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# **Panacea to Prison? Justice Reinvestment in Indigenous Communities**

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## Executive Summary

High Indigenous incarceration rates have elicited a long list of so-called solutions over the years. Since the 1991 *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC), countless reports and programs have aimed to reduce the Indigenous incarceration rate. Yet the percentage of Aboriginal people in custody has continued to rise, nearly doubling from 14% of the prison population in 1991 to 27% in 2012.<sup>1</sup>

The latest ‘solution’ to high Indigenous incarceration, and the focus of this monograph, is Justice Reinvestment. Justice Reinvestment is a school of thought from the United States that proposes redirecting money spent on prisons into programs that address the underlying causes of offending in communities with high levels of incarceration.<sup>2</sup>

Justice Reinvestment involves three steps:

1. gathering data on offending and the criminal justice system
2. using the data to create justice maps (areas with the greatest concentration of offenders)
3. redirecting funds from corrective services to implement programs in ‘targeted’ locations to reduce offending and evaluating the effectiveness of the programs.<sup>3</sup>

The underlying premise of Justice Reinvestment—to build communities rather than prisons—has proven seductive, and many countries are now applying or investigating Justice Reinvestment.<sup>4</sup>

Australia is the latest country to consider adopting Justice Reinvestment. The Australian Senate is conducting an inquiry into the value of a Justice Reinvestment approach to criminal justice in Australia, with a particular focus on the over-representation of Aboriginal and Torres Strait Islanders in Australia’s prisons.<sup>5</sup>

Advocates of Justice Reinvestment in Australia have been quick to highlight the success stories from overseas but a number of important differences exist between the criminal justice systems in the United States, the United Kingdom, and Australia.<sup>6</sup> These disparities suggest that the application of Justice Reinvestment strategies in Australia could be difficult, and that Australia needs to exercise caution and not embrace Justice Reinvestment just because everyone else is.

In the United States, three-quarters of offenders are given custodial (prison) sentences, whereas only one-fifth of the sentences imposed in Australia are custodial, which means, the United States has more room to ‘manoeuvre’ because it has more offenders to keep out of prison compared to Australia.<sup>7</sup>

A key feature of Justice Reinvestment in the United States is the devolution of power from state to local authorities. But in Australia, criminal justice is already the responsibility of state and territory governments, and it is highly unlikely that this responsibility will be devolved to local government authorities.

Advocates of Justice Reinvestment claim it saves money, but in all the states in the United States where Justice Reinvestment strategies have been applied, prisons may have closed but correctional service budgets have continued to grow.<sup>8</sup> In the United Kingdom, Justice Reinvestment approaches seem to be accompanied by a parallel rise in the prison population.<sup>9</sup>

Justice Reinvestment appears to recycle familiar old ‘preventive’ and community-based programs in a new wrapping. The localised, community-focused approach characteristic of Justice Reinvestment is already a feature of Aboriginal Community Justice Groups in NSW, Queensland and the Northern Territory. Justice Reinvestment supporters have yet to explain how the approach will be any different or an improvement on existing community-based justice programs.

Following the 1991 RCIADIC, crime ‘prevention’ polices have applied ‘culturally appropriate’ or ‘culturally secure’ approaches to reduce Indigenous incarceration. For example, initiatives such as Circle Sentencing and the Koori and Murri courts, where Aboriginal offenders are brought before their community elders for sanctioning, were established.<sup>10</sup> Yet such initiatives have merely ‘tinkered’ with aspects of the criminal justice system and not addressed the underlying reasons why people are offending.

In the fight against Indigenous disadvantage and incarceration, Justice Reinvestment threatens to become a distraction from focusing on the fundamentals such as education and employment that will lead to change. Zero employment among 35% of the Aboriginal population plays a critical role in the high rates of Indigenous incarceration, with unemployed Indigenous people 20 times more likely

to be imprisoned than employed Indigenous people. In fact, unemployment has been found to be a greater risk factor for offending than Indigenous status.<sup>11</sup>

Education and employment may not sound as novel or exciting as Justice Reinvestment, but evidence shows they play a critical role in the high Indigenous incarceration rate. Improving educational outcomes should not be reliant on the diversion of funds from prison services but a basic right that states and territories should be covering in their education budgets.



## Introduction

Indigenous people are over-represented in the Australian prison system. Despite comprising only 2.5% of the Australian population, Aboriginal and Torres Strait Islanders constitute just over a quarter (27% or 7,982) of the total prison population.<sup>12</sup> However, it is important to note that crime is not a universal problem for all Aboriginal and Torres Strait Islanders. As this monograph shows, people in prison are not drawn in equal numbers from all neighbourhoods; in general, Indigenous prisoners come from the most disadvantaged suburbs and communities in Australia. Socioeconomic factors play a critical role in people's propensity to commit crime and subsequent incarceration, with people in prison disproportionately affected by drug and alcohol problems, intellectual disability, illiteracy and innumeracy, low educational attainment, and unemployment.<sup>13</sup>

The first section of the monograph looks briefly at Australia's penal system, current trends in incarceration rates, and Aboriginal imprisonment. Data from state and territory corrections and justice departments show that the top 10 Indigenous offender locations for each state and territory are primarily regional and remote areas. Although Indigenous offending is a problem in metropolitan cities such as Sydney and Brisbane, the percentage of offenders is much higher in remote communities such as Yuendumu—where one out of five residents is in prison (93 offenders from a total population of 587).<sup>14</sup>

While the overall Australian prison population has slightly declined in recent years, the Indigenous imprisonment rate has continued to grow. A common perception is that Aboriginal offenders are treated unfairly by the courts, and that institutional racism is a significant factor in the high level of Indigenous incarceration—but the statistics tell a different story. A comparison of Indigenous and non-Indigenous crime statistics shows that non-Indigenous offenders are more likely to receive longer jail sentences than Indigenous offenders.<sup>15</sup> A significant factor in the high Indigenous incarceration rate is high unemployment, with unemployed Indigenous people 20 times more likely to be imprisoned than employed Indigenous people.<sup>16</sup>

The second section examines a recent proposal to address high incarceration rates in the United States—Justice Reinvestment. The Australian government is seriously considering adopting Justice Reinvestment strategies—and recently announced a Senate inquiry into the value of adopting a Justice Reinvestment approach to criminal justice in Australia. A particular focus of the inquiry will be the over-representation of disadvantaged groups, including Aboriginal and Torres Strait Islanders in Australian prisons.<sup>17</sup>

The third section analyses the costs and benefits of a Justice Reinvestment approach, and considers whether some of the apparent success of the scheme in the United States can be duplicated in Australia. There are many important differences between Australia and the United States that appear to be forgotten (or ignored) by advocates for a Justice Reinvestment approach in Australia. The fourth section considers whether Justice Reinvestment is just recycling familiar old 'preventive' and community-based programs in a new wrapping. Many initiatives broadly similar to Justice Reinvestment already exist, and the question for Justice Reinvestment supporters is to explain how their approach is any different to existing community-based justice programs. The fifth and final section considers alternatives to a Justice Reinvestment approach.

## Australian penal system

Unlike other federations such as the United States, the administration of and responsibility for prisons in Australia rest with state and territory governments. There is no federal prison system and prisoners convicted and sentenced under Commonwealth legislation are housed in state- and territory-run prisons.<sup>18</sup>

**Unemployed Indigenous people are 20 times more likely to be imprisoned than employed Indigenous people.**

## Prisons

There are 115 custodial facilities across Australia, of which 89 are government-operated prisons, eight are privately operated prisons, three are transitional centres, one is a periodic detention centre, and 14 are 24-hour court-cell complexes (holding prisoners under the responsibility of corrective services in NSW).<sup>19</sup> More prisons are planned in Western Australia and the Northern Territory. The NT government plans to build a prison costing \$320 million to house 1,000 new prisoners. The WA government is building a prison in the West Kimberley near Derby (\$150 million) and another in the Eastern Goldfields (\$232 million).<sup>20</sup> As on 30 June 2012, there were 29,383 prisoners (sentenced and unsentenced) in Australian prisons, an increase of 1% (277 prisoners) from 30 June 2011—a national imprisonment rate of 168 prisoners per 100,000 adults.<sup>21</sup>

## Community corrections

In addition to prisons, all jurisdictions provide community corrections services. Community corrections are responsible for a range of non-custodial sanctions and delivering post-custodial interventions, under which prisoners released into the community continue to be subject to corrective services supervision. These services vary in the extent and nature of supervision, the conditions of the order (such as a community work component or personal development program attendance), and the level of restrictions placed on the offender's freedom of movement in the community (such as home detention). No single objective or set of characteristics is common to all jurisdictions' community corrections services—other than that they generally provide a non-custodial sentencing alternative or a post-custodial mechanism for reintegrating prisoners into the community under continued supervision. Nationally, with a decrease of 2.5% from 2009–10, the daily average of offenders serving community corrections orders in 2010–11 was 56,056: 10,854 Indigenous offenders (19.4% of the total community corrections population); 43,790 non-Indigenous offenders (78.1%); and 1,412 offenders with unknown Indigenous status (2.5%).<sup>22</sup>

