

Chapter 5

The methodology and objectives of justice reinvestment

Introduction

5.1 This chapter canvasses the methodology and the objectives of justice reinvestment as well as its implementation in overseas jurisdictions.

What is justice reinvestment?

5.2 Justice reinvestment was initially developed in the United States as a means of curbing spending on corrections and reinvesting savings from this reduced spending in strategies that can decrease crime and strengthen neighbourhoods. The South Australian Justice Reinvestment Working Group noted that 'the approach is based on evidence that a significant proportion of offenders come from, and return to, a small number of communities'.¹ It involves long, medium and short term strategies. Funding is provided for tailored programs in those communities to strengthen the community and address the causes of crime to mitigate against individuals being caught up in the criminal justice system. Those who have committed offences are diverted away from prison using other forms of punishment and those likely to reoffend are prevented from doing so through effective rehabilitation, parole supervision and after-prison support.

5.3 Mission Australia stated that 'the rationale for justice reinvestment is that diverting human and financial resources to disadvantaged communities and vulnerable people to address the underlying causes of crime will produce better value for money and long term economic benefit'.² It is argued that services that reduce the risk of crime are more cost effective than passage through the criminal justice system.³ Professor Chris Cunneen, Australian Justice Reinvestment Project, commented:

...there was a clear conceptualisation that mass imprisonment affecting a small number of communities was increasing the dysfunction within those communities. So an underpinning to this was the need to shift mass imprisonment towards community development. It has always had a very strong community development focus, so that, when the savings occur, they actually do represent some money going into those communities to strengthen and build those communities. It is a very different approach to dealing with crime from that of mass imprisonment. It is one that is built around the idea of community development.⁴

1 South Australian Justice Reinvestment Working Group, *Submission 28*, p. 8.

2 Mission Australia, *Submission 99*, p. 4.

3 See for example, Prisoners' Legal Service Inc, *Submission 94*, p. 1; Youth Advocacy Centre, *Submission 90*, p. 5.

4 Professor Chris Cunneen, Chief Investigator, Australian Justice Reinvestment Project, *Committee Hansard*, 1 May 2013, p. 58.

5.4 The South Australian Justice Reinvestment Working Group concluded that 'if properly implemented, Justice Reinvestment can reduce crime and imprisonment, improve public safety and strengthen our most disadvantaged communities, all without breaking the budget'.⁵

5.5 Supporters of justice reinvestment note that it involves 'smarter' spending rather than more spending: funding for future costs related to imprisonment, such as new prisons, is diverted to community-based programs and services that address the underlying causes of crime. Justice reinvestment does not advocate getting rid of prisons, rather that detention is a measure of last resort for dangerous and serious offenders. In addition, justice reinvestment does not aim to strip money away from already underfunded prison services and programs. For example, in the US, additional monies have often been shifted to fund both community and in-prison mental health and substance abuse services.⁶

5.6 Another major characteristic of justice reinvestment is that it requires a collaborative partnership between government and community. It aims to strengthen communities and to include them in a collaborative process to address the underlying cause of crime and imprisonment. The Law Council of Australia noted:

Justice reinvestment relies heavily on interactions between agencies at both the state and local level. It also has a significant community-focus, seeking "community-level solutions to community-level problems". It is these aspects of justice reinvestment, along with its evidence-based approach and focus on addressing and preventing the underlying causes of crime such as unemployment and drug and alcohol abuse, that have given rise to the growing support for justice reinvestment in recent years throughout the world.⁷

5.7 Mr Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, concluded:

I believe that Justice Reinvestment also provides opportunities for communities to take back some control. If it is to work properly it means looking at options for diversion from prison but more importantly, it means looking at the measures and strategies that will prevent offending behaviour in the first place. The community has to be involved and committed to not only taking some ownership of the problem but also some ownership of the solutions... I think we need to change the narrative from one of punishment to one of community safety. Funding people to go to prison might make people feel safer, but a far better way would be to stop the offending in the first place, and Justice Reinvestment provides that opportunity.⁸

5 South Australian Justice Reinvestment Working Group, *Submission 28*, p. 8.

6 South Australian Justice Reinvestment Working Group, *Submission 28*, p. 8.

7 Law Council of Australia, *Submission 97*, p. 6.

8 Cited in Uniting Church in Western Australia, *Submission 65*, p. 8.

Methodology of a justice reinvestment approach

5.8 Justice reinvestment involves advancing 'fiscally sound, data driven criminal justice policies to break the cycle of recidivism, avert prison expenditure and make communities safer'.⁹ Four steps are undertaken in the justice reinvestment approach: demographic/justice mapping and analysis of data; development of options; implementation; and evaluation.

Justice mapping

5.9 The Aboriginal and Torres Strait Islander Social Justice Commissioner's *Social Justice Report 2009* stated that '[a] holistic analysis of the criminal justice system is a key feature of the justice reinvestment methodology. Consideration is given to policing, judicial systems, probation and parole, prevention programs, community supervision and diversion options as well as the geographic mapping.'¹⁰ Justice mapping provides the means to identify where offenders are coming from (and returning to) by the collection, analysis and mapping of data about crimes, convictions, imprisonment and parole.

