

## Chapter 6

# The benefits of a justice reinvestment approach for Australia

### Introduction

6.1 Despite some concerns with the implementation of justice reinvestment in the US, the great majority of submitters supported a justice reinvestment approach for Australia. In particular, it was noted that a justice reinvestment approach could benefit Indigenous communities as a way of containing and reversing the very high incarceration and recidivism rates of Indigenous peoples.

6.2 As outlined in the committee's discussion on imprisonment in Australia, over the last 30 years there has been substantial growth in rates of incarceration. Drivers to that growth are well identified and include poor educational attainment, high unemployment, homelessness, and changes to justice policies and practices such as sentencing and remand. Australia has also seen an increase in the over-representation of disadvantaged groups in the justice system.

6.3 As a consequence of the growth in imprisonment rates, both economic and social costs have increased. Governments across Australia are now facing significant expenditure for building new prison facilities and to provide services to prisons, courts and the police. The operating cost of the prison system alone is approximately \$3 billion per year. Greater reliance on welfare services adds to these costs. The community also endures significant economic costs through crime and loss of income for those imprisoned. The social costs of imprisonment in Australia are difficult to estimate but arise from the disintegration of families, victim trauma and the undermining of communities. Mr Robert Tickner, Australian Red Cross, commented:

...the most important thing about this investment in communities, in the causes of crime and in the underlying issues which are the dominant shaping of the coterie of our prison population is the lost lives of those people, who really are almost statistically doomed from the time they are born to interact with the criminal law. I think all of us as Australians understand there is a place for prisons—of course, there is—but there are massive numbers in those prison populations who should never have been there and whose lives are irredeemably damaged by that process, particularly in the case of young offenders. It is economic lunacy; but, more importantly, it is a tremendous loss of human potential. People die young. They are...irredeemably damaged by the interaction with the prison processes in too many cases. Some lucky ones make it through but the evidence shows that the level of reoffending is as high as 55 per cent. Something like 39 per cent of people who are released are back there within two years.<sup>1</sup>

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1 Mr Robert Tickner, Chief Executive Officer, Australian Red Cross, *Committee Hansard*, 1 May 2013, p. 29.

6.4 Submitters commented that Australia's justice system and its reliance on imprisonment as a deterrent has failed. The Prisoners' Legal Service Inc., for example, stated that '[i]t is hard to imagine a solution to crime that is more expensive and more likely to fail than the prison system'.<sup>2</sup> Other submitters pointed to high recidivism rates as an example of the failure of the justice system: in the Northern Territory, very high numbers of incarcerated offenders return to the prison system within two years of being released.<sup>3</sup>

6.5 The Anglican Diocese of Brisbane submitted:

The current approach arguably fails to acknowledge our complex world, in which public safety is not assured by incarceration alone. In this respect, the rehabilitative function of the criminal justice system has become secondary, the impacts on families and communities obscured and preventative measures barely considered.<sup>4</sup>

6.6 Other jurisdictions have recognised not only the failure of imprisonment to address rising crime rates but also that governments can no longer continue to support a highly expensive and ultimately ineffective penal system. Professor Clear commented that 'over the past decade, a combination of political shifts, accumulating empirical evidence, and fiscal pressures has come together to make downsizing prisons a feasible idea, politically and tactically'.<sup>5</sup> The justice reinvestment approach has emerged as one solution.

6.7 The following discussion canvasses the benefits of a justice reinvestment approach in Australia, particularly for Indigenous communities and the emergence of support for justice reinvestment. The introduction of a justice reinvestment approach in Australia would not be without its challenges. These are discussed in the following chapter.

### **Benefits of a justice reinvestment approach**

6.8 The overwhelming majority of submitters supported the implementation of a justice reinvestment approach in Australia.<sup>6</sup> The Anti-Discrimination Commission Queensland, for example, commented that:

Justice reinvestment presents an opportunity to interrupt the cycle of migration of communities to prison and back again, and to arrest the ripple effects of imprisonments that are felt throughout a community.<sup>7</sup>

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2 Prisoners' Legal Service Inc, *Submission 94*, p. 1.

