



15 March 2013

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Sir / Madam

RE: Inquiry into the value of a justice reinvestment approach to criminal justice in Australia

This submission is made on behalf of the Brisbane Diocesan Social Responsibilities Committee of the Anglican Church of Australia. We wish to offer support for the further exploration and application of justice reinvestment strategies in Australia.¹

Our current system is deeply flawed

One does not have to look far to realise that our current approach to criminal justice and imprisonment is cause for grave concern and does not serve our community well. The National Council of Churches in Australia has noted that:

*The number of people in prison in Australia (both sentenced and unsentenced) is increasing faster than population growth. At the same time, rates for most categories of offending are decreasing. These trends require us to pause and reflect on what is happening in our society and especially, who is most likely to be found in prison. The great majority of prisoners come from impoverished circumstances, often experiencing multiple disadvantage.*²

There are many statistics that bear this out. For instance, around 26% of male inmates, and 31% of female inmates across Australia are Indigenous,³ even though Indigenous peoples make up just 2.5% of the Australian population.⁴ A recent study within Queensland also found that the prevalence of mental disorders of Indigenous people in our prisons over a 12-month period was estimated to be around 73% among men and 86% among women.⁵ Moreover in 2010, 25% of children with youth justice orders in Victoria came from just 2.6% of postcodes.⁶

Limited conceptions of justice

The glaring disparities in our current criminal justice system speak to an ongoing and flawed emphasis on retributive and punitive justice, driven by a preoccupation with "law and order" or in populist terms a call to "get tough on crime". This is perhaps reflective of a certain cultural anxiety or fear in which it is not crime itself, but our perceptions of crime, that have been driving areas of policy.

¹ For this submission we assume an understanding of the definition and basic principles of Justice Reinvestment.

² National Churches Council of Australia (2011). *I Was in Prison and You Visited Me*, resource for Social Justice Sunday 2011, see their website at: www.ncca.org.au/departments/social-justice

³ Deloitte Access Economics (2013). *An economic analysis for Aboriginal and Torres Strait Islander offenders: prison vs residential treatment*, on behalf of the National Indigenous Drug and Alcohol Committee, ANCD research paper (no.24). At: www.nidac.org.au

⁴ ABS website, 'Quick stats'. At: www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/0

⁵ Edward B. Heffernan et al (2012). 'Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland prisons.' *Medical Journal of Australia* (vol. 197 no.1) pp.37-41. At: www.mja.com.au/journal

⁶ Jesuit Social Service (2013), *Thinking Outside: Alternatives to Remand for Children*. At: www.jss.org.au/policy-and-advocacy/news/571-research-report-released-by-jesuit-social-services



This is not to suggest that these conceptions of justice may not have some place, as it is important to recognise “the moral claim victims have for redress in the aftermath of violence that is contained in retributive intuitions”;⁷ and that those who break the law must be held to account. But rather, their predominance has narrowed and distorted both the operation and effectiveness of our criminal justice system.

In order to address these inequities we need to reconsider our conceptions of justice, and ask ourselves what truly makes our families and communities safe? This includes reconsidering ideas of distributive justice and looking beyond retribution to restoration and healing.

Incarceration is not “the answer”

Certainly, it is the prerogative of the State to maintain imprisonment as a consequence of last resort, necessary for the preservation of public order and safety. However, this ultimate limitation on freedom always requires justification, and we must continue to reflect on the function and utility of our prisons, as Rowan Williams, the former Archbishop of Canterbury, has suggested they are:

...places where society can very easily deposit its projections of its own interior sicknesses, externalising these wounds and weaknesses so that they can be ‘expelled’ in what’s supposed to be a therapeutic purging ...

To the extent that the penal institution is so often conceived by those outside as essentially punitive, as somehow quite outside the discourse and practice of ‘ordinary’ corporate life, the whole institution carries a set of strongly negative expectations. We, as a society, do not look to a prison to work at healthy or therapeutic relations, at nurturing responsiveness or responsibility (which is why we should not be surprised by recidivism). We thus collude in the creation of a totalizing environment, where the style of relation taken for granted is divorced from or at odds with the style of thought of as normal or desirable elsewhere. Everyone in the institution suffers as a result of this, staff and prisoners.⁸

The current approach arguably fails to acknowledge our complex world, in which public safety is not assured by incarceration alone. In this respect, the rehabilitative function of the criminal justice system has become secondary, the impacts on families and communities obscured and preventative measures barely considered.⁹

Moreover, prisons are inordinately expensive, and are not necessarily reducing the “debilitating pattern of cyclical imprisonment”,¹⁰ which “disrupts the fragile economic, social, and political bonds that are the basis for informal social control in a community”.¹¹ From an investment perspective, they might be considered business failures. For instance, a recent economic analysis by Deloitte Access Economics revealed that State governments could save \$110,000 per person if Indigenous peoples

⁷ William J Danaher. “Towards A Paschal Theology of Restorative Justice”, *The Anglican Theological Review*, Summer 2007 (Volume 89, Number 3) p. 367.

