

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

by the
Senate Legal and Constitutional Affairs Committee

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The Alcohol and other Drugs Council of Australia (ADCA) welcomes the opportunity to contribute to the Legal and Constitutional Affairs Committee inquiry into *The value of a justice reinvestment approach to criminal justice in Australia*. ADCA is the national non-government peak body representing the interests of the Australian alcohol and other drugs (AOD) sector. It works with government and non-government organisations, business and the community to promote evidence-based, socially just approaches aimed at preventing or reducing the health, economic and social harm of AOD to individuals and the broader Australian community.

ADCA has consulted with its membership and with the state and territory peak AOD bodies in Australia in developing this submission. There is a strong sense of hope and potential in the notion of justice reinvestment that finally the message will ring loud that to address AOD, crime and other issues in our society, we need to look at the underlying causes of this behaviour.

What is justice reinvestment?

A number of definitions of justice reinvestment are circulating for what is a relatively recent concept in Australia. At the most basic level, justice reinvestment is about moving from a reactive approach to addressing crime to a preventative approach. It uses data to identify localities that are ‘hot spots’ for offenders and is based on evidence that a large number of young offenders often come from a relatively small number of disadvantaged communitiesⁱ.

Once these communities are identified, education programs and services can be provided to address the underlying causes of crime. Justice reinvestment aims to prevent offenders from entering the corrections system and becoming part of the recidivist population typical of Australian prisons, thereby reducing the load on law enforcement, courts and prisons. Essentially, it takes a social determinants approach to offending behaviour that concentrates on the relevant communities.

Justice reinvestment is predicated on the effectiveness of preventative and early intervention activities. It warrants noting that the success of these programs depends on the level of investment and the quality of the services. To gain maximum benefit, it is critical that there are enough services available, that they take a range of evidence-informed approaches to address needs, they have adequate resourcing, and are staffed by appropriately qualified and trained staff. As the old adage goes, you get what you pay for.

For the AOD sector, justice reinvestment provides the opportunity to think about Australia’s approach to dealing with drug and alcohol issues. For a long time the AOD sector has argued for a change in policy emphasis from law enforcement to health and human rights.

Criminal justice dominates government *illicit* drug policy discussion and funding allocation, but health and social approaches are more appropriate and effective, have fewer unintended negative consequences and greater cost benefits. AOD use is most appropriately addressed as a health issue. Last year Australia21 called for a reopening of the debate about drug use, its regulation and controlⁱⁱ.

The sector has also been calling for adequate and meaningful investment in prevention, early intervention and treatment that appropriately addresses the risks associated with AOD use. That's completely at odds with services and activities that have recently been stripped of funding in Queensland, New South Wales, Victoria and South Australia.

The economic value of preventative activities is always hard to argue. The *potential* saving of drug education services or treating someone so they don't progress to more problematic levels of use appears to be less significant than putting a figure on how much money can be saved by not funding a particular activity. Neither the social cost arising from the escalation of an individual's usage and the need for more complex ongoing treatment nor the longer term cost of withdrawing a service should ever be underestimated. A justice reinvestment approach recognises the need for increased investment in services – not a reduction.

Benefits of implementing a justice reinvestment approach in Australia

This submission will not go into detail about the economic and social cost of imprisonment except to make a few general points.

Over the years we have seen increased expenditure on the criminal justice system yet Australian imprisonment rates continue to riseⁱⁱⁱ. This suggests that the current approach towards crime prevention, including increasing arrest rates^{iv}, doesn't work; this highlights the need for a more cost-effective approach. The growth in imprisonment is concentrated in particular population groups, particularly Aboriginal and Torres Strait Islander peoples, those with mental illnesses, and individuals experiencing socioeconomic deprivation.

According to the Australian Medical Association^v, there is a strong association between imprisonment and poor health; as a group, prisoners and detainees have far greater health needs than the general population, with high levels of mental illness, chronic and communicable diseases, injury, poor dental health, and disability. These contribute to the costs associated with criminal activity which should be sufficient incentive to adopt a social determinants approach to crime.

Between 2011 and 2012, the prisoner population increased in all states and territories, except New South Wales and Tasmania. The highest proportional increases in prisoner numbers were for the Northern Territory (11%), Western Australia (7%) and the Australian Capital Territory (4%). Prisoner populations in New South Wales and Tasmania dropped slightly.

