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(by e-mail legcon.sen@aph.gov.au)

Dear Secretary,

Value of a justice reinvestment approach to criminal justice in Australia

- [1] Australian Lawyers for Human Rights (**ALHR**) thanks the Senate Legal and Constitutional Affairs References Committee (the Committee) for the opportunity to make a submission to this inquiry, and also for the extension to 26 March 2013.
- [2] In summary, ALHR supports the adoption of a justice investment approach to criminal justice in Australia because such an approach assists fulfilment of Australia's human rights obligations and will have a positive impact on reducing offending behaviour and high incarceration rates. ALHR considers that justice reinvestment be included in the National Human Rights Action Plan and that the Commonwealth Government should introduce adequately resourced justice reinvestment pilot projects in consultation with relevant communities and organisations, in particular, Aboriginal and Torres Strait Islander peoples and organisations (see [43]-[44] below). ALHR urges the Committee to include these matters in its recommendations and report.
- [3] This submission is divided into the following headings:

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Introduction

- [4] ALHR uses international human rights standards to inform its position on issues. There are several standards, and obligations which Australia has committed to fulfil, which are particularly relevant to the current inquiry including:
- (a) most significantly, having a justice system which does not involve discrimination on racial or other grounds, and which ensures equality before the law;¹
 - (b) upholding protections of the right to liberty and security of the person; prohibitions on arbitrary arrest or detention, and the provision of effective remedy in case of such treatment;²
 - (c) having a criminal and prison system which treats prisoners with the essential aim of their reformation and social rehabilitation;³
 - (d) ensuring that Aboriginal and Torres Strait Islander peoples are able to participate effectively in government decisions and actions affecting them;⁴ and
 - (e) upholding core economic and social rights including adequate food, basic education, primary health care, water and, arguably, basic shelter⁵ - States are required to ensure that these rights are enjoyed by everyone and to act where they are not being enjoyed by sections of the population.⁶
- [5] 'Justice reinvestment' has emerged as a way to help meet some of these standards. ALHR's understanding of justice reinvestment is taken from the 2009 report of the Australian Human Rights Commission (**AHRC Report**):
- Justice reinvestment is a localised criminal justice policy approach that diverts a portion of the funds for imprisonment to local communities where there is a high concentration of offenders. ... Justice reinvestment ... shifts the culture away from imprisonment and starts providing community wide services that prevent offending. Justice reinvestment is not just about reforming the criminal justice system but trying to prevent people from getting there in the first place.⁷
- [6] According to the AHRC Report, the four key steps involved in implementing a justice reinvestment approach are:
- (a) analysis and mapping;
 - (b) development of options to generate savings and improve local communities;
 - (c) quantifying savings and reinvesting in high needs communities; and
 - (d) measuring and evaluating impact.
- [7] Justice reinvestment complements other initiatives that aim to promote fulfilment of human rights obligations, particularly, in the area of economic and social rights and the question of priorities in public spending. For example, the United Nations Office of the High Commissioner for Human Rights and other human rights experts emphasise the importance of using indicators to inform decision-making in this area.⁸
- [8] Various human rights fora and Australian bodies have identified justice reinvestment as an important initiative for Australia. For example, the *Committee on the Elimination of Racial Discrimination*, which examines compliance with international standards on racial discrimination, has encouraged Australia to use justice reinvestment 'to address the social and economic factors underpinning Aboriginal and Torres Strait Islander contact with the criminal justice system

...[including through] continuing and increasing the use of Aboriginal and Torres Strait Islander courts and conciliation mechanisms, diversionary and prevention programmes and restorative justice strategies'.⁹ Furthermore, the Aboriginal & Torres Strait Islander Social Justice Commissioner analysed and made recommendations about justice reinvestment in the *Social Justice Report 2009*.¹⁰ Justice reinvestment has also been recommended by numerous Commonwealth Parliamentary committees,¹¹ and also at the State/Territory level.¹² Most recently, Australia's national Aboriginal and Torres Strait Islander representative body, the National Congress of Australia's First Peoples', strongly recommended the adoption of justice reinvestment approaches in its justice policy.¹³