3 See for example, Central Australian Aboriginal Family Legal Unit Aboriginal Corporation, *Submission 32*, p. 3.

4 Anglican Diocese of Brisbane, *Submission 36*, p. 2.

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

6 See for example, Goldfields Land and Sea Council, *Submission 27*, p. 2.

7 Anti-Discrimination Commission Queensland, *Submission 71*, p. 21.

6.9 The support for justice reinvestment centred around the development of measures and policies directed at both the individual and at communities that produce significant numbers of offenders. Benefits accrue to an individual but also to communities through the identification of the drivers of crime in the targeted, communities. This serves to both prevent offending in the first place as well as reoffending once an individual returns to the community from a period of imprisonment. In this way, justice reinvestment isn't just about individual offenders but is also about providing a benefit to the wider community that they come from.

6.10 It is a move away from a punitive approach to criminal justice for certain crimes with an evidence-based approach to the provision of alternative programs. Ms Priday, AHRC, stated:

...we know there is a lot of research around deterrence, and things that are very strict, draconian punishments do not tend to be a deterrent for people. They might take people off the streets for a short period of time, but they are not necessarily going to get back and address those root causes of offending. That is where I see justice reinvestment coming in. It is going to address those things at the front end through building stronger communities and working with the community to find out what they think needs to occur to address offending and reoffending.<sup>8</sup>

6.11 In addition, it was highlighted that strengths of the justice reinvestment approach are the collection and analysis of data to inform decisions about how and where best to allocate public funds to reduce crime and its strong emphasis on evaluation.<sup>9</sup> Such an approach was seen as providing major benefits to local communities and individuals as well as appealing to a wide range of political constituents.<sup>10</sup> Sisters Inside commented:

Sisters Inside believes that justice reinvestment would have a significant positive effect on our wider Australian social fabric. It would redirect expenditure to areas that help, rather than harm, individuals, families, communities and society – in both the short and long term. The challenge will be to move beyond aspirational strategies and targets alone, and achieve allocation of resources for service delivery.<sup>11</sup>

6.12 A further benefit of a justice reinvestment approach was noted by the Public Advocate for Queensland who commented that it aligns with the national social inclusion agenda:

The Australian Social Inclusion Board acknowledges the destructive effect of social inequality and exclusion on the Australian community. Through its early intervention approach, justice reinvestment provides the

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8 Ms Emilie Priday, Senior Policy Officer, Australian Human Rights Commission, *Committee Hansard*, 1 May 2013, p. 2.

9 See for example, Just Reinvest NSW, *Submission 44*, p. 22.

10 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 22.

11 Sisters Inside, *Submission 69*, p. 27.

opportunity to make fundamental changes within communities and provide a pathway out of disadvantage for many vulnerable people.<sup>12</sup>

6.13 Mr Jonathon Huynor, NAAJA, commented that justice reinvestment focusses on solutions:

The value of the justice reinvestment approach and model is that it really encourages us to get real about what the solutions are and to recognise that they are systemic ones. It is not going to be a matter of simply spending a million dollars here and a million dollars there on youth programs or on alcohol rehabilitation programs or the like. Those things are important parts of it but the underlying social disadvantage and community issues are always going to be complex and hard to solve.<sup>13</sup>

### **Economic benefits**

6.14 In the US, cost savings have been seen as a major benefit of the justice reinvestment approach. Some submitters, for example, the National Association of Community Legal Centres argued that while the benefits other than cost savings are the primary reasons for implementing a justice reinvestment approach, there is also an economic argument. First, justice reinvestment is cost effective: it does not require additional funding, merely a reallocation of money that has been already assigned to corrections. Because of its evidence-based approach, it ensures that funding is spent where it will have the greatest impact for potential offenders.<sup>14</sup> In addition, it was argued that savings arise from the implementation of community programs which are more cost effective than imprisonment.<sup>15</sup> NATSILS concluded that utilising a justice reinvestment approach ensures that taxpayers receive a better 'bang for their buck' in regard to government spending on the justice system. It would ensure a cost-effective, fiscally sound approach to justice spending that prevents wastage on ineffective policies.<sup>16</sup>

6.15 Submitters pointed to significant savings that can be made in Australia across both state and Commonwealth budgets.<sup>17</sup> For example, it was noted that the new prison for the Northern Territory was expected to cost some \$495 million. On current projections the new prison will be 83 beds short when it opens in 2014 and the Northern Territory will require another 1000 bed prison by December 2016.<sup>18</sup> Any decrease in future demand for prison beds in the Northern Territory would lead to significant savings.

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12 Public Advocate for Queensland, *Submission 45*, p. 1.

13 Mr Jonathon Hunyor, Principal Legal Officer, North Australian Aboriginal Justice Agency, *Committee Hansard*, 1 May 2013, p. 13.

14 National Association of Community Legal Centres, *Submission 103*, p. 16.

15 Youth Advocacy Centre, *Submission 90*, p. 10.

16 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 27.