5.10 Justice mapping is different from crime mapping. Crime mapping identifies locations of high activity which may become the focus of increased policing. Sara Hudson, in her monograph for The Centre for Independent Studies (CIS), noted that crime mapping can have the effect of displacing criminal behaviour to other locations rather than reducing overall offending. Justice mapping allows policy makers to target the locations where offenders come from, and return to, so that programs to reduce crime can be introduced.¹¹

5.11 The justice data obtained is cross-referenced against indicators of disadvantage and gaps in available services to help identify the underlying causes of crime in these communities. Experience in the United States indicates that this type of data and analysis was often lacking in jurisdictions before justice reinvestment was considered.¹²

5.12 The House of Commons Justice Committee, in its review of justice reinvestment, identified the significant elements required to support this stage of the justice reinvestment approach:

- the expertise and capacity to undertake justice mapping and interpret the analysis;
- the availability of data to input into the mapping process; and

9 Australian Justice Reinvestment Project, *Submission 114*, p. 7.

10 Australian Human Rights Commission, *Submission 85, Attachment 1*, Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, Australian Human Rights Commission, p. 16.

11 Sara Hudson, 'Panacea to Prison? Justice Reinvestment in Indigenous Communities', *Policy Monographs*, The Centre for Independent Studies, No. 134, 2013, p. 13.

12 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, p. 16.

- the existence of costs data on current service provision to offenders in a particular locality both within, and external to, the criminal justice system.¹³

Develop options for reducing offending and to generate savings

5.13 Once communities or localities have been identified, options are developed for decision makers. The options may provide initial savings to corrections or reduce the number of people going into prison in the first place. The options to generate savings in the United States have included changes in how technical matters such as parole violations or bail matters are dealt with and providing community based alternatives to imprisonment of non-violent crime.

5.14 Options to reduce offending are also identified. This allows decisions makers to implement effective programs to curtail offending and to strengthen communities. NATSILS commented that 'it is important to emphasise that this process involves identifying savings that can then be reinvested and as such is a diversion or shifting of spending rather than an *increase* in spending'.¹⁴

5.15 Programs and services are generally focused on poverty, education, housing, healthcare and public amenities. However, NATSILS noted that an important part of this stage is the recognition that a one-size-fits-all approach is not appropriate and the justice reinvestment plan for each community identified will need to be based on the specific drivers of crime and the 'community assets' of that community. NATSILS also emphasised that it is essential for government to partner with the community in identifying the needs of that community as well as the solutions.¹⁵ Both the Australian Justice Reinvestment Project and Just Reinvest NSW supported this view.¹⁶ Just Reinvest NSW commented that justice reinvestment is not purely data-driven: 'the experiences, perceived needs and capacities expressed by the community are instrumental in developing tailored programs to address offending and, at the same time, achieving social justice outcomes'.¹⁷

5.16 Just Reinvest NSW identified best practice characteristics of place-based initiatives:

- Government entering into genuine government/community partnership with the community;
- power devolving to the local level through local governance structures comprised of government departments, community organisations and community leaders;

13 House of Commons Justice Committee, *Cutting crime: the case for justice reinvestment*, First Report of Session 2009–10, Vol. 1, HC 94-1, p. 118.

14 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 23.

15 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 24.

16 Ms Melanie Schwartz, Chief Investigator, Australian Justice Reinvestment Project, *Committee Hansard*, 1 May 2013, p. 57.

17 Just Reinvest NSW, *Submission 44*, p. 20.

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- the local governance structure supported and enabled by a skilled community facilitator;
 - time and resources are invested into building trust between stakeholders, creating a shared vision for change, establishing effective governance, and developing a justice reinvestment implementation plan;
 - ongoing engagement and participation mechanisms are created to allow community members and other stakeholders to input into decision making;
 - the community is supported to determine, monitor and evaluate their justice reinvestment initiatives;
 - the capacity of the community is enhanced to identify and tackle their own challenges; and
 - sufficient time and resources are allocated over the long-term.¹⁸

5.17 The House of Commons Justice Committee also identified the significant elements required to support this stage of the justice reinvestment approach:

- agreement on which departments, agencies or partnerships constitute the policymakers;
- the existence of a mechanism to generate options for policymakers to manage the growth in the prison population and probation caseloads;
- the existence of a robust, high quality, evidence base of the cost-effectiveness of alternative approaches to manage the growth in the prison population; and
- the willingness and capacity of policymakers to adopt the policies identified.¹⁹

Implementation

5.18 Analysis of the options developed under stage two provides policymakers with the level of costs which could be saved or avoided by adopting some or all of the options identified for reducing the use of imprisonment. Plans are then developed to reallocate the savings (all or part) to the targeted communities.

Evaluation

5.19 Under the justice reinvestment approach there is rigorous, ongoing evaluation to measure the impact of reinvestment and the functioning of the criminal justice system as a whole. This is a critical part of the justice reinvestment approach to ensure that projected results and benefits are being achieved. Monitoring and evaluation must ensure that the projected savings are being realised and that the reinvestment of these funds is having the desired effect on offending and incarceration rates.