- [9] ALHR has previously encouraged justice reinvestment in various contexts. We recommended that the Australian National Human Rights Action Plan include justice reinvestment programs, particularly, where community-owned and driven, and make provision to 'sustainably fund the research, development, implementation and evaluation' of these programs.¹⁴ ALHR also endorsed the *Joint National Call to Action* by Australians for Native Title and Reconciliation (ANTaR) which called for 'A commitment to a Justice Reinvestment approach, which involves diverting some of the funds currently spent on prisons into communities with a high concentration of offenders to fund initiatives that will reduce rates of offending'.¹⁵
- [10] We outline, below, our response to the Committee's Terms of Reference (ToR). We have not addressed every ToR but rather focussed on those areas in which we have particular expertise.

(a) Drivers behind growth in imprisonment rate

- [11] Australia's increasing imprisonment rate is not a problem unique to this country and, consequently, there is a plethora of local and international research into the issue. Whilst a variety of issues have been (and continue to be) studied in the context of imprisonment rates (for instance, biases within the criminal justice system, discriminatory sentencing practices, effectiveness of prison-based programs targeted at reducing recidivism¹⁶), a significant focal point of current research in this area concerns the precursors to offending.
- [12] It has long been known that there are a range of socioeconomic factors associated with offending.¹⁷ What has not been known, however, were what *specific* economic, social and cultural factors are *strongly* associated with offending. Research into this issue is steadily increasing in Australia and much of that research has concentrated on juvenile offending as a number of studies (both locally and internationally) have found that juvenile offending is highly likely to lead to adult offending, particularly serious crimes (with the concomitant likelihood of imprisonment).¹⁸ The findings reveal that unemployment, child abuse/neglect, drug and alcohol abuse, mental health issues and performance at school are all factors highly associated with juvenile offending.¹⁹
- [13] Studies into the effects of these factors on juvenile offending have been conducted across both Aboriginal and Torres Strait Islander and non-Indigenous communities with similar results in respect of both.²⁰ Significantly, however, the research has also revealed that the prevalence of those factors is overwhelmingly greater in Aboriginal and Torres Strait Islander communities.²¹ This is significant because the rate of imprisonment for Aboriginal and Torres Strait Islander peoples is significantly higher than for non-Indigenous people and the Aboriginal and Torres Strait Islander population continues to be grossly overrepresented in Australian prisons.²² Thus, that these factors are more prevalent within a population that is grossly overrepresented in Australian prisons provides strong support for the association between the presence of the factors in a child's life and imprisonment in adulthood.

- [14] This research and its findings, therefore, directly support justice reinvestment, with a particular focus on addressing those specific factors which have been found to be highly associated with offending, especially amongst juveniles and in Indigenous communities.

(b) Economic and social costs of imprisonment

- [15] There are many detailed studies and reports on the economic costs of imprisonment which may assist the Committee.²³ ALHR's submission, however, focusses on the social costs of imprisonment.
- [16] The social costs associated with imprisonment need to be understood at the individual level. Perhaps, even more importantly in this context, they need to be understood at the community level. In relation to individuals, there are copious stories of prison as a 'breeding ground' for criminality because of its effect in increasing the likelihood of re-offending through associations and networking. Prison time is also an obstacle to reintegration into society, through associated stigma and the problems posed for former prisoners re-entering society without appropriate support.
- [17] An article from 2012 reported that no Australian jurisdictions have any formal ongoing assessment or screening services for mental health following admission to a correctional facility,²⁴ noting that:
- (a) due to insufficient funding, the only funds for treatment are available during crisis point, or to those who have committed violent or sexual crimes; and
 - (b) the effective management of mental health by screening all prisoners and providing evidence-based treatment programs has the potential to reduce overall recidivism rates.
- [18] Significantly for justice reinvestment frameworks, the article estimated that each offender who does not return to prison reduces the annual cost of incarceration by \$100,000.
- [19] The social costs to the community are even more complex. Imprisonment is, obviously, required for serious and violent crime. Part of the rationale for this concerns community protection. Justice reinvestment is not about changes at that level but, rather, on focussing on how to reduce the rate of less serious offending and related incarceration and costs. The importance of this is apparent in studying the community impacts of high rates of imprisonment, which include absence of family members,²⁵ problems with family cohesion and post release problems including employment and civic participation.²⁶ Additionally, when large numbers of a particular demographic are imprisoned, then the 'institution of prison become[s] a[n] overarching and institutional presence not only on the lives of the individual... but upon their families and social networks'²⁷. The overrepresentation of Aboriginal peoples in the Australian criminal justice system warrants specific attention as it compounds existing social disadvantage relating to health, employment, housing and education.

