



**SANDAS submission to the Legal and Constitutional Affairs
References Committee Inquiry into the value of a justice
reinvestment approach to criminal justice in Australia**

March 2013

Executive Summary:

The South Australian Network of Drug and Alcohol Services (SANDAS) recommends:

1. The Federal Government establish a task force to look at the feasibility of a national public and private sector prison licensing system. In the event of a licensing system, a benchmark requirement should be a dedicated Alcohol and Other Drug (AOD) and Mental Health unit, or a clear and specifically AOD funded program in each prison.
2. Notwithstanding such a licensing system, the Government, pursue a set of national standards for pre-entry, pre-release and post release prison programs that require evidence of how they connect to JR programs which aim to minimise the risk of re-offending and recidivism.
3. Any program that specifically addresses the harms caused by substance abuse must form a core component of any JR model that is trialled in Australia.

Introduction:

Formed in 2004, SANDAS is the peak body representing South Australia's NGO Alcohol and Other Drugs (AOD) sector.

SANDAS works with its members and stakeholders to reduce the harmful impact of alcohol and other drugs through independent representation at national and state levels, providing opportunities for networking and collective action through information sharing, advocacy, training and policy review.

We welcome the opportunity to participate in this inquiry, and thank the Chair, Senator Penny Wright, for elevating the concept of Justice Reinvestment (JR) to the national arena.

SANDAS has a strong interest in JR. Many of our member organisations deliver drug diversion programs which attempt to deal with the health issues that are either associative, or causative to the offending. A larger number of our member organisations deal with ex-offenders, and people with a high risk of offending or re-offending. Many of our members also work in communities of high social disadvantage, where early intervention and prevention strategies are poorly developed and where substance misuse, mental illness, and comorbidities, have a high frequency in the local population.

These conditions are, in a large number of cases, due to an absence of sufficient alternatives to justice pathways. Where the number and various type of engagement services and trained personnel are low, and where point of contact referral options are limited, we see a criminalisation of what are essentially health issues.

The following submission will touch on the key issues affecting the AOD sector in South Australia, and how a JR approach to criminal justice in Australia would be beneficial. Please note that only the terms of reference relevant to this organisation will be addressed.

What is Justice Reinvestment?

The term 'Justice Reinvestment', was first coined in 2003 by the US-based Open Society Institute, in response to concerns about the growing prison population, and its associated corrections, health and social costs.

Essentially, the concept of JR consists of three key steps:

1. Collection of data relating to offending and the criminal justice system;
2. Independent analysis of the data to determine and identify the neighbourhoods who would benefit from targeted crime prevention, as well as targeted recidivism in prisons; and
3. Development of services and programs in the areas identified through the data collection and mapping.

While the term 'Justice Reinvestment' may have only been part of public discourse for a decade, the theory behind it proves that it is not a radically new approach. Ensuring decisions based on strong evidence, community needs and evaluation, that is a great monetary investment, is a common sense approach that must be seriously considered.

There is a need for new approaches to help direct people into crime prevention programs, and where needed the health system, to leave prison as a last resort primarily for individuals where alternatives have been shown to not be viable. This requires a change in community and policy setting attitudes from those which regard people who commit crimes as being outside our society, to attitudes that reinvest in offence mitigation and rehabilitation as a core principle and practice.

JR uses demographic mapping, to best identify the communities that would benefit from targeted investment in programs for prevention, early intervention, rehabilitation. Instead of investing in more patrols, and more police on the ground in areas considered high-risk, JR directs money into the communities where the offenders come from, in order to break the cycles of crime that are often inter-generational. Programs and services on poverty, education, housing, health care and public amenities are generally the focus. Community safety is enhanced by engaging potential offenders in such programs.

Imprisonment rate in South Australia:

The prison population in South Australia has increased by 50 per cent over the past decade, with the average cost per person, per day, amounting to \$221. This figure increases to more than \$652 per day, in juvenile corrections.¹

In South Australia, over the last decade, the "*keep the streets safe*" policy and the "*rack 'em, pack 'em, and stack 'em*" approach to justice; have hampered any reasonable and well informed debate. This has led to the acceptance of a growing evidence base that shows a largely punitive approach has reached the point of diminishing returns and very high and increasing taxpayer costs.

