

Investing in Indigenous youth and communities to prevent crime

Indigenous young people, crime and justice conference

Australian Institute of Criminology

31 August 2009

Good morning everyone.

I'd like to begin by paying my respects to the Darug people, the traditional owners of the land where we gather today. I pay my respects to your elders, to the ancestors and to those who have come before us. And thank you, Uncle Ray Leslie, for your generous welcome to country for all of us.

I'd also like to thank Attorney General McClelland for his opening address. It is good to see that the government is taking the issue of Indigenous over representation in the juvenile justice system seriously.

Also thank you to Dr Adam Tominson from the AIC and of course thank you to Professor Chris Cunneen for his excellent analysis of the subject. It is also good to see Senator Ludlam here.

Finally, I want to acknowledge the Indigenous young people who are participating here today. Older people like me probably think we know more than we actually do about these issues. I really hope you will all be able to share your insights, set us straight where you need to and help us get to the bottom of all of this over the next two days.

I am very happy that the Australian Human Rights Commission has been able to support this conference. I think that the over representation of our Indigenous young people in the juvenile justice system is not just a policy issue, not just a political issue, but a major human rights issue.

And I think it's about time we looked at it in the context of human rights and the current government commitment to close the gap between Indigenous and non Indigenous Australians. There is something seriously wrong with our system of justice when Indigenous young people are 28 times more likely to be detained than non Indigenous young people.¹

I'm not going to go into all the facts and figures in too much detail. Chris has already given us a very useful snap shot of the situation. I also know that I am in a room where people work with the realities of these statistics everyday. You see the human consequences of these statistics and the impact that each period of detention has on the young person, their families and communities.

¹ Australian Institute of Health and Welfare, Juvenile Justice in Australia 2006-2007. At <http://www.aihw.gov.au/publications/juv/jja06-07/jja06-07.pdf> (viewed 27 May 2009).

What I do want to say is, quite simply, what we are doing is just not working. If it was working, we would be seeing a decrease, rather than the 27% increase in the Indigenous juvenile detention rate between 2001 to 2007.²

I say this with the greatest respect for those of you who are actually working at the coal face. But I reckon that most of you would also share my frustration with a system that seems more intent on locking kids up rather than preventing crime in the first place.

When something isn't working we need to be bold and creative in our thinking. So I want to use this opportunity to talk about a new idea for dealing with Indigenous over representation called justice reinvestment. As the title of this paper suggests, justice reinvestment is a way of investing in our Indigenous young people and communities to prevent crime.

Justice reinvestment is an idea that originally came from the United States. It is a criminal justice policy approach that diverts a portion of the funds spent on imprisonment to the local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested in programs and services that address the underlying causes of crime in these communities.

Justice reinvestment still retains detention as a measure of last resort for dangerous and serious offenders but actively shifts the culture away from imprisonment. Instead of imprisoning people it starts providing community wide services that will actually prevent offending. It is not just about tinkering around the edges of the justice system but actually trying to prevent people from getting there in the first place.

Sounds simple doesn't it? And that is part of the strength of the approach. Most of the best ideas are simple but as I will show, it uses complex research and analysis, in concert with community engagement to achieve robust results.

Also, justice reinvestment addresses what I think is the fundamental gap in all our attempts to reduce Indigenous over-representation. That is, we have all heard about prevention and diversion and indeed we have seen some truly exceptional programs that really help young people. But it is the same old story- these programs get such a small slice of the funding compared to hugely expensive detention centres. Justice reinvestment turns this on its head by reducing imprisonment and sending the money where it needs to go.

Let me tell you a little about how justice reinvestment came about before I go into how I think it can help with Indigenous young people. Justice reinvestment is not the product of the usual suspects of criminological research or policy. It came about from a think tank, the Open Society Institute, led by George Soros.

² SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009). At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 24 July 2009).

George Soros is a wildly successful financial speculator and stock investor - the 29th richest person in the world. But he has an interesting take on the world. He escaped the Nazis as a young man and has first hand insights into human rights violations. He now donates a huge chunk of his fortune to developing open, fair democracies and tackling issues like mass incarceration.

Given this background, it is not surprising that justice reinvestment has as much in common with economics as social policy. Justice reinvestment asks the question: is imprisonment good value for money?

The simple answer is that it is not. We are spending ever increasing amounts on imprisonment and recidivism rates are high. This is leading to overcrowded prisons and detention centres where the levels of individual programming and support decrease even further.

In Australia we spent \$2.6 billion on adult imprisonment.³ Indigenous prisoners make up about a quarter of the prison population so we can estimate that we would spend at least \$650 million on Indigenous adult imprisonment a year. To put it another way, if Indigenous adults were represented at the same rate as non-Indigenous Australians, we could save around \$610 million a year.