(e) Methodology and objectives of justice reinvestment

- [20] The objective of justice reinvestment is to put money into social infrastructure so that people caught in the criminal justice cycle have support to break out of it and others have support not to enter it in the first place. Keeping people out of the criminal justice system is necessary for the realisation of many human rights. From a human rights perspective, this is about building social, economic and emotional support so that individuals are not brought into the criminal justice system in the first place. Reducing incarceration levels is necessary for full realisation of various rights such as the rights of the child; right to adequate standard of living, health and education; freedom from discrimination and equality before the law.

(f) Benefits and challenges regarding justice reinvestment in Australia

- [21] Aboriginal and Torres Strait Islander peoples are over represented within the penal system²⁸. The statistics show that Aboriginal and Torres Strait Islander peoples are ‘being imprisoned at more than 13 times the rate of non-indigenous people’.²⁹ Justice reinvestment looks to involve communities with a high percentage of offenders to develop initiatives based on ownership and accountability of their actions. Hence, reducing crime rates, particularly reoffending behaviour.
- [22] ALHR perceives four main challenges to implementing initiatives in justice reinvestment in Australia.
- (a) The primary problem initially in implementing such a scheme, as with all new ideas, is to ensure that the core concept is understood. In doing so, misconceptions that suggest that extra funding or funding that is dedicated to other essential programs for Aboriginal and Torres Strait Islander peoples may be diverted to justice reinvestment need to be quashed immediately. Since this system relies solely on funding dedicated to correctional facilities the money spent on building more prisons will be diverted to implementing community programs to assist in correcting offending behaviour.
 - (b) Implementing such a scheme would require bipartisan support from the Australian Parliament. Successful implementation of justice reinvestment will require the State/Territory and National Governments to work together on adopting this data driven approach of criminal justice analysis.
 - (c) Justice reinvestment holds the potential for significant benefits, but the achievement of those benefits depends on the way it is implemented.³⁰ It is vital for continuous evaluation of the program to see its success. Therefore, jurisdictional support as well as community focus groups and a great level of support by law enforcement authorities will be required.
 - (d) The method of data collection and analysis for justice reinvestment focuses on where offenders normally reside, rather than the community they are from (see below at [23] and [36]). Where offenders are transient or highly mobile, this may create a challenging environment for meaningful data collection and analysis.

- [23] The state-level approach in the United States (explained below [33]-[37]) may not be directly transferrable to Australian states, which have a large demographic that varies from urban areas to remote Aboriginal and Torres Strait Islander communities, especially, when we consider that remoteness is a major factor that contributes to recidivism in Aboriginal and Torres Strait Islander communities. However, the US approach illustrates that reinvesting corrections funding in protecting fundamental human rights (and eliminating inequalities in the community) can be an effective means of reducing the rate of imprisonment and reducing government spending on corrections.

(g) Collection, availability and sharing of data for justice reinvestment

- [24] Justice reinvestment is premised on the fact that it is possible to identify which communities produce large numbers of offenders, and to strategically use that information to guide program investment in those communities.³¹ Accordingly, the collection and analysis of data to identify the communities to be assisted with additional funding through justice reinvestment is necessary.
- [25] The bare minimum of data required to be collected is that of prisoners’ geographic address, which can then be used to generate “justice maps,” or “prisoner geographies.”³² Of course this must be

done in a way which protects individual identities and privacy. Specific street addresses cannot be used and data must be sufficiently 'anonymised' before being used in any public fora. Additional useful data includes the geographic address of persons arrested, persons with convictions, and persons on probation, parole, or serving sentences in the community. The focus of data collection is *not* the community in which the offending occurs but on the community in which the offender resides. In this respect the data necessary to implement justice reinvestment programs differs from traditional geographic analysis of criminal offending.

