

Submission to the  
Senate Legal & Constitutional Affairs Committee  
Inquiry:

**Value of a justice reinvestment approach  
to criminal justice in Australia**

March 2013

A joint submission prepared by:



**WAAMH**

**Western Australian Association  
for Mental Health**



**wacoss**

Western Australian  
Council of Social Service Inc

*Ways to make  
a difference*



**wanada**  
Western Australian Network of  
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## 1. Background

The Western Australian Council of Social Service (WACOSS), Western Australian Association for Mental Health (WAAMH) and Western Australia Network of Alcohol and Drug Agencies (WANADA) thank the Senate Legal and Constitutional Affairs Committees for the opportunity to make a submission to this inquiry.

As the three peak body organisations representing the community, mental health and alcohol and other drug sectors in Western Australia, we have a keen interest in, and much to contribute to the planning, implementation and evaluation of a justice reinvestment approach in WA. This is because some of our respective members are currently involved in direct service provision within both adult and juvenile detention facilities, and the services of many others are linked to the areas of crime prevention, children and youth, mental health, drugs and alcohol, child protection, and community development.

### 1.1 About WACOSS

The **Western Australian Council of Social Service (WACOSS)** is the leading peak organisation for the community services sector in Western Australia, and represents its 300 members and the over 800 organisations involved in the provision of services to individuals, families and children in our community. WACOSS has strong relationships with the community services sector and represents the interests of the sector and the communities they serve.

WACOSS is in a unique position to comment on critical social issues that affect members of the WA community — particularly those members who are disadvantaged and vulnerable.

WACOSS represents community sector organisations who work in a diverse range of areas, including:

- health;
- mental health;
- community services and development;
- disability;
- employment and training;
- aged and community care;
- family support;
- children and youth services;
- drug and alcohol assistance;
- indigenous affairs;
- support for culturally and linguistically diverse people;
- housing and crisis accommodation;
- safety and justice; and
- advocacy.



## 1.2 About WAAMH

The **Western Australian Association for Mental Health (WAAMH)** is the peak body representing over 80 community-managed mental health services in Western Australia. WAAMH's vision is that Western Australian community organisations will lead the way in supporting and including people with mental illness and their carers, providing innovative, well-governed community-based services focused on recovery.



WAAMH's core role is to support the development of the community-based mental health sector, provide systemic advocacy and representation, and influence public opinion for the benefit of people with mental illness and their carers.

Our members' services assist individuals to identify their own recovery goals, which can involve steps like securing safe housing, gaining and maintaining employment, engaging in a recreational activity and re-engaging with family. Community services often provide 'core' mental health services (like counselling) among a suite of other related services aimed at enhancing a person's recovery journey (like housing, employment and education assistance).

## 1.3 About WANADA

The **Western Australian Network of Alcohol and other Drug Agencies (WANADA)** is the peak body for the alcohol and other drug education, prevention, treatment, rehabilitation and support sector in WA. WANADA is an independent, membership-driven not-for-profit association.



Alcohol and other drugs are a health and social issue that impacts the whole community. The alcohol and other drug sector in Western Australia provides highly skilled services to meet the diverse needs of people in our community. WANADA is committed to supporting services to improve the quality of life for individuals, families and communities affected by alcohol and other drugs.

WANADA is driven by the passion and hard work of its member agencies and is the independent voice on alcohol and other drug sector issues throughout WA.

## 2. Introduction

Western Australia is stuck in a rut, when it comes to prisons. And what an *expensive* rut it is!

Despite increasing investment in prisons and the justice system in WA and a ‘tough on crime’ approach, including mandatory sentencing, minimum terms, and reduced parole, no significant return on the State’s investment in this area has been achieved. This investment has not led to a reduction in offending rates, reduction in recidivism rates, or improvements in community safety. Rather, most of these factors have been getting worse. Furthermore, the fact that the Department of Corrective Services is funded based on prisoner numbers means that there is little incentive for the Department to reduce the prisoner population.

It’s clear to WACOSS, WAAMH and WANADA that the status quo approach to community safety and justice has, *for decades*, not been achieving an acceptable return on investment for our community. With Western Australia spending more than ever on prisons and corrective services, and rates of offending showing no significant improvement, it’s time for a change of approach.

However, we are realistic about the significant political and structural barriers to the implementation of justice reinvestment at the state level, and recognise that it will take a sustained effort to bring about the necessary change. While there continues to be significant impediments within departmental structures, and a lack of political will to pursue the issue within the state bureaucracy, it is true to say that there is significant interest in and support for justice reinvestment across the community sector in WA. The community sector as a whole is keen to pursue what it can do to increase the focus on rehabilitation, diversion, early intervention and prevention and to contribute to making the case for an evidence-based approach to justice issues.

It is in this context that we believe there is a significant role that can be played by the Commonwealth Government in providing leadership on justice reinvestment, as outlined further below.

### 2.1 About this submission

This submission provides an outline of the current situation in Western Australia — showing an increasingly desperate situation with rapidly increasing prison populations, unsustainable increases to prison operation and infrastructure costs, and little evidence of the benefits of this expenditure. Compared with other states in Australia, Western Australia consistently performs poorly in measures relating to justice and incarceration. This submission also addresses what we can do – as community service providers acting together and acting in collaboration with Commonwealth and State governments – to address WA’s justice problems, and to deliver better outcomes for disadvantaged and vulnerable citizens. It draws attention to existing data on justice outcomes in WA and makes some recommendations about how to address some of the gaps, as well as highlighting a number of promising and successful initiatives on which we can build.

Through this submission, the following terms of reference have been addressed:

<b>Term of Reference</b>	<b>Page</b>
(a) the drivers behind the past 30 years of growth in the Australian imprisonment rate;	7
(b) the economic and social costs of imprisonment;	11
(c) the over-representation of disadvantaged groups within Australian prisons, including Aboriginal and Torres Strait Islander peoples and people experiencing mental ill-health, cognitive disability and hearing loss;	17
(d) the cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures;	30
(f) the benefits of, and challenges to, implementing a justice reinvestment approach in Australia;	35
(g) the collection, availability and sharing of data necessary to implement a justice reinvestment approach;	40
(h) the scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments; and	41

Our joint submission to this inquiry is based on a report we published in early 2013, and released as a part of our advocacy during the 2013 State Election campaign. This report was titled *Justice & Community Safety in Western Australia: A call for efficient investment in effective outcomes*.<sup>1</sup>

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<sup>1</sup> The *Justice & Community Safety in Western Australia* report can be found here: [http://www.wacoss.org.au/Libraries/State\\_Election\\_2013\\_Documents/Justice\\_and\\_Community\\_Safety\\_Report.sflb.ashx](http://www.wacoss.org.au/Libraries/State_Election_2013_Documents/Justice_and_Community_Safety_Report.sflb.ashx)

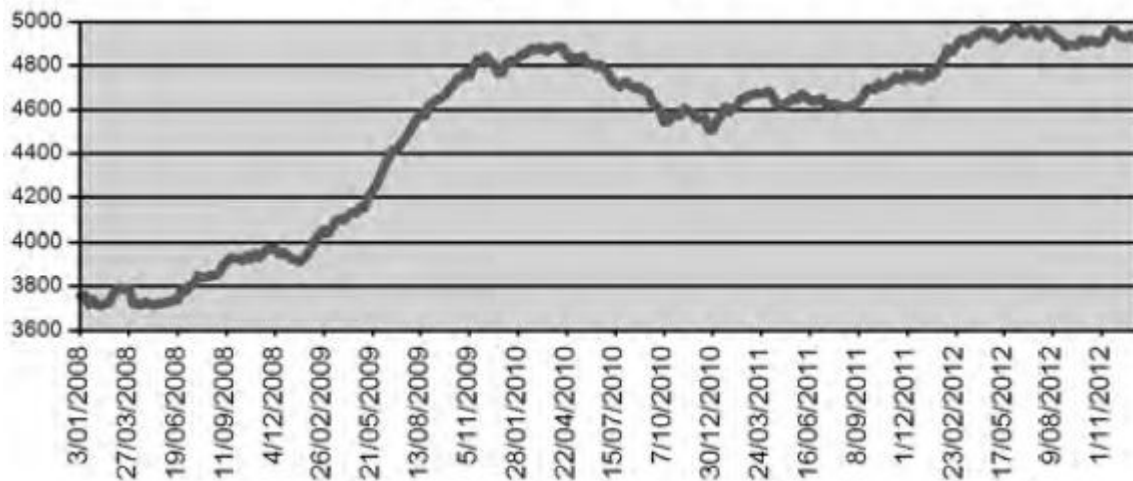
### 3. Term of Reference: (a) The drivers behind the past 30 years of growth in the Australian imprisonment rate

#### 3.1 The growth of imprisonment numbers in WA

Over the last 5-6 years in particular, the prisoner population in Western Australia has gone through a period of immense growth. Between 4 January 2007, and 3 January 2013:

- The total adult and juvenile prisoner population grew by 41.1%.
- The number of adults in prison grew by 40.6% (an additional 1,429 prisoners).
- The adult female prisoner population grew by 64.4% (an additional 181 prisoners).
- The number of juveniles in detention grew by 56.3% (an additional 72 detainees).<sup>2</sup>

Figure 1: Adult Prisoner Population - Rolling 5 year snapshot<sup>3</sup>



The following table compares the numbers and demographics of the adult and juvenile prisoner populations on 4 January 2007, and 3 January 2012.

<sup>2</sup> Figures taken from the Department of Corrective Services *Weekly Offender Statistics* reports from 4 January, 2007 <http://www.correctiveservices.wa.gov.au/files/about-us/statistics-publications/statistics/2007/prison-count-jan-mar-2007.pdf> and 3 January, 2013 <http://www.correctiveservices.wa.gov.au/files/about-us/statistics-publications/statistics/2013/cnt130103.pdf>.

<sup>3</sup> Department of Corrective Services (2013) *Weekly Offender Statistics*: 3 January 2013, <http://www.correctiveservices.wa.gov.au/files/about-us/statistics-publications/statistics/2013/cnt130103.pdf>.

Table 1: WA adult & juvenile prison populations<sup>4</sup>

	January 4, 2007		January 3, 2013		% Increase
	Number	% of total population	Number	% of total population	
<b>Adult prisoner population</b>	3,524	100.0%	4953	100.0%	40.6%
- Males	3,243	92.0%	4491	90.7%	38.5%
- Females	281	8.0%	462	9.3%	64.4%
- Indigenous	1,480	42.0%	1993	40.2%	34.7%
- Non-Indigenous	2,044	58.0%	2960	59.8%	44.8%
- Sentenced	2,874	81.6%	3947	79.7%	37.3%
- Unsentedenced (Remand)	627	17.8%	984	19.9%	56.9%
<b>Juvenile custodial population</b>	128	100.0%	200	100.0%	56.3%
- Males	118	92.2%	180	90.0%	52.5%
- Females	10	7.8%	20	10.0%	100.0%
- Indigenous	94	73.4%	135	67.5%	43.6%
- Non-Indigenous	34	26.6%	65	32.5%	91.2%
- Sentenced	58	45.3%	102	51.0%	75.9%
- Unsentedenced	70	54.7%	98	49.0%	40.0%

These figures show an alarming rate of growth in our prison population.