17 Victorian Alcohol and Drug Association, *Submission 92*, p. 12.

18 Mr Jonathon Huyor, Principal Legal Officer, North Australian Aboriginal Justice Agency, *Committee Hansard*, 1 May 2013, p. 8.

6.16 Smart Justice for Young People also noted that prison expansion is underway in Victoria to cope with unprecedented population increases. It is predicted that Victoria's prison system will still fall 1,400 beds short of the required capacity by 2016. Smart Justice for Young People went on to comment that this will result in a significant cost for the corrections system and have detrimental effects on other areas of the economy. It concluded that 'implementing a justice reinvestment scheme in Victoria and halting any further prison construction would release hundreds of millions of dollars in revenue'.<sup>19</sup>

6.17 In South Australia, the South Australian Justice Reinvestment Working Group noted that plans for a \$750 million new super prison have been shelved because of a lack of funding. However, a benefit of a successful justice reinvestment program would be that the new facility would not be required, or not to the extent previously contemplated as offending rates decrease.<sup>20</sup>

6.18 While it was acknowledged that most of the benefits accrued from justice reinvestment would go to the states and territories which are responsible for corrections and law and order, submitters pointed to the longer term benefits for the Commonwealth. The Noetic Group, for example, pointed to the increased participation and productivity of individuals who are diverted from the justice system through effective rehabilitation.<sup>21</sup> This not only improves people's lives but also increases their productivity and contribution to society and the economy.<sup>22</sup>

6.19 A further significant benefit for the Commonwealth is through the reduction of Indigenous over-representation in the justice system. Noetic Group noted that according to the Productivity Commission, governments spend some 5.83 times more on Indigenous people for public order and safety. Reducing the need for services related to family dysfunction and the consequences of incarceration will assist in reducing government expenditure spent on Indigenous people annually. This was \$25.4 billion in 2012 of which the Commonwealth provides 45 per cent.<sup>23</sup>

### **Benefits for communities**

6.20 The emphasis on strengthening communities was supported by submitters as a significant step in decreasing incarceration rates.<sup>24</sup>

6.21 The Anti-Discrimination Commission Queensland noted the comments in the *Social Justice Report 2009* that the process of decarceration through community capacity building 'becomes mutually reinforcing; crime prevention decreases

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19 Smart Justice for Young People, *Submission 91*, pp 11–12.

20 South Australian Justice Reinvestment Working Group, *Submission 28*, p. 9.

21 Noetic Group, *Submission 98*, p. 7.

22 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 27.

23 Noetic Group, *Submission 98*, p. 7.

24 See for example, Victorian Alcohol and Drug Association, *Submission 92*, p. 12; Mission Australia, *Submission 99*, pp 8–9.

imprisonment; and community engagement strengthens the community so the preconditions for crime are reduced'.<sup>25</sup>

6.22 Justice reinvestment programs direct funding at services and strategies that combat crime, violence, health problems, homelessness, drug and alcohol abuse and disadvantage in communities. It was noted that by addressing the causes which perpetuate disadvantage, this approach builds social capital and contributes to making communities safer and more secure.<sup>26</sup> The Australian Justice Reinvestment Project stated:

...the impact of a successful translation of JR into the Australian context would provide welcome benefits to the high stakes communities which it targets.

JR is ultimately concerned with increasing functionality and capacity in disadvantaged communities, through the rationalisation and reinvestment of corrections spending, and thus understanding the potential for the adoption of JR strategies will assist directly with strengthening both the social *and* economic fabric in Australia.

Effectively implemented, JR may improve prospects for young people through early intervention, (a healthy start to life) and help families and individuals live healthy, productive and fulfilling lives particularly in the disadvantaged, high crime focus communities on which JR focuses.<sup>27</sup>

6.23 A significant benefit seen by supporters of a justice reinvestment approach is that it focussed on local solutions and community-led initiatives. It is not a one-size-fits all approach. As Professor Cunneen noted, the issues in Papunya, Northern Territory, will not be the same as Blacktown in Sydney: 'It really is a more precise approach to it'.<sup>28</sup>

6.24 A community focussed approach also means that decision makers can draw on the infrastructure in local communities and utilise the knowledge and resources of existing organisations and services. It will also assist in building service capacity in rural and regional Australia as well the capacity of NGOs to meet the needs of young people, families and communities with complex needs.<sup>29</sup>

6.25 The National Association of Community Legal Centres noted that community-supported solutions have a greater chance of success and community

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25 Anti-Discrimination Commission Queensland, *Submission 71*, p. 21; see also Mission Australia, *Submission 99*, p. 8.