## Cost of imprisonment

The latest available statistics on Australia's penal system reveal that in 2008–09, national expenditure on prisons totalled \$2.8 billion.<sup>23</sup> During this period, keeping someone in jail cost \$210 per day, or \$76,650 per prisoner per year.<sup>24</sup> The cost of housing a young person in a correction facility is even higher at nearly \$600 per day; just under half the NSW Department of Juvenile Justice budget is spent on keeping juvenile offenders in custody.<sup>25</sup> Advocates of a Justice Reinvestment approach use the high cost associated with incarceration to argue for more non-custodial sentences such as diversion.<sup>26</sup> Yet, few Justice Reinvestment supporters acknowledge the high costs associated with not imprisoning violent and repeat offenders.<sup>27</sup>

## Overall trends in imprisonment

In 2009, the Australian Prisons Project estimated that if the NSW prison population continued to grow at its current rate, the state would have to build one medium-sized jail every year to accommodate the influx of prisoners.<sup>28</sup> Fortunately, the Australian Prisons Project's projections were wrong: in 2012, prisoner numbers in NSW dropped by 8% and the NSW government closed three prisons.<sup>29</sup> The recent fall in the NSW prison population has been attributed to a combination of lower crime rates, a reduction in the likelihood of imprisonment, and the imposition of shorter prison sentences. The drop in imprisonment rates in NSW was reflected nationwide in 2011, when for the first time in 10 years, there was a nationwide reduction in prison numbers (2% or 594 prisoners).<sup>30</sup> Unfortunately, this drop was short-lived and prison numbers increased in 2012 by 1%. The increase in prison numbers was mostly among female prisoners: the number of male prisoners increased by 0.4% (104) while the number of female prisoners increased by 8% (171).<sup>31</sup>

**Advocates of a Justice Reinvestment approach use the high cost associated with incarceration to argue for more non-custodial sentences such as diversion. Yet, few Justice Reinvestment supporters acknowledge the high costs associated with not imprisoning violent and repeat offenders.**

## Aboriginal imprisonment

While the overall Australian prison population is decreasing (or remaining stable), the level of Indigenous imprisonment is growing. In 1991, the number of adult Indigenous prisoners was 2,140 and 14% of all adult prisoners identified as Indigenous.<sup>32</sup> Today, Aboriginal and Torres Strait Islanders number only 2.5% of the Australian population but comprise just over a quarter (27% or 7,982) of the total prison population.<sup>33</sup> The number of Aboriginal female prisoners rose by 20% from 2011 to 2012.<sup>34</sup>

The statistics are even more shocking for juvenile offenders, with Indigenous youth accounting for some 50% of the total juvenile detention population. The detention rate for Indigenous juveniles is 28 times higher than it is for non-Indigenous juveniles.<sup>35</sup> However, it is likely that the increase in the proportion of Indigenous offenders in prison is partly due to more Aboriginal offenders identifying as Indigenous in official police and court records—and not just the result of an increase in the offending rate of Aboriginal and Torres Strait Islanders. In the last five years, the number of people identifying as Aboriginal in the census has increased by 20.5%, which analysts put down to an ‘increased level of confidence’ in reporting their Aboriginality.<sup>36</sup>

**The detention rate for Indigenous juveniles is 28 times higher than it is for non-Indigenous juveniles.**

**Table 1: Growth in Indigenous incarceration, 1991–2012**

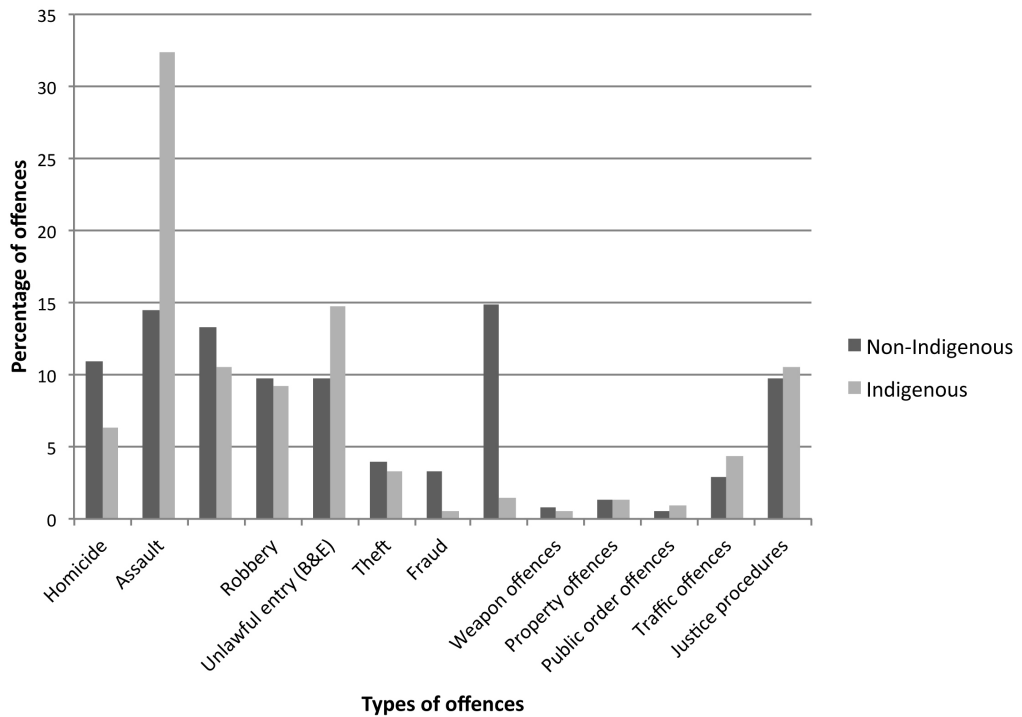
Year	Indigenous people in total population	Number of Indigenous people incarcerated	Prison population who identify as Indigenous
1991	Less than 2%	2,140	14%
2001	2.4%	4,445	19.9%
2011	2.6%	7,656	26%
2012	2.5%	7,982	27%

**Source:** ABS (Australian Bureau of Statistics), *Prisoners in Australia, 2012*, Cat. No. 4517.0 (Canberra: ABS, December 2012); Gaminratne Wisjeskere, ‘Incarceration of Indigenous and Non-Indigenous Adults: 1991–2001: Trends and Differentials,’ paper prepared for presentation at the 11<sup>th</sup> Biennial Conference of the Australian Population Association (Sydney: Office of Evaluation and Audit (Indigenous Programs) (formerly part of the Aboriginal and Torres Strait Islander Commission (ATSIC), 2–4 October 2001).

## Types of offences

Figure 1 clearly shows that the majority of Indigenous adult prisoners are imprisoned for assault. This is true for males and females. Unlawful entry with intent (including burglary and breaking and entering) is another common offence, as are offences against justice procedures (such as breaching parole). Indigenous people were also twice as likely to be imprisoned for traffic offences as non-Indigenous people. Recent research by the Aboriginal Legal Service has found that in NSW, Aboriginal offenders convicted of driving while disqualified in remote and regional NSW are sentenced to jail at three times the state average. This is often because the offence is committed by unemployed Indigenous people who are issued fines they cannot pay.<sup>37</sup> By contrast, a much smaller percentage of the Indigenous prison population is sentenced for drug offences than the non-Indigenous population. A smaller share of the Indigenous prison population is also imprisoned for homicide, sexual assault, and fraud-related offences compared to non-Indigenous prisoners.

**Figure 1: Non-Indigenous and Indigenous prisoners in Australia, 2009**

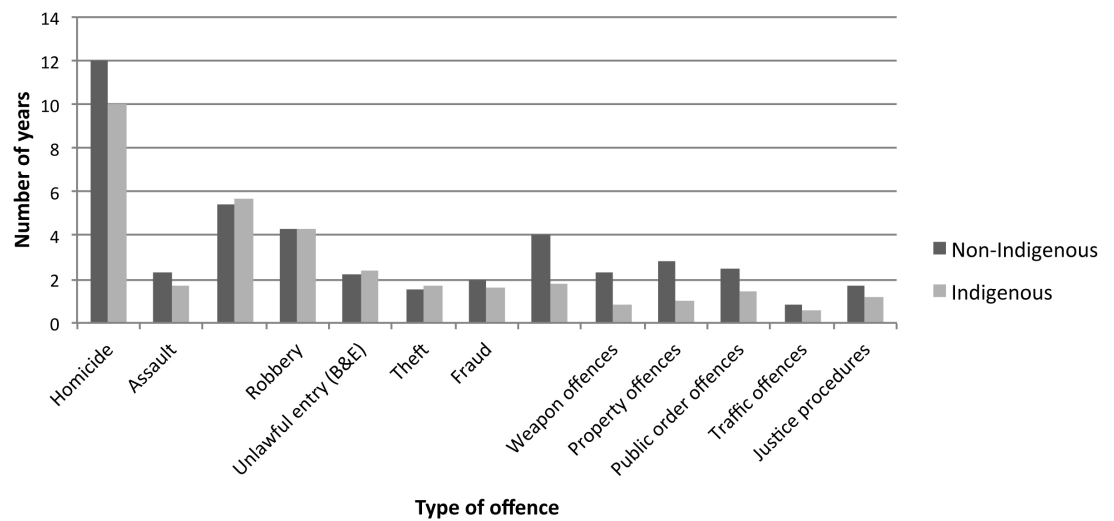


**Source:** ABS (Australian Bureau of Statistics), *Prisoners in Australia, 2011*, Cat. No. 4517.0 (Canberra: ABS, December 2011). Categorised by most serious offence/charge; graph does not include miscellaneous offences.