National expenditure on juvenile justice is not reported but let's take the example of NSW. NSW spent just over \$103 million on juvenile detention in 2007-2008 according to their Annual Report.⁴ Approximately half of the young people detained in NSW are Indigenous so we can assume in NSW alone nearly \$52 million was spent locking up Indigenous kids.

All this money sees little return, especially when you consider that a stint in juvenile detention rarely leads to rehabilitation with a large proportion of young people returning to custody. Even more alarming is the progression of young people into the adult criminal justice system. In a NSW Bureau of Crime Statistics and Research cohort study of juveniles before the Children's Court for the first time, 90% of the Indigenous young people went on to appear before the adult criminal court, compared to 52% of the non Indigenous young people.⁵

I bet we can all think of better ways of spending all that money.

But thinking about better ways of spending imprisonment dollars is exactly what they have done with justice reinvestment in the United States.

Obviously, they have a different situation in the United States. They imprison a lot more people than we do. In fact they imprison more people than anywhere else in the world - 2.3 million people every year.

³ Australian Institute of Criminology, *Australian Crime: Facts and Figures 2008*, p 110. At http://www.aic.gov.au/documents/E/4/0/%7BE4031E6F-031D-415C-B544-8CE865A3CA0C%7Dfacts_and_figures_2008.pdf (viewed 22 July 2009).

⁴ NSW Department of Juvenile Justice, *Annual Report 2007-2008*. At <http://www.djj.nsw.gov.au/publications.htm> (viewed 23 July 2009).

⁵ S Chen, T Matruggio, D Weatherburn and J Hua, *The transition from juvenile to adult criminal careers*, NSW Bureau of Crime Statistics and Research, Contemporary Issues in Crime and Justice no. 86 (2005). At [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb86.pdf/\\$file/cjb86.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb86.pdf/$file/cjb86.pdf) (viewed 24 July 2009).

But let's not get too proud of ourselves. The rate of imprisonment for Indigenous Australians is almost two and half times greater than the rate of imprisonment in the United States. If we look at states like WA it is almost 4 times greater than the US rate.

So, the United States was in crisis. Imprisonment costs were blowing budgets for very little return. Politicians were faced with the choice between spending on hospitals and schools, or prisons. In this climate, some were willing to look at alternatives to the tough on crime rhetoric in favour of solutions that actively reduced imprisonment spending.

And what is interesting is that justice reinvestment has been adopted in some of the places you would least expect - for instance, Texas, home of George W. It has gained a lot of traction with politicians and policy makers on both sides of the ideological divide. It offers the promise of prevention, diversion and community justice for those on the left and balanced budgets and fiscal responsibility for those on the right. At the end of the day I think it comes down to the fact that money talks, especially to politicians!

So how does justice reinvestment actually work?

Firstly, justice reinvestment is based on the evidence that a large number of offenders come from a relatively small number of disadvantaged communities. Demographic mapping in the US has identified 'million dollar' blocks where literally millions of dollars are being spent imprisoning people from certain neighbourhoods. For instance, there is one neighbourhood, The Hill in Connecticut where \$20 million was spent in one year imprisoning just 387 people. The Hill is disproportionately made up of low income, African Americans.

I think it is fairly safe to assume that we have our own version of million dollar blocks. Thorough demographic mapping hasn't been done in Australia yet, but pioneers like Professor Tony Vinson have already identified the most disadvantaged post codes in Australia⁶ - many of these have higher than average Indigenous populations.

In researching for my 2009 Social Justice Report chapter on justice reinvestment, I have asked governments to provide data about where Indigenous adult and juvenile detainees come from.

I won't go into great detail today suffice to say that the data for juvenile detainees is a bit harder to analyse because we are dealing with smaller numbers. However, I don't think the anecdotally known locations would come as any surprise to you. For instance, in NSW the top 5 locations with the most Indigenous juvenile detainees are around Mt Druitt, Dubbo, Kempsey, Bourke and Wagga Wagga. In other states we are also seeing similar hot spots like Port Augusta, Ceduna and Murray Bridge in South Australia; Broome, Carnarvon and Port Headland in WA; and Darwin, Alice Springs and Wadeye in the NT.

⁶ T Vinson, *Dropping off the edge: the distribution of disadvantage in Australia* (2007).

So once you know where prisoners and juvenile detainees come from, what do you do? Justice reinvestment says that the concentration of offenders logically suggests that there should be commensurate concentration of services and programs to prevent offending in these communities.