26 National Aboriginal and Torres Strait Islanders Legal Service, *Submission 72*, pp 26–27.

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

28 Professor Chris Cunneen, Chief Investigator, Australian Justice Reinvestment Project, *Committee Hansard*, 1 May 2013, p. 60.

29 Juvenile Justice NSW, *Submission 124*, pp 11–12.

ownership helps to avoid the stigma often associated with outside providers. This will also generally improve attendance at, or uptake of, programs.<sup>30</sup>

### ***Indigenous communities***

6.26 The benefits of justice reinvestment to address the over-representation of Indigenous people in prisons was highlighted by many submitters. Mission Australia commented that justice reinvestment 'provides a practical, meaningful and effective way to address the extreme yet increasing over-representation of Aboriginal Australians in custody, particularly young Aboriginal Australians'.<sup>31</sup>

6.27 The AHRC also noted that 'to date the thinking around justice reinvestment in Australia has been in relation to Aboriginal and Torres Strait Islander communities'. The AHRC commented that there are 'persuasive arguments' for trialling justice reinvestment in Aboriginal and Torres Strait Islander communities given the high levels of Indigenous over-representation in prison and the disadvantage faced by these communities.<sup>32</sup> Ms Emilie Priday, AHRC, reminded the committee that Aboriginal and Torres Strait Islander young people are 35 times more likely to be in detention, and Aboriginal and Torres Strait Islanders are 14 times more likely to be in prison. The Indigenous reimprisonment rate, 66 per cent within 10 years, is much higher than the retention rate for Indigenous students from years 7 to 12 of high school, at 46.5 per cent, and higher than the university retention rate for Indigenous students, which is below 50 per cent. Ms Priday concluded '[i]n other words, Indigenous people are more likely to be returned to prison than they are to be retained at either high school or university'.<sup>33</sup>

6.28 When there are high crime rates and a high proportion of community members in prison at any one time, a 'tipping point' is reached where communities are weakened, creating the conditions for further crime. Professor Cunneen observed:

The argument in relation to justice reinvestment is that you can pour as much money as you like into health or education but, while you are pulling out of that community large numbers of men and women, the destructive effect of imprisonment undermines any other positive aspects that may be achieved through the funding of health or education services. So that is a very strong argument that has been put underpinning justice reinvestment—that the large numbers of imprisonment from relatively small communities is actually highly destructive of those communities.<sup>34</sup>

6.29 The ALRC commented that in the future, this is only going to get worse, with the Indigenous population being amongst the youngest and fastest growing in our

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30 National Association of Community Legal Centres, *Submission 103*, p. 16.

31 Mission Australia, *Submission 99*, p. 8.

32 Australian Human Rights Commission, *Submission 85*, p. 9.

33 Ms Emilie Priday, Senior Policy Officer, Australian Human Rights Commission, *Committee Hansard*, 1 May 2013, p. 2.

34 Professor Chris Cunneen, Chief Investigator, Australian Justice Reinvestment Project, *Committee Hansard*, 1 May 2013, p. 61.

country. As a consequence, 'efforts to close the gap will be undermined if we continue to ignore the impact of imprisonment and fail to create safe communities'.<sup>35</sup>

6.30 It was noted that, within Indigenous communities, there was 'a real appetite' for a justice reinvestment approach.<sup>36</sup> Ms Kerry Graham, Just Reinvest NSW, added that Indigenous leaders have been calling for a justice reinvestment approach for some time and noted the Aboriginal and Torres Strait Islander Social Justice Commissioner *Social Justice Report 2009*. The Just Reinvest NSW campaign found that it had an 'incredible response—an engaged and informed response—from communities and their leaders about this policy being something they want to step into, that they choose to do'.<sup>37</sup>

6.31 The principles of justice reinvestment that make it attractive to supporters of its trialling in Indigenous communities include:

- localism;
- community control, with ownership and leadership within the community;
- focus on addressing disadvantage;
- better cooperation between local services; and
- community working in partnership with government.<sup>38</sup>

#### *Localism*

6.32 As justice reinvestment focusses on locations that produce high numbers of prisoners, submitters argued that is it particularly suited for Indigenous people and communities. Submitters pointed to the high concentration of offenders in Indigenous communities. For example, in 2007–08, 72 adults from the remote Central Australian community of Papunya were serving time in Northern Territory prisons, of a total population of 379 (including 71 people who were under the age of 14).<sup>39</sup> The AHRC also commented that 'the reality is that if we were to map the locations with the highest concentrations of offenders, many of these locations also have very high Aboriginal and Torres Strait Islander communities'.<sup>40</sup>

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35 Ms Emilie Priday, Senior Policy Officer, Australian Human Rights Commission, *Committee Hansard*, 1 May 2013, p. 2.