Indigenous people have remained highly over-represented in the adult prisoner population in WA - 42% in 2007 and 40.2% in 2013; and are even higher in the juvenile population - 73.4% in 2007 and 67.5% in 2013. This is particularly significant when we consider that Indigenous people represent only 3.1% of the total population in WA.<sup>5</sup>

In 2012, Western Australia also recorded the highest rate of imprisonment of Aboriginal adults (per 100,000) in Australia, as shown in Figure 3 — a rate almost 25 times higher than the non-Indigenous imprisonment rate.<sup>6</sup>

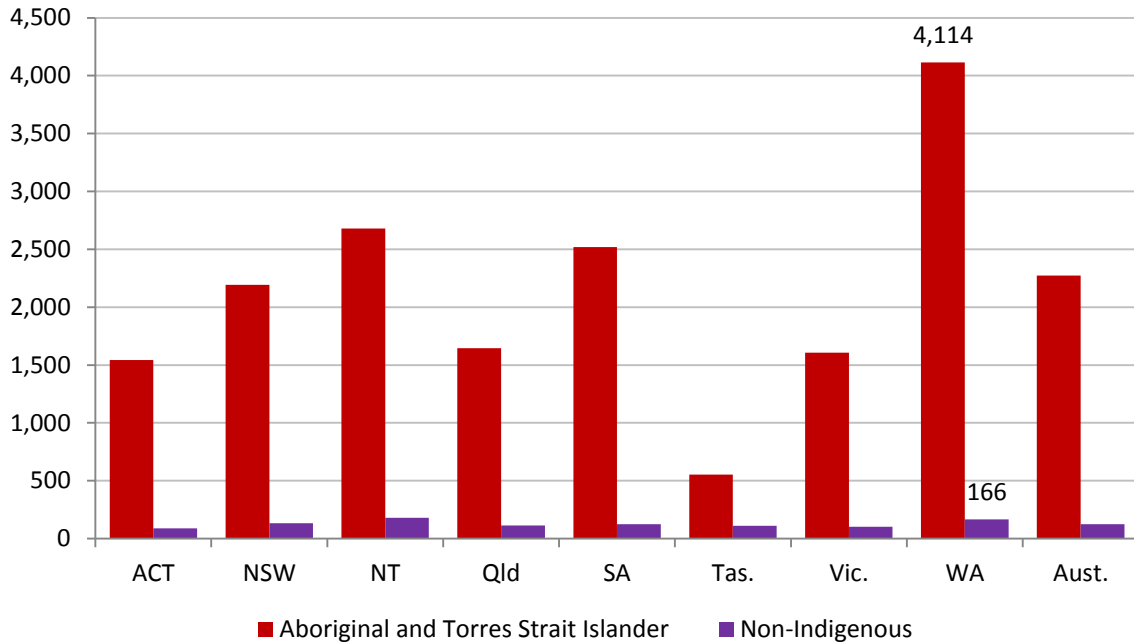
<sup>4</sup> Figures taken from the Department of Corrective Services *Weekly Offender Statistics* reports from 4 January, 2007 <http://www.correctiveservices.wa.gov.au/files/about-us/statistics-publications/statistics/2007/prison-count-jan-mar-2007.pdf> and 3 January, 2013 <http://www.correctiveservices.wa.gov.au/files/about-us/statistics-publications/statistics/2013/cnt130103.pdf>.

<sup>5</sup> Australian Bureau of Statistics (2012) *2011 Census Counts — Aboriginal and Torres Strait Islander Peoples*, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2075.0main+features32011>

<sup>6</sup> Australian Bureau of Statistics (2012) *4517.0 - Prisoners in Australia, 2012*, Table <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02012?OpenDocument>, Prisoner characteristics - states and territories: Table 3.



Figure 2: Adult imprisonment rate (per 100,000) by state & Indigeneity (2012)<sup>7</sup>



### 3.2 Overcrowding in WA prisons

In 2010, there was concern raised about the rates of prison overcrowding in WA following an increase in the adult prisoner population of approximately 25% in the space of a year. Much of this increase was attributed to the changed practice of the new Prisoner Review Board from 2009.<sup>8</sup> The impact of the new Board’s “difference of approach” in granting early release orders can be seen in the table below:

Table 2: Prisoner Review Board decisions<sup>9</sup>

	2008-09	2009-10
The number of prisoners who became eligible to be released under a parole order	3,051	3,091
The number of prisoners who were refused an early release order	855	2,112
The number of prisoners released under an early release order	1,957	927

<sup>7</sup> Australian Bureau of Statistics (2012) 4517.0 - *Prisoners in Australia: Prisoner characteristics - states and territories, 2012* <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02012?OpenDocument>, Table 1.

<sup>8</sup> ABC Radio National (2010) Law Report: WA’s Prisoner Review Board, <http://www.abc.net.au/radionational/programs/lawreport/was-prisoner-review-board/3015552#transcript>

<sup>9</sup> Prisoner Review Board (2010) Annual Report [http://www.prisonersreviewboard.wa.gov.au/files/PRB\\_Annual\\_Report\\_2010.pdf](http://www.prisonersreviewboard.wa.gov.au/files/PRB_Annual_Report_2010.pdf), page 12

With prisoner numbers increasing, occupancy rates in WA detention facilities shamefully defy design and optimal capacity. As the 2010 Productivity Commission *Report on Government Services* (Chapter 10: Corrective Services) explained (emphasis added):

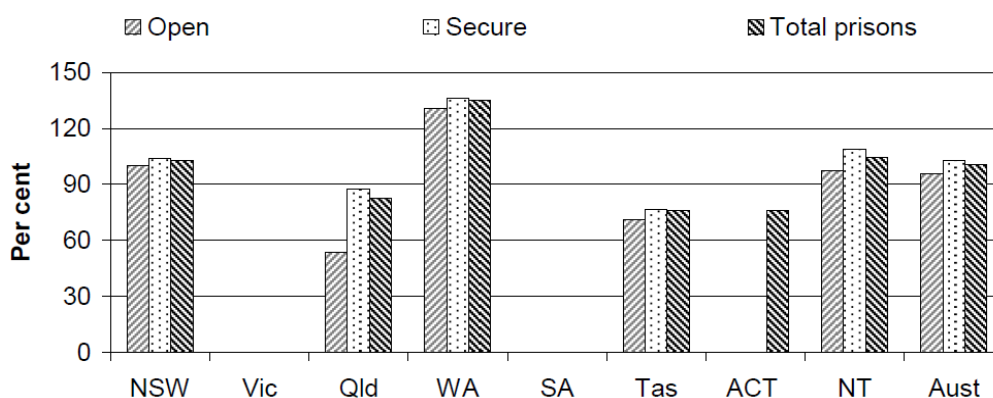
*'Prison utilisation' is defined as the annual daily average prisoner population as a percentage of the number of single occupancy cells and designated beds in shared occupancy cells that is provided for in the design capacity of the prisons, reported separately for open and secure custody.*

***It is generally accepted that the preferred level of prison utilisation falls between 85 and 95 per cent, because of the need for spare capacity to cater for the transfer of prisoners, special-purpose accommodation such as protection units, separate facilities for males and females and different security levels, and to manage short-term fluctuations in prisoner numbers. Percentages at the upper end of this range indicate better performance towards achieving efficient resource management.***

*Efficiency indicators are difficult to interpret in isolation and need to be considered in conjunction with effectiveness indicators. A high utilisation percentage, for example, can impact adversely on effectiveness indicators such as 'assaults'.<sup>10</sup>*

According to the same Productivity Commission report, in 2010-11 the national rate of prison utilisation was 100.6 per cent.<sup>11</sup> However, Western Australia has performed significantly worse on this measure, as shown by the graph below:

Figure 3: Prison design capacity utilisation, 2010-11<sup>12</sup>



<sup>10</sup> Productivity Commission (2010) *2010 Report on Government Services, Chapter 8: Corrective Services*, Australian Government, <http://www.pc.gov.au/gsp/rogs/2010>, page 27.

<sup>11</sup> Ibid, page 27.

<sup>12</sup> Ibid, page 27.

In 2010-11, Western Australian prisons were operating at 134.9% of the total design capacity. (Secure facilities were operating at 136.1% of capacity, and open facilities were operating at 130.6% of capacity. WA's prison utilisation rate has worsened since 2008-09 when they were operating at 116.9% of the total design capacity. (At that time, secure facilities were operating at 112.1% of capacity, whereas open facilities were 130.6% of capacity).<sup>13</sup>

The poor rate of prison utilisation (overcrowding) in WA needs to change. While money does need to be spent on replacing and repairing ageing prison infrastructure, it does not follow that the best way to improve the prison utilisation rate is to build more prisons. Shifting investment *away* from expensive new prisons, and into both crime prevention strategies (which address the underlying causes of criminal behaviour) and programs which reduce recidivism rates is the more fiscally and socially responsible option.

## 4. Term of Reference: (b) The economic and social costs of imprisonment

### 4.1 The rising cost of detention

According to WA State Budget figures, between 2006-07 and 2010-11, the costs per day of keeping adults and juveniles in detention did not change significantly. However, given the large increases in the size of the prisoner population, the total cost of delivering Adult and Juvenile Offender Services both increased significantly, as shown in the table below:

Table 3: Cost of Offender Services in WA<sup>14</sup>

	2006-07 Actual (\$'000)	2010-11 Actual (\$'000)	Difference (\$'000)	Increase (%)
Cost per day of keeping an adult offender in custody	286	292	6	2.1%
Adult Offender Services - Net Cost of Service (Total)	380,231	568,452	188,221	49.5%
Cost per day of keeping a juvenile in detention	657	667	10	1.5%
Juvenile Offender Services - Net Cost of Service (Total)	55,185	86,879	31,694	57.4%

The 2012-13 State Budget has provided for expenditure of \$759,945 (for Adult and Juvenile Corrective Services) in the 2012-13 financial year.<sup>15</sup> This represents a 75% increase in spending on

<sup>13</sup> Ibid, Table 8A.23.

<sup>14</sup> Figures taken from the *2008-09 WA State Budget Papers: Volume 3*, (Corrective Services, pages 1028-1031) and *2012-13 WA State Budget Papers: Volume 2*, (Corrective Services, page 784).

the 2006-07 figures shown above — and does not include the Government’s investment in new and expanded prison infrastructure.

## 4.2 The WA Government is investing heavily in new prisons

As a result of recent prison population increases, the WA Government has committed hundreds of millions of dollars to expand existing prisons, and build new prison facilities. In recent years — both because of the need to replace and repair ageing prison infrastructure, and because of the growing numbers of prisoners. But this asks the question — will building more prisons yield the best possible investment of public safety dollars?

In recent years, the State Government has committed to:

- Spending \$655 million on a prison infrastructure program which would add 640 beds to the existing Hakea, Casuarina and Albany prisons.<sup>16</sup>
- Establishing a prison work camp near Warburton, at a cost of \$15.6 million (housing 18 prisoners).<sup>17</sup>
- Establishing a prison work camp near Wyndham, at a cost of \$9.4 million (housing 9 prisoners).<sup>18</sup>
- Establishing a new West Kimberley Regional Prison, near Derby at a cost of \$150million (150 beds)<sup>19</sup>

(Note: the spending figures identified above, which total over \$830 million, account only for infrastructure costs, and do not include the ongoing costs of running the new facilities.)