⁸ Rowan Williams. ‘Ministry in Prison Theological Reflections.’ *Justice Reflections* 2003 (Issue 2). p. 11.

⁹ For instance, although there was a slight drop in 2011, the overall numbers behind bars increased exponentially from 86 per 100,000 adult population in 1984 to 165 in 2011. See <http://theconversation.edu.au/prison-rates-down-but-not-enough-2333>. Also the Australian Institute of Criminology notes that about 60 per cent of those in custody in Australia have been imprisoned before. Reoffending behaviour or recidivism can be influenced by many factors including poor education and employment histories, mental illness and bad physical health, as well as drug and alcohol misuse. See: www.aic.gov.au/crime_community/communitycrime/recidivism.html.

¹⁰ See also a recent ABS Research Paper: *An Analysis of Repeat Imprisonment Trends in Australia using Prisoner Census Data from 1994 to 2007, Aug 2010* which found that: “reimprisonment is strongly associated with being young, being Indigenous, or having been previously imprisoned (that is, being a prisoner who had already served time in prison). In all jurisdictions except Queensland, the rate of reimprisonment in recent years was higher than in the mid-1990s.” At: www.abs.gov.au

¹¹ Open Society Institute (2003), *Ideas for an Open Society: Justice Reinvestment*. At: www.opensocietyfoundations.org/publications/ideas-open-society-justice-reinvestment



convicted of a substance abuse-related, non-violent offence went into rehabilitation instead of jail.¹² The *Thinking Outside* report also found that for the 27 children in their sample group who had first experienced remand at 10 to 12 years, the cost of custody in the youth justice system was \$3,046,560. Of this cohort of young people 78% had previously been known to the child protection system and, as the report noted, “for most of these children, these costs will continue to grow”.¹³

Possible benefits of justice reinvestment

Justice reinvestment should not be viewed as a panacea to our ongoing ethical and practical struggles with issues of crime and imprisonment. However we are challenged to seek more nuanced understandings of justice, human dignity and public safety. Set within this broader context it is an approach that may open up new ways of thinking, discussing and acting upon these issues.

In this respect justice reinvestment offers possibilities to:

- **Change the narrative** — from a retributive based focus on crime and punishment to a more nuanced understanding of justice, such as based in restoration and rehabilitation.
- **Build bridges not walls** — investing in the sources of crime and the social factors that give rise to criminal behaviour, rather than continuing to foster an industry built on its aftermath.
- **See the entire “criminal justice path”** — and look for interventions at all critical points: prevention, diversion, and (if incarceration is required) in reducing recidivism.
- **Respect human dignity** — by seeking to understand offenders both as citizens with rights and as a human being born with dignities and liberties, and as such always new potential.¹⁴
- **Provide accountability** — to local community not just ‘society’ at large. By remaining in community, offenders’ roles may be changed from “permanent consumers of correctional services” to “builders and restorers of healthy, safe communities”.¹⁵
- **Respect the sanctity of family** — when a person is imprisoned it is not just the individual affected, but their family members and dependents also bear a economic, social, mental and emotional burden.
- **Provide sound methodological and evidence-based practice** — although much thinking still needs to be done in how it might apply in an Australian context, justice reinvestment explicitly seeks such underpinnings. It may also engender more community engagement, and culturally safe practices.

Thus we commend further exploration and application of a justice reinvestment approach in Australia, as one approach that may offer new ways of thinking about and reformulating our criminal justice system.

As Christians we are called to respect the human dignity of all people, including those who commit crimes, and to “affirm and practice” the ‘justice that picks a person up and helps her or him to stand. While holding those who break the law to accountability, it liberates, restores, gives new life and hope.¹⁶

¹² Deloitte Access Economics (2013). *An economic analysis for Aboriginal and Torres Strait Islander offenders: prison vs residential treatment*, on behalf of the National Indigenous Drug and Alcohol Committee, ANCD research paper (no.24). At: www.nidac.org.au

¹³ These estimates did not include time etc of police and others involved in their cases. See Jesuit Social Service (2013), *Thinking Outside: Alternatives to Remand for Children: Summary Report*. p. 15. At: www.jss.org.au

¹⁴ This understanding of prisoner, framed in principle of both theology and politics, was succinctly articulated by Rowan Williams in a 2011 speech to the House of Commons. At: <http://rowanwilliams.archbishopofcanterbury.org/articles.php/563/archbishops-address-to-the-appg-on-penal-affairs>

¹⁵ Open Society Institute (2003), *Ideas for an Open Society: Justice Reinvestment*.

¹⁶ Sadie Pounder (2008). “Prison Theology: A Theology of Liberation, Hope and Justice”, *Dialog: A Journal of Theology*, (Vol. 47, No.3) Fall 2008. p. 287.



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We are pleased to see the Senate inquire into this matter, and trust you will continue to seek more just policies, so that we may come to appreciate a deeper and more lasting sense of safety and coherence within our communities.

Peace

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Anglican Diocese of Brisbane