### Length of sentences

A comparison of Indigenous and non-Indigenous crime statistics shows that overall, non-Indigenous offenders are more likely to receive longer jail sentences than Indigenous offenders—the only exceptions are for sex offences, robbery, and unlawful entry and theft (Figure 2).

**Figure 2: Average (mean) length of non-Indigenous and Indigenous prison sentences**



**Source:** ABS (Australian Bureau of Statistics), *Prisoners in Australia, 2011*, Cat. No. 4517.0 (Canberra: ABS, December 2011). Average (mean) of expected sentence length in months (years) of prisoners in Australia by offence category; graph does not include miscellaneous offences.

## Over-representation of Indigenous people in custody

Indigenous people's over-representation in prison is subject to dispute; some researchers argue systemic or institutional bias in the criminal justice system is the cause, while others point to the high rate of Indigenous involvement in violent crime and the high rate of Indigenous re-offending.<sup>38</sup> Although police bias may be a factor in some neighbourhoods, Indigenous prisoners overall are given shorter sentences than non-Indigenous offenders (Figure 2).<sup>39</sup> Moreover, a study comparing Indigenous and non-Indigenous sentences in Queensland found that Indigenous adult offenders received 'significantly' shorter terms of imprisonment by the Supreme Court than non-Indigenous offenders. However, Indigenous offenders in the Magistrates Court were more likely to receive a prison sentence than non-Indigenous offenders, though if sentenced to a monetary order, Indigenous offenders were on average fined less than non-Indigenous offenders.<sup>40</sup> These examples suggest institutional racism in the courts is not as prevalent as some suggest; on the contrary, some courts appear to be particularly lenient to Aboriginal offenders.<sup>41</sup>

The Royal Commission into Aboriginal Deaths in Custody in 1991, and related concerns of institutional bias in the criminal justice system, led to the decriminalisation of drunkenness, changes in police procedures, and cultural training for police and prison officers.<sup>42</sup> Yet none of these measures have succeeded in reducing the over-representation of Indigenous people in prison. The belief that Aboriginal people are unfairly targeted by police and arrested for relatively minor 'social nuisance' offences ignores the fact that many crimes committed by Indigenous offenders are serious enough to warrant arrest.<sup>43</sup> Indigenous offenders are more likely than non-Indigenous offenders to exhibit factors that lead to custodial sentences—for example, a lengthy prior criminal record, or being convicted of a serious violent offence or multiple concurrent offences.<sup>44</sup> A very high rate of recidivism is evident in the Indigenous prison population—75% of Indigenous prisoners have a history of prior imprisonment compared to 50% of non-Indigenous prisoners.<sup>45</sup>

Rather than just asking why Indigenous people are over-represented in Australia's prisons, we also need to ask why certain Indigenous Australians are committing such serious crimes.

## Why do people commit crime

Broadly speaking, two factors influence people's propensity to commit crime:

- environmental factors such as socioeconomic status, neighbourhood and lifestyle
- psychological and cultural factors such as offenders with a mental illness or their culture normalising violence.

Research suggests that although psychological factors do play a part in criminal offending, they are often conditions affected by the environment people live in. Particular neighbourhoods and communities may have higher rates of criminal offending and suggest a 'culture' that normalises violence. However, culture is not an inherent quality but something learned and influenced by social and environmental factors.

## Socioeconomic factors

The importance of environmental factors such as socioeconomic status on offending is clear. According to a police officer, Indigenous people are incarcerated at a higher rate than non-Indigenous people because:

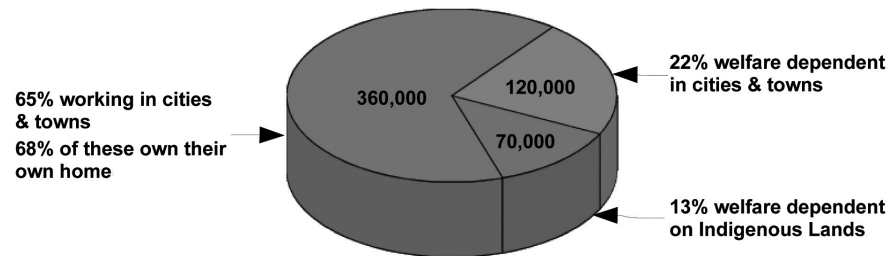
Crime occurs more in low socio-economic areas. These are places where parents do not know and usually don't care where their children are; where a lot of people do not work and do not want to work; and where there is little respect for the police or for other people. The crime is committed by both Indigenous and non-Indigenous people but it is unfortunately a fact that ... [many] Aboriginal people live in low socio-economic areas.<sup>46</sup>

**The belief that Aboriginal people are unfairly targeted by police and arrested for relatively minor 'social nuisance' offences ignores the fact that many crimes committed by Indigenous offenders are serious enough to warrant arrest.**



Although a majority (65%) of Aboriginal and Torres Strait Islanders live in cities and towns and have jobs, a greater proportion of Indigenous Australians are not in the labour force (35%) and live in low socioeconomic, welfare dependent suburbs (22%) or communities (13%) with corresponding high levels of crime than non-Indigenous Australians (Figure 3).<sup>47</sup>

**Figure 3: Breakdown of Indigenous population (550,000) in Australia, 2012**



**Source:** Estimates based on Helen Hughes and Mark Hughes, *Indigenous Employment, Unemployment and Labour force Participation: Facts for Evidence Based Policies*, Policy Monograph 107, (Sydney: The Centre for Independent Studies, 2010). Figures revised following 2011 Census.

As Figure 3 illustrates, there are two groups of welfare-dependent Indigenous Australians. Those living in cities and towns in low socioeconomic neighbourhoods, and those living on Indigenous land in remote and very remote Australia. The socioeconomic indicators of remote Indigenous communities are far worse than those of urban welfare-dependent populations. Due to the lack of private property rights on Indigenous lands, there is no economy in these remote areas and few employment options are available. The only housing is public or social housing, and almost all residents are welfare dependent.

Data from state and territory corrections and justice departments, showing the breakdown of all Indigenous prisoners by the postcode of place of usual address, highlight the top 10 Indigenous offender locations for each state and territory by number (see Appendix).<sup>48</sup>

The top offender locations are not particularly surprising; they are the same communities that have been identified as disadvantaged for some time now. A 2007 study called ‘Dropping Off the Edge’ by Professor Tony Vinson found that 3% of Australia’s most disadvantaged postcodes have at least twice the rate of unemployment, criminal convictions, imprisonment, child maltreatment, and psychiatric admissions than other postcodes.<sup>49</sup> A more recent study in Queensland in 2012 found the postcodes with the most chronic and costly offenders were in remote and very remote locations with a high proportion of Indigenous youth and high levels of disadvantage.<sup>50</sup> Although Indigenous offending is a problem in metropolitan cities such as Sydney and Brisbane, the percentage of offenders is much higher in remote communities such as Yuendumu—where one out of six residents is in prison (93 offenders from a total population of 587), and where education and employment opportunities are limited.<sup>51</sup>

Poor educational attainment and unemployment are principal measures of disadvantage and strong determinants of Indigenous and non-Indigenous offending. The NSW Inmate Health Survey found that just over half (52%) of men and under half (45%) of women in NSW prisons did not finish Year 10. Half (50%) of men and two-thirds (67%) of women were unemployed in the six months before their incarceration. Much of this unemployment was long-term, with 30% of men and 44% of women being unemployed for five years or longer.<sup>52</sup>

Research has found that unemployment is a greater risk factor for offending than Indigenous status. The imprisonment rate of Indigenous people who were employed at the time of their offending was 332 per 100,000 population.<sup>53</sup> The same rate for unemployed Indigenous people was 6,495 per 100,000. The researchers also noted the