In 2009-10 South Australia invited The Honourable Peggy Hora, former judge of the Superior Court of California, to join its *Thinker in Residence* program. With international evidence and experience, and after reviewing our corrections system, Judge Hora suggested SA

¹ '*Supply, demand, and harm reduction strategies in Australian Prisons: An Update*' Australian National Council on Drugs, November 2011p.59

could benefit from new approaches to the justice system “smart justice”.² To date any move to adopt such a position has been a very slow process.

When analysing data from across the different jurisdictions, prisoners who have AOD issues vary from between 60 – 80 per cent, with approximately 50 per cent of offenders on community service orders with identified AOD problems. National surveys have shown that between 35 – 52 per cent of prisoners report that their offending is attributable to their AOD problem.

At a much lower cost of imprisoning someone, JR could provide access to mental health services, case workers, youth development programs, employment and training programs, or rehabilitation programs in local communities. Such approaches are particularly important when creating alternate pathways for young people who are at high risk of long term, repeat offending, drug and alcohol abuse and suicide.

SANDAS views the growth in the Australian imprisonment rate as a complex and major social, economic and health problem needing urgent action. The addiction, chronic and infectious disease morbidities associated with certain classes of offending and custodial sentences have left the community carrying an unacceptable and significantly avoidable cost burden. Similarly, the mortality rates from self-harm or harm from others in post-prison release groups leaves an intolerable emotional burden on families and communities.

In 2008, 75 per cent of prison entrants in South Australia had a substance misuse history. This was most prevalent in the younger population where 76 per cent of 18-24 year olds had such a history.³ This suggests the patterns of misuse and “at risk” situations were a pre-existing condition in their communities. The distribution of misuse histories between males and females was similar, although 56 per cent of males and 76 per cent of females had a history of high alcohol intake. Given what is known about the effects of alcohol on lowering impulse control, it is plausible to suggest there is a lack of engagement with prevention programs in the communities.

Below is a table that shows the pattern of drug use by inmates in SA prisons in 2009:⁴

Drug	Male	Female
Cannabis	52 %	56 %
Amphetamines	32 %	22 %
Heroin	10 %	44 %
Cocaine	7 %	11 %

Based on detection data, it would appear prisons do not offer water tight respite from drug use. Drugs and drug use paraphernalia have the second highest confiscation rate in SA prisons, with 2008-2009 figures showing 782 drug detection incidents in SA prisons. In the same reporting year of the 1146 Hepatitis C tests conducted, 219 proved positive. The relationship between, AOD misuse, offending and the subsequent demands on the health systems is a strong one.⁵

² “Smart Justice: Building Safer Communities, Increasing Access to the Courts, and Elevating Trust and Confidence in the Justice System” – Hon. Peggy Hora, Adelaide Thinker in Residence 2009-2010

³ ‘Supply, demand, and harm reduction strategies in Australian Prisons: An Update’

⁴ Ibid

⁵ Ibid p.60

Alcohol and Other Drugs – a snapshot:

In addition, there is a very serious downstream effect in the current system. Most offenders, after conviction and/or prison sentence return to the areas where the offending occurred. It is easy for them to secure drugs and slip back into the local culture associated with the substance supply chain and therefore increase the risk of re-offending. This is a gateway for under 18's to be attracted to high offending risk situations and behaviour patterns. It is well established that the impulse controls of all people under the influence of alcohol and/or drugs can be severely impaired, and therefore their ability to restrain or change offending type behaviour is very limited.

Without a Justice Reinvestment intervention model in high-risk areas, like neighbourhoods within the Northern and Southern suburbs of Adelaide, there is a limited capacity for these communities to break this cycle. Often, there are intergenerational issues within these areas, where youth unemployment has sometimes exceeded 30 per cent and stayed at high levels for long periods of time; where request for police assistance for domestic, individual and group violence and offending are frequent; where alcohol bottle shop densities are higher than other metropolitan areas; where the drug supply chain is readily accessible, and where because of low income, a user is frequently a supplier and therefore, when caught, attracts a prison sentence.