5.20 The House of Commons Justice Committee identified the elements of effective evaluation as:

18 Just Reinvest NSW, *Submission 44*, p. 20.

19 House of Commons Justice Committee, *Cutting crime: the case for justice reinvestment*, First Report of Session 2009–10, Vol. 1, HC 94-1, p. 126.

- appropriate performance measures including, for example, the amount justice expenditure saved or avoided; recidivism rates; and benefits to local communities;
- appropriate monitoring systems to collate data across agencies on outcomes and the capacity of agencies to collect, record and monitor the data required;
- the expertise to review how closely the actual impact corresponds to projections; and
- commissioning arrangements to enable changes to be made to the delivery of services in the event that the policies are not having the desired effect.²⁰

Justice reinvestment in overseas jurisdictions

United States

5.21 The United States has the highest incarceration rate of any country in the world. While the US has only five per cent of the world's population, its prisons hold a quarter of all prisoners worldwide.²¹ The US also has very high recidivism rates with two-thirds of offenders being reincarcerated.²² A factor contributing to the growth in prison population has been 'tough-on-crime' policies. The Council of State Government (CSG) Justice Center noted that 'these aggressive policies have in turn drained critical state resources and produced dismal results in addressing the root causes of the crimes they seek to prevent'.²³

5.22 Justice reinvestment emerged at a time when US government and stakeholders were acknowledging that the continued increase of already high incarceration rates was not sustainable for government budgets nor was it improving public safety. Justice reinvestment, with its emphasis on reducing prison population numbers and the diversion of savings to support communities with high incarceration rates, was seen as delivering two important aims: reduction in costs in the penal system and interrupting the prison-community cycle.

5.23 It was recognised that data was fundamental to the planning and the delivery of justice reinvestment approaches. The Bureau of Justice Assistance stated:

Justice reinvestment is a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and strengthen neighborhoods. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost-effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable. States and localities engaging in justice reinvestment collect and analyze data on drivers of criminal justice

20 House of Commons Justice Committee, *Cutting crime: the case for justice reinvestment*, First Report of Session 2009–10, Vol. 1, HC 94-1, p. 152.

21 Kate Burns, *Justice Reinvestment: The Economic Benefits for Victoria*, Thesis, 2012, p.xxiii.

22 Youth Advocacy Centre, *Submission 90*, p. 8.

23 Council of State Government Justice Center, *Submission 95*, p. 1.

populations and costs, identify and implement changes to increase efficiencies, and measure both the fiscal and public safety impacts of those changes.²⁴

5.24 The justice reinvestment strategy is being led by the agencies including the Pew Center and the CSG Justice Center. The CSG Justice Center provides assistance 'where leaders have demonstrated bipartisan, inter-branch interest in justice reinvestment, a willingness to provide access to data, and financial commitment to support some of the costs associated with technical assistance'.²⁵ The CSG Justice Center provides technical assistance to states to analyse the factors driving high incarceration rates so that governments can identify locations most in need of reinvestment. Common issues that were identified in various states as leading to increased rates of incarceration include unequal employment opportunities; lack of access to substance abuse/mental health services in the community; and lack of appropriate incentives/sanctions to encourage offenders to comply with the conditions of probation/parole. Other factors were also identified as specific to certain states.

5.25 Development of reinvestment policies using savings from the state corrections budget is undertaken. Common policies developed by states include diversionary programs, substance abuse and mental health treatment programs, intensive supervision programs, increasing access to parole reporting services, and increasing employment opportunities. The CSG Justice Center encourages the use of risk assessments to direct funding and services to those most at need.

5.26 The CSG Justice Center also ensures that policies are developed in a manner that is consistent with the ethos of the justice reinvestment program. The 3-Step Justice Reinvestment Process allows for states to develop specific solutions to specific problems within their state, but also allows for evaluation and comparison of results between states. The state-level approach allows states to take responsibility for the inequalities in their own communities which contribute to the rates of offending.²⁶

5.27 There are now 27 states which have participated in the justice reinvestment initiative under the auspices of the Center and approximately 18 of those states have enacted justice reinvestment legislation for the purpose of stabilising corrections populations and budgets.²⁷ Another five states are pursuing justice reinvestment independently or through non-profit organisations.²⁸

5.28 A feature of justice reinvestment is that it does not result in the same 'one-size-fits-all' policies being adopted. However, it has been noted that 'the states that have pursued such an initiative all share a common result: reduced spending on

24 Cited in National Congress of Australia's First Peoples, *Submission 53*, p. 15.

25 Council of State Government Justice Center, *Submission 95*, p. 2.

26 Australian Lawyers for Human Rights, *Submission 74*, pp 7–8.

27 Council of State Government Justice Center, *Submission 95*, p. 2.

28 Sara Hudson, 'Panacea to Prison? Justice Reinvestment in Indigenous Communities', *Policy Monographs*, The Centre for Independent Studies, No. 134, 2013, p. 10.

corrections, with the averted costs or savings reinvested in strategies to increase public safety'.²⁹

5.29 The following discussion canvasses the experience of the justice reinvestment approach in Texas, Kansas and Pennsylvania.