This is an important departure from current policy which is individually focused. Most corrections programs provide individual and some group work but little support for the broader community. At the end of the day, you can put an offender through the best resourced, most effective evidence based rehabilitation program, but if they are returning to a community with few opportunities, their chances of staying out of trouble are limited.

The other reason justice reinvestment focuses on communities is because of a recognition of the consequences of incarceration on communities. For a long time we have been told by our politicians that taking offenders off the streets will make communities safer, better places. This might be true if we are talking about removing a small number of serious offenders from a community. But if large numbers are being removed from a single community this disrupts the social networks and creates an environment that breeds further crime and dysfunction.

This is exactly what we are seeing in so many of our Indigenous communities. We are seeing whole generations of men being removed from the community, large numbers of parents being separated from their kids and young people taken away from their supports. All of this drains the community's capacity to tackle crime and build safe communities.

This was also recognised back in the Bring them home report which identified juvenile justice as a form of contemporary separation that has negative effects on individuals and communities.

So, once justice reinvestment identifies the high stakes communities, a serious analysis of the criminal justice system leads to a range of options that will decrease imprisonment and generate savings to divert to the high stakes communities.

Let me explain by talking about the example of Texas. In Texas they had no trouble working out which communities to target. Only five counties accounted for more than half the people imprisoned.

But the next step was to work out what was going on in the criminal justice system that was causing this. Basically they found that the community supervision system was letting these people down, with probation revocations leading to an 18% increase in prison terms. Similarly the number of low risk prisoners released on parole was also very small. At the same time prisons have been expanding, funding had been cut to community based substance abuse and mental health services.

To tackle these systemic issues the Texas Legislature started to re-orient its criminal justice system, putting more money into substance abuse treatment, diversion, and half way houses. To do this they reinvested \$241 million that

would have been spent on building a new prison and a further \$210 million the following financial year.

The savings didn't just get reinvested in substance abuse services. Funding was also allocated to a Nurse-Family Partnership program in the high stakes communities to provide true early intervention in the first two years of a child's life.

Kansas is also another place where justice reinvestment has worked well. Kansas found similar trends and put in place similar reforms to Texas. They also built an innovative community development program called *the New Communities Initiative* for the high stakes communities.

The *New Communities Initiative* brings together state, county and community leaders to improve public safety, education and housing for the disadvantaged neighbourhoods in Central North-east Wi-chita. In a truly holistic, cross sector way they have engaged with community to tackle preventative issues. In the first year they set up a program for children of incarcerated parents, created a local job placement agency, diverted portions of the city liquor tax revenue to be spent on substance abuse treatment targeting these neighbourhoods, expanded the healthy babies program, reallocated school resources and set up a summer program employing young people from these areas to landscape and revitalise their neighbourhoods.

On top of all of this, Kansas has already experienced a 7.5% reduction in their prison population; parole revocation is down by 48%; and the reconviction rate for parolees has dropped by 35%. Texas also halted the growth in imprisonment for the first time in years.

Justice reinvestment has also been used specifically for juveniles in the US. In Oregon they came at the justice reinvestment approach from a slightly different angle. In Oregon the state government pays for imprisonment based on the decisions made by the county courts. This means there was no financial incentives for local governments to do anything to prevent crime.

In 1997 legislation was passed which allowed counties to supervise juveniles in the community who would otherwise have been sent to state prisons. In return, the local counties were given the money that would have been spent on locking the young people up in state institutions. These funds were then reallocated to neighbourhood improvement projects and quality community based supervision.

It set up a new dynamic. If the county successfully diverted young people into local programs it would have ample resources for preventative services. But if the county sent kids to state institutions the county would assume the cost of incarceration.

Strong community service programs were put in place, with kids working on neighbourhood regeneration programs in their own communities as well as skill enhancing activities like building furniture for disadvantaged families and even building houses in partnership with *Habitat for Humanity*.

Within one year the program had reduced youth incarceration in state facilities by 72%, the biggest ever decrease in juvenile detention according to the National Centre for Juvenile Justice.

Justice reinvestment is being used in 10 states across the US. Congress has recently held hearings on justice reinvestment and there are suggestions that the Obama administration will move to introduce it nationally. Justice reinvestment is also attracting a lot of attention in the United Kingdom, with Parliamentary inquiries and influential backers like Cherie Booth, Tony Blair's wife, making recommendations about its use in the UK. It seems like an idea that is gaining considerable currency overseas and perhaps its time has come in Australia.

