



Written Submission

March 2013

Federal Senate

Legal and Constitutional Affairs Committee Inquiry

Investigating the Value of a

Justice Reinvestment Approach to

Criminal Justice in Australia.

OUTCARE INCORPORATED
27 MOORE STREET
EAST PERTH WA 6004

Ph: (08) 6263 8622
Fax: (08) 6263 8611
Email: outcare@outcare.com.au
Website: www.outcare.com.au

Contact: (1) Peter Sirr, Outcare CEO:
(2) Carol Mitchell, Outcare Policy & Research Officer (Author):

Value of a Justice Reinvestment approach to criminal justice in Australia

On 26 November 2012 the Senate referred the following matter to the Legal and Constitutional Affairs Committees for inquiry and report.

Terms of Reference

The value of a justice reinvestment approach to criminal justice in Australia, with particular reference to:

- (a) the drivers behind the past 30 years of growth in the Australian imprisonment rate;
- (b) the economic and social costs of imprisonment;
- (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;
- (d) the cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures;
- (e) the methodology and objectives of justice reinvestment;
- (f) the benefits of, and challenges to, implementing a justice reinvestment approach in Australia;
- (g) the collection, availability and sharing of data necessary to implement a justice reinvestment approach;
- (h) the implementation and effectiveness of justice reinvestment in other countries, including the United States of America;
- (i) the scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments; and
- (j) any other related matters.

Introduction:

Thank you for the opportunity to provide input into the Legal and Constitutional Affairs Committee Inquiry investigating the **Value of a Justice Reinvestment approach to criminal justice in Australia**.

This submission highlights the key work done to date through many other Inquiries, Reports and Papers that support the **Outcare Incorporated (WA)** recommendation for a paradigm shift from rhetoric, policy and practice of being 'tough on crime' to being *effective* and *smart* on crime and justice in Australia through a Justice Reinvestment approach.

Although this submission is from one agency, Outcare, it has also been informed by an inter-agency committee with representatives from non-government, government, community service organisations and individuals with a common goal. That is, to prioritise the reduction of the over-representation of Indigenous people(s) in WA prisons through the introduction of Justice Reinvestment studies/research, pilot programs and subsequent long-term practices that improve community safety for all Australians through *effective* and *smart* Justice Reinvestment approaches.

The Justice Reinvestment for Western Australia (WA) Committee comprises a representative from the following organisations:

Outcare Incorporated (Western Australian non-government organisation)

Outcare is the major non-government provider of crime prevention in Western Australia; working closely with offenders, ex-offenders and their families, as well as the broader community, government and non-government organisations, to prevent crime and make WA a safer place to live. Outcare is a non-profit organisation, strongly supported in its mission by the WA Department of Corrective Services and other agencies working to reduce crime. Outcare takes a holistic approach to community safety and crime prevention, offering a broad range of education, intervention and reform programs aimed at reducing the re-offending rate of people in conflict with the justice system and supporting their successful reintegration into the community. This leads to improved community safety and lower costs associated with the justice system.

ALS (WA): Aboriginal Legal Service (Western Australia)

The Aboriginal Legal Service of Western Australia (Inc.) (ALSWA) provides legal representation and support services for Aboriginal and Torres Strait Islander peoples in Western Australia, including advocating in policy and law reform in submissions, at conferences and in the media. ALSWA is funded by the Australian Government, through the Commonwealth Attorney General's Department. As well as the Perth office there are 17 regional ALSWA offices located in Albany, Broome, Bunbury, Carnarvon, Derby, Fitzroy Crossing, Geraldton, Halls Creek, Kalgoorlie, Kununurra, Laverton, Meekatharra, Newman, Northam, Roebourne, South Hedland and Warburton. These offices provide ALSWA criminal law, family law and civil and human rights law work in the country and have access to the resources of the Perth office as required.

CLC (WA): Community Legal Centres (Western Australia)

The Community Legal Centres Association of WA is the peak organisation representing the 28 Community Legal Centres (CLCs) operating in Western Australia. It is committed to the principles of human rights, social justice and equity, including the rights of Western Australians to equity in access to legal services. The Association is part of a national network of community legal centres, the National Association of Community Legal Centres. Community Legal Centres (CLCs) are community based and controlled organisations providing free or low-cost services to their communities. CLCs primarily target their services for people who are ineligible for legal aid and who are unable to afford the services of a private lawyer.

CPSU/CSA: Community and Public Sector Union/Civil Service Association of WA

The CPSU/CSA and its members work together to create a better quality of life for the membership and their families and are committed to protect and improve the delivery of public sector services to the community.

Deaths in Custody Watch Committee (WA)

The DICWC in WA was set up by a coalition of concerned parties in 1993 that included various Church bodies and representatives, unions, lawyers, politicians, Aboriginal organisations, other NGOs, family members related to people who had died in custody, as well as other prominent individuals. This followed the release of the final report for the Royal Commission into Aboriginal Deaths in Custody in 1991. While the Royal Commission was a national Inquiry, it recommended Deaths in Custody Watch Committees be set up in each State. The DICWC of WA has focused and worked almost exclusively on WA issues, especially given this State has some of the worst statistics in regard to these issues. WA continues to incarcerate people at a rate far higher than any other State, and in particular has a huge over-representation of Aboriginal prisoners, with the result that they make up just over 40 per cent of deaths in custody. "The DICWC (WA) Inc will continue to monitor and work to see the effective implementation of the 339 recommendations into the Royal Commission into Aboriginal Deaths in Custody 1991".