**A recent study in Queensland in 2012 found the postcodes with the most chronic and costly offenders were in remote and very remote locations with a high proportion of Indigenous youth and high levels of disadvantage.**

importance of educational attainment. The imprisonment rate of Indigenous people who had completed school was 164 per 100,000 population; for those who had not, the rate was 2,217 per 100,000.<sup>54</sup>

### Lifestyle factors

There is a strong correlation between high welfare dependency and alcohol abuse, with unemployment providing plenty of free time for people to engage in excessive drinking.<sup>55</sup> Noel Pearson has described the negative impact of alcohol on Cape York Indigenous communities. Positive Indigenous values such as the responsibility to share with relatives have been corrupted by alcohol abuse and transformed into negative traits of exploitation and manipulation. In drinking circles, the cultural obligation to share food has turned into a cultural obligation to share 'grog.' Even non-drinkers are forced to give money to support the drinkers. People are made to feel guilty if they do not contribute and threatened with violence if they do not comply.<sup>56</sup>

Alcohol plays a major role in the over-representation of Indigenous people in prison. Estimates suggest alcohol is a factor in up to 90% of all Indigenous contact with the criminal justice system—87% of all Indigenous intimate partner homicides are alcohol related, and 63.8% of Indigenous adult offenders reported drinking alcohol before arrest and being placed in police custody.<sup>57</sup> Aurukun, in Cape York in Queensland, was once described as a 'liveable and vibrant community'; following the introduction of a regular supply of alcohol and no controls on its use, levels of violence, abuse and neglect skyrocketed. In 2000, the town's homicide rate was estimated to be 120 times the state average.<sup>58</sup>

### The neighbourhood

Once incarceration rates reach a certain level in a community, there is a 'tipping point' where imprisonment fails to reduce offending and instead causes it.<sup>59</sup> When large numbers of the population are in prison, imprisonment becomes part of the socialisation process. Every family and individual in these neighbourhoods has direct personal knowledge of prison through a spouse, child, parent, neighbour or friend. Imprisonment ceases to be the fate of a few criminal individuals and instead becomes another contributor to social dysfunction. As imprisonment becomes 'normalised,' the prospect of prison loses much of its deterrent effect, becoming instead a 'fact of life' or even, on some occasions, a 'rite of passage.'<sup>60</sup>

#### **Wilcannia: Where imprisonment is a 'rite of passage'**

Recently, as part of the research for this monograph, I visited remote towns in Outback NSW, including Wilcannia (population 595, of which 67.4% are Indigenous). Wilcannia has one of the highest recorded crime rates in NSW. The crimes are predominately assault, particularly domestic violence related assault; breaking and entering; and malicious damage to property. The high level of crime in Wilcannia has resulted in an acceptance of violence and offending as the social norm. Going to jail is spoken of as a rite of passage. When someone comes back from jail, it's as if a celebrity has returned. They get out of jail, go to Centrelink to get their welfare money, and go straight to the pub—where they are welcomed back into the community with, 'Haven't seen you in ages, mate. Have a beer.' No one mentions they were in jail because they had stabbed someone in a drunken stupor.<sup>61</sup>

Children too talk casually about domestic violence, as if they're talking about their dad changing a tyre on the car: 'Dad lifted mum last night.' High rates of unemployment and subsequent boredom also contribute to Wilcannia's high crime rate. When the river is high, crime goes down because people go fishing and are too busy to drink, fight and offend.<sup>62</sup> When an employment program was trialled for three months in 1996, the number of court attendances dropped from 110 a month to 10 a month. Ambulance call-outs dropped by 50%–60%, and incidents of domestic violence dropped by 40%–50%. As soon as the program ended and people had nothing to do, the numbers increased.<sup>63</sup>

**Research has found that unemployment is a greater risk factor for offending than Indigenous status.**

**When the river is high, crime goes down because people are too busy to drink, fight and offend.**

## Justice Reinvestment the 'answer' to high Indigenous imprisonment

Justice Reinvestment: to invest in public safety by reallocating justice dollars to refinance education, housing, health care and jobs.<sup>64</sup>

Justice Reinvestment is a recent initiative that aims to combat high crime and incarceration rates in particular localities. Its localised, community-focused approach has seen it touted as a potential 'panacea' to high Indigenous incarceration. Susan Tucker and Eric Cadora from the United States coined the phrase Justice Reinvestment in a publication for the Open Society Institute in 2003:<sup>65</sup>

The goal of justice reinvestment is to redirect some portion of the \$54 billion America now spends on prisons to rebuilding the human resources and physical infrastructure—the schools, healthcare facilities, parks, and public spaces—of neighbourhoods devastated by high levels of incarceration.<sup>66</sup>

The first step in the Justice Reinvestment process is to analyse data provided by state and local agencies relating to crime, then to use that data to map specific neighbourhoods that are home to large numbers of people under the supervision of the criminal justice system. The second step is to collect information about services in the community and develop 'practical, data-driven policies' that reduce spending on corrections to reinvest in other services likely to improve public safety and reduce crime. The third step is to implement the new policies and then evaluate the impact of the policies on rates of incarceration, recidivism and criminal behaviour.<sup>67</sup>

### The rise of Justice Reinvestment

Since 2003, the concept of Justice Reinvestment has taken off across the United States. To date, 16 US states have signed up with the Council of State Governments Justice Center to investigate or apply Justice Reinvestment in their jurisdiction.<sup>68</sup> Another five states are pursuing Justice Reinvestment independently or through non-profit organisations.<sup>69</sup> Some states have introduced legislation supporting Justice Reinvestment initiatives. The federal *Criminal Justice Reinvestment Act* bill was introduced in the US Senate in November 2009 and approved by bipartisan vote in 2010; since then, it has lapsed following the conclusion of the 111th congressional session to which it was attached—and it remains to be seen whether it will be reintroduced.<sup>70</sup>

The Justice Reinvestment model has also found a following in the United Kingdom. In 2007, the Howard League for Penal Reform set up the Commission on English Prisons Today to investigate why the prison population had more than doubled since 1992, despite a 42% decline in reported crime since 1995. Its report, *Do Better Do Less*, introduced Justice Reinvestment as 'a radical new way of delivering a modified and ultimately "moderate" form of criminal justice [through a] devolved approach that focuses on communities or localities.'<sup>71</sup> In January 2010, the House of Commons Justice Committee released *Cutting Crime: The Case for Justice Reinvestment*. The report identified a crisis of sustainability facing the criminal justice system and recommended cutting prison numbers in the United Kingdom by a third through the use of Justice Reinvestment.<sup>72</sup>

### Justice Reinvestment in Australia

A groundswell of interest in Justice Reinvestment has also been building in Australia. The first person to promote the concept was the former Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, in the *2009 Social Justice Report*.<sup>73</sup> In the same year, the Senate Legal and Constitutional Affairs References Committee presented its report *Access to Justice*, which 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>74</sup> In 2010, the Australian Greens Party formally adopted Justice Reinvestment as part of its justice policy.<sup>75</sup> A review of the NSW Juvenile Justice system in 2010 by Noetic Solutions also proposed the implementation of Justice Reinvestment strategies (Figure 4).<sup>76</sup>

**Figure 4: Three strategic options for juvenile justice in NSW<sup>77</sup>**

Option 1: Continue on the same path	Option 2: Less cost and some better outcomes	Option 3: A change in thinking – Justice Reinvestment
<ul style="list-style-type: none"> <li>+ Maintaining the status quo plus the implementation of some common recommendations.</li> <li>+ Based on current static crime figures and perceived low appetite for reform.</li> <li>+ Approximate cost of \$348.14 million over the next 6 years to meet forecast juvenile justice centre capacity.</li> <li>+ Highly unlikely to address the underlying causes of crime or reduce re-offending.</li> <li>+ Low risk option in terms of certainty of outcomes.</li> </ul>	<ul style="list-style-type: none"> <li>+ Implementation of common recommendations.</li> <li>+ Implementation of recommendations to reduce remand numbers.</li> <li>+ Based on evidence that shows the negative effects of remand.</li> <li>+ Approximate cost of \$34.4 million over the next 3 years to meet forecast juvenile justice centre capacity (less demand than Option 1).</li> <li>+ Is unlikely to address the underlying causes of crime or reduce re-offending - particularly indigenous offending.</li> <li>+ Low risk option in terms of certainty of outcomes.</li> </ul>	<ul style="list-style-type: none"> <li>+ Involves all Review recommendations.</li> <li>+ Justice reinvestment to divert funding from building juvenile justice centres to evidence-based prevention and early intervention programs and services for local communities.</li> <li>+ Could be implemented through spiral development or immediate widespread implementation.</li> <li>+ Approximate costs of \$348.14 million to reinvest into addressing the underlying causes of crime.</li> <li>+ Significant long term benefits for the community.</li> <li>+ Some risk in terms of certainty of outcomes.</li> </ul>
No change	Appetite for change	Reform

**Source:** Peter Murphy, Anthony McGinness, Andrew Balmaks, Tom McDermott, and Megan Corriea, *A Strategic Review of the New South Wales Juvenile Justice System*, report for the minister of juvenile justice, (Canberra: Noetic Solutions Pty Ltd, April 2010).