The location and type of these new corrective prisons reflect the over-representation of Indigenous Western Australians in the WA justice system. In particular, the Derby facility has been designed specially to cater for Indigenous prisoners. Corrective Services Minister, Christian Porter MLA claimed that “The Derby facility will be the first complex in Australia designed, built and staffed to meet the unique social and cultural needs of Aboriginal offenders.”<sup>20</sup> While we acknowledge there is value in providing culturally appropriate facilities, we question whether the high rates of Indigenous offending in the (primarily Indigenous) communities surrounding these new facilities could not be better dealt with by instead increasing investment in local, community-directed initiatives targeting the factors which have been shown to precipitate offending

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<sup>15</sup> Government of Western Australia (2012) *2012-13 WA State Budget Papers: Volume 2*, (Corrective Services, page 784).

<sup>16</sup> The Nationals WA (2012) *State Budget 2011-12: Supporting our Community - Corrective services infrastructure improvements*, <http://www.nationalswa.com/News/Speeches/>

<sup>17</sup> The West Australian (2012) 'Resorts cheaper' than work camp, <http://au.news.yahoo.com/thewest/a/-/breaking/13811497/resorts-cheaper-than-work-camp/>

<sup>18</sup> Ibid.

<sup>19</sup> Liberals WA (2008) *\$150million for new West Kimberley Regional Prison*

<http://www.wa.liberal.org.au/article/150million-new-west-kimberley-regional-prison>

<sup>20</sup> Ibid.

behaviour in a local area. Providing ongoing funding for evidence-based programs and services which address existing areas of disadvantage (and other identified issues) has the potential to bring long term, much more positive outcomes to local communities than it is likely any prison will be able to achieve.

#### 4.3 The indirect costs of increased numbers of prisoners

While the previous sections have discussed the direct (and very high) costs of corrective facilities and Offender Programs, it is also important to consider the indirect costs of corrective facilities — though such costs are much more difficult to measure. In Western Australia, where facilities have been operating at high cost and with overcrowding, there are a range of considerations which relate directly to the issue they seek to address — community safety.

The growth in the prisoner population in the last 5 years, has led to concerns about the levels of overcrowding in WA prisons. This led to particular concerns, including:

- Cells which were specifically designed for single-occupancy were suddenly being double, triple or quadruple “bunked” (more than one prisoner being held in a cell).<sup>21</sup>
- As a result of insufficient beds, some prisoners have been forced to sleep on the floor of cells.<sup>22</sup> Compounding this, there have also been reports of prisoners “sleeping on the floor on mattresses, their head lying centimetres away from the toilet or the cell door.”<sup>23</sup>
- It has also been reported that the overcrowding had led to both the cancellation of training and education opportunities for prisoners, and the inability of prisoners to gain access to programs.<sup>24, 25</sup> The flow-on effect of this is that prisoners have been denied parole because they have not been able to address their offending behaviours as programs are unavailable or oversubscribed.
- The WA Prison Officers Union has expressed concern about the safety of its members (and of prisoners), claiming that “overcrowded prisons in WA are causing violent behaviour to fester among some of the state's most dangerous prisoners.”<sup>26</sup>

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<sup>21</sup> The Australian (2010) Overcrowding, breaches of basic care and responsibility 'rife' in WA prisons, 23 July 2010, <http://www.theaustralian.com.au/business/legal-affairs/breaches-of-basic-care-and-responsibility-rife-in-wa-prisons/story-e6frg97x-1225895824870>

<sup>22</sup> WAToday (2012) *New minister defends prison overcrowding* <http://www.watoday.com.au/wa-news/new-minister-defends-prison-overcrowding-20120702-21c2f.html#ixzz2LcBOQCSC>

<sup>23</sup> The Australian (2010) Overcrowding, breaches of basic care and responsibility 'rife' in WA prisons, 23 July 2010, <http://www.theaustralian.com.au/business/legal-affairs/breaches-of-basic-care-and-responsibility-rife-in-wa-prisons/story-e6frg97x-1225895824870>

<sup>24</sup> WAToday (2012) Overcrowded prisons ‘festering more crime’, 23 October 2012, <http://www.watoday.com.au/wa-news/overcrowded-prisons-festering-more-crime-20121023-282re.html>

<sup>25</sup> ABC News (2012) *Warnings of deaths in custody as WA prison population explodes*, 9 August 2012, <http://www.abc.net.au/worldtoday/content/2012/s3563989.htm>

<sup>26</sup> WAToday (2012) Overcrowded prisons ‘festering more crime’, 23 October 2012, <http://www.watoday.com.au/wa-news/overcrowded-prisons-festering-more-crime-20121023-282re.html>

Overcrowding undermines the rehabilitative intention of prisons. Denial of parole due to the inaccessibility of programs means that prisoners are released at the end of their sentence without ongoing supervision, unlike when they are released on parole. The consequences (and costs) of prison overcrowding in WA cannot be underestimated - it has the potential to have negative consequences for community safety (though it is uncertain whether any such consequences in WA are being actively measured or monitored).

As *Fleming et al.* wrote in 2011 with regard to the effects of “releasing offenders with untreated mental health problems into the community”:

*It is important to consider not only the health issues of the prisoners, but also the effects of releasing offenders with untreated mental health problems into the community. Particularly with problematic prison overcrowding, the mental wellbeing of prisoners will only worsen as living conditions become more cramped, cell temperatures reach extremes, and interpersonal difficulties inevitably occur. Overcrowding also increases the pressure on prison health services, unavoidably resulting in prisoners with undetected and untreated mental health problems. As these prisoners complete their sentences and are released, potentially without parole, the impact is felt on the public health system as they start accessing public health resources... Thus, prisoner mental health must be screened for and treated, with data provided to health organisations and government agencies to ensure programs are effective, and the health of prisoners meets standards expected in the general community.<sup>27</sup>*

We are concerned by the seeming acceptance in WA of the bottomless pit which seems to be the State Government’s corrective services budget. While prisons are an essential part of the justice system, they should only be used as a last resort, and much greater emphasis needs to be placed on the rehabilitative opportunity the period of imprisonment provides. Ultimately, supporting communities by addressing the underlying problems which often lead people to commit crimes should be at the core of State Government justice and corrections policy.

This is why we as community service organisations are in favour of a justice reinvestment approach.

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<sup>27</sup> Fleming, J., Gately, N., & Kraemer, S. (2011) *Creating HoPE: Mental Health in Western Australian Maximum Security Prisons*, Edith Cowan University, <http://goo.gl/LZ9fd>, pages 7-8.

#### 4.4 Corrections spending is high, but so are recidivism rates

The willingness of the Western Australian Government to allow such high rates of imprisonment (and overcrowding) to both manifest and continue, raises significant questions about what the Government and Western Australian community sees as the primary purpose of prisons — is it deterrence, incapacitation, punishment, or rehabilitation?

- **Deterrence** — to deter people from offending, through fear of loss of liberty.
- **Incapacitation** — to remove offenders from the community and incapacitating them, in order to prevent them from offending again.
- **Punishment (or retribution)** — to subject an offender to a penalty (loss of liberty) in response to their wrongdoing. The punishment seeks to deter them from offending (or getting caught) again.
- **Rehabilitation** — to provide support, services or training for an offender so as to assist them to overcome the factors in their life which resulted in them becoming an offender. The rehabilitation seeks to provide an individual with new lifestyle-options post-release.

However, with regards to “incapacitation” and “punishment”, it is important to remember that almost all prisoners get released at some point. Fear of re-imprisonment alone is unlikely to be effective in bringing about significant, and lasting, behavioural change – particularly if there are broader social determinants of offending which remain unaddressed. Similarly, the problem with “deterrence” is that the focus is on not getting “caught,” rather than not offending.

All four of these factors have some role to play in addressing crime and justice issues in WA. The question is how much emphasis is placed on each of these purposes, how funding can be distributed to bring about the most positive outcomes for the broader Western Australian community.

The Department of Corrective Services (WA) lists its obligations as:

- providing offender management services that protect the community;
- giving offenders the interventions they need to make a positive difference in their lives and reduce their involvement in the criminal justice system;
- supporting offenders to become responsible citizens by adopting law-abiding lifestyles; and
- promoting crime prevention.<sup>28</sup>

Despite mounting spending on corrective services, rates of recidivism amongst WA prisoners remain high. Recidivism is defined as re-incarceration within two years of release and does not include convictions involving other penal sanctions. In 2010–11, the recidivism rate in Western

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<sup>28</sup> Department of Corrective Services (2011) *Our Responsibilities*, <https://www.correctiveservices.wa.gov.au/about-us/our-responsibilities/default.aspx>

Australia was 44.2% for the adult prison population as a whole.<sup>29</sup> However, the recidivism rate for the Aboriginal prison population is markedly higher than that of the non-Aboriginal prisoner population.

Between 1 July 1998 and 30 June 2008, the recidivism rates for Western Australians were as follows:

Table 4: Recidivism rates, Western Australia<sup>30</sup>

	Recidivism rate
Aboriginal male adult	70%
Non-Aboriginal male adult	40%
Aboriginal female adult	55%
Non-Aboriginal female adult	30%
Aboriginal male juvenile	80%
Aboriginal female juvenile	64%

If the WA prison system was working effectively, by deterring people from offending, or discouraging them from re-offending post-release, we would expect to see both prisoner numbers decreasing, and significantly lower rates of recidivism. This is the opposite of what WA is currently experiencing.

Furthermore, the WA prison system's ongoing, still-unresolved overcrowding issues do not reflect favourably on these obligations, and contribute in a less than positive (and very expensive) way to the safety of the Western Australian community.

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<sup>29</sup> Sentencing Advisory Council of Victoria (2012) Released Prisoners Returning to Prison, <http://sentencingcouncil.vic.gov.au/page/about-sentencing/sentencing-statistics/imprisonment/released-prisoners-returning-prison>

<sup>30</sup> Hon Wayne Martin (2009) 'Corrective Services for Indigenous Offenders - Stopping the Revolving Door', Presentation to Joint Development Day - Department of Corrective Services, <http://goo.gl/2nPwQ>



## 5. Term of Reference: (c) The over-representation of disadvantaged groups within Australian prisons, including Aboriginal and Torres Strait Islander peoples and people experiencing mental ill-health, cognitive disability and hearing loss

The over-representation of disadvantaged groups within the Western Australian justice system is an issue of significant concern to the community sector. As discussed in section 3, Aboriginal Western Australians are particularly over-represented within our juvenile and adult courts and prisons. There is a strong consensus among community service providers and social justice advocates that many “tough on crime” measures disproportionately impact on Aboriginal people as well as other disadvantaged and minority groups in WA.

A key feature of the existing approach to crime and justice issues in WA has been the ‘criminalisation’ of social and health issues. The lack of support provided for those experiencing significant social and health disadvantage together with the lack of appropriate and effective treatment for mental health, alcohol and other drug problems (and their comorbidity) contributes to circumstances where those affected and untreated are significantly more likely to end up in our justice system. This is evidenced in high rates of over-representation in our courts, prisons and juvenile justice system, and as victims of crime.