Some more specific Alcohol and Other Drugs (AOD) factors contributing to the rising prison rate include, but are not limited to;

- Under a “get tough” policy setting there has been an increase in the range of offences under the *SA Criminal Consolidation Act 1935*. The number of listed illegal drugs has increased and therefore the drug use and supply offences which attract prison sentences have increased.
- Drug detection technology has improved and become part of regular policing rather than sitting purely in a specialist unit.
- The profitability of drugs has developed multiple supply points, increased detections and imprisonments.
- The drug manufacturing technology, specifically portable methamphetamine labs, and hydroponic marijuana, allows simple large volume production, which attracts longer sentencing.
- An increase in intoxication rates at late night venues and frequency of police attending a range of incidents which carry potential prison sentences. In such instances, it is not clear what role mental illness plays and therefore pre-sentencing assessments may not be as accurate as they need to be. Also the removal of intoxication as a defence, impacts on sentence outcomes.
- Increases in public housing concentrations in broad areas and rapid growth corridors, associated with low AOD and community support programs and service level, establishes higher risk of offending pockets in communities.
- An inadequate number and types of pre and post release programs, increase the risk of recidivism as ex-offenders have difficulty in establishing supports. This includes poor housing options, which can lead to released prisoners seeking out old associates or returning to areas where there is support from within a “criminal element”.

Of great concern to SANDAS is the over-representation of disadvantaged groups within Australian prisons, including Aboriginal and Torres Strait Islander (ATSI) people experiencing mental ill-health, cognitive disability, substance misuse and other morbidities such as Hepatitis C. The criminalisation of comorbid issues due to poor access to

preventative services and programs needs to be addressed urgently. The young (ATSI) people caught in this system face lifelong disadvantage and the real possibility of repeat offending.

A case for Justice Reinvestment in South Australia

There is a growing concern in South Australia that new Cultural and Linguistically Diverse (CALD) groups are also on the verge of entering a high imprisonment rate category. In particular, young people of African origin are forming gangs, discovering easily accessible and cheap alcohol and entering the drug supply chain. This again represents inadequate programs of engagement, prevention, early intervention, diversionary and rehabilitation measures, especially in areas such as the Northern suburbs of Adelaide.

SANDAS would like to draw the committee's attention to our recently released Justice Reinvestment position paper, included as Attachment A to this submission. It is also worth noting that SANDAS now sits on the South Australian Justice Reinvestment Group (JRWG), who have also provide a submission to this inquiry. We see JR approaches as a vital part of how SA needs to address this very costly intersect between AOD, mental illness and justice.

In the course of developing the position paper, and working with the SA JRWG, it became apparent there are two fundamental challenges facing a shift to a JR policy setting.

First, there is a need to better define and communicate the concept to the public and get it into the arena of public debate. JR needs to be able to convey to the public that it does not do away with conventional approaches to justice, but supports them in a way that aims to reduce prison intake and improve the outcomes of prison exits.

Second, the three tiers of government must reach a wide based understanding of JR and move to endorse the concept and its principles. There needs to be a program of well-organised and accessible conferences, workshops and seminars, and a national clearing house of international and national evidence base of JR strategies.

To help meet these challenges SANDAS believes there needs to be one or more JR "light house" projects to demonstrate a visible trial for the community and government, as to how JR looks on the ground in terms of planning, set up, operation and cost benefit. This could also contribute to a data base and foundation for further JR program development.

Currently, SANDAS is a Chief Investigator in a three year ARC Linkage funded project in northern Adelaide. Comorbidity Action in the North (CAN): "Stop the Run Around" is working with a large number of service providers concerned about the health and social impacts of co-existing AOD and mental illness issues facing 12 year olds and over, with a focus in ATSI and CALD groups. With an established service provider network and community base, including many stakeholders in the justice area, northern Adelaide would be a good trial site for such a project.

With regard to the scope for federal government action which would encourage the development and adoption of JR policies by state and territory governments, SANDAS would like to suggest the following three areas be explored:

1. The Federal Government establish a task force to look at the feasibility of a national public and private sector prison licensing system. In the event of a licensing system, a benchmark requirement should be a dedicated AOD and MH unit or clear and specifically AOD funded program in each prison.