36 Ms Emilie Priday, Senior Policy Officer, Australian Human Rights Commission, *Committee Hansard*, 1 May 2013, p. 2.

37 Ms Kerry Graham, Just Reinvest NSW, *Committee Hansard*, 1 May 2103, p. 21.

38 See for example, Ms Emilie Priday, Senior Policy Officer, Australian Human Rights Commission, *Committee Hansard*, 1 May 2013, pp 1–2; Central Australian Aboriginal Family Legal Unit Aboriginal Corporation, *Submission 32*, p. 2; Ms Kerry Graham, Just Reinvest NSW, *Committee Hansard*, 1 May 2103, p. 21; Central Australian Aboriginal Family Legal Unit Aboriginal Corporation, *Submission 32*, p. 2.

39 Central Australian Aboriginal Family Legal Unit Aboriginal Corporation, *Submission 32*, p. 2.

40 Australian Human Rights Commission, *Submission 85*, p. 9.

6.33 While Aboriginal and Torres Strait Islanders remain so over-represented any meaningful action to reduce overall imprisonment and reduce spending should be targeted at these communities.

6.34 It was noted that Indigenous communities are extremely diverse. A justice reinvestment approach, with its emphasis on data gathering and analysis of the drivers of crime to develop appropriate options, can take into account this diversity. Through community consultation, programs responsive to community can be identified.<sup>41</sup>

#### *Community control*

6.35 Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Mick Gooda, has supported a justice reinvestment approach as it 'provides opportunities for some communities to take back local control...to not only take some ownership of the problem but also own the solution'.<sup>42</sup>

6.36 Other submitters also pointed to benefits of a community focussed approach where services are owned, controlled and operated by the local Indigenous community. The characteristics of justice reinvestment align well with notions of self-determination and principles for working with Aboriginal and Torres Strait Islander peoples. In addition, the goals and principles of key policies including the National Indigenous Law and Justice Framework and the Closing the Gap Initiative also have a community focus. It was also noted that these policies emphasise community ownership and responsibility as well as responsiveness to local need.<sup>43</sup>

#### *Focus on disadvantage*

6.37 A characteristic of many Indigenous communities is the high level of disadvantage. Disadvantage is a key issue which justice reinvestment strategies can attempt to address. Strategies aim to alleviate community disadvantage and strengthen community capacity by investing in housing, education, health services and prevention programs.<sup>44</sup> The savings and value for money in justice expenditure provide funding for these programs.

6.38 Submitters saw particular benefits for children and women in Indigenous communities of a justice reinvestment approach. By reducing offending and imprisonment justice reinvestment would reduce the number of children with an incarcerated parent and thus prevent the harm associated having a parent in prison. It would create healthier families and children if both parents were available to provide care. This has potential not only to reduce the number of children who enter the child protection system but also to disrupt the intergenerational cycle of offending.<sup>45</sup>

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41 National Family Violence Prevention Legal Service Forum, *Submission 39*, p. 5.

42 Cited in The Centre for Independent Studies, *Submission 46*, p. 3.

43 National Family Violence Prevention Legal Service Forum, *Submission 39*, p. 5.

44 Central Australian Aboriginal Legal Aid Service, *Submission 62*, p. 19.

45 Central Australian Aboriginal Legal Aid Service, *Submission 62*, p. 19.

6.39 The Central Australian Aboriginal Family Legal Unit Aboriginal Corporation also argued that a justice reinvestment approach is particularly suited to tackling the issue of Indigenous family violence because of its focus on community-based initiatives, community disadvantage, preventative and therapeutic programs, and its potential benefit to victims of family violence.<sup>46</sup>

### **Benefits for individuals**

6.40 For the individual, the benefits of justice reinvestment can be profound. In the first instance, it aims to take offenders who do not pose a risk to society out of the corrections system. There is ample evidence that time spent in prison often has a harmful effect on those who are imprisoned and prisoners returning to society often find it difficult to reintegrate into the communities they left.<sup>47</sup> The National Association of Community Legal Centres also commented that the use of community-based programs has the potential to discourage recidivism and reduce the prison population, particularly of overrepresented groups in the criminal justice system including Aboriginal and Torres Strait Islander peoples and people experiencing mental ill-health or cognitive disability.<sup>48</sup>