The availability of alternatives to imprisonment is important, especially amongst offenders who have one (or many) factors that contribute to offending behaviour. A 2009 study by the Law Reform Commission of Western Australia found, in examining a selection of Western Australian sentencing cases (a total of 156 offenders) in the Supreme Court and District Court, that:

*The Commission found that in approximately 90 per cent of these cases there was evidence of at least one of the following underlying problems: substance abuse, mental health, family violence, gambling and homelessness. In 71 per cent of the cases analysed substance abuse was involved in some way; 28 per cent of offenders had a mental health problem; 19 per cent of offenders had both substance abuse and mental health problems; and in 14 per cent of cases either the offence involved family violence (or abuse) or the offender had previously been a victim of family violence or abuse. These results support the contention that a substantial number of offenders have underlying problems that contribute to offending behaviour.<sup>31</sup>*

It is both inappropriate and ineffective to treat health problems and address social disadvantage through prisons. The fact that these issues, if left untreated, can lead or contribute to criminal

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<sup>31</sup> Law Reform Commission of WA (2009) *Court Intervention Programs: Final Report* <http://www.lrc.justice.wa.gov.au/files/P96-FR.pdf>.

behaviour amongst *some* of those affected, is a reason to ensure appropriate and adequate services are available to all. The presence of these factors cannot be said to ‘cause’ or excuse criminal behaviour – but the evidence is clear that they do make it very much more likely. While from a social justice point of view, many of us may like to think that it is simply the right thing to do to ensure all citizens have equal access to services and support and to reduce social and economic disadvantages arising from historical injustices, the point about a justice reinvestment argument is that targeted and effective prevention, diversion and rehabilitation strategies are more economically effective.

Prisons are a particularly inappropriate place for most people with health issues (especially mental health and/or alcohol and other drug issues) to receive treatment. Experience has shown that prisons can rarely provide the support needed to help individuals seek recovery or to prevent them from reoffending. The practical reasons for this include that, in prison, medical attention is scant, PBS Medicare entitlements are withdrawn, and recovery-oriented services are generally unavailable or inaccessible.<sup>32</sup>

In the following sections — section 5.1 through section 0, we discuss in further detail the following areas of disadvantage and concern:

- Western Australians experiencing **mental health issues, alcohol and other drug issues**, and those experiencing the combination of these issues (i.e. comorbidity) are significantly over-represented within the justice system in WA as discussed in sections 5.1 and 0.
- **Cognitive disability** (including but not limited to those with acquired brain injury and foetal alcohol spectrum disorder) are significant issues which have also previously been considered by other Senate Inquiries (see section **Error! Reference source not found.**).
- **Young people from disadvantaged communities** are significantly over-represented in our justice system, and we remain concerned that there is a vicious cycle emerging as a result of the lack of opportunities, services and support for youth in these areas – as discussed in section 0.

In considering all of the various issues arising from the over-representation of specific disadvantaged and vulnerable groups within our justice system, the crucial issue that we must not overlook is the relationship between social and financial disadvantage, and the likelihood of offending behaviour and incarceration. The challenge in unpicking and understanding the relative contribution of all of these possible causal and underlying factors is how we can get access to relevant and revealing data, and how we can track the effectiveness of, or barriers to, particular interventions that seek to disrupt these chains of cause and effect. The fact that early experience of poverty, child abuse and neglect mean that it is significantly more likely that a person will end

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<sup>32</sup> Stokes, B. (2012) *Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia*, Prepared for the Department of Health, Government of Western Australia, pages 119 -122 and recommendation 9.1.3.

up within our criminal justice system is a compelling reason why we need to do more to tackle these fundamental injustices as a society.

## 5.1 Alcohol & other drugs

Estimates of the percentage of WA prisoners who have alcohol and other drug use issues, vary between 60% and 80%. For example:

- The *Drug Use Careers of Offenders Study*, conducted in 2000, surveyed the drug histories of sentenced adult male prisoners in Western Australia. The study found that 80% of prisoners had a history of regular illicit drug use, and 50% reported a high level of drug dependence.<sup>33</sup>
- In 2011, the Department of Corrective Services told a Parliamentary Committee that “approximately 62% of prisoners have alcohol and other drug problems, and 53% of adults on community service orders have alcohol and other drug problems.”<sup>34</sup>

Furthermore, the Department of Corrective Services reported in their *Offender Drug and Alcohol Strategy 2010 – 2014*, that:

*It is estimated that between 37% and 52% of offenders in Australia report that their offending is attributable to their drug problem.<sup>35</sup> In relation to young people in custody, an Australian study indicated that the misuse of drugs exacerbated offending, with 35% of Aboriginal and 29% of non-Aboriginal youths attributing their offending to their drug use.<sup>36</sup>*

Below are some examples of what we know about the treatment (or lack of treatment) of alcohol and other drug issues in WA for individuals involved in the justice system:

### Community corrections/prior to imprisonment

- (1) The alcohol and other drug community service sector is minimally resourced. Many services are forced to cap the number of mandated clients they are able to provide treatment services to as a way of minimising the displacement of voluntary service

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<sup>33</sup> Makkai and Payne (2003) cited in Australian National Council on Drugs (2012) *Drug Research Paper 23: Supply, Demand and Harm Reduction Strategies in Australian Prisons - an update*, [http://www.ncd.org.au/images/PDF/Researchpapers/rp23\\_australian\\_prisons.pdf](http://www.ncd.org.au/images/PDF/Researchpapers/rp23_australian_prisons.pdf), page 49.

<sup>34</sup> Education and Health Standing Committee (2011) *Alcohol: Reducing the Harm and Curbing the Culture of Excess*, Legislative Assembly Parliament of Western Australia, [http://www.parliament.wa.gov.au/parliament/commit.nsf/%28Report+Lookup+by+Com+ID%29/1511331A52931060482578B80007F0D5/\\$file/97909904.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/%28Report+Lookup+by+Com+ID%29/1511331A52931060482578B80007F0D5/$file/97909904.pdf), page xxviii.

<sup>35</sup> NCDS (2006) cited in Department of Corrective Services (2010) *Offender Drug and Alcohol Strategy 2010 – 2014*, <http://goo.gl/fEVWt>, page 5.

<sup>36</sup> Prichard and Payne (2005) cited in Department of Corrective Services (2010) *Offender Drug and Alcohol Strategy 2010 – 2014*, <http://goo.gl/fEVWt>, page 5.

users. Alcohol and other drug services that see a high percentage of mandated consumers typically experience higher turnover of staff and a negative impact on the culture of the organisation.

- (2) There is high demand and waiting lists for services at most alcohol and other drug services, including significant demand for services to mandated consumers. Waiting lists often act as a deterrent to early access to services as a prevention to crises, including criminal behaviour.
- (3) The alcohol and other drug sector receive minimal funding to specifically meet the needs of the significant referrals from community corrections.
- (4) Referral from corrective services staff typically demonstrates inadequate understanding of the needs of alcohol and other drug consumers or the autonomous community service sector, with inappropriate referrals, expectations of prioritisation and inadequate assessment and case management. As a result community sector resources are often wasted.
- (5) Diversion initiatives are welcomed by the alcohol and other drug sector. The 2006 review of the Perth Drug Court (established in 2000) found that:

*Drug Court involvement had a beneficial effect on recidivism – with participants being 17.0% less likely to return to correction than prisoners and 10.4% less likely than those on community orders.<sup>37</sup>*

However, at the time of the review, there was a waiting list for people wanting to access the Drug Court. Evidence has also indicated that marginalised and vulnerable population group members are typically underrepresented in diversion access. In addition, alcohol diversion is currently not an option in Western Australia.

### **During prison**

- (6) Assessment of alcohol and other drug issues is not routinely and adequately undertaken at prison entry for all individuals. As such there is no appreciation of the true treatment and support needs for the WA prison population and no capacity for the prisons, government or the community service sector to participate in meaningful planning to meet the gaps in service needs.

The 2011 Legislative Assembly report, *Alcohol: Reducing the Harm and Curbing the Culture of Excess* found that “the current provision of (alcohol and other drug) treatment programs provided by the Department of Corrective Services is inadequate”.<sup>38</sup>

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<sup>37</sup> Department of the Attorney General (2006) *A review of the Perth Drug Court*, [http://www.courts.dotag.wa.gov.au/D/drug\\_court\\_evaluation.aspx?uid=1254-2424-6583-8790](http://www.courts.dotag.wa.gov.au/D/drug_court_evaluation.aspx?uid=1254-2424-6583-8790) page 1.

- (7) The “zero tolerance” approach (as opposed to a “harm minimisation” approach) to drug use has been demonstrated again and again as not being a viable option for the community, and this is demonstrated by the ineffective capacity for confined environments (such as Western Australian prisons) to ensure zero tolerance. The Drug Use Careers of Offenders Study, which was conducted in 2000, surveyed the drug histories of sentenced adult male prisoners in Western Australia, finding that:

*45 per cent of 146 prisoners reported using drugs in prison. Of those reporting drug use while in prison, 21 (over 30%) reported that the last time they injected was in a prison setting (Kraemer, Gately and Kessell, 2009). A cross-sectional audit of all medical notes for inmates at one regional prison in Western Australia found that 57 per cent of inmates had documented evidence of illicit drug use in their lifetime.<sup>39</sup>*

Equitable access to treatment, support or harm reduction services is not made available to people in Western Australian prisons. Under the illusion of no drug use in prisons, harm reduction strategies (including those that assist with reducing blood borne viruses) are not afforded to prisoners, who on release from prison contribute to community and family risks of harm. Poor service access and inadequate focus on the health and wellbeing of prisoners with health and disadvantage concerns is negatively impacting on the safety and wellbeing of the Western Australian community.

#### **Post-release**

- (1) Pathways programs, supporting the transition from prison and back to the community are provided, however numbers participating are minimal and clearly more resources need to be focused in this area to significantly prevent recidivism.

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<sup>38</sup> Education and Health Standing Committee (2011) *Alcohol: Reducing the Harm and Curbing the Culture of Excess*, Legislative Assembly Parliament of Western Australia, page xxviii  
[http://www.parliament.wa.gov.au/parliament/commit.nsf/%28Report+Lookup+by+Com+ID%29/1511331A52931060482578B80007F0D5/\\$file/97909904.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/%28Report+Lookup+by+Com+ID%29/1511331A52931060482578B80007F0D5/$file/97909904.pdf)

<sup>39</sup> Gilles et al. (2008) cited in Australian National Council on Drugs (2012) *Drug Research Paper 23: Supply, Demand and Harm Reduction Strategies in Australian Prisons - an update*, page 49,  
[http://www.ncnd.org.au/images/PDF/Researchpapers/rp23\\_australian\\_prisons.pdf](http://www.ncnd.org.au/images/PDF/Researchpapers/rp23_australian_prisons.pdf)

## 5.2 Mental health

Various studies have sought to estimate the mental health status of people in prison or specific prison populations. Below is a summary of some of some of the findings:

- A 2003 NSW study suggests that around 74 per cent of people in prison have some form of mental health problem, in comparison to 20 per cent of the general population.<sup>40</sup>
- Research by Morgan et al (2008) indicated that mentally ill individuals are over-represented in the criminal justice system at all levels. Of those who offend, court data cross-linked with a mental health database shows that 85 per cent of court attendees have had contact at some previous stage with mental health services.<sup>41</sup>
- A 2009 study on the health of Australia's prisoners shows that prisoners in Australia have poor health compared to the general community, with 37% reporting having a mental health diagnosis at some point, with 31 per cent having been referred to prison mental health services.<sup>42</sup>
- The 2010 National Prisoner Health census indicated that 31% of prison entrants reported that they had been told by a doctor, psychiatrist, psychologist or nurse that they had a mental health disorder (including drug and alcohol abuse) in their lifetime - a rate 2.5 times higher than the general population.<sup>43</sup> 16% of prison entrants surveyed were currently on medication for a mental health disorder.
- 54% of prisoners in a WA prison study reported having received treatment for an emotional or mental health problem in the past.<sup>44</sup>

A 2012 *Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia*, undertaken by Professor Bryant Stokes AM, has provided the most current, and identified the *most significant* gaps in mental health supports for people in and released from prison. Some of the findings of this report are reflected in the

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<sup>40</sup> Butler, R., and Allnutt, S. (2003) cited by Government of Western Australia, Mental Health Commission *Mental Health 2020: Making it personal and everybody's business*, <http://goo.gl/YqTUv>, page 37.