Texas

5.30 Despite having spent \$2.3 billion between 1983 and 1997 to increase the number of new prison beds, by 2007 Texas was experiencing increasing pressure on its prison system. The prison population exceeded capacity by 3,000 individuals and was projected to increase by 14,000 people within five years. To meet the demand for new prison places, Texas planned expenditure of \$523 million to build additional prisons and an extra \$184 million in emergency contracted capacity to rent detention spaces in county gaols.³⁰

5.31 Mapping of the prison population was undertaken to identify the communities where offenders were coming from. This included five counties which accounted for more than half of the people imprisoned at a cost over half a billion dollars. It was also found that 50 per cent of former prisoners returned to neighbourhoods that accounted for only 15 per cent of the Houston population.³¹

5.32 Analysis by the CSG Justice Center pointed to factors which had contributed to the growth in the prison population:

- increasing numbers of probation revocations between 1997 and 2006;
- reductions in funding for community-based substance abuse and mental health services resulting in increasing numbers of people waiting for space in treatment programs or facilities; and
- lower than suggested numbers of people being approved for parole based on risk levels and severity of the crime.

5.33 In May 2007, Texas enacted a justice reinvestment package of criminal justice legislation. The new policies included an expansion of in-prison and community-based treatment and diversion programs to reduce rates of re-offence and revocations to prison. These policies included new beds in half-way houses to divert probation and parole violators away from prison or to assist in re-entry. Policies were also directed at parole and probation practices and included establishing a maximum limit for parole caseload to ensure adequate supervision and establishing incentives for counties that created progressive sanctioning models for probation officers to respond effectively to violations and supervision.

29 The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime and Corrections Spending, January 2011, p. 55.

30 The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime and Corrections Spending, January 2011, pp 56–57; NJCEOs Working Group, *Justice Reinvestment/Causes of Crime*, November 2011, p. 15.

31 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, p. 20.

5.34 The outcome of these policies has been a decline in the rate of recidivism for people on community supervision: between 2006 and 2009, the parole revocation to prison rate decreased 29 per cent and the probation revocation to prison rate declined by 3 per cent. The impact on prison population has been significant with the prison population stabilising and a projected minimal future growth. Between January 2007 and December 2008, the Texas prison population increased by only 529 individuals rather than the projected increase for the period of 5,141 individuals. The prison population decreased by 1,125 individuals between December 2008 and August 2010. The introduction of justice reinvestment policies have been cited as the reason for the stabilisation of the prison population which is expected to remain below operating capacity through to 2015. This is a significant outcome given the initial projected growth in the Texas prison population by approximately 17,000 people over five years from 2007.

5.35 Texas recorded savings of \$443.9 million in 2008–09 including savings from the cancellation of plans to build new prison units. Savings were reinvested in treatment and diversion programs including \$241 million to expand the capacity of substance abuse, mental health, and intermediate sanctions facilities and programs that focussed on people under supervision who would otherwise likely be revoked to prison. In addition, Texas reinvested a portion of its savings in the Nurse-Family Partnerships Program, a nationally recognized model that pairs nurses with first-time, low-income mothers during the child's first two years.³²

Kansas

5.36 In 2007, it was predicted that the prison population in Kansas would increase by 22 per cent by 2016. To rein in this growth, Kansas legislators decided to develop and implement a justice reinvestment strategy.

5.37 Analysis by the CSG Justice Center identified the factors driving the prison population growth as probation and parole revocations. The majority of revocations were for conditions violations such as alcohol or drug use. In addition, 58 per cent of people revoked on probation supervision demonstrated a need for substance abuse or mental health treatment. Most people were released from prison without participating in programs which could reduce their risk of reoffending including substance abuse treatment and vocational education.

5.38 In 2007, legislation in Kansas was introduced which provided for:

- creation of a performance-based grant program for community corrections programs to design local strategies that could reduce revocations by 20 per cent;
- establishment of a 60-day credit for people who successfully completed educational, vocational, and treatment programs prior to release; and

32 The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime and Corrections Spending, January 2011, pp 56–59.

- restoration of earned-time credits for good behaviour for non-violent offenders.

5.39 Kansas also implemented strategies to increase public safety. The New Communities Initiative brought together state, county, community and city leaders to design a comprehensive set of strategies aimed at addressing the needs of a single neighbourhood in Wichita which was identified as having a high level of incarceration. This neighbourhood was a high user of food stamps, unemployment insurance and other welfare measures. The strategies were aimed at addressing children and youth; behavioural, mental and physical health; adult education and economic viability; safe and secure communities; and housing.

