



# Submission

on the Justice Reinvestment Inquiry 2013



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## NSW Reconciliation Council Submission

### *To the Senate Committee on Legal and Constitutional Affairs*

#### INTRODUCTION

This submission is made in response to an inquiry established by the Senate Committee on Legal and Constitutional Affairs relating to the value of a justice reinvestment approach to criminal justice in Australia. The New South Wales Reconciliation Council (NSWRC) welcomes the opportunity to contribute to the process.

This submission is not intended to comprehensively address all aspects for consideration under the inquiry. Rather, it aims to provide a response from the perspective of the NSWRC regarding justice reinvestment as it relates to Reconciliation in NSW.

#### THE NSW RECONCILIATION COUNCIL

The New South Wales Reconciliation Council (NSWRC) is the peak representative body for Reconciliation in NSW. The NSWRC is made up of Indigenous and non-Indigenous Australians, working through a range of groups and organisations to promote united communities and address the 'unfinished business' of Reconciliation. This means promoting recognition of rights, economic independence and social justice for Aboriginal and Torres Strait Islander peoples, as well as improving relationships and respect between Indigenous and non-Indigenous people.

As a people's movement, Reconciliation draws on the commitment of grassroots and community based individuals, working towards a fairer society for all and greater respect, opportunities and engagement with Aboriginal and Torres Strait Islander peoples. NSWRC members have been concerned about the alarming over representation and the experience of Aboriginal people in the criminal justice system for many years; campaigning for innovative, community-led solutions since the Council's establishment in 2001.

#### *Aboriginal and Torres Strait Islander Peoples and Imprisonment*


The Royal Commission into Aboriginal Deaths in Custody (*The Royal Commission*) reported in 1991 that Indigenous incarceration was unacceptably high: Aboriginal people were at the time 15 times more likely to be incarcerated than non-Indigenous offenders.

In 2001, the Human Rights and Equal Opportunities Commission's (HREOC) *Social Justice Report* identified that whilst all prison populations had risen since the Royal Commission, the rise was sharpest in the Aboriginal and Torres Strait Islander demographic. Between 2001 and 2008, the adult imprisonment rate rose by 37% nationally, 48% in NSW and 45% in Victoria.<sup>1</sup> In NSW this was a rise of 265 prisoners in 2001 to 456 in 2008.

It has been clear in Australia since the Royal Commission's report that:

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<sup>1</sup> NSW Bureau of Crime Statistics and Research, *Why are Indigenous Imprisonment Rates Rising?* Issue paper no. 41 (2009) 1.



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*‘The single most significant contributing factor to incarceration is the disadvantaged and unequal position of Aboriginal people in Australian society in every way, whether socially, economically or culturally.’<sup>2</sup>*

Aboriginal people continue to be arrested in greater numbers than non-Indigenous people. In addition, social symptoms such as drug use and alcohol abuse<sup>3</sup> belie long-term trauma, separation from family support systems, poverty, low education and separation from culture and spirituality. Aboriginal people are more likely to reflect conditions that impact negatively on their treatment in the criminal justice system; including prior records, unpaid fines, suspended drivers license and transitory living arrangements. These factors create a ‘cumulative effect’<sup>4</sup> and lead to a greater chance of arrest, which in turn equals a greater risk of recidivism.<sup>5</sup>

In addition, various legislation has provided police with powers which disproportionately impact on Aboriginal and Torres Strait Islander people, such as the authority to remove people from public places under certain circumstances – in the *NSW Children (Protection and Parental Responsibility) Act 1997*, mandatory sentencing for juvenile offenders and increased search powers for prohibited instruments. In many cases, police continue to use arrest for minor offences, meaning that Indigenous people are far more likely than non-Indigenous people to be arrested, charged, taken to court and given bail conditions.<sup>6</sup> The sum total of these historical, legislative and systemic conditions is that Aboriginal people are suffering a justice tragedy of massive proportions.

When a person is arrested, networks and social bonds are weakened, social responsibilities held by the offenders are unable to be completed and communities’ ability to strengthen and overcome disadvantage suffer. Many offenders are parents or income earners with responsibilities. As young people, offenders are brothers, sisters and community members in the formative time of social and community identity building.