6.41 It was noted that there will be improved long term outcomes for individuals who are diverted from initial, or ongoing, involvement in crime. These outcomes include improved employment prospects, maintenance of social connections, increased housing stability and a reduction in the crime-producing effect that prison can have.<sup>49</sup>

6.42 Greater assistance to victims of crime was seen as a further benefit of justice reinvestment with Mission Australia noting that 'one of the strengths of justice reinvestment is the ability to divert funding to victim support services'.<sup>50</sup>

### ***People with mental illness and cognitive/intellectual disability***

6.43 NATSILS commented that justice reinvestment would also be an effective means of addressing the over-representation of people with a mental illness or cognitive/intellectual disability. Savings can be generated through a justice reinvestment approach by treating people with a mental illness or cognitive/intellectual disability outside of the prison system. These savings can be reinvested in further community support and treatment facilities. NATSILS noted that there would be options other than the police arrest for assisting people with behaviour that is the result of a mental ill-health or cognitive/intellectual disabilities. Courts

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46 Central Australian Aboriginal Family Legal Unit Aboriginal Corporation, *Submission 32*, p. 2.

47 See for example, Central Australian Aboriginal Family Legal Unit Aboriginal Corporation, *Submission 32*, p. 3.

48 National Association of Community Legal Centres, *Submission 103*, p. 15.

49 Mission Australia, *Submission 99*, p. 8.

50 Mission Australia, *Submission 99*, p. 8.

would also be able to divert people to appropriate options where necessary.<sup>51</sup> The AHRC also commented on this aspect of justice reinvestment:

There is a neat flow on effect here. If there is money to reinvest in better alcohol and drug treatment, housing options and general community support services, judges can be more confident about sentencing offenders to community based options.<sup>52</sup>

6.44 Aside from a criminal justice issue, such investment should also be seen as a basic investment in the health system that would dramatically improve the quality of many people's lives.

### ***Juvenile justice***

6.45 Juvenile justice was another area where a justice reinvestment approach was seen as being particularly beneficial. As noted in chapter 3, there has been a substantial increase in the remand of young people and a steady increase in the incarceration of young people. This comes at a huge cost for governments and the community. Incarceration costs are high: the cost of keeping a young person in custody in NSW was \$652 per day in 2011. In contrast, the cost of community-based supervision in Victoria was just \$52 per day.<sup>53</sup> The social costs include loss of employment, low educational attainment, family breakdown and homelessness.

6.46 Submitters commented that justice reinvestment can provide significant benefits for young people and for governments. The savings to government will include reduced incarceration costs and long term reduction in demand for social and welfare services.<sup>54</sup> In some states, for example, Victoria, the low numbers of juveniles sent to prison may not generate the level of savings that will allow investment of the scale required to truly address the causes of offending in local settings. However, Smart Justice for Young People argued that there are opportunities to realise savings in the youth justice system through changes to bail and remand practices. It was noted that there are high numbers of young people on remand in some jurisdictions, particularly Western Australia and Northern Territory. This provides scope for at least re-assessing the extensive use of detention as a substitute for services or temporary accommodation in Australia.<sup>55</sup>

6.47 The Commissioner for Children and Young People WA commented that there are 'underlying social determinants that make it far more likely that a child or young person will come into regular contact with the criminal justice system. For these young people, justice and welfare issues are inextricably linked'.<sup>56</sup> Submitters noted

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51 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 28.

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

53 Australian Youth Affairs Coalition, *Insights from the coalface: The value of justice reinvestment for young Australians*, 2013, p. 11.

54 Juvenile Justice NSW, *Submission 124*, pp 10–11; Just Reinvest NSW, *Submission 44*, p. 22.

55 Smart Justice for Young People, *Submission 91*, pp 11–12.

56 Commissioner for Children and Young People WA, *Submission 23*, p. 5.

the benefit of investing in early intervention and targeted prevention strategies aimed at young people as well as provision of family support, a focus on health and social responses, and strategies tailored to the needs of the individual.<sup>57</sup> The Commissioner for Children and Young People WA observed that these 'mirror the approaches required to sustain a justice reinvestment approach'.<sup>58</sup>