<sup>41</sup> Morgan et al (2008) cited in Stokes, B. (2012) *Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia*, Prepared for the Department of Health, Government of Western Australia, page 111, [http://www.amawa.com.au/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core\\_Download&EntryId=1476&PortalId=0&TabId=132](http://www.amawa.com.au/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=1476&PortalId=0&TabId=132)

<sup>42</sup> Australian Institute of Health and Welfare, *The health of Australia's prisoner's: 2009*, <http://www.aihw.gov.au/publication-detail/?id=6442468371>, page x.

<sup>43</sup> Australian Institute of Health and Welfare, *The mental health of prison entrants in Australia: 2010*, <http://www.aihw.gov.au/publication-detail/?id=10737422201>, page 2.

<sup>44</sup> Fleming, J., Gately, N., & Kraemer, S. (2011) *Creating HoPE: Mental Health in Western Australian Maximum Security Prisons*, Edith Cowan University, <http://goo.gl/LZ9fd>, page 11.

following observations regarding the treatment (or lack of treatment) of mental health issues in WA for individuals involved in corrective services:

### **Community corrections/prior to imprisonment**

- (1) One in 5 Western Australian adults (450,000 people) will experience a mental health difficulty in any year.<sup>45</sup> However, all community mental health services have waiting lists which vary from 3 weeks to 12 months.<sup>46</sup> As noted earlier, waiting lists often act as a deterrent to early access to services as a prevention to crises, including criminal behaviour.
- (2) Professor Stokes received evidence that criminal behaviour is often the result of the longstanding difficulty experienced by patients and their carers in accessing care in the community.<sup>47</sup>
- (3) The community sector has welcomed the State Government's decision to establish a new dedicated mental health court for people (adults and young people) with mental health problems and/or mental illness. However, given the high rate of mental illness amongst people coming into contact with the criminal justice system in WA, it seems likely that the Court will be unable to meet demand.

### **During prison**

- (4) The Frankland Centre is WA's only forensic secure inpatient mental health facility. The Centre was opened in 1993, with 30 beds. The number of beds in the facility has not increased since it was opened "despite a significant increase in demand brought about largely by the proclamation of the Criminal Law (Mentally Impaired Accused) Act 1996 in 1997"<sup>48</sup> and the significant increase in prisoner numbers.

*... prisoners who require psychiatric care at Frankland sometimes wait up to three or four weeks in prison before a bed becomes available... the current number of secure beds in the Frankland Centre is highly inadequate to meet demand.<sup>49</sup>*

Professor Stokes received evidence that there are significant gaps in availability of mental health care to people in prison. It was reported that prisoners who require

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<sup>45</sup> Stokes, B. (2012) *Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia*, Prepared for the Department of Health, Government of Western Australia, page 25,  
[http://www.amawa.com.au/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core\\_Download&EntryId=1476&PortalId=0&TabId=132](http://www.amawa.com.au/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=1476&PortalId=0&TabId=132).

<sup>46</sup> Ibid, page 159.

<sup>47</sup> Ibid, page 120.

<sup>48</sup> Ibid, page 119.

<sup>49</sup> Ibid, page 119.

psychiatric care at Frankland sometimes wait up to three or four weeks in prison before a bed becomes available and the current number of secure beds is highly inadequate to meet demand.<sup>50</sup> Professor Stokes called for, as a matter of urgency:

*The planning, business cases and funding for provision of a full range of mental health services in WA prisons and detention centres. This will involve dedicated units and services in prison for mentally ill women, youth, Aboriginal and people with acquired brain injury/intellectual disability.*<sup>51</sup>

- (5) The understaffing of mental health programs and services within prisons means “funds for treatment are often only available for those at crisis point, or who have committed particularly violent or sexual crimes.”<sup>52</sup>

#### **Post-release**

- (6) Professor Stokes also noted that, in the WA context, many prisoners may not receive any medical or mental health follow-up following their release, as the critical services may not be informed of their release.<sup>53</sup> Professor Stokes called for, as a matter of urgency:

*Community services [to be] expanded to facilitate transition from prison, to assertively follow up people who are seriously mentally ill and present a serious risk of harm to themselves and others, and to closely follow up and monitor mentally impaired accused patients on custody orders in the community.*<sup>54</sup>

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<sup>50</sup> Ibid, page 119.

<sup>51</sup> Ibid, page 21.

<sup>52</sup> Fleming, J., Gately, N., & Kraemer, S. (2011) *Creating HoPE: Mental Health in Western Australian Maximum Security Prisons*, Edith Cowan University, <http://goo.gl/LZ9fd>, page 3.

<sup>53</sup> Stokes, B. (2012) *Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia*, Prepared for the Department of Health, Government of Western Australia, page 7,

[http://www.amawa.com.au/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core\\_Download&EntryId=1476&PortalId=0&TabId=132](http://www.amawa.com.au/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=1476&PortalId=0&TabId=132)

<sup>54</sup> Ibid, page 21.



### 5.3 Undiagnosed disabilities

Many people who have ongoing learning, cognitive or behavioural difficulties as a result of past experiences of trauma or diagnoses such as ADHD, Fetal Alcohol Spectrum Disorder or Traumatic Brain Injury — are unable to access support services because they do not neatly fit into either the mental health or disability ambits.

Foetal Alcohol Spectrum Disorder (FASD) is caused by a pregnant woman drinking alcohol at levels which harm her unborn child. The consumption of alcohol during pregnancy has been shown to cause brain damage in the child.<sup>55</sup>

*FASD's effects on the brain can result in cognitive or behavioural deficits. These deficits may include mental retardation, learning disabilities, hyperactivity, attention deficits, and poor social skills. These and other problems associated with FASD may increase the chance that a person will break the law.*<sup>56</sup>

The WA Legislative Assembly Education and Health Standing Committee's report into FASD identified the significant cost of FASD to the community:

*FASD is the leading cause of non - genetic, intellectual disability in Australia and the Western World. Data reflects an incidence rate of FASD greater than that of Down's Syndrome. When including a cost to the community of FASD, where there has been some contact with the criminal justice system, it may cost up to \$25,000 each year averaged across every year of an affected person's life. Thus, by the time a person with FASD is 40 years of age they will have cost the community up to \$1,000,000.*<sup>57</sup>

International research indicates that young people with FASD have a high likelihood of coming into contact with the criminal justice system. In a submission to the Federal Government inquiry into FASD in 2012, the Alcohol and Other Drug Council of Australia (ADCA) cited statistics from the National Organization on Fetal Alcohol Syndrome in the US, which stated that 61 per cent of

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<sup>55</sup> WA Legislative Assembly Education and Health Standing Committee (2012) *Foetal Alcohol Spectrum Disorder: the invisible disability*  
[http://www.parliament.wa.gov.au/C8257837002F0BA9/%28Report+Lookup+by+Com+ID%29/1740F63B37A1314A48257A7F000766DD/\\$file/Final+FASD+Report+with+signature.pdf](http://www.parliament.wa.gov.au/C8257837002F0BA9/%28Report+Lookup+by+Com+ID%29/1740F63B37A1314A48257A7F000766DD/$file/Final+FASD+Report+with+signature.pdf)

<sup>56</sup> US Department of Health and Human Services (2007) *Fetal Alcohol Spectrum Disorders and Juvenile Justice: How Professionals Can Make a Difference*,  
[http://fasdcenter.samhsa.gov/documents/WYNK\\_JuvJust\\_Profs.pdf](http://fasdcenter.samhsa.gov/documents/WYNK_JuvJust_Profs.pdf)

<sup>57</sup> WA Legislative Assembly Education and Health Standing Committee (2012) *Foetal Alcohol Spectrum Disorder: the invisible disability*,  
[http://www.parliament.wa.gov.au/C8257837002F0BA9/%28Report+Lookup+by+Com+ID%29/1740F63B37A1314A48257A7F000766DD/\\$file/Final+FASD+Report+with+signature.pdf](http://www.parliament.wa.gov.au/C8257837002F0BA9/%28Report+Lookup+by+Com+ID%29/1740F63B37A1314A48257A7F000766DD/$file/Final+FASD+Report+with+signature.pdf), page ii.

adolescents with FASD in the US have been in trouble with the law.<sup>58</sup> Unfortunately comparable Australian figures are not currently available.

FASD is not a diagnosed disability, which contributes to the difficulty for people with FASD to obtain access to those support services — the sorts of services which could potentially reduce their likelihood of coming into contact with the justice system. This concern was addressed in the WA Legislative Assembly's report:

*Recommendation 8: The Committee recommends that the Government and the Minister for Disability Services support changes to commonwealth and state legislation to better accommodate children and adults with FASD. In particular any reference to disability or intellectual disability to be broadened to include a definition of cognitive impairment as an ongoing impairment in comprehension, reason, judgment, learning or memory, that is the result of any damage to or dysfunction, developmental delay, or deterioration of the brain or mind.*<sup>59</sup>

This report makes a range of further recommendations which have specific implications for youth justice, including (but not limited to):

*Recommendation 11: The Committee recommends that the Attorney General make available additional funding in the 2013 budget for justice and corrective services to enable:*

- a. The identification of people with FAS / FASD or who have a cognitive impairment.*
- b. Additional programs to be developed to assist people with FAS / FASD or a cognitive impairment during their pre - sentence period, incarceration and following discharge to help them function in society.*

Diagnoses such as FASD, traumatic brain injury and other learning or cognitive impairments (such as ADHD) do not appear on Australia's *List of Recognised Disabilities*<sup>60</sup>, thus limiting access to support services and to payments for carers. However, the prevalence of such diagnoses amongst young people who come into contact with the criminal justice system cannot be ignored.

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<sup>58</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs (2012) *FASD: The Hidden Harm Inquiry into the prevention, diagnosis and management of Fetal Alcohol Spectrum Disorders*, Available at:

[http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=spla/fasd/report.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=spla/fasd/report.htm), page 137

<sup>59</sup> Ibid, page ix.