- [26] There is little publicly available analysis of data for the purpose of justice mapping. However there are indications that such data is readily available at the State and Territory level. Appendix 2 of the Aboriginal and Torres Strait Islander Social Justice Commissioner's *Social Justice Report 2009* contains an analysis of data about Aboriginal and Torres Strait Islander prison and juvenile detention populations to determine the communities contributing the most offenders to those populations, provided by the State and Territory governments at the request of the Commissioner.
- [27] The responses provided identify some of the issues about the collection of data required for justice mapping. Some of the data provided was point in time (that is, it provided data about a prison population at a particular static point in time), whilst other data provided a report for a specified period of time. Some States and Territories provided analysis on a postcode level, others used Australian Bureau of Statistics subdivisions, and others used local government area as the basis for the geographic analysis.³³
- [28] The mobility of offender populations can also complicate the process of justice mapping. A recent justice mapping study of juvenile offenders (which again demonstrates the availability of data) found that, over a ten year period:
- (a) only 30% of persons identified by the study as 'chronic offenders' resided in only one postcode;
 - (b) one third of chronic offenders resided in more than three postcodes over the period; and
 - (c) almost 10% resided in six or more postcodes.³⁴
- [29] It has been suggested that the analysis and mapping of data provided be undertaken by independent third parties, in cooperation with state and territory departments responsible for prisons and funding of corrective services, to ensure a non-partisan approach.³⁵ The use of independent parties with experience in data collection and analysis may assist in addressing the difficulties with data analysis, and ensure consistent analysis across the country.
- [30] When considering more complex means of identifying high risk communities, such as arrest rates or contact with the criminal justice system in any form, it may be appropriate to seek data from select non-government organisations, such as Legal Aid or the Aboriginal Legal Service, in addition to obtaining data from government departments dealing with corrective services.
- [31] In addition to collating data about where offenders reside, the collection of data about the assets of the community – being the various government and non-government agencies and organisations operating in the community – can assist in identifying the appropriate entities for the divestment of justice reinvestment funds.³⁶ Such information is less amenable to statistical analysis, and is more appropriately collected once a community has been identified as contributing a high number of offenders.

(h) Implementation & effectiveness in other countries

[32] Justice Reinvestment policies are being discussed and implemented to varying degrees in many modern democracies including the US, England, Scotland, Finland, Canada, Germany, and New Zealand. Generally, these initiatives appear in societies with higher levels of inequality which also have more punitive approaches to punishment and thus a greater need for justice reinvestment programs. Two countries which ALHR examines in this submission are the United States and the United Kingdom.

[33] It is easy to see why the United States is seeking new approaches to justice. At present, the United States spends approximately \$60 billion a year on corrections and imprisons more people than any other country in the world. Justice Reinvestment in the United States has developed in response to the realisation that state spending on corrections was rising faster than spending in any other area, while rates of re-incarceration remained high. Policy makers have begun to question whether continuing to build more prisons is an appropriate response to this problem, and are seeking out new approaches that minimize state expenditure whilst reducing the rate of incarceration.

[34] The Justice Centre is the central body responsible for organisation and implementation of Justice Reinvestment programs in 12 states across the country. The Justice Centre is managed by the Council of State Governments which is a national non-profit organisation. The Justice Centre adopts a 3 Step Justice Reinvestment Process, which can be summarised as follows:

- (a) Analyse data and develop policy options
- (b) Adopt new policies and put reinvestment strategies into place
- (c) Measure performance

[35] Each of these three steps is explained below:

(a) Analyse new data and develop policy options

In the past, a lack of state-level research into the driving factors behind crime led to the development of poor policy responses, which failed to reduce the rate of imprisonment. The Justice Centre aims to rectify this problem by ensuring that states begin with a thorough analysis of driving factors so that they can identify where reinvestment is most needed. The Justice Centre provides technical assistance to states, who organise working groups to conduct the initial research and analysis.