Reported recurrent expenditure on Australia's 115 custodial facilities, including 89 government and nine privately-operated prisons, totalled \$2.3 billion nationally in 2010-11. The equivalent figure for community corrections was \$0.4 billion^{vi}. A Productivity Commission *Report on Government Services 2012* put the average cost per Australian prisoner per day at \$289.

Of particular concern are the trends that research shows in juvenile offenders. Several studies of juvenile detainees suggest that:

- approximately half of all juveniles in detention across Australia have been in prison on at least one prior occasion
- more than half of those released from detention will be reconvicted within at least six months
- nearly eight in every 10 juveniles released from detention will be subject to supervision by a corrective services agency within seven years and almost half will be imprisoned as an adult
- juvenile detainees are likely to be reconvicted of new offences much sooner than adult prisoners^{vii}.

Of further concern is evidence from Victoria that of all young people at risk, those with the highest death rates are those who have been in juvenile justice correctional institutions^{viii}. The research suggests the need for a better response to problems of drug misuse and psychiatric disorder once they occur, and for effective strategies to facilitate social reintegration of young offenders, incorporating activities related to education and training, accommodation, and family interventions.

Australian data from 2004 put the cost of alcohol-attributable crime at \$1.73 billion; this included the costs of policing (\$747 million) and prisons (\$141 million) along with loss of productivity of prisoners (\$368 million) and violence (\$187 million). Other crime-related costs included criminal courts (\$85.8 million), property (\$67.1 million) and insurance administration (\$14.3 million)^{ix}. Preventing criminal behaviour, or at least reducing its occurrence, provides an opportunity for considerable savings.

Research by New South Wales Bureau of Crime Statistics and Research indicates that modest reductions in the rate at which offenders are re-imprisoned would result in substantial savings in prisoner numbers and correctional outlays. A ten per cent reduction in overall re-imprisonment rates would reduce the prison population by more than 800 inmates, saving \$28 million per year^x.

Therefore, the ideal result would be to reduce imprisonment rates. Unfortunately, that doesn't appear to be happening. In a ten year comparison, all states and territories, with the exception of New South Wales and Queensland recorded increased imprisonment rates over 2002 figures. The Northern Territory recorded the largest percentage increase between 2002

and 2012, rising 72% (from 480 to 826 prisoners per 100,000) and Western Australia's prison population increased by 37% from 195 to 267 prisoners per 100,000.

At this point it should be stressed that the most effective outcomes from treatment occur when such treatment is undertaken on a voluntary basis. Mandatory treatment, as has been suggested in the Northern Territory, is not supported and is even less likely to succeed if the treatment is not followed up by ongoing support individuals as they move out of treatment and into the community.

The relationship between alcohol and other drugs and crime

According to a report by the Institute of Criminology^{xi}, nearly half of all police detainees attributed their current offending to alcohol or drugs; alcohol is more frequently cited than all other drugs combined. As many as 40% of those who linked their offending to AOD use said they had been intoxicated or under the influence of drugs or alcohol; only 25 per cent attributed their crimes to economic factors, such as the need to fund drug addictions.

A 2001 survey found that 62% of adult male prisoners reported being under the influence of alcohol or illegal drugs at the time of the offence that led to their incarceration. Drug use also appears linked to a heightened risk of recidivism among prison populations; those prisoners with a history of injecting drug use were found to be three times more likely to be re-incarcerated than their non-injecting peers.

The high proportion of reinforces the importance of diversion and treatment in the criminal justice system. The AIC report supports the need for a multifaceted approach in a range of treatments, particularly due to alcohol's involvement in as many offences as all illegal drugs combined.

South Australia police data overwhelmingly demonstrate the strong link between alcohol misuse and offending; in 2008-09 in the Adelaide CBD, 58 per cent of victim-reported crime was alcohol-related. Of all apprehensions by police in the CBD during that period:

- 62% of offences against the person were alcohol-related
- 65% of serious assaults were alcohol-related
- 65% of minor assaults were alcohol-related
- 81% of incidents of assault police were alcohol-related
- 53% of non-arson property damage was alcohol-related
- 76% of disorderly or offensive behaviour was alcohol-related
- 77% of hindering police/resisting arrest was alcohol-related.