National Congress of Australia's First Peoples (WA representative)

The establishment of the National Congress of Australia's First Peoples is the culmination of years of hard work to re-create a national representative body. The Congress has been established as a company limited by guarantee and was incorporated in April 2010. The vision is to be a national leader and advocate for recognising the status of Aboriginal and Torres Strait Islander peoples as First Nation peoples. "The Congress will create a national and collective voice, conduct research, be a partner for government and industry, a think tank for our issues and our peoples" (Congress launch, May 2010).

WAAMH: Western Australian Association of Mental Health

WAAMH is the peak mental health representative body in Western Australia for community managed mental health organisations. WAAMH's 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 living with mental illness and their carers.

WACOSS: Western Australian Council of Social Services

WACOSS is a not-for-profit, member based organisation and the peak body for the social services sector in WA. Since 1956, WACOSS has been developing and strengthening the non-government community services sector's capacity to assist all Western Australians. At the heart of its activities, lies the belief that the mark of a civilised community is the support and help it gives to those most in need. WACOSS and its members are committed to a socially just and sustainable society for all Western Australians; sharing a vision of an inclusive, just and equitable society now and in the future.

WANADA: Western Australian Network of Alcohol and other Drug Agencies

The Western Australian Network of Alcohol and other Drug Agencies (WANADA) is the peak body for the alcohol and other drug (AOD) education, prevention, treatment and support sector in Western Australia. Since its establishment in 1984, WANADA's membership has developed to reflect a 'whole-of-community' approach to alcohol and other drug issues. WANADA is an association of organisations and individuals working to improve the quality of life of people and communities affected by alcohol and other drugs. WANADA is an independent, membership-driven not-for-profit association.

(a) The drivers behind the past 30 years of growth in the Australian imprisonment rate:

- The Most Reverend Barry Hickey, in his former capacity as the Catholic Archbishop of Perth, and as a former Patron of Outcare Inc. (WA) stated:

“There is no need for Western Australia to have one of the highest rates of incarceration in Australia if government and society were to creatively address the many social issues such as poverty, lack of accommodation, disadvantage and mental health that takes people into a downward spiral of imprisonment and recidivism. Locking people up is not the answer to these problems but reflects a poverty of ideas” (Outcare Annual Report 2010)

Statistical Reports:

- *Data on Prisons – Imprisonment rates and proportions of prisoners* (July 2010)
Australian Institute of Criminology: AIC
www.aic.gov.au/publications/current%20series/rpp/100-120/rpp107/06.html
- *Imprisonment Rates – Australian Bureau of Statistics: ABS* (January 2013)
www.abs.gov.au/ausstats/abs@.nsf/Lookup/4125.0main+features5210Jan%202013
- *Australian Corrections: The imprisonment of Indigenous people* (AIC; Trends and Issues in crime and criminal justice; No 137); Carlos Carcach, Anna Grant and Rowena Conroy
- *Crime and Justice: Women in Prison – ABS*
www.abs.gov.au/ausstats/abs@.nsf/1020492cfcd63696ca2568a1002477b5/781c132ae9185bedca256e9e002975fc!OpenDocument
- *Repeat Imprisonment – ABS*
www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features10Mar+2010
- *An Analysis of Repeat Imprisonment Trends in Australia using Prisoner Census Data from 1994 to 2007*
[www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/26D48B9A4BE29D48CA25778C001F67D3/\\$File/1351055031.aug%202010.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/26D48B9A4BE29D48CA25778C001F67D3/$File/1351055031.aug%202010.pdf)
- *Recidivism in Australia: Findings and Future Research* (2007); Jason Payne; AIC – Research and Public Policy Series (No. 80)
www.aic.gov.au/documents/0/6/B/%7B06BA8B79-E747-413E-A263-72FA37E42F6F%7Drpp80.pdf

Australia:

- *Why are Indigenous imprisonment rates rising?* (2009); Jacqueline Fitzgerald; Crime and Justice Statistics; NSW Bureau of Crime Statistics and Research; Bureau Brief (Issue Paper No. 41)
[www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/BB41.pdf/\\$file/BB41.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/BB41.pdf/$file/BB41.pdf)

- *Imprisonment in Australia: Trends in Prison Populations and Imprisonment Rates 1982 – 1998* (1999); Carlos Carcach and Anna Grant; Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice (no. 130)
www.aic.gov.au
- *Mandatory Sentencing* (1999); AIC – Trends and Issues in Crime and Criminal Justice (No. 138); Declan Roche
www.aic.gov.au
- *Probation, Parole and Community Corrections. Past, Present and Future. Are we prepared to go there?* (2002); Kathy Waters; Paper presented at Probation and Community Corrections: Making the Community Safer Conference convened by the AIC and the Probation and Community Corrections Officers' Association Inc; held in Perth, 23-24 September 2002
- The Australian Prisons Project; Eileen Baldry, University of NSW
www.app.unsw.edu.au/sites/app.unsw.edu.au/files/assets/baldry_cjf.pdf
- Other reports of interest: Sentenced Prisoners (ABS); The Remand Population (AIC); and Bail in Australia (AIC)

Western Australia:

- According to the Media Release (March 2013), *Report: WA Justice System – Expensive and Ineffective*¹:
 - Western Australian incarceration and re-offending rates are skyrocketing – our prison population has grown 40% in the last six years, juveniles in custody have risen 56% and at the same time our recidivism rate rose to 44%. Despite increased spending, WA also has the most overcrowded prisons in the nation. The Corrective Services budget increased 75% over the last six years to \$760 million per year – not including the additional \$830 million to build new and expended prisons or the additional running costs
- According to the paper by Wendy-Rea Young and Tammy Solonec, *Epidemic Incarceration and Justice Reinvestment – It's time for change* (2011):