As societies with higher levels of inequality are likely to have higher rates of imprisonment, this analysis draws attention to instances where states are failing to protect the fundamental rights of their citizens. Common issues that were identified in various states as leading to increased rates of incarceration include: unequal employment opportunities, lack of access to substance abuse/mental health services in the community; and lack of appropriate incentives/sanctions to encourage offenders to comply with the conditions of probation/parole. Other factors were also identified as specific to certain states.

(b) Adopt new policies and put reinvestment strategies into place

Once state working groups have identified the factors contributing to the rate of imprisonment, they are able to develop reinvestment policies using funding from the state corrections budget. Common policies developed by states include diversionary programs, substance abuse and mental health treatment programs, intensive supervision programs, increasing access to parole reporting services, and increasing employment opportunities. These programs aim to address the wider problem of citizens being denied their fundamental rights, particularly their rights to

employment, health and education, and their right against discrimination. The Justice Centre encourages the use of risk assessments to direct funding and services to those most at need.

(c) Measure Performance

The final stage of the Justice Reinvestment Process involves evaluating the effectiveness of Justice Reinvestment policies. This allows for states to continue building on projects that have proven to be successful, and to identify and eliminate ineffective policies.

- [36] In terms of evaluating the US approach, the central organisation of the Justice Centre ensures that policies are developed in a manner that is consistent with the ethos of the Justice Reinvestment program. The 3-Step Justice Reinvestment Process allows for states to develop specific solutions to specific problems within their state, but also allows for evaluation and comparison of results between states. The state-level approach allows states to take responsibility for the inequalities in their own communities which contribute to the rates of offending.
- [37] As the earliest Justice Reinvestment programs in the US began in 2008 and are focused on producing long-term results, it is difficult to evaluate the success of the programs. However, there are some notable outcomes so far:
- (a) Texas - \$241 million reinvested, significant decrease in number of people on probation and parole, prison population stabilized, state cancelled plans to build additional prisons, crime rates in every urban area declined.
 - (b) Connecticut - \$30 million reinvested from corrections budget, probation violations dropped by 50% from 2003 to 2005, decrease in prison population was steeper than almost any other state and the crime rate continues to drop.
 - (c) Kansas – \$7.9 million reinvested (from \$500 million corrections budget), prison population decreased by 4%, number of probation/parole revocations dropped by over 20%, no need to construct new prison facilities and some smaller facilities were closed in 2009.
- [38] Justice reinvestment has also attracted significant interest in the United Kingdom, even though the nation has a much lower proportion of its population in gaol than the United States.³⁷ In January 2010, the Justice Committee of the House of Commons published a report, *Cutting crime: the case for justice reinvestment*, evaluating the direction of policy and spending on the criminal justice system in the UK and advocating the development of a national justice reinvestment plan³⁸. The report identifies a range of factors contributing to the rate of incarceration including social exclusion (particularly among young people), mental ill-health, drug and alcohol dependency and low levels of literacy and numeracy, and makes a number of recommendations to address them including:
- (a) investing substantial resources in more preventative work with former offenders, those with drug and alcohol problems, people with mental ill-health and young people on the outskirts of the criminal justice system³⁹;
 - (b) taking swift action in the area of people with mental health problems or learning difficulties in the criminal justice system⁴⁰; and
 - (c) making particular effort to keep young adult offenders out of custody⁴¹.