The former NSW Labor government's failure to adopt option 3 contributed to Graham West, the then minister for juvenile justice, resigning from his post. The NSW Coalition government is undertaking a consultation project (Youth on Track) to develop recommendations for the future direction of juvenile justice in NSW. The Youth on Track project is considering the recommendations of the Noetic report and their feasibility in NSW. The Hon. Greg Smith, attorney-general and minister for justice, says there are issues in applying a Justice Reinvestment model to juvenile justice in NSW. The juvenile justice system in NSW is small and has fewer funds to save and reinvest than adult systems where Justice Reinvestment has been used overseas. The Youth on Track project is therefore looking into the cost effectiveness of applying a Justice Reinvestment model before committing to it.<sup>78</sup>

In June 2011, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs lent its support to the Justice Reinvestment approach in its report on the over-incarceration of Indigenous young people, *Doing Time—Time for Doing*, with its recommendation 'that further research be conducted to investigate the Justice Reinvestment approach in Australia.'<sup>79</sup> A working group was established under the National Justice Chief Executive Officers (NJCEOs) to investigate options and strategies for implementing a Justice Reinvestment approach in Australia. As part of its research into future options, the NJCEO working group is considering involvement by the private sector and a Social Impact Bond model.<sup>80</sup> Although the federal government has no control over state and territory justice systems, it has signalled its willingness to work bilaterally with jurisdictions interested in implementing Justice Reinvestment approaches. The NJCEO working group has collated information from each jurisdiction about existing activity consistent with Justice Reinvestment approaches and filed a report; however, this report has not yet been made public as not all jurisdictions have approved its release.<sup>81</sup> The Australian Senate is also conducting an inquiry into the value of a Justice Reinvestment approach to criminal justice in Australia, with a particular focus on the over-representation of Aboriginal and Torres Strait Islanders in Australia's prisons.<sup>82</sup>

**A groundswell of interest in Justice Reinvestment has also been building in Australia.**

**The juvenile justice system in NSW is small and has fewer funds to save and reinvest than adult systems where Justice Reinvestment has been used overseas.**

The first of a series of national forums discussing the concept of Justice Reinvestment was held in Adelaide in early 2012, and a community working group was established to advocate the adoption of a Justice Reinvestment approach in South Australia.<sup>83</sup> Members include the Law Society of South Australia, the South Australian Victim Support Service, Aboriginal elders, the SA Commissioner for Aboriginal Engagement, and university academics.<sup>84</sup> In May 2012, a group of organisations and individuals working with young Aboriginal people in NSW launched a Justice Reinvestment Campaign for Aboriginal Young People to encourage the NSW government to implement a Justice Reinvestment policy.<sup>85</sup> The campaign is also calling on the NSW government to establish a Justice Reinvestment Advisory Group. Among the campaign's 'champions' are Mick Gooda, Aboriginal and Torres Strait Islander social justice commissioner; the Hon. Michael Kirby, former Justice of the High Court of Australia; Jack Manning-Bancroft, CEO of the Australian Aboriginal Mentoring Experience; and Shane Philips, chairman and CEO of the Tribal Warriors Association.<sup>86</sup> In Western Australia, a coalition of organisations, including Outcare, the Deaths in Custody Watch Committee, Uniting Care Australia, the Western Australian Council of Social Services, and the Western Australian Network of Alcohol and other Drug Agencies, has been advocating a Justice Reinvestment approach in Western Australia for a number of years.<sup>87</sup> In 2010, the work of this coalition led the Community Development and Justice Committee of the WA Parliament to recommend that a Justice Reinvestment approach be piloted in the state (this recommendation is yet to be acted upon).<sup>88</sup> In Victoria, the Smart Justice project, led by the Federation of Community Legal Centres, is calling for research, evaluation and pilot programs to determine the viability and impact of Justice Reinvestment in Victoria.<sup>89</sup> The ACT is also considering Justice Reinvestment initiatives, with researchers from the Australian National University National Centre for Indigenous Studies exploring the need for Justice Reinvestment in Australia in a forum.<sup>90</sup>

Advocates of the Justice Reinvestment approach in Australia argue that reducing the use of prisons in the criminal justice system will free up corrections budgets to implement these initiatives:<sup>91</sup>

- more parole options so that Indigenous offenders do not decline offers of parole because of difficulties in meeting reporting requirements and other conditions
- more options for community corrections
- working with existing community resources, such as community justice groups or restorative justice healing circles, to engage communities in creating Justice Reinvestment strategies
- providing sustainable sources of funding for culturally appropriate, community-owned programs, including Indigenous healing programs, residential drug and alcohol or anger management programs, mentoring, men's and women's groups, and bush camps
- exploring a range of initiatives outside the criminal justice system, including housing, health and education programs.

## **Justice Reinvestment—The good and the bad**

At a glance, Justice Reinvestment sounds promising. The idea of building communities rather than prisons is seductive in its simplicity but the devil is in the detail. Supporters of a Justice Reinvestment approach in Australia have been quick to highlight success stories from the United States, but are more hesitant to acknowledge its faults. Some argue that if Australia does not take up a Justice Reinvestment approach, it is in danger of being left behind.<sup>92</sup> However, there are a number of important differences between the United States, the United Kingdom, and Australia, which suggest that Australia needs to exercise caution and not embrace Justice Reinvestment strategies just because everyone

else is. The following section discusses three claims concerning Justice Reinvestment: that it is an evidence-based approach, that it saves money, and that it devolves responsibility to the local level and allows for more community engagement.

### Focus on evidence-based policymaking

Justice Reinvestment has some attractive features, such as a focus on evidence-based policymaking. In the United States, the Council of State Governments Justice Center assists states with justice mapping and the establishment and supervision/monitoring of Justice Reinvestment initiatives.<sup>93</sup> The centre is a national body that receives a combination of federal, private and state funding to provide ‘practical, nonpartisan advice and consensus-driven strategies—informed by available evidence—to increase public safety and strengthen communities.’<sup>94</sup> The use of ‘justice maps’ or ‘prison geographies’ has allowed policymakers to identify ‘million-dollar blocks’—literally a block of housing that is home to people whose incarceration costs more than \$1 million per year.<sup>95</sup> Similarly, in the United Kingdom, justice mapping has been used to identify areas in London with high rates of re-offenders (the Diamond Initiative).<sup>96</sup>

Incarceration maps are different from mapping of crime rates in particular locations. Crime mapping identifies crime ‘hot spots,’ which may become the focus of increased policing. But this can have the effect of displacing criminal behaviour to other locations rather than reducing overall offending. Justice mapping on the other hand, allows policymakers to identify the suburbs and communities that offenders come from and target resources to those locations to try and reduce crime. In the United Kingdom, accurate mapping of areas of high incarceration has been difficult because of the particular challenges of the UK administrative system and its diverse data sets.<sup>97</sup> As a result, most of the Justice Reinvestment initiatives in the United Kingdom lack the sophisticated, economically driven system-level analysis characteristic of Justice Reinvestment in the United States.<sup>98</sup>

The operation of justice mapping in Australia is also likely to be different from the US experience. In the United States, justice or incarceration mapping has primarily focused on urban settings, whereas in Australia, many of the top 10 Indigenous offending locations are in rural and remote locations. Ascertaining reliable information and data sets from geographically dispersed locations will pose a challenge. Already, the NJCEO working group has uncovered problems with the available national prisoner data sets. There is a gap in the ‘flow data’ to identify the total number of Indigenous prisoners going through Australia’s prisons, particularly for minor offences attracting shorter sentences.<sup>99</sup>

In investigating the application of Justice Reinvestment ‘type’ initiatives across Australia, the NJCEO working group identified a significant number of programs aimed at addressing the causes of criminal offending; however, they also noted a lack of independent outcomes-focused evaluations of these programs. As a result, jurisdictions are working to improve the evidence base by evaluating Indigenous justice programs operating under the National Indigenous Law and Justice Framework, with the findings of the first group of evaluations due in January 2013.<sup>100</sup> In this regard, Justice Reinvestment’s focus on evidence-based policy and evaluation could be an improvement on current practices, but whether better data collection and monitoring of programs need to come under the auspices of Justice Reinvestment is questionable—government should already be evaluating programs properly as a matter of course.