“Current factors that contribute to the high incarceration of Indigenous people include over-policing, punitive police practices, mandatory sentencing, absence of crisis accommodation, limited access to legal advice and interpreters, discriminatory bail and parole processes, a lack of community-based sentencing options, difficulties in obtaining driver's licences (especially in remote locations), and inadequate rehabilitation programs in prisons and detention centres”

¹ Justice and Community Safety in Western Australia: A call for Efficient investment in Effective outcomes (February 2013); A discussion paper prepared by: WAAMH, WACOSS and WANADA

(b) The economic and social costs of imprisonment:

- According to the Australian Human Rights Commission Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into *Access to Justice* (October 2009, p 10); “Justice reinvestment has as much in common with economics as social policy. It asks the question: Is imprisonment good value for money? The simple answer is that it is not, given the high levels of recidivism and negligible impact on crime rates”
- According to (former) Social Justice Commissioner Tom Calma, within his Social Justice Report (2009), “it is about time we got smart with our money and reinvested in community-wide early intervention and support for Indigenous communities, rather than throwing it away on imprisonment”²

Reports:

- Australian Human Rights *Social Justice Report 2009*
http://humanrights.gov.au/socxial_justice/sj_report/sireport09/index.html
- Productivity Commission *Report on Government Services* (2013); eg: Corrective Services (Chapter 8); Child Protection and Out of Home Care Services; as well as Youth Justice Services (Chapter 15)
www.pc.gov.au/gsp/rogs/2013

Papers:

- *Justice and Community Safety in Western Australia: A call for Efficient investment in Effective outcomes* (February 2013); A discussion paper prepared by: WAAMH, WACOSS and WANADA; Refer to ‘The rising cost of detention’ (p 12); and ‘The indirect cost of increased numbers of prisoners’ (p 13)
- *Issues and Barriers Faced by Offenders and their Families* (September 2010); An Information Sheet by Outcare Inc.
www.outcare.com.au
- ‘Silent Sufferers’ – The partner/family of a prisoner (December 2010); An Information Sheet by Outcare Inc.
www.outcare.com.au
- *Smart Justice: “Smart action for a safer community”*; More prisons are not the answer to reducing crime: www.smartjustice.org.au
- *Incarceration: Unsustainable Costs and Diminishing Benefits* (August 2008); Offenders Aid and Rehabilitation Services of South Australia Inc (OARS SA); Richard Cannon and Karne Grogan, South Australian Council of Social Service (SACOSS)
www.sacoss.org.au/online_docs/081111%20OARS%20Incarceration.pdf
- *The Booming Industry: Australian Prisons* (2008); Eileen Baldry; School of Social Sciences and International Studies, University of NSW (UNSW)
www.nobars.or.au/downloads/Baldry_Debate.pdf

² Australian Human Rights Commission. Social Justice Report 2009.

- *The economics of imprisonment and offender supervision in Queensland: Costs and efficiency in the provision of corrective services*; Glynn Francis Edwards (1999); PhD Thesis: School of Economics; University of Queensland
<http://espace.library.uq.edu.au/view/UQ:186238>
- Outcare's submission to the Parliament of WA, Community Development and Justice Committee *Inquiry into the Adequacy and Future Directions of Social Housing in WA* (December 2010): www.outcare.com.au

Recommendations:

- Support the 'Recommendations: Where to from here?' within the WAAMH, WACOSS and WANADA February 2013 discussion paper, *Justice and Community Safety in Western Australia*:
 - A commitment to evidence-based responses to justice issues (p 35)
 - Improved collection, analysis and sharing of data (p 35)
 - Mental health and alcohol and other drug services (p 36)
 - Building community sector capacity (p 37)
 - Collaboration (p 37)
- Support the Smart Justice solutions (as outlined in the November 2011 Victorian factsheet): www.smartjustice.org.au
 - Tackling underlying factors that contribute to offending through increased investment in child protection, family support, housing, employment, education, mental health and alcohol and other drug programs;
 - Expanding court programs which address the causes of offending like the Neighbourhood Justice Centre and the Court Integrated Services Program;
 - Providing intensive support to prisoners to reduce the risk of reoffending through adequate pre and post release support, particularly in the areas of housing, education and employment; and
 - Promoting appropriate alternatives to prison including community based orders and suspended sentences
- Given the over-representation of Indigenous youth in the justice system and their over-representation for social and health inequities (including homelessness or over-crowding, limited schooling and family dysfunction) further support and action for the whole-of-government focus to 'close the gap' through National Partnership Agreements is endorsed (in health, early childhood, housing, economic development and remote service delivery). Children/teenagers having children themselves who have early contact with the juvenile justice system need to be urgently supported; especially when this is intergenerational.
- An educational focus on basic literacy, numeracy and life skills is recommended given it is important to one's self esteem and sense of wellbeing. The life skills endorsed, especially for Indigenous youth include shopping/budgeting/cooking and maintaining an accommodation, as well as obtaining a driver's license/extraordinary license. This needs to be prioritised for those geographically and culturally/socially isolated such as through a remote or region-specific driver's license.