- [39] In line with the approach advocated by the Justice Committee's report, a number of local justice reinvestment pilots have been established in the UK. For example, the Youth Justice Board (YJB) and the Ministry of Justice (MoJ) have initiated four youth justice reinvestment pathfinder pilots⁴² with the aim of reducing the number of nights spent in custody among young people.
- (a) A proportion of the YJB's custody budget is invested upfront in pilot areas in return for those areas committing to target reductions in their use of custody. Areas have flexibility on what interventions they deliver, but will have to return funding if targets are not achieved.
 - (b) The UK Government will consider the evaluation of the pathfinder pilots - a one-year interim report is scheduled for 2013 with a final report in mid-2014 - before committing to adopting the approach more widely⁴³.
- [40] Examples of justice reinvestment in the UK exist in both England and Scotland.
- (a) **England** has various pilot programs adopted at local level. This includes social investment schemes, which involve raising funds from investors, shifting financial risk from the government and providers to investors (investors receive returns on their investment depending on the reduction in reoffending). This approach makes it difficult to measure outcomes accurately in determining returns to investors, and difficult to ensure that local communities will have the flexibility to use funding as they see fit. England also has incentives for private prison operators who can demonstrate a reduction in the rate of offending. Local justice reinvestment pilot programs have been used, and where local authorities can demonstrate a reduction in reoffending rates, the savings are shared between Ministry of Justice and local areas. This involves various strategies, such as intensive support programs for recently released offenders, providing substance abuse/mental health/housing services, building partnerships between offenders and key stakeholders e.g. police, case workers. Funding for these programs is often dependent on the local authority being able to demonstrate a reduction in recidivism rates over the period of a few years.
 - (b) In **Scotland**, the Prison Commission has called for more alternative sentencing options that involve some level of community service, emphasis on rehabilitation and reform for incarcerated offenders, and investment in developing communities. There is also recognition for the need for a reinvestment approach to corrections, but policies and implementation strategies remain unclear at this point.
- [41] In conclusion, ALHR observes that the US approach seems to have the most consistent, measurable results. Much of this can be attributed to the central organisation by the Justice Centre. The success of the scheme can be seen through a lowered rate in reoffending by prisoners. The Three Strikes Policy saw the number of prisoners within their penal system increase. However, the goal of ensuring that communities were safer and the crime rate was to be lowered was not achieved. The Justice Reinvestment scheme, once implemented effectively, was able to enforce a sense of community into the offenders and drive home the notion of responsibility in committing crimes. In contrast, the United Kingdom has a more piecemeal approach and lacks the funding necessary to generate accurate evaluations of their effectiveness.
- [42] We note that the Law School of the University of New South Wales is currently conducting a study into the characteristics of justice reinvestment programs used in other countries,⁴⁴ and urge the committee to examine their analysis.

(i) Scope for federal government action

[43] ALHR repeats its earlier recommendation that justice reinvestment be included in Australia's *National Human Rights Action Plan* (see [9] above). We note that the Commonwealth Government has already indicated its acceptance of justice reinvestment:

A justice reinvestment approach...has the potential to significantly improve rates of offending behaviour and victimisation in the long term and is likely to be examined in the context of the Safe Communities Strategy. Place based approaches to address offending and reoffending, diversion and early intervention are an opportunity to identify where significant outcomes may be achieved through redirecting resources across a broader range of activities.⁴⁵

[44] ALHR is disappointed that, despite these statements, it seems most activity remains at the level of Parliamentary inquiries. The Government should be working on pilot justice reinvestment initiatives, potentially through the Council of Australian Governments. ALHR considers that areas identified in the National Justice Policy of the National Congress of Australia's First Peoples serve as important guidance for federal government action, including:

- (a) 'standardised national data collection and pilots of Justice Reinvestment strategies in a number of prioritised communities';⁴⁶
- (b) 'While any approach to Justice Reinvestment will require the support of State and Territory governments, the Commonwealth Government should take the lead in stimulating justice reinvestment programs, by offering funding for pilots in a selection of communities with high rates of Aboriginal and Torres Strait Islander incarceration.'⁴⁷

About ALHR

[45] ALHR was established in 1993, and is a network of Australian lawyers and law students active in practising and promoting awareness of international human rights. ALHR has a national membership of over 2600 people, with active National, State and Territory committees. Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. ALHR has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia.