### Economic argument for Justice Reinvestment

A purported benefit of Justice Reinvestment is that it saves money—instead of channelling funds away from communities into prisons, money that would have been spent on housing prisoners is diverted into programs and services to address the underlying causes of crime in those communities.<sup>101</sup> Susan Tucker and Eric Cadora describe prisons and parole systems in the United States as business failures, arguing

**Supporters of a Justice Reinvestment approach in Australia have been quick to highlight success stories from the United States, but more hesitant to acknowledge its faults.**

that from an investment perspective, prisons fail to provide many returns.<sup>102</sup> It is true that there are many economic and social costs to imprisonment. Prisoners are exposed to other offenders and criminal networks, and the time spent in prison can fracture family and community ties. Post-release offenders often find it hard to reintegrate into society as the labelling effect of prison diminishes their employment opportunities.<sup>103</sup> Justice Reinvestment attempts to reduce the burden of imprisonment on society by reducing the number of people entering the criminal justice system in the first place, as well as lowering the numbers returning to custody via breaches of parole or reoffending.<sup>104</sup> Yet it is equally true that crime has high social and economic costs. The assumption underpinning Justice Reinvestment—that the prison system is a failure—ignores the fact that prisons serve a purpose: they protect society by taking out of circulation violent and repeat offenders.

### Justice Reinvestment and prison closures

One of the most widely acclaimed success stories of Justice Reinvestment is in Michigan, where over the last 10 years (2002–12) the state has closed 21 prisons.<sup>105</sup> The 2004 Justice Reinvestment pilot in Connecticut also resulted in the cancellation of a contract to build a new prison, realising savings of US\$30 million.<sup>106</sup> It must be noted, however, that most of these savings were from legislative and policy reforms to probation and parole regimes, which can lead to fast, and sometimes dramatic, reductions in prison numbers because prisoners are given non-custodial sentences instead of custodial sentences.

The impact on offending or recidivism from the reinvestment of these savings into community-based crime prevention strategies will take a lot longer to emerge, and it is too early to evaluate their effects, if any. Another issue is that even though prisons have been closed down or not built in some states, the true correctional savings have been difficult to document and even more problematic to capture. US criminologist Todd Clear says in every one of 12 locations where Justice Reinvestment work has been carried out, the correctional budgets have continued to grow.<sup>107</sup> This means unless funds saved from reducing incarceration are genuinely redirected, Justice Reinvestment will become yet another ‘add-on’ program.

Important differences between the United States and Australia affect the application of Justice Reinvestment strategies in Australia. In the United States, three-quarters of offenders are given custodial (prison) sentences, while in Australia, one-fifth of the sentences imposed are custodial.<sup>108</sup> The United States therefore has a lot more room to move in that regard—and a lot more offenders to keep out of prison than Australia. In the United States, it might make sense to divert the flow of funds spent locking up offenders in rural prisons to invest in urban areas with a higher concentration of offenders. However, that flow is reversed for many Indigenous offenders in Australia. Indigenous offenders mainly live in rural and remote areas and are sent to prisons in larger towns or cities. Many sentencing options are not available in rural areas in Australia, in particular, supervised bonds, community service orders, periodic detention, and home detention.<sup>109</sup> Advocates for Justice Reinvestment have suggested the program could act as a catalyst to make these services available.<sup>110</sup> However, practical difficulties make diversion programs hard to implement in such locations. Juvenile offenders from Brewarrina and Wilcannia inevitably end up in juvenile detention in Dubbo because there is no suitable place to return them to in their home town. Sending them back to their families is not an option as their home environment is often the cause of their offending.<sup>111</sup> Moreover, although diversion and other non-custodial sentences may be appropriate for some offenders, for many crimes prison should remain the only option. Reducing the number of people going to prison is an admirable goal but its feasibility will depend on the type of offence committed.

In addition, although the percentage of Indigenous offenders in many locations is high, the number of offenders is not nearly as high as in the United States. Consequently a more dramatic reduction in the percentage of offenders and re-offenders would be

**The assumption underpinning Justice Reinvestment – that the prison system is a failure – ignores the fact that prisons serve a purpose: they protect society by taking out of circulation violent and repeat offenders.**



needed to realise any savings in the corrections budget and for prisons to be closed. Closing prisons also comes with costs. For instance, when the NSW government closed three prisons in 2011, it received criticism from the prison officers union who complained that the closures would mean other prisons would become overcrowded and pose a serious risk to the safety of prison officers.<sup>112</sup> Shadow Minister for Regional and Rural Affairs Mike Veitch instigated a parliamentary inquiry into the closure of the prisons, arguing that correctional facilities are major employers in regional communities, and that hundreds of workers, families and the wider communities of Berrima, Kirkconnell and Parramatta would be affected by the cuts.<sup>113</sup> While these are secondary concerns to high crime and incarceration rates, they do highlight the potential ramifications and negative publicity associated with closing prisons. If Justice Reinvestment is successful in reducing the number of people going to prison, closing prisons and redirecting prison budgets may not be as simple as Justice Reinvestment supporters hope.

### Devolving responsibility to the local level

Justice Reinvestment starts from a universal criminological truth, that people in prison are not drawn in equal numbers from all neighbourhoods.<sup>114</sup>

A key component of Justice Reinvestment is devolving accountability and responsibility to the local level to find community-level solutions to community-level problems.<sup>115</sup> In the United States, Justice Reinvestment typically involves a form of budgetary devolution and fiscal incentives, from state and federal jurisdictions to county administrations. Under some Justice Reinvestment schemes, the cost of imprisoning people is ‘charged back’ to the counties.<sup>116</sup> Counties choosing not to imprison offenders have the option of using the funds the state would have spent on incarceration for community-based programs and community development activities in the areas where offenders live. If the offenders go to prison, the counties bear the cost. For example, when Oregon reinvested money in community service programs for juvenile offenders, the programs reduced youth incarceration in state facilities by 72% within one year.<sup>117</sup>

So far, Justice Reinvestment pilots in the United Kingdom have not devolved corrections budgets to local authorities or offered fiscal incentives, although fiscal incentives have been used to engage the private sector in addressing recidivism.<sup>118</sup> The United Kingdom’s Social Impact Bond (SIB) is a fund created to give private entities (such as charitable trusts) an investment incentive to provide more effective services to people convicted of crimes when they return to the community from prison.<sup>119</sup> The SIB was launched in the United Kingdom in March 2010 by Social Finance UK—a social finance intermediary—to reduce the rate of reoffending by short-sentence prisoners at Peterborough Prison.<sup>120</sup> A range of charitable trusts and foundations have subscribed to the bond and raised £8 million of capital. If a private provider manages to produce a lower recidivism rate than that of government-run programs, the private provider will receive a portion of the bond money as profit. The incentives are graduated so the greater the drop in recidivism, the higher the return.

Australia does not have as much scope for the devolution of funding and responsibility between different governments as the United States. In Australia, criminal justice is already the primary responsibility of state governments, and it is highly unlikely that local government authorities will be given this responsibility. On the other hand, some people have suggested that Indigenous communities could be given responsibility for Justice Reinvestment initiatives directly or through an expanded role for NGOs, churches, and welfare and charitable organisations.<sup>121</sup> Australia is investigating incentives through social impact bonds (called Social Benefit Bonds or SBBs) with the first trial (and the second in the world) being undertaken by NSW Treasury. Three pilot bonds, one to address recidivism and two focusing on out-of-home care, began in late 2012.<sup>122</sup> Investors include NGOs such as Mission Australia, the Benevolent Society, Uniting Care Burnside, and Social Finances, as well as Westpac and the Commonwealth Bank

**Juvenile offenders from Brewarrina and Wilcannia inevitably end up in juvenile detention in Dubbo because there is no suitable place to return them to in their home town.**

of Australia.<sup>123</sup> Supporters believe SBBs could lead to more innovative approaches and a greater focus on outcomes instead of outputs. They argue SBBs could achieve better outcomes and deliver future costs savings for government by sharing risks between government, the non-profit sector, and social investors.<sup>124</sup> However, it is too early to know how effective they will be and the potential ramifications of trying to turn non-profit goals into for-profit ones.<sup>125</sup> Questions also remain about how long it should take for SBBs to show effectiveness and what happens if they do not meet their goals.<sup>126</sup>

### **A community-based solution**

Justice Reinvestment's localised, community-focused approach has seen it touted as an appropriate 'place-based' strategy for Indigenous communities.<sup>127</sup> The argument is that because Justice Reinvestment focuses on locations that produce high numbers of prisoners—and that many of these locations are home to high numbers of Indigenous people—it is particularly suited to Indigenous people and communities.<sup>128</sup> Social Justice Commissioner Mick Gooda says he likes Justice Reinvestment because it 'provides opportunities for some communities to take back local control ... to not only take some ownership of the problem but also own the solution.'<sup>129</sup> Yet for all the talk that Justice Reinvestment is a 'new way' of tackling crime in Indigenous communities, there is nothing particularly novel about community-based programs.