(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:

Reports:

- Report to the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) 1991 www.austlii.edu.au/other/IndigLRes/rciadic/
- *Overcoming Indigenous Disadvantage Report 2009*; (eg: Imprisonment and Juvenile Detention) www.pc.gov.au/gsp/indigenous
- *'Making our prisons work': An Inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies* Report (2010)
- Indigenous Imprisonment Rates (2009); Australian Institute of Criminology; Crime Facts Information (No. 195) www.aic.gov.au
- Data on prisons: Imprisonment rates and proportion of prisoners; Australian Institute of Criminology (2010) www.aic.gov.au/publications/current%20series/rpp/100-120/rpp107/06.html
- *Incarceration rates for Indigenous women a national shame* (2003); Australian Human Rights Commission; Media Release http://humanrights.gov.au/about/media/media_releases/2003/12_03.html
- *Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems* (2005); A Report by Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission

Papers:

- *Epidemic Incarceration and Justice Reinvestment – It's time for change* (2011); Wendy-Rea Young and Tammy Solonec; Indigenous Law Bulletin (September/October 2011); ILB Vol 7, Issue 26
- *Building communities, not prisons: Justice Reinvestment and Indigenous over-imprisonment*; Melanie Schwartz; Indigenous Law Review, Vol 14 (1) 2010 www.ilc.unsw.edu.au
- *Justice Reinvestment: a new strategy to address family violence* (May 2010); Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission; National Family Violence Prevention Forum AIATSIS and CDFVR; www.hreoc.gov.au
- *True Justice*: Indigenous leaders are calling for a new approach to help solve the continuing high rate of Indigenous juveniles in detention; Georgie Oakeshott; About the House – May 2010
- What works to overcome Indigenous disadvantage: Key learnings and gaps in evidence (2011); Australian Institute of Health and Welfare (AIHW) – Closing the Gap Clearinghouse; Dr Fadwa Al-Yaman and Dr Daryl Higgins

- *Justice Reinvestment for Indigenous Young People*; Special Children's Rights Edition of the Human Rights Law Centre Bulletin 2011
- Australians for Native Title and Reconciliation (ANTaR) released a 'Joint National Call to Action to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system' in April 2011. It outlined 'What is needed':
 - Clear targets within a National Plan to reduce imprisonment rates
 - Justice Reinvestment: a new direction
 - Potential areas for investment, action and reform:
 - Programs for at risk individuals, groups or communities
 - Improved police training and accountability
 - Adequate legal representation
 - Improved court processes and decisions
 - Improved prisons and detention centres
 - Better post-release transition and (re-)integration
- The Western Australian Association for Mental Health (WAAMH) Pre-budget Submission 2013 -14; Better human rights for people with mental health issues (p 6)
- Outcare submission to the Commissioner for Children and Young People (CCYP) *Inquiry into the mental health and wellbeing of children and young people in WA* (2010): www.outcare.com.au
- Outcare submission to the Parliament of WA, Community Development and Justice Committee, *'Making our prisons work': An Inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies* (March 2010): www.outcare.com.au

Projects/Programs:

- Project 10%: Keeping families together and moving forward; Reducing Aboriginal and Torres Strait Islander imprisonment by 10% a year for 10 years; ANTaR Queensland
- Building Communities Not Prisons Campaign – DICWC (WA): www.deathsincustody.org.au/prisonovercrowding

Recommendations:

- Support for the recommendations outlined in the April 2011 ANTaR joint national call to action to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system
- Support the recommendations made within the WAAMH Pre-budget Submission 2013 – 14 in the section, Better human rights for people with mental health issues:
 - pertaining to a call on the Government to amend punitive elements of the Criminal Law (Mentally Impaired Defendants) Act 1996 (p 6);
 - supporting the Government's Mental Health Court Diversion and Support Program (p 6);
 - supporting the calls of the Law Society of WA and others for the WA Government to abandon mandatory sentencing (p 7);
 - supporting WAAMH calls for a thorough investigation of mental health services and programs in prisons by the Department of Corrective Services and the Mental Health Commission (p 7).

(d) The cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures:

Reports:

- Recognition of Aboriginal Customary Laws: *ALRC Report 31* (1986); Australian Law Reform Commission (ALRC); www.alrc.gov.au
- Aboriginal Customary Laws and Sentencing – Alternative forms of Sentencing; ALRC www.alrc.gov.au
- The 2004 Senate Committee Inquiry report on poverty, *A Hand Up Not a Hand Out: Renewing the fight against poverty; Report of poverty and financial hardship* (March 2004): www.aph.gov.au/

Papers:

- *Targeting crime prevention to reduce Offending: Identifying communities that generate chronic and costly offenders* (September 2012); Troy Allard, April Chrzanowski and Anna Stewart; Australian Institute of Criminology (AIC)
- *The Pathways to Prevention project: doing developmental prevention in a disadvantaged community* (August 2006); Ross Homel, Kate Freiberg, Cherie Lamb, Marie Leech, Sam Batchelor, Angela Carr, Ian Hay, Rosie Teague and Gordon Elias; AIC
- Best practice interventions in corrections for Indigenous people (AIC) 2001 www.aic.gov.au/events/aic%20upcoming%20events/2001/indigenous2.html
- Benefit-Cost Analysis and Crime Prevention; John Chisholm (2000); Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice (No. 147) www.aic.gov.au

Prevention:

- *Justice Reinvestment – a pathway to safer, stronger communities:* <http://penny-wright.grensmips.org.au/campaigns/justice-reinvestment>
- National Family Violence Prevention Forum AIATSIS and CFFVR; Justice Reinvestment: A new strategy to address family violence; paper presented by Mick Gooda; Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission (19 May 2010), Mackay, Queensland www.noviolence.com.au/public/forum2010/MickGooda.pdf

Early Intervention:

- The WACOSS Pre-Budget Submission for the WA State Budget 2012-13 (November 2011), *Closing the Social Divide: Building a sustainable future for the benefit of all Western Australians*, highlighted the 'Wraparound Wilwaukee' program as a promising model of cost-effective community based alternative to residential care and treatment, linking child welfare, education, juvenile justice and mental health. The program is targeted specifically to children and adolescents who have serious emotional disorders and are identified by authorities as at immediate risk of residential or correctional placement or psychiatric hospitalisation.

