sup> Ibid (pg3)

<sup>26</sup> Senator Wright (2012) Justice Reinvestment: Lets be smart on crime, National Stakeholder Round Table, Australian Greens

As noted in the National Aboriginal and Torres Strait Islander Legal Services submission to this Inquiry the social impact extends to family breakdown, disruption in care and living arrangements, mental health issues, poorer educational outcomes and increased probability of the children offending later in life.

“Intergenerational offending in particular needs to be recognised, and treated as a social condition which becomes more entrenched with every expansion of the criminal justice system.” (National Aboriginal and Torres Strait Islander Legal Services 2013 pg 13)

#### **2.4. Cost, availability and effectiveness of alternatives**

ANTaR supports the framework for alternatives described by The National Congress of Australia’s First Peoples in their submission to this Inquiry as a spectrum of interventions that includes Prevention, Early Intervention and Diversion.

The National Aboriginal and Torres Strait Islander Legal Services in their submission identifies a number of programs that could fall within this spectrum that address the underlying drivers of offending, these include:

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- Early childhood intervention/family support and school attendance programs;
- Improved public housing and transport programs, especially in regional and remote areas;
- Services for youth in crisis, and their families;
- Alcohol and drug counselling, including both residential and community based rehabilitation options, psychological and psychiatric counselling, anger management and family violence counselling services. Ensuring that such are linguistically accessible and culturally appropriate is essential for Aboriginal and Torres Strait Islander peoples;
- Restorative Justice/Conferencing;
- Initiatives like community courts that engage Aboriginal and Torres Strait Islander elders and community leaders in the justice process;
- ‘Problem solving’ courts like mental health and drug courts;
- Community work programs as an alternative to jail e.g. working on maintenance of community facilities, working for community organisations providing essential social services, working in community service roles like ranger programs and community work parties (subject to security clearance);
- Increasing resources for prison support and throughcare projects which provide intensive pre and post release case management. This could also include community driven initiatives like Strong Bala men’s program in Katherine to support offenders once they leave prison; and
- Reducing caseload and shifting focus of community corrections officers so that they can work with people who are released on parole and under supervision to support their re-integration rather than having only a policing/compliance role.“

(National Aboriginal and Torres Strait Islander Legal Services 2013 pg 14)

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<sup>27</sup> Ogilvie E, Van Zyl A (2001) Young Indigenous Males, Custody and the Rites of Passage, Australian

ANTaR does not have the capacity in the scope of this submission to undertake an audit of the cost, availability and effectiveness of alternatives that are being implemented across the nation, however would like to draw the committee's attention to some key principles:

- Alternatives need to recognize that the causes of over representation of are multi dimensional, cross-generational and are interrelated.<sup>28</sup>
- Aboriginal and Torres Strait Islander community leadership is essential for success<sup>29</sup>
- Sufficient long term funding is required to ensure sustainability and viability.<sup>30</sup>
- The increased challenges in regional and remote communities must be realised and funded accordingly<sup>31</sup>

With respect to effectiveness I draw the Committees attention to *Review of Effective Practice in Juvenile Justice Report for the Minister for Juvenile Justice* a Review undertaken by Noetic Solutions for the NSW Minister of Juvenile Justice. The report reviews national and international practices, providing the costs and benefits of various strategies and options available to the NSW government.<sup>32</sup>

### 3. Justice Reinvestment

#### 3.1. Justice Reinvestment Defined

Justice reinvestment is a data driven, place based and fiscally sound model designed to reduce offending and imprisonment and increase community safety, supported by a centralised strategic body.<sup>33</sup>

A justice reinvestment approach is based on evidence that a large proportion of offenders come from and return to a relatively small number of disadvantaged communities.<sup>34</sup> Data collection enables mapping of where Aboriginal and Torres Strait Islander peoples have high rates of contact with the criminal justice system, where they come from and return to and the cost of incarcerating people from these communities.

Being place based, the model involves a genuine partnership with the local community, where power is devolved to the local level through local governance structures which could be in the nature of a community justice committee and include community leaders and reps from police, the local court, local area health and community organisations and would work to develop, to implement and to monitor a local Justice Reinvestment strategy.

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Institute of Criminology

<sup>28</sup> National Congress of Australia's First Peoples (2013) National Justice Policy

<sup>29</sup> Ibid

<sup>30</sup> National Aboriginal and Torres Strait Islander Legal Services (2013) Submission to Inquiry into the value of a Justice Reinvestment approach to criminal justice in Australia

<sup>31</sup> Ibid

<sup>32</sup> Noetic Solutions (2010) Review of Effective Practice in Juvenile Justice Report for the Minister for Juvenile Justice

[http://www.djj.nsw.gov.au/pdf\\_htm/publications/general/juvenile%20justice%20effective%20practice%20review%20final.pdf](http://www.djj.nsw.gov.au/pdf_htm/publications/general/juvenile%20justice%20effective%20practice%20review%20final.pdf) (Viewed March 12, 2013)

<sup>33</sup> Justice Reinvestment Inc (2012) Justice Reinvestment Campaign for Aboriginal Young People Policy Position.

<sup>34</sup> Calma, T - Aboriginal and Torres Strait Islander Commissioner (2009) Social Justice Report 2009, Australian Human Rights Commission

The model requires time and resources to be invested locally into building trust between stakeholders, creating a shared vision for change, establishing effective governance, and developing a Justice Reinvestment implementation plan.