The localised, community-focused approach characteristic of Justice Reinvestment is one of the goals of the National Indigenous Law and Justice Framework 2009–15 (the framework).<sup>130</sup> Goal 5 is to 'strengthen Indigenous communities through working in partnership with governments and other stakeholders to achieve sustained improvements in justice and community safety.' Under Action 5.2.1b of the framework, community justice groups are identified as a conduit for establishing links between health, education, housing, employment and welfare services so that an integrated approach to crime prevention can be developed.<sup>131</sup> According to a government fact sheet:

Aboriginal Community Justice Groups are based on the idea that local Aboriginal people know their own communities and problems. Therefore, the groups can solve local community problems better by developing local community solutions.<sup>132</sup>

The description of Aboriginal Community Justice Groups sounds strikingly like what Gooda says Justice Reinvestment will do. The question for Justice Reinvestment supporters is to explain how it will be any different to existing community-based justice programs. Interviews with Aboriginal Community Justice Group Coordinators show that many recognised the programs they ran were band-aid measures at best (such as running midnight basketball for bored youth), yet they received very little funding to address what was really needed to reduce crime in their communities—better education and more employment opportunities.<sup>133</sup> No doubt advocates for Justice Reinvestment in Australia will say this example supports their argument to redirect resources from prison services to community-based initiatives such as community justice groups. However, supporters of Justice Reinvestment in Australia appear overly optimistic about how easy it will be to divert funds away from imprisonment and for disadvantaged communities to run preventive programs, as the following quote by Gooda illustrates:

The beauty of justice reinvestment is that it shifts money away from imprisonment and into services for disadvantaged communities instead. The funding for Justice Reinvestment is not about shifting funds from other community resources and services—it is about shifting money from prison services. Justice Reinvestment services should add to existing resources and enhance resources that are available to victims as well as perpetrators of violence.<sup>134</sup>

**Yet for all the talk that Justice Reinvestment is a 'new way' of tackling crime in Indigenous communities, there is nothing particularly novel about community-based programs.**

In reality, shifting funds from corrective services to communities could only occur if preventive or recidivist programs do manage to reduce offending and reoffending. In the beginning, additional government resources will be needed to establish Justice Reinvestment initiatives. Such an investment will involve a relatively high degree of risk as there is no guarantee on the outcome. Already a large number of programs aimed at addressing the causes of Indigenous offending exist, but as the increase in Indigenous incarceration rates over the last 10 years shows, these have not been particularly successful.

The outcomes of previous place-based (community) initiatives—the COAG Indigenous Trials and the Communities in Crisis Initiative—highlight the difficulties involved in implementing place-based programs in remote communities, particularly if they are rolled out with little regard to measuring their impact or effectiveness.<sup>135</sup> In general, most Indigenous community-based programs are not subject to rigorous evaluation. Few evaluations of place-based initiatives examine outcomes related to core measures of disadvantage, such as a change in employment rates and the incidence of crime. Instead, they examine outcomes such as building relationships.<sup>136</sup>

In addition, barriers to self-management in Indigenous communities have been documented in many government reviews and reports—and relate to low levels of literacy, numeracy and work readiness.<sup>137</sup> These are all contributing factors to high imprisonment rates in Indigenous communities, and it is likely that those communities with the highest number of offenders and the greatest need for alternative solutions will also find implementing Justice Reinvestment strategies the most challenging. A police strategy to get members of remote South Australian Aboriginal communities to become community constables is failing, with 9 out of 12 community constable positions vacant.<sup>138</sup> Civil society relies on the effective functioning of civil institutions. If these civil institutions are weakened (or do not exist, as is the case for remote Indigenous communities such as Yuendumu), then the normative foundation for a shared commitment to the rule of law is undermined (or does not exist).

There have been countless government initiatives in Australia aimed at assisting Indigenous communities to take responsibility and find solutions to their own problems. These have mostly been unsuccessful because they have invariably ended up being controlled not by the communities but by government or other non-Indigenous organisations.<sup>139</sup> Advocates of Justice Reinvestment in Australia argue that to avoid “‘bureaucratic” or “metrocentric” solutions being foisted upon communities,’ it is ‘crucial’ that Australia adopt a body similar to the US Council of State Governments Justice Center.<sup>140</sup> Yet it is debatable whether such a body will lead to less centralised government processes. Although the stated objective of the Council of Australian Governments (COAG) is to work with communities and seek new ways of delivering services, it appears to obfuscate community involvement rather than facilitate it.<sup>141</sup> In a submission to the Senate Inquiry into Regional and Remote Indigenous Communities, the Kimberley Aboriginal Law and Culture Centre pointed out that COAG’s National Partnership Agreement on Remote Service Delivery had not resulted in changes to service delivery. Nor could it identify any COAG planning document that put Aboriginal ‘law’ men and women (traditional leaders) at the centre of government planning.<sup>142</sup>

Supporters of Justice Reinvestment argue it could be the ‘new way’ of working with Indigenous people, which COAG had in mind.<sup>143</sup> At the same time, there is also the danger that adopting a Justice Reinvestment approach could merely add to existing government rhetoric. The 2009 Social Inclusion Agenda has eight ‘approaches’ that are broadly similar to Justice Reinvestment strategies, including building on individual and community strengths through partnerships with key stakeholders; developing tailored services; using ‘locational’ approaches; and building joined-up services and whole-of-government solutions. Most of the government policies, agreements and frameworks contain ‘motherhood statements’ that have had no effect at the coal face. As the Kimberley Aboriginal Law and Culture Centre points out in its submission to the Senate Inquiry

**In reality, shifting funds from corrective services to communities can only occur if preventive or recidivist programs do manage to reduce offending and reoffending.**

into Regional and Remote Indigenous Communities, there is a big difference between ‘talking the talk’ and ‘walking the walk.’<sup>144</sup>

## Justice Reinvestment: A new theory?

Despite Justice Reinvestment’s growing popularity, it is still an idea in its infancy. Critics point to the lack of a ‘strong empirical foundation’ and question whether it qualifies as a ‘proper’ theory.<sup>145</sup> Many details of Justice Reinvestment are left unexplained. Who is diverted from prisons and how are they diverted? How are prison savings calculated and how are they reinvested? Justice Reinvestment sounds great in theory, but what happens if funds are redirected from corrections budgets to communities and offending does not go down? Are offenders not given a custodial sentence (even though their offence is worthy of imprisonment) to save funds, or will the government end up paying more money to achieve very little change in offending and reoffending outcomes?

The premise of Justice Reinvestment is that the most effective way to address offending behaviour lies not within the penal realm, but rather in addressing the underlying causes of crime in communities. This insight is not new. Since the 1978 *Nagle Royal Commission into NSW Prisons*, the failure of prisons in addressing reoffending has been well known.<sup>146</sup> The report of the 1991 *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) contained 339 recommendations, with many recommending ‘imprisonment as a last resort’ and for a greater focus on ‘culturally appropriate’ strategies to reduce Indigenous incarceration.<sup>147</sup> Many of the initiatives introduced following the RCIADIC report have aimed to prevent Indigenous offending but have focused on changing the operation of the criminal justice system rather than crime prevention. For example, an initiative that allows community members to visit police watch-houses to provide comfort and support to Indigenous detainees is described by the Queensland government as one of a few key initiatives that ‘aim to reduce Aboriginal and Torres Strait Islander over-representation,’ although its effect on crime is likely to be negligible.<sup>148</sup> Crime prevention is quite an amorphous concept, and it seems almost anything that provides a ‘social good’ can be labelled as ‘crime prevention.’ For instance, in Queensland crime prevention funds were used to support the Hope Vale Indigenous Knowledge and Technology Centre.<sup>149</sup> The difficulty in defining Justice Reinvestment suggests that it too could become a ‘catch all’ phrase used to describe any number of ‘feel good’ type programs. Already supporters of Justice Reinvestment in Australia are calling for vague, ‘culturally appropriate’ initiatives such as ‘healing centres’ to be established.<sup>150</sup> These types of initiatives may help alleviate some of the ‘symptoms’ of disadvantage but will not address the causes.

Lessons can also be learned from past panaceas such as Restorative Justice. When Restorative Justice was all the rage in the 1990s, one of its promises was that it would provide ‘healing’ to victims.<sup>151</sup> There was widespread adoption of restorative justice practices across Australia and around the world. Yet many of these involved token programs focusing on low-level juvenile offending. A number of these programs also ended up becoming net-widening exercises—actually increasing the number of people coming into contact with the criminal justice system rather than reducing it.<sup>152</sup> Arguably, the reason why Restorative Justice type initiatives such as Circle Sentencing in NSW have had no effect on levels of reoffending or the seriousness of offences is they focus on treating the symptoms, not the causes of offending.<sup>153</sup> By involving local Aboriginal people in the process of sentencing offenders, Circle Sentencing may have had some benefit, but crime rates will not go down unless the underlying reasons why people offend are addressed.