- According to the Wraparound Milwaukee Family Handbook, Wraparound Milwaukee seeks to “help build healthy and strong communities by enhancing children’s and families’ ability to meet life’s challenges and to foster resilience and hope for the future”.³
- According to the Commissioner for Children and Young People (CCYP) Issues Paper 4, April 2010, Youth Justice:
 “The same factors that can lead a child or young person into the justice system are largely the same as those that can lead them into State care – that is, dysfunction at home and in the community, disadvantage and poverty”.

These are also known risk factors for mental health challenges. It needs to be acknowledged that those in conflict with the law at an early age come from a group that have experienced more social and health inequities.

Diversificationary:

- *Responding to substance abuse and offending in Indigenous communities: Review of diversion programs* (2008); AIC – Research and Public Policy Series (No. 88); Jacqueline Joudo; www.aic.gov.au

Rehabilitation:

- *Interventions for Prisoners Returning to the Community: A report prepared by the AIC for the Community Safety and Justice Branch of the Australian Government Attorney-General’s Department; Dr Maria Borzycki (2005)*

Recommendations:

- Fund pilot community-based programs providing wrap-around services to high risk individuals and their families in areas with high offending rates in all Australian States and Territories.
- Provide adequate funding for strengths-based cultural diversion programs for Aboriginal juvenile offenders, including alternatives to sentencing, especially for minor offences.
- Develop a database of successful diversionary and rehabilitative programs appropriate to identified high-risk communities that incorporate cultural diversionary methods
- Those identified in the early years as being vulnerable to violence/abuse and neglect need to be prioritised for early intervention through appropriate multidisciplinary support to improve protective factors as many will invariably have early contact with the juvenile justice system without this; and many will have existing or a high likelihood of mental health challenges that may include Foetal Alcohol Spectrum Disorder.
- The intergenerational costs of inaction needs to be appropriately costed.

³ Wraparound Milwaukee Family Handbook, p 2. <http://county.milwaukee.gov/WraparoundMilwaukee.htm>

(e) The methodology and objectives of Justice Reinvestment:

Reports:

- *Justice Reinvestment at the Local Level: Planning and Implementation Guide*; Urban Institute, Justice Policy Center; Nancy La Vigne; S Rebecca Neusteter, Pamela Lachman, Allison Dwyer and Carey Anne Nadeau
www.urban.org/UploadedPDF/412233-Justice-Reinvestment.pdf

Papers:

- *Epidemic Incarceration and Justice Reinvestment – It's time for change* (2011); Wendy-Rea Young and Tammy Solonec; Indigenous Law Bulletin (September/October 2011); ILB Vol 7, Issue 26
- *Justice Reinvestment – An option for Western Australia?* (September 2010); Paul Papalia CSC, MLA
- *A smarter criminal justice system: The role of Community Legal Centres*; Hugh de Kretser and Michelle McDonnell; Alternative Law Journal; Vol 37 (1) 2012; 'Justice for all'; www.altlj.org/

Projects/Programs:

- Justice Reinvestment Campaign – for Aboriginal young people (NSW):
"We aim to influence the NSW Government to shift spending that has been allocated for prisons towards community-based programs and services that address the factors that contribute to criminal behaviour in young people"
<http://justicereinvestmentnow.net.au>

Methodology:

- According to the Fact Sheet authorised by South Australian Senator, Penny Wright:
 - *Justice Reinvestment: A four step process*
 - Justice Mapping
 - Develop Options for Reducing Offending
 - Implementation
 - Evaluation
- According to the United States *Justice Reinvestment: Overview* from the Council of State Governments – Collaborative approaches to Public Safety:
 - Analyse data and develop policy options
 - Adopt new policies and put reinvestment strategies into place
 - Measure performance

Objectives:

- *Introducing Justice Reinvestment: We need to be smarter on crime, not tougher on crime* – A means of reducing corrections spending and reversing escalating incarceration rates whilst improving public safety and strengthening communities⁴

⁴ Fact sheet: Authorised by South Australian Senator, Penny Wright:
<http://penny-wright.greensmps.org.au/campaigns/justice-reinvestment>

- “Justice reinvestment – a data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease crime and strengthen neighborhoods”⁵

Recommendations:

- The data-driven approach of Justice Reinvestment to shift spending from building prisons and increasing corrections spending to building and strengthening communities (capacity and capability building) needs to be moved from theory to practice in Australia
- Prioritised communities need to be based on justice mapping that highlights a high rate of incarceration; with urgent support required for those communities with intergenerational challenges and high juvenile offending and/or identified family dysfunction that places children at heightened risk of victimisation and/or offending.