International research suggests alcohol consumption increases the number of homicides and that those which involve alcohol differ significantly to non alcohol-related homicides. In Australia, research^{xii} on the National Homicide Monitoring Program over six years found that

nearly half (47%) of 1565 homicides were classified as alcohol related and of those, both the victim and the offender consumed alcohol prior to the incident. Victim, offender and incident characteristics differentiated alcohol-related homicides from others, highlighting the crucial role of situational and environmental factors in precipitating alcohol-related homicide. Researchers also found that the overwhelming majority of Indigenous intimate-partner homicides were alcohol related.

The ABS *National prisoner census* for 2012^{xiii} revealed some interesting statistics related to *illicit* drug offences. Note that this data refer to the primary reason for the imprisonment and do not include those whose illicit drug use led to the offences for which they were imprisoned ie burglary, assault etc; those imprisoned for illicit drugs offences are a small proportion of the population when compared with the impact of alcohol on offending behaviour:

- prisoners aged less than 25 years accounted for roughly 10% of the population of prisoners for illicit drug offences – this represents an opportunity to undertake prevention activities with young people most at risk, before they begin to engage in criminal behaviour
- prisoners sentenced for illicit drug offences represented 11% of the prison population overall
- illicit drug offences were one of seven main offences that accounted for 83 per cent of the total Australian prison population
- 67% of prisoners in custody at 30 June 2012 with a most serious offence/charge of illicit drug offences had no prior adult imprisonment recorded
- the median sentence length for illicit drug users where illicit drug use was the most serious offence was five and a half years, however the expected time to serve for the offence was approximately three years
- Aboriginal and Torres Strait Islander (A&TSI) prisoners represented just over a quarter (27% or 7,982) of the total prisoner population. Aboriginal and Torres Strait Islander people are 15 times more likely to be imprisoned than non-Indigenous prisoners
- 13% of unsentenced prisoners were on remand for illicit drug offences, facing an average remand period of four months. In 2012, there were 6,870 unsentenced prisoners in custody representing 23% of Australia's total prison population, 13% of whom were on remand for illicit drug offences, facing an average remand period of four months, compared with a national median remand time spent for unsentenced prisoners of 2.7 months.

The criminal justice system plays a significant role in preventing crime. However, Wan et al (2012)^{xiv} found that some variables exert much stronger effects than others, with increasing arrest rates likely to have the largest impact. They also found that arrest and imprisonment appear to have stronger effects on *violent* crime than on property crime. Even more interesting is the finding that the effects of income on crime reduction are quite pronounced in areas of high socioeconomic disadvantage, like those with high A&TSI concentrations. Indeed, the effects of income on crime are far larger than those of the criminal justice system. This suggests that measures that affect the economic well-being of the community provide more potential leverage over crime than the likelihood of arrest or the severity of punishments.

This supports the argument for a justice reinvestment approach which addresses social disadvantage as a measure to address crime. Furthermore, Weatherburn (2010)^{xv} found that offenders who received a prison sentence were slightly more likely to re-offend than those who received a noncustodial penalty, adding further support for preventative activities. Targeted programs based on the specific needs of the different groups of individuals will likely be more effective than a generalised approach.

Alternatives to prison including prevention, early intervention, diversionary and rehabilitation measures

The benefits of evidence based prevention within the alcohol and drug sector are significant. For every \$1 invested in prevention^{xvi}, communities can achieve savings of up to \$7 in areas like substance abuse treatment and criminal justice system costs, not to mention the wider impact on the trajectory of young lives and their families (National Institute on Drug Abuse 2007). Approaches to prevention which seek to increase protective factors, reduce risk and build resilience can result in positive outcomes across a range of health and social problems including criminality, drug use and mental health disorders.

Alcohol management plans provide a good example of a community based preventative measure to reduce alcohol related harm. The most effective AMPs are those that are locally driven and include strategies to reduce harm, supply and demand for alcohol. In Western Australia, AMPs incorporate a broad range of strategies such as prevention and community capacity building, treatment and support, policing and legislation and monitoring and reporting. Alcohol management plans are most successful where they are established with an emphasis on public health evidence and are monitored. They should be supported and encouraged.