When I first heard all of the great results and growing support for justice reinvestment I got excited thinking about how it might work for our Indigenous communities. Imagine if:

- the huge amount spent on Indigenous imprisonment could be spent in way that prevents crime and increases community functioning
- there was increased accountability and scrutiny about how tax payer funds on corrections are spent
- communities were involved in identifying the causes and solutions to crime
- there was a shift away from the mindset that imprisonment is the only option - instead it becomes the last resort.

This might have sounded like pie in the sky wishful thinking but having seen the great promise in the United States, justice reinvestment seems a way of making this a reality.

There are some strong synergies between justice reinvestment and best practice approaches to Indigenous over representation. Firstly, justice reinvestment acknowledges what Indigenous communities have known for a long time - taking people out of communities through imprisonment weakens the entire community. We need to stem this tide if we are to get communities back on their feet. You can't have a constant drain of people and not expect those left behind to feel the strain in terms of cultural, family and other responsibilities.

And apart from this, how often do we hear of young people going off to detention to be schooled in the ways of further crime and getting really entrenched with peers who will lead them astray.

Making the community a central building block in juvenile justice policy brings community crime prevention to the fore. And this isn't just about putting on a basketball competition at the local PCYC. It is also providing the basic services that are so often lacking for Indigenous communities, things like access to quality education, housing and health care.

And just as important, justice reinvestment actually gives the community a strong voice in what they think are the problems causing crime and the solutions

necessary to fix it. This is fundamental to a human rights based approach as set out in the Declaration on the Rights of Indigenous Peoples.

Indigenous community engagement and partnership are the cornerstones of human rights based policy. But in my opinion, they are also the cornerstones of effective policy. Indigenous communities have the answers to their own problems and it is about time we started listening to them in the juvenile and criminal justice sphere.

The mechanism for reinvestment means that all the fine principles of community engagement, participation and crime prevention can actually be backed up with real dollars, adding up to real change.

Secondly, justice reinvestment will work for Indigenous communities because it is such a sound analysis tool. The demographic mapping is very rigorous and also a very powerful way to think about where there is the greatest need.

The capacity to analyse the legal and systemic blocks in the system is very useful. In the US, the Justice Center, the organisation that develops the data and generates justice reinvestment options for governments, have found that during the analysis stage, they gathered unique and detailed data about the local criminal justice system. This has enabled politicians to actually make decisions based on all the facts for the first time ever. We talk about evidence based policy all the time but I wonder how often we actually have all the evidence.

Justice reinvestment would make it very obvious when we were implementing laws or policies that are leading to excessive imprisonment and then suggest legislative reform to remedy this. For instance, in Texas, the legislation around parole revocation for technical matters was changed, resulting in a drop in the prison population.

Here is a topical example of a policy that is leading to increased detention in NSW. By anyone's definition, the juvenile remand population in NSW has exploded in the past couple of years. Between 2007 and 2008 the number of juveniles held on remand in NSW rose by 32%, from an average of 181 to 239 people on remand each day.⁷ This has led to a 29% increase in remand costs, from \$36.7 million per year up to \$47.2 million.⁸ The length of time that young people are spending on remand is also increasing considerably.

A recent study by the NSW Bureau of Crime Statistics and Research (BOCSAR) has found that the growth in remand has been a result of changes to the NSW

⁷ S Vignarendra, S Moffatt, D Weatherburn and E Heller, *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin no.128 (2009). At [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/\\$file/CJB128.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/$file/CJB128.pdf) (viewed 27 July 2009).

⁸ S Vignarendra, S Moffatt, D Weatherburn and E Heller, *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin no.128 (2009). At [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/\\$file/CJB128.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/$file/CJB128.pdf) (viewed 27 July 2009).

Bail Act and increased policing. Significantly, the increased rate of remand has done nothing to reduce the rate of crime.⁹

In 2007 the NSW government amended the Bail Act 1978 to restrict the number of applications for bail that can be made to the court. Amendment 22a prevents a defendant from making an additional application for bail unless they can show new facts or circumstances, or because they were not represented by a legal practitioner at the first application.¹⁰

The BOCSAR report did not specifically consider the impact on Indigenous young people, however, given that they routinely make up around half of the juvenile detention population, it is likely to be significant. In fact, those working in field suspect that Indigenous young people are even more disadvantaged by the recent changes.

It seems from the BOCSAR research that police have deliberately stepped up enforcement of bail conditions. Young people are more vulnerable because courts impose a number of 'welfare' conditions. These include things like curfews, non-association orders, reside as directed, and must be in the company of a parent. If the police find that these conditions have been breached the young person can then be taken into custody.