In environments where high incarceration rates prevail, social control also declines in this environment. Informal social control is strong when there is sufficient community trust and solidarity and has the potential to prevent crime. Informal social control includes:

- ▶ The ability of parents to supervise their children and other young people
- ▶ Whether community members are willing and able to offer assistance or intervene if they witness deviant or criminal activities

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<sup>2</sup> *Royal Commission into Aboriginal Deaths in Custody vol 1(15)*, in Blagg et al *Systemic Racism as a Factor in the Overrepresentation of Aboriginal Peoples in the Victorian Criminal Justice System* (2005) 37.

<sup>3</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner. *Social Justice Report 2002*, Australian Human Rights Commission (2002).

<sup>4</sup> Blagg et al *Systemic Racism as a Factor in the Overrepresentation of Aboriginal People in the Victorian Criminal Justice System* (2005) 37.

<sup>5</sup> Troy Allard et al; ‘Police Diversion of Young Offenders and Aboriginal and Torres Strait Islander Overrepresentation’ (2010) *Trends & Issues in Crime and Criminal Justice*, Australian Institute of Criminology, 4.

<sup>6</sup> Laura Brown, ‘The Criminalisation of Conduct: Indigenous Youth in the Criminal Justice System’ (2012) 7 (28) *Indigenous Law Bulletin* 9.

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- ▶ Community members willingness to intervene if they believe a child is at risk or being abused.

Whilst the removal of a small number of serious offenders to incarceration may indeed create a deterrent effect and make communities safer, the frequent incarceration of Aboriginal people from communities ruptures social structures and affects Aboriginal peoples' capacity to fully participate in life in both their community and the broader Australian community. We cannot continue to lock up our most disadvantaged minority in this way. Australia must urgently find an innovative solution which addresses this issue.

The NSW Reconciliation Council views with concern the continuing rising imprisonment rates of Aboriginal people, and particularly young Aboriginal people in NSW. **We acknowledge that continuing imprisonment is inextricably linked to the social history of dispossession, continued disenfranchisement, structural, systemic and direct racism and a lack of control over Aboriginal people's own lives.** Supporting and developing community capacity and ownership of solutions is key to increasing informal social control and a community's own crime prevention mechanisms.<sup>7</sup>

### *A Justice Reinvestment Approach to Criminal Justice*

NSWRC considers that health, education, self-determination and justice outcomes are inextricably linked for Aboriginal people. **NSWRC urges the Senate Committee to recognise the relationship and cyclical nature of current criminal justice approaches which entrench disadvantage.** NSWRC believes that previous failures in reducing incarceration rates have not worked because they fail to adequately involve the community in decision making, and address the causes of crime, not just the symptom.

NSWRC draws the Committee's attention to Australia's international commitments. Self-determination is a fundamental principle of human rights, as the opening Article in both the ICCPR and the ICESCR, which together form the basis of Australia's human rights obligations. Under ICCPR, the right to self-determination means that:

#### **Article 1**

(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

In addition, the United Nations Declaration on the Rights of Indigenous Peoples demonstrates Australia's responsibilities:


#### **Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind

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<sup>7</sup>Aboriginal and Torres Strait Islander Social Justice Commissioner. *Social Justice Report 2002*, Australian Human Rights Commission (2009).





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of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social cultural development.

### **Article 8**

States shall provide effective mechanisms for prevention of, and redress for:

- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

NSWRC considers a new approach to criminal justice both urgent in nature and essential under international law. Rights are interconnected. A strong causative relationship between economic, social and cultural conditions and incidences of offending behaviour, recidivism and the refusal of bail is real and affects Aboriginal communities' capacity to self-determine. Australia needs an innovative solution with a genuine commitment to proper consultation and governance to change the conditions which lead to offending, prevents cultural practice and denies agency to individuals.

Justice reinvestment is a policy which diverts funds which would be spent on imprisonment to communities where there is a high proportion of offenders. The money that would have been spent on imprisonment is reinvested in programs and initiatives which address the underlying causes of offending behaviour. The NSW Reconciliation Council and its members have been engaged in the working group of the Justice Reinvestment Campaign across the past twelve months. NSWRC considers that the principles of justice reinvestment with a focus on community governance, independent evaluation and adequate resourcing are an appropriate and evidence based approach to improving Australia's appalling justice situation in regards to Aboriginal and Torres Strait Islander peoples.

The appalling levels of Indigenous over-representation, the large amount of money being spent on Indigenous imprisonment and the toll that this is taking on individuals and communities all suggest a better justice policy framework is urgently required, and evidence internationally indicates that justice reinvestment may provide that opportunity.<sup>8</sup>

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<sup>8</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner. *Social Justice Report 2009*, Australian Human Rights Commission (2009).