Justice Reinvestment involves a fiscally sound approach involving a shift in the focus of criminal justice spending from prisons to prevention. In the long term Justice Reinvestment is a cost reduction approach. It is about smart investment in programs and services shown to reduce imprisonment and recidivism rates to communities where there is a high concentration of young offenders.<sup>35</sup>

Justice reinvestment entails investing money on a whole community, rather than just specifically identified individuals or groups of people.<sup>36</sup> Thereby investing in creating safer communities and reducing expenditure in the criminal justice system. It can include reinvestment directed towards programs and services in prisons designed to reduce recidivism rates.<sup>37</sup>

“When criminal justice expenditures are controlled or reduced, the resulting savings can be dedicated to interventions designed to prevent the onset of criminal behavior, to increase the likelihood that released probationers will succeed on supervision, and to provide the community with support necessary to lower the odds that released detainees will reoffend (Petersilia 2005)” ( La Vigne et al 2010 pg 45).<sup>38</sup>

In his 2009 Social Justice Report Dr Tom Calma notes that the Justice Reinvestment approach still “retains prison as a measure for dangerous and serious offenders but actively shifts the culture away from imprisonment and starts providing community wide services that prevent offending.”<sup>39</sup>

ANTaR acknowledges that initial investment in the model will be required before savings from the criminal justice system can be realised and then reinvested in the activities posed in the local Justice Reinvestment implementation plans.

A centralised strategic body is essential to support data collection and analysis, identification of communities for a Justice Reinvestment approach, build the capacity of communities to implement Justice Reinvestment strategies and undertake social and economic monitoring and evaluation.<sup>40</sup>

Justice Reinvestment is an ‘inherently flexible strategy’, with ‘programs falling within Justice Reinvestment as diverse as investments in education, job training, health, healing programs, parole support, housing or rehabilitation’ and extending to micro-

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<sup>35</sup> Ibid

<sup>36</sup> ANTaR (2011) Submission to the House of Representatives Committee on Aboriginal and Torres Strait Islander Issues Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system ( January 2011), p 5.

<sup>37</sup> La Vigne et al (2010) Justice Reinvestment at the Local Level Planning and Implementation Guide, Urban Institute Justice Policy Centre (<http://www.urban.org/UploadedPDF/412233-Justice-Reinvestment.pdf> (Viewed March 11, 2013)

<sup>38</sup> Ibid pg 45

<sup>39</sup> Calma, T - Aboriginal and Torres Strait Islander Commissioner (2009) Social Justice Report 2009, Australian Human Rights Commission  
[http://humanrights.gov.au/social\\_justice/sj\\_report/sjreport09/chap2.html](http://humanrights.gov.au/social_justice/sj_report/sjreport09/chap2.html) (Viewed March 12, 2013)

<sup>40</sup> ‘Justice Reinvestment Roundtable Report April 2012 ‘Current Action & Future Options’ - Senator Penny Wright, South Australia.



finance schemes and ‘family development loans’ to consolidate debt or support home ownership.<sup>41</sup>

### 3.2. Methodology

#### **Step 1 – Analysis and Mapping**

Step one is to identify where offenders come from and how much is spent on incarceration in those areas.<sup>42</sup> Often the spending on health, education, housing, and social services contrasts to the over-spending on imprisonment in such areas.<sup>43</sup>

This stage relies on:

- *“The expertise and capacity to undertake justice mapping and interpret the analysis*
- *The availability of data to input into the mapping process, and*
- *The existence of costs data on current service provision to offenders in a particular locality both within, and external to, the criminal justice system.”<sup>44</sup> (House of Commons p. 118)*

#### **Step 2 – Develop Policy Options to Generate Savings & Improve Local Communities**

The second step is to determine ways to save prison costs so that funds can be spent in communities.<sup>45</sup> This involves considering drivers of high imprisonment and recidivism rates.<sup>46</sup> The reasons may relate to technical matters like bail and parole laws, as well as social issues.<sup>47</sup> Justice Reinvestment provides evidence-based policy for reinvesting funds into community initiatives (ie. better alcohol/drug treatment, mental health, housing options, education and community and cultural support services), thus enabling judges to be more confident about sentencing offenders to community-based options.<sup>48</sup> Each community will have different drivers, options and needs, so consultation and a community lead response to solutions is essential.<sup>49</sup>

This stage relies on:

- *“Agreement on which departments, agencies or partnerships constitute the policymakers;*
- *The existence of a mechanism to generate options for policymakers to manage the growth in the prison population and probation caseloads*
- *The existence of a robust, high quality, evidence base of the cost-effectiveness of alternative approaches to manage the growth in the prison population;*

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<sup>41</sup> Melanie Schwarz, ‘Building Communities, not Prisons: Justice Reinvestment and Indigenous Over-Imprisonment’, Vol 14, No. 1, *Australian Indigenous Law Review* 2010 at 2-17, page 5.

<sup>42</sup> Calma, T - Aboriginal and Torres Strait Islander Commissioner (2009) Social Justice Report 2009, Australian Human Rights Commission

<sup>43</sup> Ibid.

<sup>44</sup> House of Commons, Justice Committee, *Cutting Crime: the case for justice reinvestment* (2009), p 118 (pt 263) <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/94i.pdf> (Viewed January 31 2013).

<sup>45</sup> Calma, T - Aboriginal and Torres Strait Islander Commissioner (2009) Social Justice Report 2009, Australian Human Rights Commission

[http://humanrights.gov.au/social\\_justice/sj\\_report/sjreport09/chap2.html](http://humanrights.gov.au/social_justice/sj_report/sjreport09/chap2.html) (Viewed March 12, 2013)

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

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- *The willingness and capacity of policymakers to adopt the policies identified.*<sup>50</sup> (House of Commons p 126)

### **Step 3 – Quantify Savings and Reinvest in High Need Communities**

It is possible to project savings based on reductions in imprisonment spending, based on the information gathered in the previous two steps. These savings can then be put towards the services and projects identified by communities.<sup>51</sup>

This stage relies on:

- *“An understanding of how resources are directed at national and local level to calculate where savings can be made*
- *A mechanism for reallocating the potential cost savings to those responsible for commissioning and delivering services at local level”*<sup>52</sup> (House of Commons p 136) Noting where mechanism already exist they should be funded further to increase capacity and prevent duplication.