<sup>60</sup> Australian Government (2012) *Social Security Act 1991: 1.1.R.90 Recognised disability (CA (child))*, Accessed at: [http://guidesacts.fahcsia.gov.au/guides\\_acts/ssg/ssguide-1/ssguide-1.1/ssguide-1.1.r/ssguide-1.1.r.90.html](http://guidesacts.fahcsia.gov.au/guides_acts/ssg/ssguide-1/ssguide-1.1/ssguide-1.1.r/ssguide-1.1.r.90.html)

For example, research has found that history of traumatic brain injury (TBI) — a blow to the head resulting in a loss of consciousness or blacking out<sup>61</sup> — is high amongst prisoners, with 37% of WA prisoners reporting having suffered from a TBI.<sup>62</sup> People with TBI:

*... may experience long-term changes in one or more of the following areas— physical and sensory abilities, cognition, behaviour and personality, communication and medical status.*<sup>63</sup>

The high rate of TBI amongst prisoners “may be attributed to the neuropsychological deficits and aggressive, violent, criminal behaviours that can result from TBI.”<sup>64</sup> TBI can be both a result of criminal behaviour, but may also contribute to it — for example, if a child suffers from sustained, serious physical abuse.

In addition, up to 70% of Youth Legal Service clients indicate some impairment of learning or cognitive abilities — the most common being attention deficit hyperactivity disorder (ADHD).<sup>65</sup>

Legislators and government departments need to be more actively seeking opportunities to both prevent people suffering from such conditions, and to find ways to encourage young people with such diagnoses to engage in positive and meaningful ways.

There is a need to better understand the rates, causes and consequences, of undiagnosed disabilities amongst prisoners in WA — just as was discussed in relation to alcohol and other drug and mental health problems. Improved data collection and analysis is needed to accurately evaluate the need for services within prisons; to plan and manage/support prisoners once they are released back into the community; and to develop effective crime-prevention strategies. Prisoners are often people with extremely complex needs who need integrated multi-department/service responses to get the best outcomes for both individuals and their communities.

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<sup>61</sup> Loss of consciousness following an injury to the head is an indication that there has been an effect on the brain.

<sup>62</sup> Australian Institute of Health and Welfare (2011) *The health of Australia's prisoners 2010*, Accessed at: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737421312&libID=10737421312>, page 37.

<sup>63</sup> Ibid, page 37.

<sup>64</sup> Ibid, page 37.

<sup>65</sup> Information provided by Cheryl Cassidy-Vernon, Director, Youth Legal Service WA.

## 5.4 Young people at risk

Research has indicated that young people at risk of offending often have a history of involvement with a range of government and community sector services and interventions. This suggests that there is a clear opportunity that is being missed to identify young people most at risk before they begin to engage in criminal behaviour and come into contact with the justice system – at which point intervention becomes more difficult and the costs more significant. We need to provide better services and support to young people at risk.

There is strong evidence that children who suffer abuse or neglect are more likely to engage in criminal activity than those who do not. A recent study by the Australian Institute of Health & Welfare linked available child protection, juvenile justice and Supported Accommodation Assistance Program (homelessness) data. Analysis of the linked data found that “children and young people who are involved in one of these three sectors are more likely to be involved in another of the sectors than the general population.”<sup>66</sup> For example, the study found that:

- Almost 15% of young people under juvenile justice supervision received SAAP support within 1 year before the start of their most recent supervision, and this proportion increased to almost 20% for the previous 2 years.<sup>67</sup>
- One in 12 (8%) of young people received SAAP support within 12 months after the end of their most recent juvenile justice supervision, while 1 in 8 (12%) received it within 2 years.<sup>68</sup>
- Almost one-third (31%) of young Indigenous women under juvenile justice supervision had one or more child protection notifications, compared with 19% of young Indigenous men, 17% of young non-Indigenous women and 8% of young non-Indigenous men.<sup>69</sup>
- Young people with a history of substantiated child protection notifications were more likely to enter supervision at a younger age than those with no substantiated notifications.<sup>70</sup>

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<sup>66</sup> AIHW (2012) *Children and young people at risk of social exclusion: links between homelessness, child protection and juvenile justice*, Australian Institute of Health & Welfare  
<http://www.aihw.gov.au/publication-detail/?id=60129542237>.

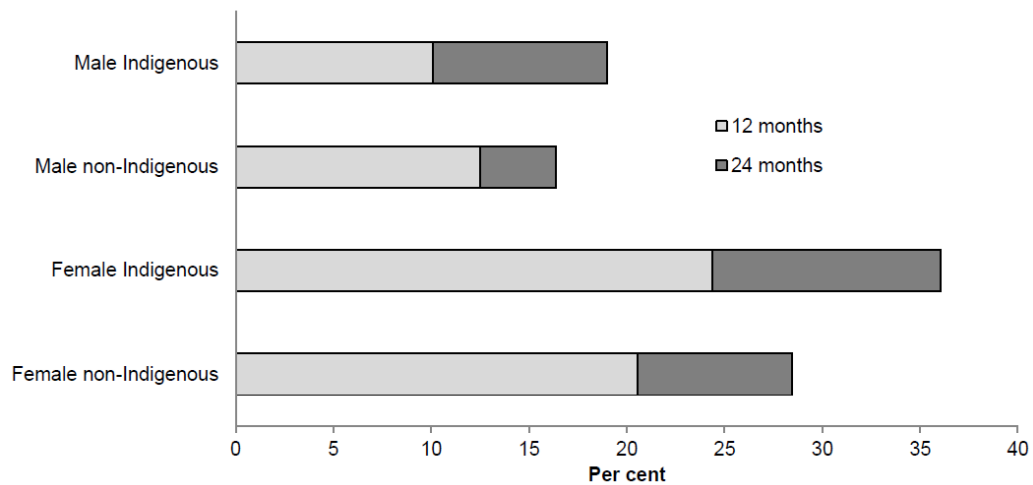
<sup>67</sup> Ibid, page 10.

<sup>68</sup> Ibid, page 14.

<sup>69</sup> Ibid, page 25.

<sup>70</sup> Ibid, page 26.

Figure 4: Young people who received SAAP support before their most recent juvenile justice supervision<sup>71</sup>



In April 2012, WACOSS hosted a Sector Consultation titled “Youth at Risk and Juvenile Justice.” The forum canvassed a wide range of issues affecting young people, including housing, access to services, government ‘silos,’ the cultural competence of youth services, diversion programs, early intervention, binge drinking, parenting, service funding, the media coverage of youth issues and health.

One of the key themes of the consultation was youth justice. While the community sector participants were concerned about the rate young people were coming into contact with the justice system (and the rate at which they were being incarcerated), most were more concerned about what was seen as the critical need to address those underlying factors which have been shown to contribute towards the likelihood of offending behaviour. Such factors included (but are not limited to) alcohol and/or drug abuse, mental illness, homelessness and family breakdown.

Following the Youth at Risk and Juvenile Justice Forum in April, the Youth Affairs Council of WA (YACWA), Youth Legal Service and WACOSS came together to develop plans to provide further opportunities for participants and other interested parties to discuss and workshop the issues raised. Subsequently, three half-day “Youth Justice Think Tank” workshops were held, one in each of September, October, and December 2012.

The report ‘**Building a more effective youth justice system**’<sup>72</sup> is a result of a series of Youth Justice Think Tanks hosted by the Western Australian Council of Social Service (WACOSS), the Youth Legal Service (YLS) and the Youth Affairs Council of Western Australia (YACWA). The Think Tanks brought together over 100 policy makers, representatives from non-government organisations,

<sup>71</sup> Ibid, page 10.

<sup>72</sup> The *Report and Recommendations of the 2012 Youth Justice Think Tank*, can be found here: [http://www.wacoss.org.au/Libraries/State\\_Election\\_2013\\_Documents/Youth\\_Justice\\_Think\\_Tank\\_Report.sflb.ashx](http://www.wacoss.org.au/Libraries/State_Election_2013_Documents/Youth_Justice_Think_Tank_Report.sflb.ashx)

legal experts and youth workers to explore how Western Australia could evolve our youth justice approach to better meets the needs of young people and the community.

The report contains 26 recommendations targeting government and non-government services that can deliver effective community action. These recommendations all relate to improving the effectiveness of the Western Australian approach to addressing youth justice issues. The strong involvement of people from both the government and community sectors was one of the great strengths of the Youth Justice Think Tank.

## **6. Term of Reference: (d) The cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures**

### **6.1 Measuring the effectiveness of prevention & early intervention programs**

The Committee has shown wisdom in identifying that information on the comparative cost, availability and effectiveness of diversionary programs and rehabilitative services — as well as wider programs for at risk groups that seek to prevent criminality by addressing its underlying causes or seek to intervene on first contact with the justice system — is crucial to making the case for a justice reinvestment approach. Unfortunately this is also an area where we struggle to get access to good data on outcomes and costs. The reasons for this include the fragmentary and often short term nature of funding for services; lack of access to relevant and valuable data held by State agencies and departments; and the lack of resources for independent research into related issues.

There is a willingness within the community sector to share data and resources to better understand those issues which contribute to offending behaviour; better evaluate the relative effectiveness of different programs and supports; and to collaborate in establishing consistent protocols for gathering meaningful data on outcomes. Unfortunately in practice, data collection and submission for the purposes of contractual reporting is too often a one-way process, where the data gathered is driven by agency priorities and concerns, rather than the interests of evaluating outcomes. Where data *is* submitted by community service organisations, it is seldom seen again; rarely analysed and reported on in a meaningful fashion; and information gathered about comparable programs, agencies or service types is seldom, if ever, accessible to independent researchers.

One place within which the Commonwealth has a significant opportunity to add value to the disparate efforts of community service providers, social justice advocates, researchers and academics, is to provide leadership and resources to support independent research and to enable the development of common data protocols for outcomes-based comparative evidence gathering.

It has been noted that there is some difference of opinion or emphasis in justice reinvestment circles on the relative importance of diversionary versus rehabilitative measures, and to what extent prevention and early intervention should be a priority.

One of the challenges of a focus on preventative measures is that it can be difficult to draw a conclusive connection between access to particular services — be it education and training, youth and cultural programs, mental health, AOD, child protection or family services — and the change in justice outcomes. Similarly, if we are investing in preventive services within a community and we see no change or a sudden increase in the incarceration rate, how do we reliably attribute it? Does it mean there is a gap in our preventive strategy and, if so, where? Conversely, we might also consider whether might there be some other driver that, if not for the presence of our preventive programs, would have resulted in a much higher rate of criminality — and, if so, how can we know or conclusively prove it?

On the other hand, once a person from a disadvantaged background is already within the justice system, we recognise that as service providers we face a considerable task in undoing the compounded effects of disadvantage, trauma, socialisation within an offending subculture, and institutionalisation within the justice system. We know it would have been simpler and more effective to deliver supportive and enabling services earlier and get them onto a more meaningful and healthy path in life sooner — but how do we prove it, and how do we divert the limited resources also needed for tertiary and crisis services to where they might do more good sooner... when this ultimately may mean those with more severe or pressing needs may be missing out? In a context where our members, as service providers, are already turning away increasing numbers of people seeking services because of limited capacity, these are very difficult decisions to make.