6.48 Juvenile Justice NSW for example, commented that the justice reinvestment approach through early intervention does not wait for antisocial behaviour to escalate to criminal justice involvement. Rather, young people and their families have access to the services they need outside the justice system.<sup>59</sup> Juvenile Justice NSW pointed to immediate benefits of desistance, reduced incarceration and better post release support services in the community. If family-based interventions are implemented, longer term outcomes will include better functioning families, prevention of young siblings engaging in crime, and enhanced educational and employment outcomes.<sup>60</sup>

6.49 Longer term outcomes will arise through investing in the communities that young offenders return to following time in custody. This may shape longer term outcomes and support desistance. Juvenile Justice NSW also noted that health, education and therapeutic gains achieved while in custody can often be eroded after returning to 'toxic' environments. Juvenile Justice NSW stated that data suggests that young people are at highest risk of offending in the six months following their release from custody. Therefore, building community infrastructure and delivering support services to families of young offenders or children may reduce the risk of reoffending behaviour by building resilience across the community.<sup>61</sup> Just Reinvest NSW argued that the benefit of justice reinvestment arose not only from reducing the number of young people incarcerated but also from breaking the pattern of young offenders becoming adult prisoners.<sup>62</sup>

6.50 A further benefit was seen in a change to the public perception that the only way to deal with crime, especially crime committed by young people, is through long and harsh periods of detention.<sup>63</sup>

### **Emergence of support for a justice reinvestment approach in Australia**

6.51 Examination of justice reinvestment in Australia has been undertaken in a number of reports since 2009. The Aboriginal and Torres Strait Islander Social Justice Commissioner *Social Justice Report 2009* examined justice reinvestment as a solution to the problem of over-representation of Indigenous people in the criminal justice system. It was concluded that:

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57 Youth Advocacy Centre, *Submission 90*, p. 9.

58 Commissioner for Children and Young People WA, *Submission 23*, p. 5.

59 Juvenile Justice NSW, *Submission 124*, pp 11–12.

60 Juvenile Justice NSW, *Submission 124*, pp 11–12.

61 Juvenile Justice NSW, *Submission 124*, pp 11–12.

62 Just Reinvest NSW, *Submission 44*, p. 22.

63 Youth Advocacy Centre, *Submission 90*, p. 10.

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Justice reinvestment is a pragmatic solution to the problem of Indigenous imprisonment but it is based on some sound principles that meld with Indigenous perspectives and approaches.

It takes the role of community seriously, recognising the damage for the individual and community each time a person is imprisoned.

It recognises that there are 'high stakes' communities where it is imperative that preventative resources and systemic change is put in place to address imprisonment.

Most importantly, it provides a real role for the community to have a say in what is causing offending in their communities and what needs to be done to fix it. All of these principles would guide a partnership approach to addressing Indigenous imprisonment.<sup>64</sup>

6.52 It was recommended 'that the Standing Committee of Attorneys General Working Party identify justice reinvestment as a priority issue under the National Indigenous Law and Justice Framework, with the aim of conducting pilot projects in targeted communities in the short term' and 'that the Australian Social Inclusion Board, supported by the Social Inclusion Unit, add justice reinvestment as a key strategy in the social inclusion agenda'.<sup>65</sup>

6.53 In recent years there have been a number of Commonwealth Parliament committees that have supported the adoption of justice reinvestment, or have considered that a justice reinvestment approach should at least be explored. The Final Report of the Senate Select Committee on Regional and Remote Indigenous Communities suggested that further work be undertaken on the 'potential for justice reinvestment in regional and remote Indigenous communities'.<sup>66</sup> In 2009, this committee's report on its inquiry into access to justice recommended that 'the federal, state and territory governments recognise the potential benefits of justice reinvestment, and develop and fund a justice reinvestment pilot program for the criminal justice system'.<sup>67</sup>

6.54 In 2011, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, in its report *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, supported the justice reinvestment approach for Indigenous communities. The committee recommended (recommendation 40) that 'governments focus their efforts on early intervention and diversionary programs and

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64 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, p. 56.

65 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, p. 56.