### **Step 4 – Measure and Evaluate Impact**

The methodology will operate differently in each location due to administrative and community differences, and should be amended according to its results.<sup>53</sup>

This stage relies on:

- *“Appropriate performance measures including, for example, the amount justice expenditure saved or avoided; recidivism rates; and benefits to local communities*
- *Appropriate monitoring systems to collate data across agencies on outcomes and the capacity of agencies to collect, record and monitor the data required;*
- *The expertise to review how closely the actual impact corresponds to projections;*
- *Commissioning arrangements to enable changes to be made to the delivery of services in the event that the policies are not having the desired effect.”*<sup>54</sup> (House of Commons p. 152)

### **3.3. Collection, availability and sharing of data**

The role of data collection and analysis is an essential element to the implementation of a Justice Reinvestment model.

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<sup>50</sup> House of Commons, Justice Committee, *Cutting Crime: the case for justice reinvestment* (2009), p 126 (pt 284 ) <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/94i.pdf> (Viewed January 31 2013.)

<sup>51</sup> Calma, T - Aboriginal and Torres Strait Islander Commissioner (2009) Social Justice Report 2009, Australian Human Rights Commission [http://humanrights.gov.au/social\\_justice/sj\\_report/sjreport09/chap2.html](http://humanrights.gov.au/social_justice/sj_report/sjreport09/chap2.html) (Viewed March 12, 2013)

<sup>52</sup> House of Commons, Justice Committee, *Cutting Crime: the case for justice reinvestment* (2009), p 136 (pt 313) <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/94i.pdf> (Viewed January 31 2013)

<sup>53</sup> Calma, T - Aboriginal and Torres Strait Islander Commissioner (2009) Social Justice Report 2009, Australian Human Rights Commission [http://humanrights.gov.au/social\\_justice/sj\\_report/sjreport09/chap2.html](http://humanrights.gov.au/social_justice/sj_report/sjreport09/chap2.html) (Viewed March 12, 2013)

<sup>54</sup> House of Commons, Justice Committee, *Cutting Crime: the case for justice reinvestment t* (2009), p 152 (pt 363) <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/94i.pdf> (Viewed January 31, 2013)



I refer the committee to *Justice Reinvestment at the Local Level Planning and Implementation Guide*. The guide lays out the recommended sources of data, discusses the challenges with data integration and outlines the use of data in the development of local strategies.<sup>55</sup>

As has been discussed there is a lack of consistent data parameters for the economic costs of imprisonment, particularly across jurisdictions within Australia. Similarly there exists a lack of comparable data on the profile of people entering the justice system, the offences and the trajectories of these people through the justice system.

ANTaR supports the position of the National Congress of Australia's First Peoples in their submission calling for improved data collection that includes but are not limited to the following priorities:

“

- A nationally consistent approach to identification of Aboriginal and Torres Strait Islander people across all national justice data collection projects, based on identification by the individual rather than subjective assessment by criminal justice system personnel.
- Nationally consistent data on the length of time taken to finalise criminal matters in court.
- Nationally consistent data on rates of assault for crime victims who report to police.
- Nationally consistent data collection in relation to family violence.
- Nationally consistent evidence on the effectiveness of programs for perpetrators of family violence, to inform the development and delivery of these programs.
- A nationally consistent approach to measuring the effectiveness of diversionary programs, including warnings, cautions, conferences and treatment programs that seek to address drug, alcohol and mental health issues.
- National consistent data on the health and housing status of people released from prison and youth detention.
- A nationally consistent approach to Aboriginal and Torres Strait Islander inmate health data, as described in section 5.”

(National Congress of Australia's First Peoples Submission to the Senate Inquiry into the value of a Justice Reinvestment approach to criminal justice in Australia pg 9)

### **3.4. Initial costs and longer term savings**

#### **Initial Costs**

The Justice Reinvestment model requires the capacity to quantify costs and potential savings. La Vigne et al suggests that, “In the absence of the identification of net savings, justice reinvestment cannot take place.” (La Vigne et al 2010 pg 6) Ensuring this capacity is a primary upfront cost of Justice Reinvestment.

*Initial Costs are likely to include but not limited to;*

- Investment in a centralised strategic body
- Investment in the creation and implementation of a nationally consistent data collection framework.

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<sup>55</sup> La Vigne et al (2010) *Justice Reinvestment at the Local Level Planning and Implementation Guide*, Urban Institute Justice Policy Centre (<http://www.urban.org/UploadedPDF/412233-Justice-Reinvestment.pdf>) (Viewed March 11, 2013)

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- Investment in the creation and implementation of a review and evaluation framework.
- At the local level financial support to pilot the process of reallocating resources to reduce crime.<sup>56</sup>
- Investment in capacity building in Justice Reinvestment expertise at local and national levels.

### **Potential Long Term Savings**

ANTaR does not have the capacity in the scope of this submission to consider the potential long-term savings of the national implementation of Justice Reinvestment. However would like to draw the Committee's attention to some cost benefit analysis that has been undertaken by Just Reinvest NSW and Community Legal Centres.

Just Reinvest NSW have worked with Price Waterhouse Coopers to undertake some economic modeling of a hypothetical communities implementing a Justice Reinvestment Implementation Plan.

Applying the Washington State Institute for Public Policy ("WSIPP") cost-benefit evaluation Price Waterhouse Coopers have indicated a net annual saving of \$2.7M on a hypothetical Justice Reinvestment initiative to change supervision for young people 10-18 years to the RNR (risk-need-responsivity) supervision model to improve outcomes and reduce rates of re-offending based on approximately 1456 young people subject to supervision at any one time in NSW.

In another hypothetical example the results for a Justice Reinvestment Initiative to targets people in grades 1 to 6, aiming to increase bonding and ties to school and family with the hope of reducing school failure, delinquency, drug abuse, teen pregnancy and violence saw an overall net saving of 3.6M based on a population of 1,004 Aboriginal and Torres Strait Islander young people aged 5-12 years.<sup>57</sup>

An earlier cost benefit study undertaken by Edgerton and Partridge (2006) on Community Legal Centres found that every dollar spent on legal services at community legal centres (CLCs) can save at least \$100 in avoided costs<sup>58</sup>

Further analysis of over 200 CLCs in urban, regional, remote and rural Australia showed that the benefits and avoided costs for government, accrued as a result of low-cost CLC intervention, can range from between \$10,000 and \$34,000<sup>59</sup>

As ANTaR outlined in our *Submission to the House of Representatives Committee on Aboriginal and Torres Strait Islander Issues Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system* in 2011, Justice Reinvestment does require additional up front expenditures, as the economic rebalancing that derives from shifting spending priorities will take a number of years to

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<sup>56</sup> House of Commons, Justice Committee. Cutting Crime: the case for justice reinvestment (2009) p.19 (pt 74) <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/94i.pdf> (Viewed January 31, 2013)

<sup>57</sup> Just Reinvest NSW (2012) Justice Reinvestment Campaign for Aboriginal Young People Policy Position.