5.40 Following the implementation of the legislation, Kansas experienced a decline in the number of people, both probationers and parolees, revoked to prison from community supervision. Between 2007 and 2010, the prison population increased by only ten individuals rather than the projected 700 people.³³ However, in 2010 incarcerations increased and are expected to continue to increase. The increase has been linked to the defunding, in the wake of the global financial crisis, of many of the programs introduced to reduce reoffending. In addition, new admissions have also contributed to the increase. These new admissions involve 'off-grid' offenders: those offenders whose crimes are considered too serious to be eligible for automatic release on parole once their minimum term is served, minus any 'goodtime' earned by way of completion of risk reduction programs. The introduction of 'Jessica's Law'³⁴ has been linked to the rapid increase in the 'off-grid' category of inmates. The Kansas legislature is now looking at options for alternative measures to turn around their newly growing imprisonment rates.³⁵

Pennsylvania

5.41 Like other US states, Pennsylvania's spending on its prison system increased substantially between 2000 and 2011 from \$1.1 billion to \$1.9 billion, an increase of 76 per cent while the number of prisoners increased by 40 per cent. From 2007, funding received by local law enforcement projects from both the federal and state government decreased by 87 per cent.

5.42 In 2012, in response to the adverse impact on the state's budget of growing costs of the prison system and the negative effect of budget cuts on local law enforcement, the state introduced legislation containing a framework based on a justice reinvestment approach. The legislation aimed at reinvesting a portion of the savings generated by more effective corrections and parole policies in strategies to assist local law enforcement in crime prevention, provide more resources to probation

33 The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime and Corrections Spending, January 2011, pp 60–62.

34 Jessica's Law provides for the mandatory sentencing of 25 years in prison and lifetime electronic monitoring of adults convicted of sexual acts against a victim less than 12 years old.

35 NJCEOs Working Group, *Justice Reinvestment/Causes of Crime*, November 2011, pp 16–17.

departments, support crime victim services and expand the utilisation of risk assessment.

5.43 The development of the framework was assisted by the CSG Justice Center and three policy priority areas were identified:

- reduce the number of people sent to state prison for sentences under one year – one third of individuals in prison were found to have less than one year to serve on their minimum sentence, thus making it difficult for them to engage in treatment programs and for the timely review of cases by the Parole Board. This was addressed by allowing those prisons convicted of two lowest-level misdemeanor offence categories to serve a local sanction rather than a prison sentence. The aim was to reduce the people admitted to prison on very short sentences by 30 per cent by 2017;
- heighten the efficiency of the corrections and parole systems – in Pennsylvania prisoners must be considered for parole after reaching their minimum sentence. However, with the increasing prison numbers, review of parole cases was backlogged. It was found that this situation was exacerbated by lack of coordination between agencies. Policy options for the parole system aimed at increasing the number of parole cases reviewed each month by 20 per cent by 2015; and
- refocus costly community-based residential programs to target high risk and high need individuals – while the state was providing over \$100 million each year to community-based residential programs to reduce recidivism, these programs were not targeting individuals on parole who could benefit most. Policy options were identified with the aim of better targeting these programs.

5.44 The implementation of the policy framework is expected to increase public safety and generate up to \$253 million in cost savings by 2017. The Pennsylvania legislation requires that a portion of the savings be reinvested in public safety improvements over the next six years, for example, police officer training, department accreditation and competitive grants for data-driven law enforcement strategies. Other initiatives include grants to county probation and parole departments to implement evidence-based practices, improvements to victim notification and state-wide technology, and the development of risk assessment at sentencing.³⁶

United Kingdom

5.45 Similar to the US, the United Kingdom has experienced an increase in its prison population despite a 42 per cent decline in the amount of crime being reported since 1995. This growth was attributed to the creation of 3,000 new offences by the UK Government, of which about half attract a prison sentence.³⁷ The UK has had a history of continued investment in the prison system in a bid to keep up with the

36 Council of State Government Justice Center, *Submission 95*, pp 2–4.

37 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, p. 26.

increasing demand for space. However, the increasing expenditure on prison infrastructure and the impact of the global financial crisis has resulted in the UK considering a justice reinvestment approach.

5.46 In January 2010, the Justice Committee of the House of Commons published its report, *Cutting crime: the case for justice reinvestment*. The report evaluated the direction of policy and spending on the criminal justice system in the UK. The Justice Committee stated that there were three reasons for undertaking the inquiry:

- the criminal justice system is a complex network of agencies with substantial public funding operating under increasing pressure but the different parts of the system did not seem to be pursuing the same goals or making cogent contributions to an agreed overarching purpose;
- the Government's policy in response to overcrowding of prisons and the predicted rise in the prison population, is to provide more prison places rather than to seek to address the root causes of growth; and
- authorities and agencies outside the criminal justice system—with relevant objectives, remits and funding—could take more effective action to reduce both the number of people entering, and re-entering, the criminal justice system.³⁸

5.47 The Justice Committee identified a range of factors contributing to the rate of incarceration including social exclusion (particularly among young people), mental ill-health, drug and alcohol dependency, and low levels of literacy and numeracy. It concluded that a justice reinvestment approach offered potential solutions to the challenge of high incarceration rates. In its report, the Justice Committee presented what it called a blueprint for the future implementation of justice reinvestment in England and Wales. However, it noted that 'a piecemeal approach would be unlikely to work and a holistic approach to reform is necessary'.³⁹

5.48 Following the Justice Committee's report, a number of pilot programs have been established in the UK, including four youth justice reinvestment pathfinder pilots with the aim of reducing the number of nights spent in custody among young people.⁴⁰

5.49 The Commonwealth Attorney-General's Department commented that the justice reinvestment approach in the UK has had a much greater focus on reducing offending behaviour and improving community safety rather than focussing primarily on incarceration. As a consequence, the savings in the UK from justice reinvestment approaches are not expected to be as large as in the US. The tailored strategies adopted in the UK involve funding partnerships across government, the non-government sector and the private sector in, for example, the form of social impact

38 House of Commons Justice Committee, *Cutting crime: the case for justice reinvestment*, Volume 1, December 2009, p. 5.