Prevention and early intervention have the most benefit. Once a person is at the stage where they need treatment, the cost benefit of treatment over prison is still substantial. The ANCD released a report that compared the costs and benefits of addressing A&TSI problematic AOD use with treatment, particularly residential rehabilitation, to the option of prison.

The report^{xvii} highlights the considerable benefits associated with the diversion of A&TSI offenders into community residential AOD rehabilitation services instead of incarceration. Diversion is associated with financial savings as well as improvements in health and mortality. It found that:

- the total financial savings associated with diversion to community residential rehabilitation compared with prison are \$111 458 per offender
- the costs of treatment in community residential rehabilitation services are substantially cheaper than prison – diversion would lead to substantial savings per offender of \$96 446, based on a cost of community residential rehabilitation treatment of \$18 385 per offender). Even if the high side estimate of the cost per offender for residential rehabilitation treatment was used (\$33 822), the saving would still be substantial at around \$81 000
- community residential treatment is also associated with better outcomes than prison – lower recidivism rates and better health outcomes, and thus savings in health system costs. The associated savings from community residential treatment are approximately \$15 012 per offender
- in addition, treatment of A&TSI offenders in the community rather than in prison is also associated with lower mortality and better health-related quality of life. In monetary terms, these non-financial benefits have been estimated at \$92 759 per offender
- as the residential treatment option is lower cost and associated with better outcomes than incarceration, it is clearly more advantageous.

The construction of new jails, such as that announced by the Western Australia government recently, runs counter to the evidence of the effectiveness of justice reinvestment and the interest in alternative approaches to addressing crime.

Some examples of current diversionary programs and related activity follow:

Diversion programs for alcohol and other drugs

Diversion involves the redirection of people arrested and/or charged with drug or alcohol related offences out of the judicial system into the health system, with a view to minimising levels of contact with the formal criminal justice system. All states and territories offer either drug diversion programs, alcohol diversion programs or both.

Ogilvie and Wills (2009)^{xviii} provide a good discussion of drug diversion programs which have become increasingly popular in recent years. The programs are a response to increasing levels of imprisonment, growing evidence that punitive responses alone have been unsuccessful in preventing the use of illicit drugs and associated criminal activity, and increasing awareness that (for many offenders) custodial sentences further compound harms

associated with drug use. They divert eligible individuals into education and/or treatment services that fall into one of three categories:

- police drug diversion programs
- court-based diversion programs (ranging from pre-court and pre- and post sentence diversions, as well as programs at the higher end of the court system that include intensive pre and post-sentencing drug court options such as long-term intensive treatment), and
- drug treatment correctional centres which operate at the custodial level

According to Ogilvie and Wills, evidence strongly suggests that Australian police-based diversionary schemes for drug crimes prompt positive outcomes. Irrespective of the category of offender targeted, interventions impacted positively on entrenched offenders and predominantly non-offending drug users. This suggests that diversionary interventions tailored to particular communities and drug problems can be expected to have a generally positive impact – as long as they are well designed and implemented.

Since the data demonstrates that alcohol attributed crime is much higher than illicit drug attributed crime, more alcohol diversion programs are needed.

Youth Justice Conferencing scheme

The Youth Justice Conference Scheme^{xix} in NSW is an alternative way of dealing with certain cases that would have been dealt with by the Children's Court prior to the enactment of the Young Offenders Act 1997.

A review of the cost effectiveness of the conferencing scheme compared to the Children's Court revealed that the Youth Justice Conferencing scheme is more cost-effective when dealing with young people charged with non-serious offences^{xx}.

The Indigenous Justice Program

The Indigenous Justice Program is funded by the Federal Attorney-General's Department and aims to support safer communities by reducing offending while reducing victimisation and incarceration. Organisations are funded to work with Indigenous communities to improve community safety and reduce adverse contact with the criminal justice system.

The North Australian Aboriginal Justice Agency Indigenous Throughcare Service is an example of an organisation funded under this program. It provides strength-based individual case management and referral services to help people rebuild their lives when they are released from prison. Since this service began in early 2010, only 22 out of 168 clients have returned to prison while under the supervision of NAAJA officers^{xxi}.