<sup>58</sup> Edgerton, N and Partridge, E, 'The Economic Value and Social Benefit of Community Legal Centres: a Summary', (2006) Executive Summary, iiiii  
<http://www.isf.uts.edu.au/publications/edgertonpartridge2006economicvalue.pdf> (Viewed January 31, 2013)

<sup>59</sup> Ibid.

become evident.<sup>60</sup> However in the long term, Justice Reinvestment should be revenue neutral, or potentially even provide a net positive in budgetary terms.<sup>61</sup> According to the House of Commons Justice Committee “it would only be necessary to reduce re-offending by a fairly small margin to cover the costs of many community interventions.”<sup>62</sup> But given that both the political cycle and budget forward estimates often don’t look beyond a three to four year time frame, there is a need for strong leadership and political will, ideally across all main political parties, to adopt such reform.<sup>63</sup>

#### 4. Growing Movement of Support for Justice Reinvestment within Australia

As outlined in ANTaR ‘s *Submission to the House of Representatives Committee on Aboriginal and Torres Strait Islander Issues Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system* (2011) there has been growing support within Australia for justice reinvestment.

The Australian Human Rights Commission in the *Social Justice Report 2009* recommended “that the Standing Committee of Attorneys General Working Party identify justice reinvestment as a priority issue under the National Indigenous Law and Justice Framework, with the aim of conducting pilot projects in targeted communities in the short term” and “that the Australian Social Inclusion Board, supported by the Social Inclusion Unit, add justice reinvestment as a key strategy in the social inclusion agenda.”<sup>64</sup>

In recent years there have been a number of Federal Government reports that urge the Australian governments to adopt or at least explore a Justice Reinvestment approach, drawing on positive results from overseas. The Final Report of the Senate Select Committee on Regional and Remote Indigenous Communities suggested that further work be undertaken on the “potential for justice reinvestment in regional and remote Indigenous communities”.<sup>65</sup> In 2009 the Senate Legal and Constitutional Affairs Reference Committee’s report on their inquiry into access to justice recommended that “the federal, state and territory governments recognise the potential benefits of justice reinvestment, and develop and fund a justice reinvestment pilot program for the criminal justice system.”<sup>66</sup>

In 2011 the *Doing Time: Time for Doing – Indigenous Youth in the Criminal Justice System* report released by the House Standing Committee on Aboriginal and Torres Strait Islander Affairs declared the stark over-representation of Aboriginal and Torres Strait Islander young people in our nation’s prisons a “national shame”. The report

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<sup>60</sup> ANTaR (2011), *Submission to the House of Representatives Committee on Aboriginal and Torres Strait Islander Issues Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system* (January 2011), p 8.

<sup>61</sup> Ibid.

<sup>62</sup> House of Commons, Justice Committee. *Cutting Crime: the case for justice reinvestment* (2009) p.157 (pt 377) <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/94i.pdf> (Viewed January 31, 2013)

<sup>63</sup> ANTaR (2011) *Submission to the House of Representatives Committee on Aboriginal and Torres Strait Islander, Issues Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system* (January 2011), p 8.

<sup>64</sup> Calma, T - *Aboriginal and Torres Strait Islander Commissioner* (2009) *Social Justice Report 2009*, Australian Human Rights Commission - Recommendations 2 and 3 [http://humanrights.gov.au/social\\_justice/sj\\_report/sireport09/chap2.html](http://humanrights.gov.au/social_justice/sj_report/sireport09/chap2.html) (Viewed March 12, 2013)

<sup>65</sup> Australian Senate (2010) *Final Report of the Senate Select Committee on Regional and Remote Indigenous Communities*, 24 September, 2010. Paragraph 2.54,

<sup>66</sup> Australian Senate (2009) *Senate Legal and Constitutional Affairs References Committee, Access to Justice Report*, 8 December 2009. Recommendation 21, Paragraph 6.56,

indicated its support for the principles of Justice Reinvestment and recommended further research into the application of the model in Australia.

The New South Wales government commissioned a strategic review of that state's Juvenile Justice System in July 2009. That review produced a comprehensive report, which was finalised in April 2010.<sup>67</sup> While advancing three different options, the review explicitly recommended a justice reinvestment approach:

“...because it provides the greatest long term return on investment through tangible benefits such as reduced crime, reduced re-offending and cost savings.... Justice Reinvestment ... seeks to address the causes of crime through investing resources in social programs that would otherwise have been spent on dealing with the consequences of crime – most notably the construction of prisons and detention centres.”<sup>68</sup> (Noetic Solution 2010 ix)

Unfortunately, while the response from the New South Wales government took on board some of the issues and suggestions in the report, it did not commit to adopting the justice reinvestment approach.<sup>69</sup>

In Western Australia a report by the Community Development and Justice Standing Committee of the Western Australia Legislative Assembly recommended “that the government initiates a properly funded, evidence based, collaborative Justice Reinvestment strategy in one metropolitan and one regional ‘high stakes’ community identified by the recommended mapping exercise, as a pilot, to be evaluated against adequate performance measures.”<sup>70</sup>

### **State/Territory Campaigns:**

- Queensland

*Project 10%*

<http://www.project10percent.org.au/>

The Queensland branch of ANTaR has been working with Aboriginal groups and communities in an effort to reduce Aboriginal and Torres Strait Islander incarceration in that state as part of a campaign called Project 10%, which seeks to encourage and assist the Queensland government to reduce Indigenous imprisonment rates by ten per cent per year for ten consecutive years.<sup>71</sup>

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<sup>67</sup> Noetic Solutions (2010) A Strategic Review of the New South Wales Juvenile Justice System, Report for the Minister for Juvenile Justice (April 2010) [http://www.djj.nsw.gov.au/strategic\\_review.htm](http://www.djj.nsw.gov.au/strategic_review.htm) (Viewed March 3, 2011)

<sup>68</sup> Ibid, p ix.