2. Notwithstanding such a licensing system, the government, pursue a set of national standards for pre-entry, pre-release and post release prison programs that require evidence of how they connect to JR programs which aim to minimise the risk of re-offending and recidivism.
3. Any program that specifically addresses the harms caused by substance abuse must form a core component of any JR model that is trialled in Australia.

Andris Banders
Executive Officer

Emily English
Project and Policy Coordinator

While efforts have been made to incorporate and represent the views of our member organisations, the position presented in this submission, are those solely of SANDAS.



Justice Reinvestment - - SANDAS Position Paper No.1

What is Justice Reinvestment?

The term Justice Reinvestment (JR) was coined in 2003 by the US-based Open Society Institute, in response to concerns about the growing prison population, and its associated corrections, health and social costs. The evidence questioning the effectiveness of the prison and remand systems in addressing community safety and wellbeing are accumulating. There appears to be a need to challenge our institutionalised thinking and to look at new directions.

JR aims to reduce the money spent on “hard end” correctional services, and instead reinvests that money in strategies, programs and services that decrease crime and strengthen communities. Such community-based programs and services work to address the underlying causes of crime in high risk areas and population groups.

Reducing the growth in prison populations could include measures such as: increasing the rates of parole, probation and community service orders, (rather than straight prison sentences), increasing drug and mental health treatments for prisoners and those on parole or probation, education programs for prisoners and appropriate housing programs for prisoners once released.

JR uses demographic mapping, to best identify the communities that would benefit from targeted investment in programs for prevention, early intervention, rehabilitation. Instead of investing in more patrols, and more police on the ground in areas considered high-risk, JR directs money into the communities where the offenders come from, in order to break the cycles of crime that are often inter-generational. Programs and services on poverty, education, housing, health care and public amenities are generally the focus. Community safety is enhanced by engaging potential offenders in such programs.

Justice Reinvestment in Australia

The Australian Bureau of Statistics reports that between 2002 and 2012, Australia’s prison population increased by 31 per cent to around 30 000 people.¹ While indigenous adults

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[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/ADB317600AB68902CA257ACB00136DC0/\\$File/45170_2012.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/ADB317600AB68902CA257ACB00136DC0/$File/45170_2012.pdf)

constitute only 2.5 per cent of the population, more than 26 per cent of the prison population identify as indigenous.²

The figures are more disturbing when analysing the prison rates for indigenous youth, where two in every five young people are under justice supervision and are 24 more times more likely to be imprisoned.

With an estimated \$3 billion spent on Australia's prison system every year and no real results in reducing the number of offenders, JR offers a new approach to communities with high rates of offending, to invest in programs that will reduce criminal behaviour as well as the rate of reoffending and re-incarceration.

A landmark report from the National Indigenous Drug and Alcohol Committee (NIDAC), found that \$111 000 can be saved per year, per indigenous offender, by diverting offenders into treatments instead of prisons.³

While government investment in prisons nationwide has increased over the past two years, a number of indigenous specific drug rehabilitation services have either been wound back or closed. Research tells us that high re-offending rates and incarceration are associated with poor health outcomes for prisoners, including a relatively higher risk of mortality post-release. This is worse for indigenous Australians than for non-indigenous Australians.

This economic analysis also shows that when indigenous offenders are treated in the community, rather than prisons, they experience lower mortality rates and better health-related outcomes. These non-financial benefits have been estimated at \$92 759 per offender.⁴

Three recent national inquiries have recommended that a system of JR be trialled in Australia. The Australian Human Rights Commission's 2009 "Social Justice Report" argued that the implementation of JR could address the over-representation of Indigenous Australians in the criminal justice system.⁵ A Senate Inquiry into "Access to Justice" in 2010 recommended that all governments recognise the potential benefits of justice reinvestment, and develop and fund a pilot program for the criminal justice system.⁶

While the evidence supporting the implementation of JR is widespread and growing, to date, no government has adopted such a policy. In NSW, the Justice Reinvestment Campaign for Aboriginal Young People launched in May 2012, is by far the most advanced in the country. The group presented the NSW Government with a detailed plan in October 2012, to commit to an agreed number of metropolitan and regional communities where justice reinvestment could be trialled and evaluated.⁷

Identifying and mapping the communities in need is an approach that should be trialled across the country, so the true benefits can be evaluated.