## Conclusion

Given what we know about similar initiatives, there is cause to be sceptical of Justice Reinvestment. The rhetoric that Justice Reinvestment simply involves a ‘redirection of resources’ comes across as a cynical ploy to get bipartisan support by appealing to

**Many details of Justice Reinvestment are left unexplained. Who is diverted from prisons and how are they diverted? How are prison savings calculated and how are they reinvested?**



the fiscally conservative. We would be better off recognising that in Australia, Justice Reinvestment is unlikely to lead to real savings (at least in the short term). The NSW government appears to have recognised this and has exercised caution in adopting a Justice Reinvestment model.<sup>154</sup>

In promoting Justice Reinvestment in Australia, supporters have been quick to identify its success overseas but reticent in pointing out its failings. The United Kingdom has only recently adopted Justice Reinvestment strategies, so it is too soon to say whether it is working there. Yet already UK criminologists have noted that Justice Reinvestment is being used primarily to provide improved governance of rehabilitation programs, and that these programs are running in parallel with the continued growth of the prison system.<sup>155</sup>

Aiming to decrease the number of people going to prison is a worthwhile cause, but there are other ways of achieving this without using Justice Reinvestment strategies. The NSW government is reviewing the *Bail Act 1978* and *Crimes Sentencing Procedure Act 1999* (the ‘Sentencing Act’) to address the length of time offenders spend on remand.<sup>156</sup> Currently, the number of adult inmates in NSW prisons on remand (not yet convicted and sentenced) is nearly a third (2,534) of the total prison population (9,624). The proportion of juvenile offenders on remand is even higher, with 53% of the 320 juveniles and young people in custody held on remand.<sup>157</sup> According to the Hon. Greg Smith, attorney-general and minister for justice, one of the reasons for the high number of young people on remand is a substantial number are refused bail because they are homeless.<sup>158</sup> Of these young people held on remand, 84% do not receive a custodial sentence. As it costs nearly \$600 a day to house a young person in a correctional facility, substantial savings could be realised if the time or the number of young people held on remand is reduced.<sup>159</sup>

Although it is tempting to latch onto something that sounds like a solution, history shows there are no easy or simple solutions when it comes to addressing high Indigenous offending and incarceration rates. So what can be done? As this monograph shows, the strong determinants of offending are unemployment and poor education—even though many people maintain that high rates of Indigenous incarceration reflect institutional bias in the criminal justice system and racism in the police force. High unemployment among the Aboriginal population (35%) is a critical factor in high rates of Indigenous incarceration, with unemployed Indigenous people 20 times more likely to be imprisoned than employed Indigenous people.<sup>160</sup> In fact, unemployment is a greater risk factor for offending than Indigenous status.

GenerationOne recognises the part that poor education and unemployment play in the high incarceration of Indigenous youth and is advocating diversionary programs based on its Vocational Training and Employment Centre (VTEC) model.<sup>161</sup> However, introducing more effective diversionary schemes is possible without adopting a Justice Reinvestment approach. The problem with the NSW Justice Reinvestment Campaign for Aboriginal Young People is that it uses the ‘Aboriginals are different’ argument. To address the underlying causes of Indigenous offending, we need to focus on education and employment and not be waylaid into thinking the answer lies with yet more ‘culturally appropriate’ or ‘Indigenous distinct’ programs. Separate policies for Aboriginal and Torres Strait Islanders have been ‘an experiment with human lives costing billions of dollars.’<sup>162</sup> Rather than reducing Indigenous disadvantage, these policies have led to lower standards in education and higher welfare dependency. These have undermined the private behaviour and social cohesion of Indigenous communities, not only in remote locations but also in cities and towns.

The belief that Justice Reinvestment’s localised community focus approach will reduce offending in Indigenous communities ignores the fact that for more than 30 years, governments have been running community-based programs. Apart from a few exceptions, such initiatives have not led to real social change. The focus on community involvement as a precursor to improving remote Indigenous people’s lives disregards the fact that most Indigenous communities exist only because of passive service delivery by

**The rhetoric that Justice Reinvestment simply involves a ‘redirection of resources’ comes across as a cynical ploy to get bipartisan support by appealing to the fiscally conservative.**

**To address the underlying causes of Indigenous offending, we need to focus on education and employment and not be waylaid into thinking the answer lies with yet more ‘culturally appropriate’ or ‘Indigenous distinct’ programs.**

outside suppliers. It is no surprise that the highest concentration of offenders comes from remote areas, with no economy or private property rights—and only a few employment options. Rather than looking to ‘imagined communities’ as the solution, individual incentives to encourage people themselves to make the effort to change are needed. As Wesley Aird has said: ‘Being a participant in society is about taking responsibility for our own lives, one household at a time.’<sup>163</sup> Initiatives such as Noel Pearson’s Family Responsibilities Commission show when parents are given the right incentives and support, they can become more responsible for their children’s education. Across the four Cape York communities taking part in the trial, parents have voluntarily given about \$1.5 million to individual education funds towards their children’s education.<sup>164</sup>

Education and employment may not sound as novel or exciting as Justice Reinvestment, but evidence shows both play a critical role in the high Indigenous incarceration rate. ‘Feel good’ band-aid programs such as Indigenous healing centres are no substitute for focusing on the basics of education and employment, and on initiatives that seek to establish social norms and reduce crime. In the fight against Indigenous disadvantage and incarceration, the hyperbole surrounding Justice Reinvestment threatens to become yet another distraction from focusing on the fundamental issues that will lead to change.

## Appendix: Top 10 Indigenous offender locations by number\*

NSW	QLD	SA	WA	NT	VIC	TAS	ACT
Inner Sydney	Cairns	Port Augusta	Broome	Alice Springs (urban)	Mildura	Launceston	Braddon, Campbell, Reid, Turner
<b>198</b>	<b>429</b>	<b>208</b>	<b>134</b>	<b>434</b>	<b>18</b>	<b>80</b>	<b>13</b>
Blacktown	Brisbane	Marla, Mintabie	Halls Creek	Darwin (urban)	Altona, Laverton	Brighton	Lyneham, Dickson, Hackett, Watson
<b>145</b>	<b>427</b>	<b>166</b>	<b>96</b>	<b>340</b>	<b>11</b>	<b>29</b>	<b>13</b>
Central Macquarie (Dubbo)	Townsville	Ceduna	Swan	Tennant Creek	Sale, Warruk	Mayfield	Higgins, Charnwood
<b>139</b>	<b>370</b>	<b>151</b>	<b>94</b>	<b>164</b>	<b>9</b>	<b>23</b>	<b>12</b>
Hastings (mid North Coast)	Mount Isa	Whyalla	Derby—West Kimberley	Alice Springs (rural)	Corio, Norlane	Risdon Vale	Manuka, Red Hill
<b>128</b>	<b>209</b>	<b>67</b>	<b>88</b>	<b>140</b>	<b>8</b>	<b>20</b>	<b>9</b>
Newcastle	Tablelands	Elizabeth	Stirling	Katherine (urban)	Hoppers Crossing	Montrose	Fisher, Mount Stromlo, Waramanga
<b>115</b>	<b>166</b>	<b>60</b>	<b>83</b>	<b>124</b>	<b>7</b>	<b>19</b>	<b>9</b>
Gosford-Wyong	Ipswich and Logan	Cooper Pedy	East Pilbara	Katherine (rural)	Preston	Claremont	Fadden, Gowrie, Macarthur, Monash
<b>73</b>	<b>149</b>	<b>52</b>	<b>64</b>	<b>99</b>	<b>7</b>	<b>19</b>	<b>8</b>
Bathurst Orange	Rockhampton	Woodville	Kalgoorlie/Boulder	Yuendumu	Avalon, Lara, Port Wilson	Burnie	Belconnen
<b>72</b>	<b>130</b>	<b>51</b>	<b>64</b>	<b>93</b>	<b>7</b>	<b>18</b>	<b>7</b>
Wollongong and Fairfield-Liverpool	Palm Island	Port Pirie and Blair Athol, Kilburn	Gosnells	Papunya	Shepparton	Devonport	Gilmore, Chisholm, Richardson
<b>69</b>	<b>127</b>	<b>47</b>	<b>62</b>	<b>72</b>	<b>7</b>	<b>17</b>	<b>7</b>
Northern Slopes (Moree)	Moreton Bay	Athol Park, Mansfield Park, Woodville	Wyndham-East Kimberley	Nhulunbuy	Swan Hill	Clarendon Vale	-
<b>68</b>	<b>108</b>	<b>41</b>	<b>61</b>	<b>60</b>	<b>6</b>	<b>16</b>	
North Central Plain	Aurukun	Adelaide	Ngaanyatjarraku	Groote Eylandt	-	-	-
<b>65</b>	<b>107</b>	<b>35</b>	<b>58</b>	<b>41</b>			

\* Number in bold under each location is the total number of Indigenous prisoners on remand/sentenced.

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