<sup>69</sup> Australian Government (2010) Response to NSW Juvenile Justice Review (May 2010) [http://www.djj.nsw.gov.au/pdf\\_hm/publications/general/Government%20Response%20to%20the%20Strategic%20Review%20of%20the%20NSW%20Juvenile%20Justice%20System.pdf](http://www.djj.nsw.gov.au/pdf_hm/publications/general/Government%20Response%20to%20the%20Strategic%20Review%20of%20the%20NSW%20Juvenile%20Justice%20System.pdf) (Viewed February 1 2013)

<sup>70</sup> West Australian Government (2010) “Making our Prisons Work”, Community Development and Justice Standing Committee, Western Australia Legislative Assembly, Report No 6 in the 38<sup>th</sup> Parliament, 25 November 2010. Recommendation 23

<sup>71</sup> ANTaR (2011) Submission to the House of Representatives Committee on Aboriginal and Torres Strait Islander , Issues Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system, p 6.

In 2011, in the lead up to the release of the new Justice Strategy in Queensland, ANTaR Queensland, Campaign Working Group members and Project 10% partners, Murriwatch and the Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service, presented a submission to the Queensland government entitled *Reducing Imprisonment Rates - A Three Year Plan*.<sup>72</sup> That submission reflected 18 months of community engagement around the issue of over-representation of Aboriginal and Torres Strait Islander people in the Queensland criminal justice system, and captures the insights of over 200 Elders, leaders and community members from around the State.<sup>73</sup>

The submission identifies justice reinvestment as a key strategy in reducing imprisonment rates.<sup>74</sup> It defines this approach as follows:

Justice reinvestment identifies who is in prison, where they come from and how much that crime is costing the community. The cost of crime is then reinvested positively in crime prevention strategies in the home areas of those prisoners. Justice reinvestment answers the "how much should we spend?" and "where should we spend it?" questions.<sup>75</sup>

- New South Wales

Just Reinvest NSW - *Justice Reinvestment Campaign for Aboriginal Young People*

<http://justicereinvestmentnow.net.au/>

The Just Reinvest NSW is made up of a coalition of organisations and individuals – including leaders of the Aboriginal community, the legal fraternity and Aboriginal organisations; as well as leaders in the field of social justice and human rights in NSW.<sup>76</sup> The aim of the campaign is to address the overrepresentation of Aboriginal young people in custody throughout NSW and influence the NSW Government to introduce a policy of justice reinvestment.<sup>77</sup>

Just Reinvest NSW is calling for the establishment of a Justice Reinvestment Advisory Group, which would provide whole-of-government and whole-of-community input into:

1. The development and implementation of justice reinvestment policies;
2. Monitor the proportion of funds over the next 5-10 years that are redirected from corrections and detention; and
3. Monitor the level of Aboriginal young people in detention.<sup>78</sup>

- Western Australia

*Deaths in Custody Watch Committee WA*

<http://www.deathsincustody.org.au/>

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<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> ANTaR QLD (2010) "Reducing Incarceration Rates in Queensland: A Three Year Plan". Submission to the Queensland government by Project 10%, Nov 2010.

<sup>76</sup> Justice Reinvestment Now (2013) *Justice Reinvestment for Aboriginal Young People, FAQ* <http://justicereinvestmentnow.net.au/faq/> (Viewed February 1 2013)

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

The Royal Commission into Aboriginal Deaths in Custody recommended that Deaths In Custody Watch Committees be set up in each state.<sup>79</sup> Since its formation the Deaths in Custody Watch Committee WA has focused and worked almost solely on issues relating to Western Australia.<sup>80</sup>

One of the Deaths in Custody Watch Committee WA's current campaigns is the "Build Communities Not Prisons Campaign", which aims to introduce justice reinvestment in Western Australia. On the 27 January 2010, a public meeting to mark the 2nd anniversary of the death in custody of Mr Ward was held.<sup>81</sup> The meeting was successful in beginning a grass roots campaign around current overcrowding in prisons in Western Australia and implementing a campaign for 'Justice Reinvestment'.<sup>82</sup>

Deaths in Custody Watch Committee WA believe if Justice Reinvestment is adopted in WA then there would be a "significant reduction in crime, a reduction in the imprisonment rate, a reduction in indigenous incarceration, and a big improvement in the living standards of the most disadvantaged in our society."<sup>83</sup> (DICWA)

### *Coalition of Groups*

A number of years ago the Deaths in Custody Watch Committee joined with other groups including Outcare, UnitingCare Australia, the Western Australian Council of Social Service and the Western Australian Network of Alcohol and other Drug Agencies to advocate for a Justice Reinvestment approach in Western Australia.<sup>84</sup>

In 2010, the work of these groups led the Community Development and Justice Committee of the Western Australian Parliament to recommend that a Justice Reinvestment approach be piloted in Western Australia.<sup>85</sup> However this recommendation has not been acted upon yet and the groups continue to work towards this.<sup>86</sup>

- South Australia

A community working group in South Australia made up of the Law Society of South Australia, the South Australian Victim Support Service, Aboriginal Elders, the South Australian Commissioner for Aboriginal Engagement and university academics are advocating for Justice Reinvestment.<sup>87</sup> The working group believe Justice Reinvestment approach will help achieve their shared vision of a safe community with less crime and lower incarceration rates.<sup>88</sup>

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<sup>79</sup> Deaths in Custody Watch Committee WA, *About DICWA (WA) Inc*  
<http://www.deathsincustody.org.au/about> (Viewed February 1 2013)

<sup>80</sup> Ibid.