[46] If you have any questions in relation to this submission, please contact John Southalan who is a member of ALHR's national committee. John can be contacted on

Kind regards,

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President
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Endnotes

- 1 International Covenant on Civil and Political Rights (ICCPR), arts 2(1), 14(3), 26.
- 2 eg. ICCPR art 9(1); Convention on the Rights of the Child, art 37(b).
- 3 ICCPR art 10(3).
- 4 eg. UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, UN doc A/RES/61/295, 13 Sep 2007, art 19.
- 5 eg. Committee on Economic Social & Cultural Rights, *General Comment 3: The nature of States parties obligations*, UN doc E/1991/23 (14 Dec 90), para [10]; K Young, 'The Minimum Core of Economic and Social Rights: A Concept in Search of Content' (2008) 33 *Yale Journal of International Law* 113–176; and C Harvey & o'rs, *Budgeting for Social Housing in Northern Ireland: A Human Rights Analysis* (2010) QUB School of Law, Belfast, p7 (core rights include basic shelter). Detail in relation to particular areas is contained in:
Committee on Economic Social & Cultural Rights, *General Comment 12: The right to adequate food*, UN doc E/C.12/1999/5 (12 May 1999), [6], [8] & [33];
Committee on Economic Social & Cultural Rights, *General Comment 13: The right to education*, UN doc E/C.12/1999/10 (8 Dec 1999), [57]
Committee on Economic Social & Cultural Rights, *General Comment 14: The right to the highest attainable standard of health*, UN doc E/C.12/2000/4 (11 August 2000), [43] & [44]
Committee on Economic Social & Cultural Rights, *General Comment No. 15: The right to water*, UN doc E/C.12/2002/11 (20 Jan 2003), [6] & [37].
- 6 eg. by not allocating resources so as to cause some sections to have inadequate health care *General Comment 14* (n5 above), [19] & [52]; and by not benefiting already advantaged sections with housing at the expense of other sections who do not enjoy this right: *General comment 4* (n5 above), [11].
- 7 Aboriginal & Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, Report No 1/2010, Australian Human Rights Commission, pp9–10.
- 8 Eg. G Steffan 'OHCHR Human Rights Indicators Framework', presentation to Third Annual Meeting of Metrics for Human Rights and Development, (22–23 March 2012) Office of the High Commissioner for Human Rights; and A Corkery 'Framing Fulfillment: The OPERA Framework, New Horizons in economic and social rights monitoring', presentation to Third Annual Meeting of Metrics for Human Rights and Development (22–23 March 2012) Center for Economic and Social Rights.
- 9 Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Australia*, UN doc CERD/C/AUS/CO/15-17 (13 Sep 2010), para [20].
- 10 See n7 above, pp9–56 with Conclusion and Recommendations on 55–56.
- 11 Eg. House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing*, 2011, p 321; Senate Select Committee on Regional and Remote Indigenous Communities, *Final Report*, Commonwealth Senate, 24 Sep 2010, para [2.54]; Senate Legal and Constitutional Affairs Reference Committee 16 d)
- 12 eg. Noetic Solutions, *A Strategic Review of the New South Wales Juvenile Justice System*, Report for the Minister for Juvenile Justice, April 2010; Community Development and Justice Standing Committee, Western Australia Legislative Assembly, *Making our Prisons Work*, Report No 6, 25 November 2010.
- 13 National Congress of Australia's First Peoples, *National Justice Policy*, February 2013, Recommendation 3: <http://nationalcongress.com.au/wp-content/uploads/2013/02/CongressJusticePolicy.pdf>
- 14 ALHR, *Submission to the Attorney-General's Department's Exposure Draft National Human Rights Action Plan*, 29 Feb 2012, para 71.
- 15 ANTaR, *A National Call to Action* <<http://antar.org.au/campaigns/justice-campaign>>, accessed 16 Mar 2013.
- 16 See, eg. C Bond & S Jeffries (2010). Sentencing Indigenous and non-Indigenous women in Western Australia's higher courts. (2010) 17 *Psychology, Psychiatry and the Law* 70–78; C Bond & S Jeffries, 'Indigeneity and the judicial decision to imprison: A study of Western Australia's higher courts' (2011) 51 *British Journal of Criminology*, 256–277; C Fortune & o'rs 'The Rehabilitation of Offenders: Reducing Risk and Promoting Better Lives' (2012) 19 *Psychiatry, Psychology and Law*, 646–661; P Gallagher & P Poletti, *Sentencing disparity and the ethnicity of juvenile offenders* (2000) Judicial Commission of NSW; D Weatherburn & o'rs 'Reducing Aboriginal over-representation in prison' (2003) 62 *Australian Journal of Public Administration* 65–73.
- 17 See, for example, C Cottle & o'rs 'The prediction of criminal recidivism in juveniles: A meta-analysis' (2001) 28 *Criminal Justice and Behaviour* 367–394; D Weatherburn & o'rs 'Predictors of Indigenous arrest: An exploratory study' (2008) 41 *Australian and New Zealand Journal of Criminology* 307–331.
- 18 See, for example, L Gilmore *Pathways to prevention: Developmental and early intervention approaches to crime in Australia* (1999) National Crime Commission, Attorney-General's Department: Canberra; R Tremblay & W Craig 'Developmental crime prevention' in Tonry & Farrington (eds) *Strategic approaches to crime prevention: Building a*