Special considerations

Aboriginal and Torres Strait Islander peoples

Much of the literature on justice reinvestment and its application in the Australian environment relates to the efficacy of the concept among Aboriginal and Torres Strait Islanders. This is understandable as they represent a disproportionately high percentage of Australian prison populations (A&TSI people accounted for 27 per cent or 7,982 of the total prisoner population), with large numbers in jail for comparatively minor transgressions.

In 2011, there were 548,370 people identified in the Census as being of Aboriginal and/or Torres Strait Islander origin.^{xxii} In the Northern Territory, which has the highest Aboriginal representation, just under 27% of the population identified as being of Aboriginal and/or Torres Strait Islander origin.

The Deloitte Access Economics paper *An economic analysis for Aboriginal and Torres Strait Islander offenders: prison vs residential treatment* presented strong arguments in favour of a form of justice reinvestment^{xxiii}.

FASD and the criminal justice system

There is a high prevalence overseas of FASD in young people and adults in the criminal justice system^{xxiv}. According to the National Organisation on Fetal Alcohol Syndrome (NOFAS), 61% of adolescents and 58 per cent of adults with FASD in the USA have been in legal trouble, and 35% of those with FASD over the age of 12 had been incarcerated at some point in their lives. Individuals affected by FASD are more likely to get in trouble with the law because of associated behavioural issues. They are typically impulsive and have trouble foreseeing the consequences of their actions; they may have a poor sense of personal boundaries; many are very susceptible to peer pressure and easily led; and their judgment is often poor^{xxv}.

Prevention, intervention and management of these populations are equally important to achieve better individual outcomes and for the community at large. Early identification of FASD will allow adequate supports to be put in place to help deter young people and adults from offending behavior. Should they have contact with the criminal justice system, special support is needed for the client throughout the process. The SAMHSA Center for Substance Abuse Administration in the USA provides important advice on how best to manage people affected by FASD in these circumstances.

Recommendations and comments

ADCA acknowledges that justice reinvestment is far broader than the AOD sector. However our advocacy in that area highlights the relevance of the concept to the work we do, and strengthens our long-held conviction that prevention is far more effective – and cheaper –

than cure. ADCA supports a justice reinvestment approach to crime prevention and makes the following recommendations and comments:

- that a coordinated and sustained approach to justice reinvestment is adopted that is appropriately funded and resourced, evidence informed and treatment, where appropriate, is provided by appropriately qualified and trained staff, of the same standard as the community and use the same approaches as the community
- that a social determinants approach to justice reinvestment is adopted that focuses those most at risk, identifies protective factors and, in conjunction with relevant communities, develops services to address social disadvantage and build capacity
- that any such activity within communities is developed in conjunction with the community to address the specific needs of that particular environment
- that such an approach respects the dignity and culture of individual offenders and the communities from which they come
- that a justice reinvestment approach looks at the specific needs of Aboriginal and Torres Strait Islander communities that have a high number of offenders
- that correctional institutions increase the risk of mortality for young people
- that alcohol and other drugs are significant factor in offending behaviour and that alcohol is more frequently cited than all other drugs combined
- that AOD use is most appropriately addressed as a health issue
- that adequate and meaningful investment in prevention, early intervention and treatment is needed to appropriately and effectively prevent and address the risks associated with AOD use
- that more alcohol diversion programs are needed given the much higher attribution to alcohol related crime than illicit drug related crime
- that a justice reinvestment approach supports those whose cognitive function may be affected by Fetal Alcohol Spectrum Disorder
- that compulsory treatment should be considered only where a person's capacity is diminished and should be only for the period in which the person remains incapacitated. After that time, they should have the choice of treatment or an alternative such as prison

- that looks at other factors related to why people reoffend eg because of feelings of guilt associated with friends remaining in goal, security associated with food, clothing and roof over their heads, uncertainty around being able to cope once released back into the community, lack of support when transitioning from prison to the community etc.

Justice reinvestment can offer a win-win solution for everyone. While providing the potential for reduced prison costs, it more importantly offers the opportunity for people at risk of offending to take different pathways, experience less trauma and social upheaval, and increase self esteem. It also offers a greater contribution to the community and society, while also achieving reduced levels of crime, happier and safer environments, healthier individuals and communities, and development of social capital.

I would be very happy to discuss this issue further with you. Please contact Meredythe Crane () or Rob Gill () in the first instance.

Yours sincerely

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