<sup>81</sup> Deaths in Custody Watch Committee WA, *Build Communities Not Prisons Campaign - Justice Reinvestments* < <http://www.deathsincustody.org.au/prisonovercrowding> (Viewed February 1 2013.)

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Penny Wright, *Justice Reinvestment Speech* (21 August 2012) < <http://penny-wright.greensmps.org.au/content/speeches/justice-reinvestment-speech-0> (Viewed February 1 2013.)

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Penny Wright, *Justice Reinvestment Speech* (21 August 2012) < <http://penny-wright.greensmps.org.au/content/speeches/justice-reinvestment-speech-0> (Viewed February 1 2013.)

<sup>88</sup> Ibid.



- Northern Territory

#### Making Justice Work Campaign

<http://www.ns.uca.org.au/wp-content/uploads/2012/04/Making-Justice-Work-Statement-of-Principles.pdf>

The Making Justice Work Campaign is made up of a wide range of groups, including ANTaR and their aim is to make the justice system work for the community.<sup>89</sup> Their principles are:

1. Stronger measures are needed to prevent crime and deal with its cause.  
Such as;
  - Early childhood intervention
  - School attendance programs
  - Services for youth in crisis
  - Improved public housing
  - Improved transport programs
  - Effective measures to reduce alcohol and drug-related harm
  - 'Problem solving' courts like the SMART Court for offenders with alcohol and drug abuse issues
  - Initiatives like Community Courts that engage Aboriginal Elders and community leaders in the justice process.
2. Prison is not a solution.
3. Wherever possible young people should be kept out of the criminal justice system.
4. We should put offenders to work, not just lock them away.
5. We should work with offenders and set them up to succeed, not fail.<sup>90</sup>

- Victoria

#### *Smart Justice*

<http://www.smartjustice.org.au/>

Smart Justice is supported by a partnership of organisations that is led by the Federation of Community Legal Centres (Victoria) Inc (the peak body for Victoria's 49 community legal centres).<sup>91</sup> It seeks to improve the safety of all Victorians by improving their understanding of the criminal justice policies that are effective, evidence-based and human rights compliant.<sup>92</sup>

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<sup>89</sup> Making Justice Work in Northern Territory (2012) Statement of Principles <http://www.ns.uca.org.au/wp-content/uploads/2012/04/Making-Justice-Work-Statement-of-Principles.pdf> (Viewed February 1, 2013.)

<sup>90</sup> Ibid.

<sup>91</sup> Smart Justice *About Us* [http://www.smartjustice.org.au/cb\\_pages/about\\_us.php](http://www.smartjustice.org.au/cb_pages/about_us.php) (Viewed February 1 2013.)

<sup>92</sup> Smart Justice *What is Smart Justice?* <http://www.smartjustice.org.au/resources/SMART%20intro.pdf> (Viewed February 1 2013.)

Smart Justice educates the public by producing factsheets on various criminal justice issues, from mandatory sentencing to crime prevention.<sup>93</sup> The factsheet that Smart Justice produced on 'Justice Reinvestment' can be found at [http://www.smartjustice.org.au/cb\\_pages/files/SMART\\_Reinvestment.pdf](http://www.smartjustice.org.au/cb_pages/files/SMART_Reinvestment.pdf).

In their factsheet on 'Justice Reinvestment', Smart Justice outlines that they support solutions that;

1. Provide greater investment in programs that tackle the causes of crime like justice reinvestment instead of investing more in prisons.; and
2. Research, evaluation and pilot programs that determine the feasibility and impact of justice reinvestment in Victoria.<sup>94</sup>

- ACT

Researchers at the Australian National University's National Centre for Indigenous Studies have taken the lead in the discussion around Justice Reinvestment in the Territory and broadening nationally our understanding of Justice Reinvestment. The ANU coordinated the 'Is Justice Reinvestment Needed in Australia Forum' with experts in the field from both Australia and overseas presenting.<sup>95</sup>

## 5. The Overseas Experience

### 5.1. USA

Justice Reinvestment has emerged as an effective tool in the US, for reducing crime rates, rehabilitating offenders, balancing stressed budgets and reducing rising incarceration rates among disadvantaged groups.

Specific examples include:

#### *Kansas*

In Kansas the justice reinvestment strategy included providing services under community supervision, which aimed to reduce revocations for rule violations.<sup>96</sup> Risk Reduction Initiative provides funding to county-operated programs that emphasize neighborhood revitalization, substance abuse and mental health treatments and housing services.<sup>97</sup> Kansas also amended their sentencing guidelines so people who were convicted of drug possession were diverted from prison to mandatory treatment, and

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<sup>93</sup> Ibid.

<sup>94</sup> Smart Justice, *Justice Reinvestment: investing in communities not prisons* [http://www.smartjustice.org.au/cb\\_pages/files/SMART\\_Reinvestment.pdf](http://www.smartjustice.org.au/cb_pages/files/SMART_Reinvestment.pdf) (Viewed February 1 2013.)

<sup>95</sup> Penny Wright (2012) *Justice Reinvestment Speech* (21 August 2012) <http://penny-wright.greensmps.org.au/content/speeches/justice-reinvestment-speech-0> (Viewed February 1 2013.)

<sup>96</sup> Judith Greene & Marc Mauer (2010) *Downscaling Prisons, Lessons from Four States*, The Sentencing Project, Research and Advocacy for Reform, p 4, The Sentencing Project [http://www.sentencingproject.org/doc/publications/publications/inc\\_DownscalingPrisons2010.pdf](http://www.sentencingproject.org/doc/publications/publications/inc_DownscalingPrisons2010.pdf) (Viewed February 1 2013.)