- safer society*. The University of Chicago Press: Chicago; D Weatherburn & J Holmes 'Re-thinking Indigenous over-representation in prison' (2010) 45 *Australian Journal of Social Issues*, 559-576;
- 19 See, for example, T Pratt & T Cullen 'Assessing macro-level predictors and theories of crime: A meta analysis' in Tonry, M. (ed) *Crime and justice: A review of research*. The University of Chicago Press: Chicago; Weatherburn & Holmes (n18 above); D Weatherburn & B Lind (2001). *Delinquent-prone communities*. Cambridge University Press: Cambridge.
- 20 Weatherburn and Holmes (n18 above).
- 21 See, for example, *ibid*; Pratt and Cullen (2005); Steering Committee for the Review of Government Service Provision. (2009). *Overcoming Indigenous Disadvantage: Key Indicators 2009*. Canberra: Productivity Commission;
- 22 See, for example, Australian Bureau of Statistics (2011). *Prisoners in Australia* (<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>): "The age standardised imprisonment rate for Aboriginal and Torres Strait Islander prisoners at 30 June 2011 was 1,868 Aboriginal and Torres Strait Islander prisoners per 100,000 adult Aboriginal and Torres Strait Islander population. The equivalent rate for non-Indigenous prisoners was 130 non-Indigenous prisoners per 100,000 adult non-Indigenous population."
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- 36 L Boseley & o'rs 'The Promise of Justice Reinvestment,' (2012) 37(2) *AltLJ*, 97.
- 37 The United States has a prison rate of 716 per 100,000 of national population compared to 149 per 100,000 in the United Kingdom and 130 per 100,000 in Australia (Roy Walmsley, International Centre for Prison Studies, World Prison Brief Online, www.prisonstudies.org).
- 38 House of Commons Justice Committee Report *Cutting crime: the case for justice reinvestment*, January 2010, p. 17 (Recommendation 59).
- 39 *Ibid*, p. 11 (Recommendation 15).
- 40 *Ibid*, p. 12 (Recommendation 25).
- 41 *Ibid*, p. 13 (Recommendation 28).
- 42 The pilots commenced on 1 October 2011 and will last for two years. The four pathfinder areas are Birmingham, West Yorkshire, West London and North East London. Birmingham decided to withdraw from the pilot in late 2012, citing the August 2011 disturbances in the UK as the reason for activating a 'penalty free' release clause.
- 43 Government response to the Justice Committee's Report: The proposed abolition of the Youth Justice Board, January 2012, paras 30-31.
- 44 www.law.unsw.edu.au/news/2012/11/arc-grant-research-justice-reinvestment-australia
- 45 Australian Government, *Government Response to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report: Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, November 2011, p36.
- 46 *National Justice Policy*, n13 above, recommendation 3.
- 47 *National Justice Policy*, n13 above, p42-43.