BOCSAR found that 66% of the young people were remanded for not complying with conditions of bail while only 34% of young people who breached their bail committed a further offence.¹¹

Lawyers from the NSW Aboriginal Legal Service believe that Indigenous young people are more at risk of being breached because they usually have these 'welfare' types of conditions imposed. This is partly because Indigenous have more significant welfare needs and the court often decides that they need extra monitoring. However, this can be setting young people up for failure by not adequately recognising the different lifestyles that Indigenous young people lead.

Indigenous young people are much more vulnerable to increasing policing. They are more visible because of their use of public space and often come from communities where over-policing has a longstanding history.

Similarly, if you live in a hot, crowded house in somewhere like Bourke or Brewarrina, there's a good chance that no matter what the piece of bail paper says, on 40 degree day you'll be down at the river, not at home during the curfew hours.

⁹ S Vignarendra, S Moffatt, D Weatherburn and E Heller, *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin no.128 (2009). At [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/\\$file/CJB128.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/$file/CJB128.pdf) (viewed 27 July 2009).

¹⁰ NSW Bail Act 1978

¹¹ S Vignarendra, S Moffatt, D Weatherburn and E Heller, *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin no.128 (2009). At [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/\\$file/CJB128.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/$file/CJB128.pdf) (viewed 27 July 2009).

Section 22a has also contributed to the increase of young people on remand, with the BOCSAR report showing a clear correlation between the introduction of the restrictions to further bail applications and the dramatic increase in remand numbers.¹² The other implication of the Section 22a is that young people are spending longer periods of time on remand.

The flow on effect of the increased use of remand is the overcrowding of juvenile detention centres. Young people are not being housed in appropriate accommodation. Because all of the other centres are full, the Department of Juvenile Justice has taken over the old women's gaol in Emu Plains. However, media reports indicate that this facility has cells with no ensuite and no access to drinking water so detainees are reliant on staff to let them out for these amenities. Sometimes young people have been locked down for up to 20 hours a day.¹³ Similarly, access to education and programs is also severely limited due to overcrowding.

These conditions are clearly not in the best interests of the children. Remand has a disruptive effect on a young person's family relationships, education, work and community connections. This is bad enough but when we are subjecting young people to overcrowding where their basic needs and rehabilitative goals have no way of being met, we are disadvantaging these young people further.

So justice reinvestment would suggest that any government serious about saving money so they can put it somewhere more productive than a juvenile justice detention centre, would reform this legislation so that it does not apply to juveniles at the very least. At an implementation level, policing practices should be altered so that time is spent catching criminals rather than chasing after kids on bail. When I look at the NSW budget, crumbling infrastructure and growing demand for services, it seems to me that a state like NSW is in a perfect position to make the most of the savings that justice reinvestment could deliver.

In fact, the current economic situation might be just the pragmatic opportunity we need to shift governments away from the law and order, tough on crime mentality. Framing the problem of Indigenous imprisonment as an economic issue might be more strategic than our previous attempts to address it as a human rights or social justice issue.

Justice reinvestment is both a pragmatic as well as principled way to tackle Indigenous over representation. It has a very sound research methodology and evidence base, but also values community engagement.

¹² S Vignarendra, S Moffatt, D Weatherburn and E Heller, *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin no.128 (2009). At [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/\\$file/CJB128.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/$file/CJB128.pdf) (viewed 27 July 2009).

¹³A. Horin, 'Juveniles locked in cells for 20 hours a stretch', *Sydney Morning Herald*, 23 April 2009. At <http://www.smh.com.au/national/juveniles-locked-in-cells-for-20-hours-at-a-stretch-20090422-afdd.html> (viewed 19 August 2009)

And I take considerable encouragement from the fact that it has succeeded in some of the most unlikely places in the US. If the people of Texas, notorious for their lockem up and throw away the key attitudes can implement justice reinvestment I am hopeful that a society like Australia can also take up the challenge.

As I mentioned, I will be discussing justice reinvestment and making recommendations on it in this year's Social Justice Report. The Social Justice Report goes to the Australian Parliament each year and reports on Indigenous Australians' enjoyment of human rights. I'm hoping that governments will be willing to step outside their current mindsets and engage with the idea for the good of our Indigenous young people and communities.

But I also think it is important to share ideas with people like all of you here today. We need to send the message, just like we did with Indigenous health inequality in the Close the Gap campaign, that the current rates of Indigenous over representation are just not acceptable. Not only that, but there are solutions to the problem if we are creative and innovative.

Finally, I want to leave you with a quote from Albert Einstein. He defined insanity as 'continuing to do the same things and expecting a different result'. This is exactly the sort of madness we see in the juvenile justice system. Let's try something different to tackle Indigenous over representation.

Thank you.