² "An Economic Analysis for Aboriginal and Torres Strait Islander Offenders: Prisoners vs Residential Treatment" Australian Council On Drugs, Deloitte Access Economic 2013.

³ Ibid.

⁴ Ibid p.63

⁵ http://humanrights.gov.au/social_justice/sj_report/sjreport09/chap2.html

⁶

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/completed_inquiries/2008-10/access_to_justice/report/b04.htm

⁷ <http://justicereinvestmentnow.net.au/>

Justice Reinvestment in practice: A US case study⁸

In the United States, 1 in every 100 adults is incarcerated, with two-thirds returning to jail once released. To keep up with the numbers in prisons, the US correction budget has amassed to more than \$60 billion per year – a 300 per cent increase over the last twenty years.

Since it was first developed in 2003, JR has been adopted in ten US States – Arizona, Oregon, Connecticut, Kansas, Michigan, Nevada, Pennsylvania, Rhode Island, Texas, Vermont and Wisconsin.

Following bipartisan agreement to pursue JR, Texas became the first state to commence detailed mapping of the prison population, which found that more than half of the prison population came from only five suburban areas. Analysis of the mapping also found, that a combination of decreased funding for community-based substance use and mental health services had played a major role in the increasing prison population.

Once the data had been collected, and comprehensive consultations were held, the State of Texas introduced a raft of strategies aimed at reducing the prison population. Such measures included, new AOD treatment places in both prisons and for offenders returning to the community; improved probation and parole services and nurse-family partnerships. Investing in more community-based programs instead of purely in the correctional system has resulted in more than \$444 million in savings each year.

Two years following the implementation of JR, the Texas prison population stopped growing for the first time in decades.

Justice Reinvestment and the Alcohol and Other Drug Sector

The prison population in South Australia has increased by 50 per cent over the past decade, with the average cost per person, per day, amounting to \$221. This figure increases to more than \$652 per day, in juvenile corrections.

At a much lower cost of imprisoning someone, JR could provide access to mental health services, case workers, youth development programs, employment and training programs, or rehabilitation programs in local communities. Such approaches are particularly important when creating alternate pathways for young people who are at high risk of long term, repeat offending, drug and alcohol abuse and suicide.

In 2008, 75 per cent of prison entrants in South Australia had a substance misuse history. This was most prevalent in the younger population where 76 per cent of 18-24 year olds had such a history.⁹ This suggests the patterns of misuse and “at risk” situations were a pre-existing condition in their communities. The distribution of misuse histories between males and females was similar, although 56 per cent of males and 76 per cent of females had a

⁸ Bode, Adam ‘What is Justice Reinvestment?’ *Of Substance*, Vol, 9 no.1 2011

⁹ ‘Supply, demand, and harm reduction strategies in Australian Prisons: An Update’ Australian National Council on Drugs, November 2011p.59

history of high alcohol intake. Given what is known about the effects of alcohol on lowering impulse control, it is plausible to suggest there is a lack of engagement with prevention programs in the communities.

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For the Alcohol and Other Drug Sector, a JR system could see money invested into a greater number of evidence based improved alcohol and drug treatment programs in the community, appropriate and affordable housing options and general community based alternatives for prevention and early intervention as well as cross sector capacity building to deal with comorbidity as a risk factor in offending.

The JR options applied will depend on the profile and characteristics of each community which should have some participation and say in determining the best approaches. For example in Texas money was spent on 800 new beds in substance abuse treatment for those on probation, 3000 more places in outpatient substance abuse treatment for people on probation, 300 new beds in half-way houses, 500 new beds for an in-prison treatment unit for drink driving offences, 1200 new places in intensive substance abuse treatment programs in prison. Each community is in the best position to inform such investment in terms of its trends, capacity and demand on existing service levels.

SANDAS is of the opinion that programs which specifically address the harms caused by substance abuse must form a core component of any JR model that is trialled in Australia.

¹⁰ Ibid

¹¹ Ibid p.60