<sup>97</sup> Ibid.



sentencing enhancements for people who had prior convictions for drug possessions were eliminated.<sup>98</sup>

Between 2004 and 2009 there was a 7.5% reduction in prison population, parole revocation was down by 48%; and reconviction rate for parolees dropped by 35%.<sup>99</sup> Justice Reinvestment prevented Kansas from needing to build a new prison and thus saved the state about \$80 million over a five-year period.<sup>100</sup>

### Texas

In Texas \$241 million that would otherwise have been spent on the construction of new prisons was reinvested into treatment programs and improved probation and parole services.<sup>101</sup> In the 2008–2009 financial year \$210.5 million was saved.<sup>102</sup> Some of these savings were invested into support programs for low-income families that live in the high stakes communities, providing assistance to 2000 families in the first year of operation.<sup>103</sup> According to statistics that were released just two years after the Justice Reinvestment was implemented, the Texas prison population stopped growing for the first time in decades.<sup>104</sup>

## 5.2. United Kingdom

### The Diamond Initiative

The Diamond initiative applied a brand of justice reinvestment to six sites in London (Newham, Lambeth, Lewisham, Hackney, Croydon and Southwark) for a two year period. The two key features were resettlement help for short-term prisoners released (previously lacking) plus targeting interventions at high-crime urban neighbourhoods. The Diamond initiative was highly regarded by offenders.<sup>105</sup> Conclusions drawn from the Diamond Initiative lead to a policy stance of 'gradual reformism' rather than 'rehabilitation revolution'.<sup>106</sup>

A number of important lessons, which can be applied in Australia, emerged, they included:

- Those that reoffend tend to do it relatively quickly after they are released from prison which means that there is a small window of opportunity to intervene. To adequately address this, responses must extend beyond the criminal justice

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<sup>98</sup> Ibid, p 3.

<sup>99</sup> The Senate, Legal and Constitutional Affairs Reference Committee (2009) *Access to Justice* p 108  
[http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file\\_uid=7188E3E7-1E4F-17FA-D242-4659AE23F96D&siteName=lca](http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=7188E3E7-1E4F-17FA-D242-4659AE23F96D&siteName=lca) (Viewed February 1 2013.)

<sup>100</sup> Ibid.

<sup>101</sup> Calma, T - Aboriginal and Torres Strait Islander Commissioner (2009) Social Justice Report 2009 pg 22, Australian Human Rights Commission

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid, p 65.

<sup>106</sup> London Criminal Justice Partnership (2011) *An Evaluation of the Diamond Initiative: 2 Year Findings*, Foreword, ii <http://library.npia.police.uk/docs/diamond-year2-FINAL-2011.pdf> (Viewed February 1, 2013)

- system and include range of non-government and community agencies.<sup>107</sup> There must be a joined response between custody and community;<sup>108</sup>
- Helping people to desist from crime involves a long-term commitment<sup>109</sup>;
  - It is also a complex task and is often a case of two steps forward, one step back due to the complexity of offenders' lives (such as their lack of qualifications and work experience; drug and alcohol use; a tendency to revert to previous patterns of behaviour in a crisis etc.);<sup>110</sup>
  - The evidence shows that most people heavily involved in crime eventually turn away from crime – either completely or largely;<sup>111</sup>
  - Treatment initiatives tend to have a modest impact on prisoner's offending habits this is probably because the work of police, prison and probation officers are only one of many influences on offenders' lives<sup>112</sup>;
  - Complex rehabilitation programmes can easily become derailed, especially when they involve intricate partnerships between several different agencies;<sup>113</sup> and
  - It is feasible to use police officers in rehabilitative work with offenders, this is a useful tool but not a silver bullet.<sup>114</sup>

## 6. Specific issues in the Australian Context

### 6.1. Federated Structure

Australia's federated structure and the division of areas of law between states and the Commonwealth has been a significant barrier to the nation wide adoption of Justice Reinvestment. Any national commitment requires an agreement and cooperation with nine separate governments. Coordinating the political will of each of these governments is a key challenge for advocates of Justice Reinvestment.

Despite 20 years since the *Royal Commission into Aboriginal Deaths in Custody* there has been no implementation of a coordinated national approach to reduce the over imprisonment of Aboriginal and Torres Strait Islander peoples. We continue to see excessive over representation of Aboriginal and Torres Strait Islander peoples in our prisons and people dying in police and prison custody.

The federated structure poses challenges to data collection and analysis required for the implementation of Justice Reinvestment. With states and territories having separate and independent systems of police, courts, prisons, community corrections systems and juvenile justice centres, combined with the jurisdictional powers of the Australian Federal Police implementation of a coordinated and integrated data collection framework will require political will and investment.<sup>115</sup>

ANTaR calls on the Federal Government to take a lead in the discussion and piloting of Justice Reinvestment in Australia.

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<sup>107</sup> Ibid, 61.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid, Foreword, iiiii

<sup>110</sup> Ibid, Foreword, ii.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid, Foreword, iiiii

<sup>115</sup> Steering Committee for the Review of Government Service 2013 Justice Sector Overview, Productivity Commission [http://www.pc.gov.au/data/assets/pdf\\_file/0005/121766/08-government-services-2013-partc.pdf](http://www.pc.gov.au/data/assets/pdf_file/0005/121766/08-government-services-2013-partc.pdf) (Viewed March 9, 2013)

Practically this could be in the form of:

- Investment in a coordinated and integrated data collection framework
- Investment in data collection and analysis
- Policy development and dispersal
- Investing in pilot communities
- Establishment of a centralised strategic body
- Capacity building
- Investment in a coordinated and integrated evaluation framework
- Investment in impact and cost-benefit evaluations

## **6.2. Specific Aboriginal and Torres Strait Islander community context**

The right to self-determination as expressed in the Universal Declaration of The Rights of Indigenous Peoples is the right to freely determine political status and pursue economic, social and cultural development.