39 Professor Andrew Coyle, *Submission 122*, p. 7.

40 Australian Lawyers for Human Rights, *Submission 74*, p. 9.

bonds. This funding is then invested in community development and community safety, including targeted prevention, intervention and diversion programs.⁴¹

5.50 ALHR also noted that England has various pilot programs adopted at local level, including social investment schemes. These involve raising funds from investors, shifting financial risk from the government and providers to investors (investors receive returns on their investment depending on the reduction in reoffending). ALHR commented that this approach makes it difficult to measure outcomes accurately in determining returns to investors, and difficult to ensure that local communities will have the flexibility to use funding as they see fit. In England there are also incentives for private prison operators who can demonstrate a reduction in the rate of offending.

5.51 Incentives for local justice reinvestment pilot programs have also been used. Where local authorities can demonstrate reductions in reoffending rates, the savings are shared between the Ministry of Justice and local areas. Various strategies have been used by local authorities such as intensive support programs for recently released offenders; providing substance abuse; mental health and housing services; and building partnerships between offenders and key stakeholder. Funding for these programs is often dependent on the local authority being able to demonstrate a reduction in recidivism rates over the period of a few years.⁴²

5.52 In 2011, the UK Justice Minister sought to give courts greater capacity to make non-custodial sentences. As a consequence, three prisons, with a total of 800 beds, closed.⁴³

5.53 The Law Council of Australia commented that the UK Government is currently in the process of looking at ways that it could comprehensively reform its criminal justice system with the Prime Minister, Mr David Cameron, stating that the Government must 'think hard about dealing with the causes of crime and focus on the implementation of initiatives that focus on preventing crime in the first place'. The Law Council of Australia noted that '[w]hilst a justice reinvestment approach to criminal justice does not appear to have been explicitly endorsed by Mr Cameron to date, it may be that aspects of this approach will be adopted by the British Government at some point in the future'.⁴⁴

41 Mr Kym Duggan, First Assistant Secretary, Social Inclusion Division, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 12; see also Australian Red Cross, *Submission 113*, p. 11.

42 Australian Lawyers for Human Rights, *Submission 74*, p. 9.

43 Australian Red Cross, *Submission 113*, p. 11.

44 Law Council of Australia, *Submission 97*, p. 10.

Evaluation of justice reinvestment approaches in overseas jurisdictions

5.54 Supporters of a justice reinvestment approach pointed to successes in the US with the stabilisation, and in some cases decrease, of imprisonment rates, particularly in Texas. Significant cost savings have accrued in many jurisdictions and these savings have been used to provide services in targeted communities.

5.55 There are several key factors of the justice reinvestment approach common across US jurisdictions. First, there has been bipartisan support at the political level for a justice reinvestment approach. Secondly, central organisations, principally the CSG Justice Center, have provided significant guidance and support for data collection, analysis and policy development. Importantly, the CSG Center has enabled measurement of results.⁴⁵ Thirdly, the justice reinvestment approach has been implemented through legislation.⁴⁶ Fourthly, with the help of central organisations, strategies have been implemented that take into account and address the specific needs of each location rather than being a one-size-fits-all approach.

5.56 However, recent evaluations of justice reinvestment in the US and evidence received by the committee pointed to some issues of concern.

5.57 In a paper published in April 2013, an evaluation was undertaken of the implementation of justice reinvestment in the US.⁴⁷ It was concluded that 'while [the Justice Reinvestment Initiative] has played a significant role in softening the ground and moving the dial on mass incarceration reform, it is not an unmitigated success story; the picture is complex and nuanced'. Further, the paper asserts that the Justice Reinvestment Initiative has moved away from its original goal of seeking to reduce the number of prisoners and is now focussed on reducing the growth rate of prison numbers. Investment has not been steered toward the communities most weakened by aggressive criminal justice policies.

5.58 Five major reasons were identified for the failure of the Justice Reinvestment Initiative in the US to achieve the dual objectives of sustained reductions in state correctional populations and stronger, safer communities:

- efforts that focus on crafting legislation often incorporate statutory reforms that will not significantly reduce admissions and lengths of stay, especially for people convicted of serious and violent crimes;
- activities have typically focussed on state government policy makers and state-level reforms, eschewing and sometimes excluding other important state and local constituencies;
- the initial short-term, intensive analysis and technical assistance provided by central organisations did not assist in building capacity at the state and local

45 National Centre for Indigenous Studies and Indigenous Offender Health Capacity Building Group, *Submission 83*, p. 7; Australian Lawyers for Human Rights, *Submission 74*, p. 9.