⁵ *Justice Reinvestment: Overview* from the Council of State Governments – Collaborative approaches to public safety; USA

(f) The benefits of, and challenges to, implementing a Justice Reinvestment approach in Australia:

Reports:

- Australian Human Rights *Social Justice Report 2009*
http://humanrights.gov.au/socxial_justice/sj_report/sjreport09/index.html

Papers:

- *The promise and pitfalls of Justice Reinvestment*, David Brown, Melanie Schwartz and Laura Boseley (2012); *Alternative Law Journal* Vol 37 (2)
- *Building communities, not prisons: Justice Reinvestment and Indigenous over-imprisonment*, Melanie Schwartz; *Indigenous Law Review*, Vol 14 (1) 2010
www.ilc.unsw.edu.au
- *Epidemic Incarceration and Justice Reinvestment – It's time for change* (2011); Wendy-Rea Young and Tammy Solonec; *Indigenous Law Bulletin* (September/October 2011); ILB Vol 7, Issue 26
- *Popular Punitivism – The role of the Courts in the Development of Criminal Justice Policies* (2009); Address by The Hon. Wayne Martin, Chief Justice of WA; at the Australian and New Zealand Society of Criminology Conference, Perth, November 2009

Benefits:

- *Justice Reinvestment will benefit communities* (September 2012):
<http://greens.org.au/content/justice-reinvestment-will-benefit-communities-0>
- *The necessity of justice reinvestment*, Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission; paper presented at the Koori Prison Transition Forum, Department of Justice; Rydges Bell City Conference Centre, Preston; Friday 29 June 2012
- *Justice and Community Safety in Western Australia: A call for Efficient investment in Effective outcomes* (February 2013); A discussion paper prepared by: WAAMH, WACOSS and WANADA

Challenges:

- Within the discussion paper prepared by WAAMH, WACOSS and WANADA, *Justice and Community Safety in Western Australia: A call for Efficient investment in Effective outcomes* (February 2013); refer to the *Barriers to an evidence-based approach to justice in WA*: The 'good data' barrier (p 28); and The funding barrier (p 30)

Recommendation:

- Support the 'Recommendations: Where to from here?' within the WAAMH, WACOSS and WANADA February 2013 discussion paper, *Justice and Community Safety in Western Australia*:
 - A commitment to evidence-based responses to justice issues (p 35):
All key stakeholders and political parties support a moratorium on calls for mandatory sentencing and being "tough on crime" and commit to an evidence-based approach to policy development and advocacy on justice issues
 - Improved collection, analysis and sharing of data (p 35)
 - Mental health and alcohol and other drug services (p 36):
The need to collect and analyse data, facilitate collaboration and undertake program and service planning should not delay an immediate increase in funding and service provision in critical areas, particularly prison-based and post-release services
 - Building community sector capacity (p 37):
Fund community sector peak bodies 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
 - Collaboration (p 37):
Establishment of a Justice Roundtable as a whole of government and community sector forum, with senior representation from key government and community sector stakeholders based on the model of the Partnership Forum

(g) The collection, availability and sharing of data necessary to implement a Justice Reinvestment approach:

Reports:

- *Dropping off the edge: the distribution of disadvantage in Australia (2007)*; A report by Professor Tony Vinson; commissioned by Jesuit Social Services and Catholic Social Services Australia
- *Tracking Costs and Savings through Justice Reinvestment (2012)*; Pamela Lachman and S Rebecca Neusteter; Justice Reinvestment at the local level (Brief 1; May 2012); Urban Institute, Justice Policy Center
- *Data-driven Decision-making for Strategic Justice Reinvestment (2012)*; Alison M Dwyer; S Rebecca Neusteter and Pamela Lachman; Justice Reinvestment at the local level (Brief 2; May 2012); Urban Institute, Justice Policy Center

Data collection, availability and sharing:

- According to the *Dropping off the edge* report by Professor Tony Vinson (2007), the following are recommended:
 - Establishing an Australia-wide uniform social data system to illuminate the spatial distribution of social disadvantage; Improving inter-governmental coordination in the collection and policy application of social data; and based on overseas experience, all place-based policies to reduce social disadvantage must be given long-term (at least 7 to 8 year) timetables for success (rather than the 1 to 3 years often received).
- Within the discussion paper prepared by WAAMH, WACOSS and WANADA, *Justice and Community Safety in Western Australia: A call for Efficient investment in Effective outcomes* (February 2013); refer to the *Barriers to an evidence-based approach to justice in WA*: The 'good data' barrier (p 28); and The funding barrier (p 30)
- *Justice Reinvestment at the Local Level: Planning and Implementation Guide*; Urban Institute, Justice Policy Center; Nancy La Vigne; S Rebecca Neusteter, Pamela Lachman, Allison Dwyer and Carey Anne Nadeau
www.urban.org/UploadedPDF/412233-Justice-Reinvestment.pdf

Other Recommendations:

- Within the *Justice and Community Safety in Western Australia: A call for Efficient investment in Effective outcomes* (February 2013): A discussion paper prepared by WAAMH, WACOSS and WANADA; recommendations are made for 'Improved collection, analysis and sharing of data' (p 35), including:
 - A comprehensive audit of all prisoners in WA correction facilities that includes current mental health issues, alcohol and (other) drug use and access to existing or desired services;
 - Embed annual prisoner health and social service need auditing as an ongoing function of the Department of Corrective Services in partnership with the Department of Health, Mental Health Commission and the community sector;
 - A commitment to maintain and share data with post-release and other frontline services, as prisoners come into and leave prison;

- Establish an independent program, institute or authority responsible for:
 - Linking and analysing existing WA data sets from the Department 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 in WA;
 - 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.