The Australian Human Rights Commission's Community Guide to the UN Declaration on the Rights of Indigenous Peoples describes self-determination as involving three key elements being:

“

- A choice in determining how lives are governed and development paths.
- Participation in decisions that affect lives. This includes a right to formal recognition of group identities.
- Control over lives and future including economic, social and cultural development.” (AHRC 2010)<sup>116</sup>

A Justice Reinvestment approach based on the principles of being place based and community driven provides for the community to self determine solutions to their local issue of incarcerated community members. It is widely documented that the most successful alternatives are those owned and controlled by the community.<sup>117</sup>

Effective partnership with Aboriginal and Torres Strait Islander leaders in the community will be essential to the success of Justice Reinvestment within Australia. ANTaR refers the Committee to The Close The Gap Campaign's Partnership Position Paper 2010 for ANTaR's position on the principles of partnership.<sup>118</sup>

As outlined in ANTaR's *2013-2014 Pre-Budget Submission*, the Justice Reinvestment model would need to be adapted to an Aboriginal community context, including incorporating community development principles and involving Elders in the justice process and providing culturally relevant case management programs to support rehabilitation and reintegration.

Justice Reinvestment however, should not be seen solely as an approach to address Aboriginal and Torres Strait islander over-imprisonment.<sup>119</sup> Justice Reinvestment is a

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<sup>116</sup> Australian Human Rights Commission (2010) Community Guide to the UN Declaration on the Rights of Indigenous peoples [http://www.humanrights.gov.au/declaration\\_indigenous/declaration\\_full\\_4.html](http://www.humanrights.gov.au/declaration_indigenous/declaration_full_4.html) viewed March 12, 2013

<sup>117</sup> Richards et al (2011) Promising Interventions for reducing Indigenous juvenile offending, Indigenous Justice Clearing House, <http://www.indigenousjustice.gov.au/briefs/brief010.pdf> (viewed March 12, 2013)

<sup>118</sup> Close the Gap Campaign Steering Committee (2010) Partnership Position Paper [http://humanrights.gov.au/pdf/social\\_justice/health/partnership\\_position\\_paper.pdf](http://humanrights.gov.au/pdf/social_justice/health/partnership_position_paper.pdf) (Viewed March 12, 2013)

<sup>119</sup> Senator Penny Wright (2012) *Justice Reinvestment Roundtable Report* - April 2012, p 5.

place-based methodology not race-based methodology and will have benefits for the whole Australian community.<sup>120</sup>

## **7. The relationship between justice reinvestment and community development principles**

In his speech “Justice Reinvestment: a new solution to the problem of Indigenous over-representation in the criminal justice system” which he gave at the *ANTaR NSW Seminar - Juvenile Justice Strategy: A Better Way* in March 2010 Mick Gooda outlined how he believes that Justice Reinvestment provides communities with the opportunity to take back some control.<sup>121</sup> Communities become involved and committed to taking some ownership of not only the problem but also some ownership of the solutions.<sup>122</sup>

Justice reinvestment has a very strong community focus, as it recognises that detaining a large proportion of a community’s population weakens the community, fostering conditions for further crime.<sup>123</sup>

According to Gooda

“Justice Reinvestment if done properly also provides offenders a form of accountability to their community. When offenders are sent to prison, this provides a form of accountability to society generally, but prison in most cases means going a fair way away from your community. This isn’t the same as being accountable to the community in which the offending behavior occurs. Accountability to community is about making communities safer. For example, experience in the USA tells us that their three strikes policies didn’t make the community safer, it just filled up the prisons.”<sup>124</sup>

## **7. Conclusion**

ANTaR recognises the potential for Justice Reinvestment to address the multi dimensional and intergenerational drivers of the imprisonment rate of Aboriginal and Torres Strait Islander peoples.

ANTaR supports the further investigation and piloting of Justice Reinvestment within Australia.

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<sup>120</sup> Ibid.

<sup>121</sup> Mick Gooda (2010) Justice Reinvestment: a new solution to the problem of Indigenous over-representation in the criminal justice system. ANTaR NSW Seminar - Juvenile Justice Strategy: A Better Way Sydney Mechanics School of Arts NSW (March 2010)

[http://humanrights.gov.au/about/media/speeches/social\\_justice/2010/20100320\\_justice\\_reinvestment.html](http://humanrights.gov.au/about/media/speeches/social_justice/2010/20100320_justice_reinvestment.html)

(Viewed February 1 2013.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

Specifically we support the recommendations put forward by the National Aboriginal and Torres Strait Islander Legal Services in their submission to this inquiry.

“

- 1) *That the Commonwealth Government work with opposition parties to secure bipartisan support at the federal level for justice reinvestment.*
- 2) *That the Commonwealth Government work with the Standing Council on Law and Justice to secure agreement with State and Territory governments to commit to jointly establishing an independent central coordinating agency for justice reinvestment.*
- 3) *In securing agreement with State and Territory governments, that the Commonwealth Government consider the potential for attaching relevant conditions to the funding it provides to State and Territory governments.*
- 4) *In the event that agreement is not secured, that the Commonwealth Government itself establish an independent central coordinating agency for justice reinvestment.*
- 5) *That the central coordinating agency focus on building the evidence base that will inform justice reinvestment initiatives. Such will not only assist in identifying locations for justice reinvestment initiatives but will also provide the necessary data to inform modelling as to the fiscal benefits that could be achieved which could serve to convince any State and Territory governments which have not yet signed on.*
- 6) *Given the over-representation of Aboriginal and Torres Strait Islander peoples in Australia's prisons, that the central coordinating agency and any subsequent justice reinvestment initiatives in Aboriginal and Torres Strait Islander communities must have, and insist on, cultural expertise at all stages of project design and implementation. Local and peak Aboriginal and Torres Strait Islander organisations could assist here.*
- 7) *That Commonwealth, State and Territory governments progress their previous commitment to introduce justice targets under the Safe Communities Building Block of the Closing the Gap policy initiative. Such targets should be included in a National Partnership Agreement relevant to the Safe Communities Building Block that also makes references to the implementation of justice reinvestment initiatives for Aboriginal and Torres Strait Islander communities.*
- 8) *That robust evaluation of initial justice reinvestment trials be completed in order to assess outcomes and provide evidence as to its effectiveness. Such could then be used to secure further buy in from non-participant jurisdictions. “*

(National Aboriginal and Torres Strait Islander Legal Services submission to the Senate inquiry into the value of a Justice Reinvestment approach to criminal justice in Australia 2013 Pg 28)