46 NSW Juvenile Justice, *Submission 124*, p. 14.

47 James Austin et al, *Ending Mass Incarceration: Charting a new Justice Reinvestment*. 2013.

level to assume responsibility for monitoring and evaluating implementation and outcomes for genuine justice reform over the long-term;

- increasingly, reinvestment in high incarceration communities has been abandoned as a key element and goal with the result that resources are vulnerable to the claims of other criminal justice agencies including increased investment in law enforcement; and
- there had been insufficient attention to the problem of structural disincentives that discourage and inhibit officials at all levels of government from pursuing local, innovative, non-incarceration public safety strategies.⁴⁸

5.59 The paper called for a revamped, reenergised justice reinvestment program and recommended a justice reinvestment approach that would:

- reaffirm and commit to achieving the two primary goals of the Justice Reinvestment Initiative, that is, significant reductions in all forms of incarceration and correctional supervision, and reinvestment in high incarceration communities;
- involve key stakeholders and non-government entities at the state and local levels throughout the planning, legislating, implementation and reinvestment process; and
- create a multi-year plan for implementation and evaluation beyond short-term legislative or policy fixes.⁴⁹

5.60 Issues of concern with the implementation of justice reinvestment in the US and UK were also raised in evidence received by the committee. These concerns included the lack of a clear definition of justice reinvestment, lack of rigorous evaluation of its success and the focus on immediate upfront savings through basic justice reform.

5.61 The Australian Justice Reinvestment Project commented on the lack of academic or critical treatment of justice reinvestment and stated that as a consequence 'caution is warranted'. The Australian Justice Reinvestment Project and other submitters pointed to comments by researchers Professor Clear and Dr Shadd Maruna. Professor Todd Clear noted that many of the details of justice reinvestment are 'left up for grabs'. Further, the success of justice reinvestment strategies in the US has been achieved 'despite the fact that it is an "idea in progress rather than a full-fledged strategy"'. In addition, Dr Maruna argued that the concept is only hazily defined, is not based on a 'strong empirical foundation' and does not really qualify being a proper 'theory'.⁵⁰

48 James Austin et al, *Ending Mass Incarceration: Charting a new Justice Reinvestment*, 2013, p. 5.

49 James Austin et al, *Ending Mass Incarceration: Charting a new Justice Reinvestment*, 2013, p. 5.

50 Australian Justice Reinvestment Project, *Submission 114*, p. 17; National Drug and Alcohol Research Centre, *Submission 40*, p. 2.

5.62 Ms Melanie Schwartz, Australian Justice Reinvestment Project, went on to comment that:

While the application of justice reinvestment strategies has led to significant savings in costs in corrections in a number of US states, the implementation of these strategies has largely not yet been subject to thorough examination. Reasons for caution from the US experience include questions around: what can maximise the chances of sustained rather than only an initial drop in prison numbers; whether fiscal savings are actually being substantially committed to community reinvestment; and which programs or organisations are being funded under these reinvestment programs?⁵¹

5.63 The Law Council of Australia also noted that commentators have adopted a more cautious approach to justice reinvestment as 'true correctional savings have been difficult to document and even more problematic to capture', and that the 'impact on offending or recidivism from the reinvestment of these savings into community-based crime prevention strategies will take a lot longer to emerge'.⁵² CIS was of a similar view, commenting that 'the impact on offending or recidivism from the reinvestment of these savings into community-based crime prevention strategies will take a lot longer to emerge, and it is too early to evaluate their effects, if any'.⁵³

5.64 A further issue noted is that US states have embraced strategies which address the punitive nature of the justice system without a corresponding reinvestment to address the underlying causes of crime in targeted communities. Strategies aimed at reducing incarceration include changes to probation and parole policies. Given the large numbers imprisoned in the US, small changes to criminal justice policy have resulted in significant decreases in incarceration rates and immediate costs savings.⁵⁴ In addition, custodial sentencing practices in the US meant that there was a large group of offenders fit for diversion from custody already available in jurisdictions where justice reinvestment was introduced.

5.65 The difficulties of reinvesting those immediate savings for long term benefits were noted by the Juvenile Justice NSW. It stated:

The same concept of reducing incarceration costs and 're-investing' in diversion services or other services that may reduce future growth of incarceration, is possible for juveniles. However, as the juvenile justice system is smaller, there are fewer funds to save and reinvest. As adult

51 Ms Melanie Schwartz, Chief Investigator, Australian Justice Reinvestment Project, *Committee Hansard*, 1 May 2013, p. 57.