(h) The implementation and effectiveness of Justice Reinvestment in other countries, including the United States of America:

Reports:

- *Justice Reinvestment at the Local Level: Planning and Implementation Guide*; Urban Institute, Justice Policy Center; Nancy La Vigne; S Rebecca Neusteter, Pamela Lachman, Allison Dwyer and Carey Anne Nadeau
www.urban.org/UploadedPDF/412233-Justice-Reinvestment.pdf
- *Justice Reinvestment – A new approach to crime and justice* (2007); Edited by Rob Allen and Vivien Stern; International Centre for Prison Studies; King's College, London – School of Law
www.prisonstudies.org
- *Cutting crime: the case for Justice reinvestment* (2009); First Report of Session 2009-10 (Volume 1); House of Commons; Justice Committee
www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/94i.pdf

Papers:

- *Tracking Costs and Savings through Justice Reinvestment*; Pamela Lachman and S. Rebecca Neusteter; Justice Reinvestment at the Local Level, Brief 1, May 2012; Urban Institute, Justice Policy Center, USA
- *Justice Reinvestment: What it is and why it may be an idea to consider in Scotland* (July 2008); Hillary Ross; Criminal Justice Scotland
www.cjscotland.org.uk/index.php/cjscotland/dynamic_page/?id=66

Projects/Programs:

- Justice Center, Justice Reinvestment: A project of the Council of State Governments Justice Center <http://justicereinvestment.org/states> (viewed 21 February 2013)

Recommendation:

- Refer to evaluation and/or policy documents that outline 'lessons learned' in relation to Justice Reinvestment, for example:
 - *Lessons for Justice Reinvestment from Restorative Justice and the Justice Model Experience*; Shadd Maruna
www.academia.edu/770476/Lessons_for_justice_reinvestment_from_Restorative_Justice_and_theJustice_Model_Experience

(i) The scope for federal government action which would encourage the adoption of Justice Reinvestment policies by state and territory governments:

- According to Mick Gooda⁶ (June 2012), the Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission, “for justice reinvestment to be successful, it requires bipartisan support, and the support of State and Territory Governments. It requires an agreement from both sides on the urgency of reducing imprisonment, based on both their fiscal and social responsibility”
- Media Statement (15 January 2013): *ALSWA Calls for bipartisan commitment to justice reinvestment*
www.als.org.au

Reports:

- The 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) accepts recommendation 40 on Justice Reinvestment (p 43). However, it states that ‘the primary responsibility for implementation of justice reinvestment strategies will fall to State and Territory Governments’.

Recommendations:

- Whole of government approach through justice targets for COAG’s Closing the Gap strategy; as endorsed by the Standing Committee of Attorneys-General (SCAG): www.scaag.gov.au/
- Expansion of the work undertaken through the National Justice Chief Executive Officers (NJCEOs) investigating the options and strategies for implementing a justice reinvestment approach

⁶ *The Necessity of Justice Reinvestment*; Mick Gooda, ATSI Social Justice Commissioner, Australian Human Rights Commission; Presented at the Koori Prison Transition Forum; Department of Justice; Rydges Bell City Conference Centre, Preston; Friday 29th June 2012

(j) Any other related matters:

- The **WACOSS** Pre-Budget Submission for the WA State Budget 2012-13; 'Closing the Social Divide: Building a sustainable future for the benefit of all Western Australians' (November 2011) highlighted the following within the Safety and Justice section:
 - Consideration of a 'justice reinvestment' approach has been recommended by a series of recent reports including:
 - the Senate Select Committee on Regional and Remote Indigenous Communities Report (2009);
 - the Senate Legal and Constitutional Affairs Committee *Access to Justice* Report (2009);
 - the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time: Time for Doing* Report (2010);
 - Australian Human Rights Commission, *Social Justice Report 2009*;
 - and the *Making our Prisons Work* Report (2010) of the Legislative Assembly Community Development and Justice Standing Committee.

RECOMMENDATIONS

The economic and social costs of imprisonment:

1. Support the 'Recommendations: Where to from here?' within the WAAMH, WACOSS and WANADA February 2013 discussion paper, *Justice and Community Safety in Western Australia*:
 - A commitment to evidence-based responses to justice issues (p 35)
 - Improved collection, analysis and sharing of data (p 35)
 - Mental health and alcohol and other drug services (p 36)
 - Building community sector capacity (p 37)
 - Collaboration (p 37)
2. Support the Smart Justice solutions (as outlined in the November 2011 Victorian factsheet): www.smartjustice.org.au
 - Tackling underlying factors that contribute to offending through increased investment in child protection, family support, housing, employment, education, mental health and alcohol and other drug programs;
 - Expanding court programs which address the causes of offending like the Neighbourhood Justice Centre and the Court Integrated Services Program;
 - Providing intensive support to prisoners to reduce the risk of reoffending through adequate pre and post release support, particularly in the areas of housing, education and employment; and
 - Promoting appropriate alternatives to prison including community based orders and suspended sentences
3. Given the over-representation of Indigenous youth in the justice system and their over-representation for social and health inequities (including homelessness or overcrowding, limited schooling and family dysfunction) further support and action for the whole-of-government focus to 'close the gap' through National Partnership Agreements is endorsed (in health, early childhood, housing, economic development and remote service delivery). Children/teenagers having children themselves who have early contact with the juvenile justice system need to be urgently supported; especially when this is intergenerational.
4. An educational focus on basic literacy, numeracy and life skills is recommended given it is important to one's self esteem and sense of wellbeing. The life skills endorsed, especially for Indigenous youth include shopping/budgeting/cooking and maintaining an accommodation, as well as obtaining a driver's license/extraordinary license. This needs to be prioritised for those geographically and culturally/socially isolated such as through a remote or region-specific driver's license.