## **6.2 Measuring the effectiveness of diversionary programs**

An array of positive report and evaluations exist relating to the effectiveness and cost of diversionary programs — with drug courts in Australia seeming to be the most often evaluated. One such example is the 2006 review of the WA Drug Court, about which it was concluded:

*In terms of actual costs incurred by the Justice Department... the Drug Court was more expensive than a community-based order but far less costly than a custodial order. However, when the costs of the actual sentences imposed on Drug Court participants were compared with the costs of the sentences they would probably have received if not for their involvement with the program, estimated savings of approximately \$67,000 per Drug Court client were calculated. When the lower reoffending rates of Drug Court participants were taken into account, the study estimated that each fresh offending episode cost the Drug Court just over \$36,000 compared with \$43,000 for the community-*

*based group and \$47,000 for the prison group, thus rendering the Drug Court more cost effective than the other options.*<sup>73</sup>

There are a range of diversion program evaluations which have come to similarly positive conclusions. However, as the Australian Institute of Criminology found in 2007, methodological limitations relating to the evaluation of such programs has meant that the findings relating to the effectiveness of drug diversion programs as responses to offending is considered inconclusive.<sup>74</sup> Improving such methodological limitations would be central to an evidence-based justice reinvestment approach.<sup>75</sup>

We believe that the high cost of imprisonment in WA, and the failure of the current approach to make any significant contribution to lower offending or recidivism rates, makes a strong argument for the WA State Government to undertake a significant change direction; to implement a justice reinvestment approach. Furthermore, we're keen to see a significant commitment to such an approach, rather than just a few new programs, or pilots. As the Law Reform Commission of Western Australia wrote in its 2009 report *Court Intervention Programs*:

*In the Western Australian context, the Commission stresses that unless and until court intervention programs are fully supported by government through proper reforms and adequate resources it will never be possible to accurately judge their effectiveness. Arguably, it is too early to assert conclusively that court intervention programs are cost-effective; however, it is equally too early to claim that they are not. The current research demonstrates that court intervention programs have the potential to be cost-effective – the issue for Western Australia is how best to support court intervention programs to ensure that they can operate at their full potential.*<sup>76</sup>

We know that the community sector has a valuable contribution to make to a justice reinvestment approach to crime prevention and the reduction of recidivism rates. In fact, this is an area of work which, to a variety of extents, many of our respective members are already engaged in — but there is a need for improvement of procurement processes to ensure appropriateness of services, increased funding to improve availability of services, and consistent evaluation of outcomes directly related to justice reinvestment aims.

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<sup>73</sup> Ibid, page 110. Note: These conclusions were drawn from the 2006 Review of the WA Drug Court, available here: [http://www.courts.dotag.wa.gov.au/files/Drug\\_court\\_review\\_2006.pdf](http://www.courts.dotag.wa.gov.au/files/Drug_court_review_2006.pdf) in

<sup>74</sup> Ibid, page 110.

<sup>75</sup> Wundersitz, J. (2007) *Criminal justice responses to drug and drug-related offending: are they working?*: Technical and Background Paper, Australian Institute of Criminology. <http://www.aic.gov.au/publications/current%20series/tbp/21-40/tbp025.html>

<sup>76</sup> Law Reform Commission of WA (2009) *Court Intervention Programs: Final Report* <http://www.lrc.justice.wa.gov.au/files/P96-FR.pdf>, page 10.



### 6.3 The role of the community sector in service provision

One of the major strengths of community sector organisations is their strong links to, and knowledge of, local communities and networks. These links place community organisations in a strong position to provide the kind of sustainable and targeted supports that help people overcome what can often be chaotic life factors which can lead to engagement with the justice system. Young people at risk of offending behaviour are often in contact with and known to community service providers, as discussed above. However, the high level of demand for services, the limits placed on service delivery by funding contracts, and the lack of information sharing needed to identify risk factors can prevent services from intervening.

Community sector organisations provide a wide range of services - ranging from prevention, early intervention, diversionary and rehabilitation services. Many community sector programs and services seek, directly or indirectly, to address those factors which have been shown to contribute to an increased likelihood of offending behaviour amongst vulnerable communities. This includes (but is far from limited to) services relating to alcohol and other drug problems, mental health, domestic violence, at-risk youth, family support, homelessness and employment. Other community sector programs work to provide diversion opportunities, and to reduce the rates of re-offending amongst offenders once they are released from prison. It is *not just* individuals that benefit from access to community sector programs. Families and communities are also strengthened and best served by the provision of well-integrated programs and services developed in response to the identification of vulnerabilities, and evidence of need within a local community.

A wide range of services are needed to meet the diverse needs of individuals, families and communities. Many of these services are already provided by the community sector. The links between mental health problems, alcohol and other drug use, family problems and offending behaviour means that these services can be assumed to be making a contribution towards early intervention, prevention of offending. For example:

- **The alcohol and other drug sector** provides individual, group, couples and family support through a range of services, including: community drug services, therapeutic communities and residential rehabilitation centres, sobering-up shelters, harm reduction services, counselling services, detoxification and pharmacotherapy support. The alcohol and other drug sector also provide community development, education and prevention services in consultation with their community.
- **The mental health sector** assists individuals' to identify their own recovery goals, which can involve steps like securing safe housing, gaining and maintaining employment, engaging in a recreational activity and reengaging with family. WAAMH's member organisations often have 'core' mental health services (like counselling) among a suite of other related services aimed at enhancing a person's recovery journey. For example, WAAMH member organisations often include a combination of some of the following

services: networking and support for carers, family and friends of people with mental illness; crisis accommodation and refuge from domestic violence; support gaining basic life skills; support for families affected by stress and depression relating to pregnancy, childbirth and new parenthood; and telephone crisis lines.

One example of a community-managed organisation, funded by the Western Australian State Government, is the recently opened sub-acute mental health service. The service, known as *Step-up Step-down*, encapsulates the aim of the service in providing short term supported accommodation to people who, without that support, are likely to be admitted to hospital (ie, step-up), as well as people who need support after being discharged from hospital (ie, step down). This form of accommodation provides a solid base from which to stabilise treatment and arrange individualised planning and coordination, to ensure that people are connected to the supports and services they need to re-establish a good life.<sup>77</sup>

- **The family and child sector** provides a wide range of services, including: services to build parenting capacity; family and peer support for children and family members and carers; case management; support when transitioning to child care, pre-school and primary school; playgroups, child care and family day care services; counselling; relationship support services; community education; domestic violence services; early intervention services to families and children at risk of abuse or neglect; services to prevent children from entering the child protection system; and out-of-home care services .

In addition, it is important to remember that when offenders enter diversionary programs (such as drug courts) they sometimes receive preferential access to treatment places/services. The effect of this is that it “may disadvantage an agency’s voluntary clients in situations where placements are limited”. This is an issue which has required Western Australian community service providers to place limits on the number of corrective services-related clients they can accept. The potential for this unintended consequence must be addressed in the design and funding of diversion programs.

Community sector organisations are committed to outcomes which best serve their communities. The community sector is keen to gain access to existing data and to see improved data collection processes introduced to ensure the services they (are typically being contracted to) offer are most effectively meeting the needs of their community.

Even if, in the short to medium term, many State and Territory Governments remain sceptical or recalcitrant about trialling and supporting justice investment approaches, there is a significant amount that could be achieved by the community sector unilaterally — *if* it had the resources for coordination, capacity-building and advocacy. We need more independent voices (backed by a strong evidence base) who are able to engage in public education and debate around issues of

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<sup>77</sup> Mental Health Commission (2011) *Mental Health 2020: Action Plan 2011- 2012*, [http://www.mentalhealth.wa.gov.au/Libraries/pdf\\_docs/MHC\\_action\\_plan\\_Web\\_2.sflb.ashx](http://www.mentalhealth.wa.gov.au/Libraries/pdf_docs/MHC_action_plan_Web_2.sflb.ashx), page 9.

justice and community safety. These voices are needed to provide a counter-balance to the opinions of those who drive populist law and order campaigns (for example, within state election campaigns and the mainstream media) — to point authoritatively and convincingly to the evidence of what does and doesn't make a difference to rates of offending and imprisonment, and ultimately the cost of such approaches to the community.

## 7. Term of Reference: (f) The benefits of, and challenges to, implementing a justice reinvestment approach in Australia

The challenges to the implementation of a justice reinvestment approach discussed in this section have been written specifically with the state of Western Australia in mind, but we have no doubt that the three challenges identified also relate equally to other Australian states.

### 7.1 The 'good data' challenge

Access to and sound analysis of quality data is at the basis of the justice reinvestment approach. The United States Council of State Governments: Justice Center, describes the use of data in justice reinvestment as follows:

*Justice Center experts analyse crime, arrest, conviction, jail, prison, and probation and parole supervision data provided by state and local agencies; map specific neighbourhoods where large numbers of people under criminal justice supervision live and cross-reference this information with reports of criminal activity and the need for various services (including substance abuse and mental health treatment programs) and resources (such as unemployment or food stamp benefits); and assess available services critical to reducing recidivism. Using that state-specific information, the Justice Center develops practical, data-driven, and consensus-based policies that reduce spending on corrections to reinvest in strategies that can improve public safety.<sup>78</sup>*

Good data is the key to a developing a successful, partnership-based justice reinvestment approach to crime prevention and the reduction of recidivism rates. Quality data is critical both to the planning and provision of services, but also to the comprehensive evaluation of initiatives undertaken.

Unfortunately, in WA at present, there is currently a lack of quality data measuring alcohol and other drug use, mental health rates, and other social issues currently identified as being found disproportionately amongst the prison population.

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<sup>78</sup> The Council of State Governments: Justice Center (no date) *Justice Reinvestment*  
[http://justicereinvestment.org/files/JR\\_overview\\_2010\\_rev.pdf](http://justicereinvestment.org/files/JR_overview_2010_rev.pdf)

In 2001, the Australian Bureau of Statistics published *The National Criminal Justice Statistical Framework*. In the Framework, the ABS identified “number of important questions about criminal justice and the CJS that either cannot or have not been addressed by currently available data.”<sup>79</sup>

Key issues include:

- An inability to distinguish characteristics of offenders (a lack of detailed offender information).
- An inability to track offenders through the criminal justice system.
- The lack of information of victim and offender ethnicity and Indigenous status.
- The lack of information of drug, alcohol and firearm involvement in crime.
- The lack of adequate data to examine recidivism (including the lack of a standard definition of a recidivist).
- An inability to evaluate comprehensively programs to reduce recidivism and other intervention / prevention programs in order to determine accurately the types of strategies that are effective.
- The lack of collection of data for research and evaluation requirements, rather than just for operational needs.
- The existence of many systems to store data, but no integration of that data.
- The lack of uniform standards in some parts of the crime and justice field.
- The need for geo-coded data for regional comparisons at small local area level.
- The lack of a substantial link between crime data and other data to help identify factors contributing to crime.<sup>80</sup>

In 2012, WACOSS and its members called for the introduction of an ongoing audit of rates of mental illness and drug and alcohol problems amongst prisoners.<sup>81</sup> Improved data collection and data sharing is needed to:

- Better consider the opportunities for new, targeted crime prevention services, as well as to measure the impact of existing services;
- Ensure the provision of alcohol and other drug and mental health services within prisons are both appropriate and adequate to meet the current need; and
- Plan and manage support for prisoners once they are released back into the community.