52 Law Council of Australia, *Submission 97*, p. 9; see also The Centre for Independent Studies, *Submission 46*, p. 3.

53 The Centre for Independent Studies, *Submission 46*, p. 2.

54 Sara Hudson, 'Panacea to Prison? Justice Reinvestment in Indigenous Communities', *Policy Monographs*, The Centre for Independent Studies, No. 134, 2013, p. 14; see also The Centre for Independent Studies, *Submission 46*, p. 2.

correctional systems represent a much larger proportion of the states' budget, there is greater incentive and capacity to generate savings.⁵⁵

5.66 Another aspect of the justice reinvestment approach noted by Professor David Brown of the Australia Justice Reinvestment Project was that many of the strategies in the US that go under the label of justice reinvestment are 'just basic criminal justice reform'. For example, sentencing reform which tries to move away or mitigate the effects of mandatory sentence regimes, and changed parole requirements which aim to improve the high rates of revocation of parole through provision of more parole and probation officers. Professor Brown concluded that '[q]uite a number of jurisdictions there have moved to carry out criminal justice reforms that could have been carried out just under the name of reform'.⁵⁶

5.67 The concentration on 'up-front' savings from changes in corrections has been criticised as being only a partial implementation of the justice reinvestment approach. The Victorian Drug and Alcohol Association, for example, noted that in West Virginia justice reinvestment strategies appear to centre on working with those populations already at risk of imprisonment and appear to be lacking in terms of prevention and early intervention initiatives.⁵⁷

5.68 Another issue is that even though prisons have been closed down or not built in some states, the true correctional savings have been difficult to document and even more problematic to capture. CIS noted comments by US criminologist Professor Todd Clear who stated that in 'every one of 12 locations where justice reinvestment work has been carried out, the correctional budgets have continued to grow'. This means that unless funds saved from reducing incarceration are genuinely redirected, justice reinvestment will become yet another 'add-on' program.⁵⁸

5.69 Flat Out voiced a similar concern, stating that while prisons may have closed in the US, correctional service budgets have continued to grow. Flat Out commented that it is critical that policies such as justice reinvestment address not only the growth of prisons, but of the criminal justice system. Flat Out concluded 'tinkering at the edges of a system that is failing to reduce rates of imprisonment or the overrepresentation of marginalised communities cannot address structural disadvantage'.⁵⁹

5.70 Professor Clear also stated that a central problem with current justice investment strategies has been the tendency for the savings in corrections to be redirected to other government social services. He commented the while these services are aimed at reducing failure rates and thus costs, this does not align with the original

55 Juvenile Justice NSW, *Submission 124*, p. 14.

56 Professor David Brown, Chief Investigator, Australian Justice Reinvestment Project, *Committee Hansard*, 1 May 2013, p. 61.

57 Victorian Drug and Alcohol Association, *Submission 92*, p. 13.

58 The Centre for Independent Studies, *Submission 46*, p. 2.

59 Flat Out, *Submission 51*, p. 4.

aim of justice reinvestment, that is, the rebuilding of community resources, both human and physical, in areas devastated by high levels of incarceration.⁶⁰

5.71 A further factor pointing to the need for caution was provided through the recent experience in Kansas. The introduction of Jessica's Law has seen prison rates in Kansas increase after an initial decrease following the implementation of a justice reinvestment approach. The NJCEOs commented that this 'demonstrates the effect that one-off legislative decisions can have on long term, trend changing justice reinvestment/causes of crime strategies'. While there is evidence of success with a justice reinvestment approach, it is as vulnerable to external influences (for example, economic and legislative) as any other criminal justice approach. The NJCEOs concluded:

The evidence and data which inform justice reinvestment/causes of crime approaches increase their likelihood of success however, the ability of these strategies to sustain improvements over time requires a long term commitment from governments and policy makers.⁶¹

5.72 Similarly, the Women in Prison Advocacy Network noted that some commentators have questioned whether the positive reforms introduced by justice reinvestment initiatives would still remain in place in the US, if the US economy were to fully recover from the effects of the 2008 recession and global financial crisis.⁶²

5.73 The committee received less evidence on the evaluation of justice reinvestment in the UK. However, ALHR noted that there has been a more piecemeal approach in the UK and accurate evaluations of effectiveness are unavailable because of a lack of funds.⁶³ CIS also commented that as justice reinvestment has only recently been adopted in the UK, it is too early to say whether it is achieving its aims. However, it was noted that UK criminologists have already commented that justice reinvestment is being used primarily to provide improved governance of rehabilitation programs, and that these programs are running in parallel with the continued growth of the prison system.⁶⁴

Committee view

5.74 Despite some concerns about its implementation, the success of the justice reinvestment approach in overseas jurisdictions, principally the US, is clear. However, the committee is conscious that the direct importation of an approach from the US is problematic and, indeed, may fail if not appropriately adapted to Australian conditions. The US has a significantly different justice and corrections system, political landscape and prisoner demographic, particularly in relation to location.

60 Professor Todd Clear, Rutgers University, *Unpublished paper*.

61 NJCEOs Working Group, *Justice Reinvestment/Causes of Crime*, November 2011, p. 17.

62 Women in Prison Advocacy Network, *Submission 50*, p. 5

63 Australian Lawyers for Human Rights, *Submission 74*, p. 9.

64 The Centre for Independent Studies, *Submission 46*, p. 2.

5.75 That being said, the committee considers that there is much that appeals about the justice reinvestment approach particularly its use of comprehensive data collection and rigorous analysis to create all-inclusive, cohesive program options that target the determinants of crime and thereby reduce offending and spending on prison. As Professor Clear noted, 'given the activity to date, justice reinvestment is an idea to reckon with'.⁶⁵

65 Professor Todd Clear, Rutgers University, *Unpublished paper*.