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:

5. Support for the recommendations outlined in the April 2011 ANTaR joint national call to action to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system – What is needed:
 - Clear targets within a National Plan to reduce imprisonment rates
 - Justice Reinvestment: a new direction
 - Potential areas for investment, action and reform:

- Programs for at risk individuals, groups or communities
 - Improved police training and accountability
 - Adequate legal representation
 - Improved court processes and decisions
 - Improved prisons and detention centres
 - Better post-release transition and (re-)integration
6. Support the recommendations made within the WAAMH Pre-budget Submission 2013 – 14 in the section, Better human rights for people with mental health issues:
- pertaining to a call on the Government to amend punitive elements of the Criminal Law (Mentally Impaired Defendants) Act 1996 (p 6);
 - supporting the Government's Mental Health Court Diversion and Support Program (p 6);
 - supporting the calls of the Law Society of WA and others for the WA Government to abandon mandatory sentencing (p 7);
 - supporting WAAMH calls for a thorough investigation of mental health services and programs in prisons by the Department of Corrective Services and the Mental Health Commission (p 7).

The cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures:

7. Fund pilot community-based programs providing wrap-around services to high risk individuals and their families in areas with high offending rates in all Australian States and Territories.
8. Provide adequate funding for strengths-based cultural diversion programs for Aboriginal juvenile offenders, including alternatives to sentencing, especially for minor offences.
9. Develop a database of successful diversionary and rehabilitative programs appropriate to identified high-risk communities that incorporate cultural diversionary methods
10. Those identified in the early years as being vulnerable to violence/abuse and neglect need to be prioritised for early intervention through appropriate multidisciplinary support to improve protective factors as many will invariably have early contact with the juvenile justice system without this; and many will have existing or a high likelihood of mental health challenges that may include Foetal Alcohol Spectrum Disorder.
11. The intergenerational costs of inaction needs to be appropriately costed.

The methodology and objectives of Justice Reinvestment:

12. The data-driven approach of Justice Reinvestment to shift spending from building prisons and increasing corrections spending to building and strengthening communities (capacity and capability building) needs to be moved from theory to practice in Australia

13. Prioritised communities need to be based on justice mapping that highlights a high rate of incarceration; with urgent support required for those communities with intergenerational challenges and high juvenile offending and/or identified family dysfunction that places children at heightened risk of victimisation and/or offending.

The benefits of, and challenges to, implementing a Justice Reinvestment approach in Australia:

14. Support the 'Recommendations: Where to from here?' within the WAAMH, WACOSS and WANADA February 2013 discussion paper, *Justice and Community Safety in Western Australia*:
- A commitment to evidence-based responses to justice issues (p 35): *All key stakeholders and political parties support a moratorium on calls for mandatory sentencing and being "tough on crime"*
 - Improved collection, analysis and sharing of data (p 35)
 - Mental health and alcohol and other drug services (p 36): *...an immediate increase in funding and service provision in critical areas, particularly prison-based and post-release services*
 - Building community sector capacity (p 37): *Fund community sector peak bodies to build capacity and provide coordination for a collaborative approach to justice reinvestment*
 - Collaboration (p 37): *Establishment of a Justice Roundtable as a whole of government and community sector forum*

The collection, availability and sharing of data necessary to implement a Justice Reinvestment approach:

15. Within the *Justice and Community Safety in Western Australia: A call for Efficient investment in Effective outcomes* (February 2013): A discussion paper prepared by WAAMH, WACOSS and WANADA; recommendations are made for 'Improved collection, analysis and sharing of data' (p 35), including:
- A comprehensive audit of all prisoners in WA correction facilities that includes current mental health issues, alcohol and (other) drug use and access to existing or desired services;
 - Embed annual prisoner health and social service need auditing as an ongoing function of the Department of Corrective Services in partnership with the Department of Health, Mental Health Commission and the community sector;
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 - Establish an independent program, institute or authority responsible for:
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 - 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.

The implementation and effectiveness of Justice Reinvestment in other countries, including the United States of America:

16. Refer to evaluation and/or policy documents that outline 'lessons learned' in relation to Justice Reinvestment, for example:
 - *Lessons for Justice Reinvestment from Restorative Justice and the Justice Model Experience*; Shadd Maruna
www.academia.edu/770476/Lessons_for_justice_reinvestment_from_Restorative_Justice_and_theJustice_Model_Experience

The scope for federal government action which would encourage the adoption of Justice Reinvestment policies by state and territory governments:

17. Whole of government approach through justice targets for COAG's Closing the Gap strategy; as endorsed by the Standing Committee of Attorneys-General (SCAG):
www.scag.gov.au/
18. Expansion of the work undertaken through the National Justice Chief Executive Officers (NJCEOs) investigating the options and strategies for implementing a justice reinvestment approach

Any other related matters:

19. For this committee to note that a 'justice reinvestment' approach has been recommended by a series of recent reports including:
 - the Senate Select Committee on Regional and Remote Indigenous Communities Report (2009);
 - the Senate Legal and Constitutional Affairs Committee *Access to Justice* Report (2009);
 - the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time: Time for Doing* Report (2010);
 - Australian Human Rights Commission, *Social Justice Report 2009*;
 - and the *Making our Prisons Work* Report (2010) of the Legislative Assembly Community Development and Justice Standing Committee.
20. This submission highlights the key work done to date through many other Inquiries, Reports and Papers that support the **Outcare Incorporated (WA)** recommendation for a paradigm shift from rhetoric, policy and practice of being 'tough on crime' to being *effective* and *smart* on crime and justice in Australia through a Justice Reinvestment approach.