This is clearly an area where the Commonwealth has the capacity to use its leadership and resources to support a national approach to creating the evidence-base for justice reinvestment. As a starting point, Commonwealth grants and service agreements should encourage and support the collection of and independent access to relevant and comparable outcomes data as a starting point. Similar arrangements should also be negotiated into national partnership agreements and

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<sup>79</sup> Australian Bureau of Statistics (2001) 4525.0 - *The National Criminal Justice Statistical Framework, Jul 2001*, <http://www.abs.gov.au/ausstats/abs@.nsf/66f306f503e529a5ca25697e0017661f/73D3A2566F429B95CA256AB8007FEE8D>

<sup>80</sup> Ibid.

<sup>81</sup> Western Australian Council of Social Service (2012) *2013-14 Pre Budget Submission*, [http://www.wacoss.org.au/Files/WACOSS\\_Pre\\_Budget\\_Submission\\_2013-14.pdf](http://www.wacoss.org.au/Files/WACOSS_Pre_Budget_Submission_2013-14.pdf)

other joint funding arrangements where relevant. More importantly, independent resources should be made available to support further data collection and enable independent research and analysis and advocacy.

## 7.2 The funding challenge

There was an economic argument behind the use of the justice reinvestment approach in the United States — the country with the highest rate of incarceration in the world.<sup>82</sup>

In 2007, the state of Texas projected it needed, to address the state’s impending prison overcrowding crisis, to spend an additional \$523 million for the construction and operation of new prisons over two years. Analysis of data relating to why the prison population was growing, found that failures related to community supervision and insufficient treatment capacity were key factors. Texas State Representative Jerry Madden said:

*Our prisons were increasingly filled with people sentenced for substance abuse problems, mental health issues, or technical violations. The result has been a huge burden on our state budget and fewer beds for serious, violent offenders. We needed to be smarter about how we spent taxpayers’ dollars on public safety while ensuring that we continued to be tough on those offenders who pose the greatest risk to our communities.*<sup>83</sup>

In response to these findings, the state introduced a comprehensive criminal justice package and spent \$241 million on:

- Expanding the capacity of substance abuse treatment programs
- Increasing available mental health community-based treatment and diversion programs
- Improving success rates for people on community supervision
- Enhancing the use of parole for low-risk offenders.

Texas found that the cost of increasing the capacity of treatment and residential facilities was significantly less than the earlier budget request for additional prison capacity. The state immediately saved \$210.5 million for the 2008–2009 fiscal biennium.

So, if Texas can make it work, why can’t we do it in our own ‘wild West’?

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<sup>82</sup> Population Reference Bureau (2013) *U.S. Has World's Highest Incarceration Rate*  
<http://www.prb.org/Articles/2012/us-incarceration.aspx>

<sup>83</sup> Council of State Governments: Justice Center (2009) *Texas Justice Reinvestment Policies Reduce Corrections Spending and Strengthen Supervision*,  
[http://www.reentrypolicy.org/announcements/texas\\_justice\\_reinvestment](http://www.reentrypolicy.org/announcements/texas_justice_reinvestment)

### 7.3 The Government 'silos' challenge

A number of WA State Government inquiries have recommended the adoption of a justice reinvestment approach, including the November 2010 report *Making our Prisons Work: An inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies*.<sup>84</sup>

With both State and Federal Government committees having recommended (at least further investigation of) a justice reinvestment approach, many in the community sector have been frustrated by the current WA Government's response. This frustration can, perhaps, be better understood after reading the Government's response to Recommendation 20 of the 2011 report of the *Inquiry into the Transportation of Detained Persons: The Implementation of the Coroner's Recommendations in Relation to the Death of Mr Ward and Related Matters*.

**Recommendation 20:** *The Committee supports the principles of justice reinvestment and recommends that the Government focus their efforts on early intervention and diversionary programs and that further research be conducted to investigate the justice reinvestment approach in Western Australia.*<sup>85</sup>

The response from the Minister for Corrective Services to this recommendation was (emphasis added):

*The Government notes this recommendation. **Justice reinvestment cannot be achieved by the Department of Corrective Services alone; would require a Government wide approach** (sic). The Government acknowledges the benefits that can be gained from identifying hot spots and providing local funding to those areas to tackle the social disadvantages that contribute to offending behaviour, however, past attempts to address social disadvantage have had mixed outcomes and it is not clear how the justice re-investment approach will lead to better outcomes. If such an approach is to work, it is one that would require generational change. Utilising capital funding from the Department's future capital planning for existing requirements prior to these needs being met will simply magnify the gap between design and operational capacity within prisons.*

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<sup>84</sup> Legislative Assembly (2010) *Making our Prisons Work: An inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies*, Community Development and Justice Standing Committee, Parliament of Western Australia, <http://www.parliament.wa.gov.au/Parliament%5CNews.nsf/%28Download+Lookup%29/482569F400245ECB482578310040D2B8?open&document>.

<sup>85</sup> Legislative Council (2011) *Report of the Inquiry into the Transportation of Detained Persons: The Implementation of the Coroner's Recommendations in Relation to the Death of Mr Ward and Related Matters*, Environment & Public Affairs Committee, Parliament of Western Australia, <http://www.parliament.wa.gov.au/Parliament/commit.nsf/%28ReportsAndEvidence%29/E0FB355792E06945482578D10006F211?opendocument>, page 89.

*The Government acknowledges the desirability of collaboration among government agencies. As the Committee's Report (page 109) indicates, this approach can be problematic due to a number of factors, such as the hierarchical accountability framework within government and the various agencies having different priorities. Australian and international research indicated that any justice reinvestment strategy requires a well-coordinated and closely monitored inter-agency approach.*

*If the Western Australian government were to pilot a Justice Reinvestment Strategy, the Department's research has identified that the following areas are key elements for success:*

- *Housing: Stable housing and access to support in the community have been identified as important factors for newly released offenders.*
- *Mental Health: Efforts to divert offenders with mental illness away from the criminal justice system have a positive impact. There are some effective US police diversion models which could be explored.*
- *Alcohol and other drug use: There are a range of studies exploring the relationship between drug and alcohol use and crime. Programs could be developed to cater for offenders with more entrenched drug use and a more serious level of offending.*
- *Parenting support, social supports: There has been a significant amount of international research into the area of social supports such as early childhood interventions and mentoring - and the role these may play in preventing contact with the justice system.*

*Justice Reinvestment is founded on the premise that there is appropriate infrastructure for the current requirements (i.e. sufficient design capacity) prior to consideration of reinvestment of future funds to alternatives to imprisonment. The Department is a considerable way from this point.*

We support the range of areas for attention identified by the Department, noting it would also be critical to ensure that the Department's "research" has a strong evidence-base which is understood and supported across Government Departments and the broader community to build the necessary community support. However, we are disappointed by Minister Redman's claim that the Government will not consider the "reinvestment of future funds to alternatives to imprisonment" until WA has appropriate prison infrastructure for the current numbers of prisoners. As a result, given the 40% increase in the WA prison population in recent years, it will take the current Government considerable time, and an incredible amount of money before they will be prepared to take what should be the logical *first* step - and investing in programs that both prevent crime and reduce rates of recidivism. The risk is that we end up in a vicious cycle where

we are always playing catch-up with increasing offending and incarceration rates and never in a position to invest in crime reduction.

The Minister's statement supports the notion of a whole of Government response to the report's recommendations, and suggests that the Department of Corrective Services (and hence himself as the Minister for Corrective Services) cannot solve the problem alone. The response purports to be on behalf of the State Government (as a whole) but somewhat ironically argues that a whole of government response is not possible. Clearly what is missing is an ability to provide what is truly a whole of government response, together with the willingness to tackle justice issues from an evidence-based and outcomes-driven approach, rather than a populist one.

The question that needs to be answered is – whether building expensive new prison infrastructure (not to mention the ongoing operational cost of approximately \$100,000 per annum<sup>86</sup> for each adult in prison) is really where public funds are best spent. The existing research on the effectiveness of prisons in reducing offending behaviour and preventing re-offending post-release calls Minister Redman's and the State Government's approach into question. We believe it is time to try something different.

Until the Western Australian Government makes the decision to implement a comprehensive justice reinvestment approach, accepting the that the status quo is not the best, or the most effective investment of WA's public funds, means denying our state the potential for improved social and fiscal outcomes. Central to our ability to be able to achieve this goal is the need for greater collaboration across government department silos and between the government and community services sector.

## **8. Term of Reference: (g) The collection, availability and sharing of data necessary to implement a justice reinvestment approach**

We refer the Committee to sections 6.1, 6.2 and 0 — where we identified issues relating to data as one of the key challenges to the implementation of a justice reinvestment approach in WA.

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<sup>86</sup> Government of Western Australia (2012) *2012-13 WA State Budget Papers: Volume 2, (Corrective Services, page 784)*.



## 9. Term of Reference: (h) The scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments

Based on the discussion in this report, we suggest that the following Federal Government actions would assist in encouraging the adoption of justice reinvestment policies by state and territory governments.

### Recommendations:

1. That the Federal Government use its leadership and resources to support a national approach to creating an evidence-base for strategies which prevent and reduce crime, and reduce rates of recidivism.
2. That Commonwealth grants and service agreements encourage and support the collection of relevant and comparable data relating to justice and service outcomes. Similar arrangements should also be negotiated into National Partnership Agreements and other joint funding arrangements, where relevant.
3. Establishment an independent program, institute or authority responsible for:
  - Linking and analysing existing sets of data from state Departments of Education, Health, Child Protection and Corrective Services and relevant community services;
  - Identifying gaps in data analysis, recommending additional data collection and developing data protocols;
  - Identifying and analysing social determinants of offending;
  - Providing policy advice to Government and the community sector;
  - Facilitating and supporting program and service planning and evaluation;
  - Developing a toolkit that supports community services and government agencies to work in partnership to assess community needs (related to community safety and justice), and facilitates uniform data collection and evaluation of any service responses.
4. That State Government agencies be encouraged to improve their collection of data (relating to factors which are believed to contribute to the likelihood of offending behaviour) so as to provide increased opportunities for the linkage of data relating to mental health, alcohol and other drug use, child protection and justice.
5. That national standards be developed for the auditing of rates of mental illness, drug & alcohol problems and undiagnosed disabilities amongst people in detention (or in contact with the criminal justice system).

6. That community sector peak bodies be funded to build capacity and provide coordination for a collaborative approach to justice reinvestment, including evidence-based service planning and evaluation, data collection and analysis, policy development and advocacy.
7. That the Federal Government, in partnership with the WA State Government, provide targeted funding for services specifically seeking to address mental health-related offending behaviour, with an emphasis on (and support for) evaluations of service outcomes.
8. That the Federal Government, in partnership with the WA State Government, provide targeted funding for services specifically seeking to address Indigenous offending behaviour, with an emphasis on (and support for) evaluations of service outcomes.
9. That State Governments be required to report on changes to their rates of imprisonment, and measures being undertaken to address offending behaviour at Council of Australian Governments (COAG) meetings.
10. That the Western Australian Government be incentivised and supported to host a trial of the justice reinvestment planning, implementation and comprehensive evaluation processes.
11. That a *National Justice Roundtable* be established — as a whole of government and community sector forum — with senior representation from key government and community service sector stakeholders based on the model of the Western Australian Partnership Forum.<sup>87</sup>

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<sup>87</sup> For more on the WA Partnership Forum, visit:  
<http://www.partnershipforum.dpc.wa.gov.au/Pages/Default.aspx>