66 Senate Select Committee on Regional and Remote Indigenous Communities, *Final Report 2010*, September 2010, p. 21.

67 Senate Legal and Constitutional Affairs References Committee, *Access to Justice*, December 2009, p. 110.

that further research be conducted to investigate the justice reinvestment approach in Australia'.<sup>68</sup>

6.55 In its response to the report, the Commonwealth Government noted:

A justice reinvestment approach, as proposed under Recommendation 40, has the potential to significantly improve rates of offending behaviour and victimisation in the long term and is likely to be examined in the context of the Safe Communities Strategy. Place based approaches to address offending and reoffending, diversion and early intervention are an opportunity to identify where significant outcomes may be achieved through redirecting resources across a broader range of activities.<sup>69</sup>

6.56 The Government went on to state that a Working Group had been established under the NJCEOs to specifically consider justice reinvestment, or criminal justice approaches which focus on addressing the causes of crime in particular locations. The Working Group was to investigate options and strategies for implementing a justice reinvestment approach and addressing drivers of crime in the Australian context. The response also noted that the primary responsibility for implementation of justice reinvestment strategies will fall to state and territory governments but the Commonwealth would seek to work bilaterally with interested jurisdictions to implement agreed approaches.<sup>70</sup> The NJCEOs Working Group report was provided to the committee by the Attorney-General's Department.<sup>71</sup>

6.57 At the state level, New South Wales, Western Australia and Queensland have considered justice reinvestment. The New South Wales Government commissioned a strategic review of that state's Juvenile Justice System in July 2009. In review's April 2010 report, three different options were considered but the review explicitly recommended a justice reinvestment approach:

...because it provides the greatest long term return on investment through tangible benefits such as reduced crime, reduced re-offending and cost savings....Justice Reinvestment...seeks to address the causes of crime through investing resources in social programs that would otherwise have been spent on dealing with the consequences of crime – most notably the construction of prisons and detention centres. (Noetic Solution 2010 ix)<sup>72</sup>

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68 House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, June 2011, p. 321.

69 Australian Government, *Government Response to the House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs report; Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, November 2011, p. 36.

70 Australian Government, *Government Response to the House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs report; Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, November 2011, p. 43.

71 NJCEOs Working Group, *Justice Reinvestment/Causes of Crime*, November 2011, provided 17 May 2013.

72 Cited in Australians for Native Title and Reconciliation, *Submission 63*, p. 20.

6.58 Australians for Native Title and Reconciliation noted that 'unfortunately, while the response from the New South Wales government took on board some of the issues and suggestions in the report, it did not commit to adopting the justice reinvestment approach'.<sup>73</sup>

6.59 In 2010, the Western Australia Legislative Assembly Standing Committee on Community Development and Justice tabled its report, *Making our Prisons Work*. The committee found that the current criminal justice response to crime, which has its sole focus on the offending individual, is failing where the individual comes from a highly dysfunctional community. It noted that justice reinvestment had achieved demonstrable success in some jurisdictions as it responds both to the individual and to the causes of crime. The committee recommended that the Western Australia Government:

...at the highest level charge a lead agency to establish the proposed pilot Justice Reinvestment strategy to:

- have an overarching responsibility for each of the agencies collaborating in the strategy insofar as their deliverable to the strategy are concerned; and
- have control and be accountable for the pooled Justice Reinvestment budget.<sup>74</sup>

6.60 The Youth Affairs Council of Western Australia commented that the Western Australian Government responded 'rather negatively' to this recommendation by stating that:

Justice reinvestment is founded on the premise that there is appropriate infrastructure for the current requirements (i.e. sufficient design capacity) prior to consideration of reinvestment of future funds to alternatives to imprisonment. The Department is a considerable way from this point.<sup>75</sup>

6.61 However, in May 2013, it was reported that the Western Australian Government was pursuing justice reinvestment as a way of addressing the increases in incarceration rates. The Corrective Services Minister, Mr Joe Francis, is reported as stating 'Call it justice reinvestment or prevention programs or whatever it might be, the principle of spending money to try to get people on the right track to stop them breaking the law and ending up in jail makes sense'.<sup>76</sup>

6.62 The Anti-Discrimination Commission Queensland noted that the Queensland Government is recognising the benefits of a justice reinvestment approach.

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73 Australians for Native Title and Reconciliation, *Submission 63*, p. 20.

74 Western Australia Legislative Assembly, Community Development and Justice Standing Committee, *'Making our prisons work': An inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies*, Report No. 6 in the 38<sup>th</sup> Parliament, 2010, p. 113.

75 Youth Affairs Council of Western Australia, *Submission 54*, pp 19–20.

76 'Lift for crime prevention spending', *The West Australia*, 6 May 2013.

Queensland Corrective Services in its recent report, *Pathways to Reducing Crime*, has developed a plan to 'reduce re-offending by strengthening the focus on tackling the causes of crime and correcting offending behaviour.' The report went on to comment that 'broad, multi-modal approaches to preventing re-offending over the course of an offender's sentence, and beyond, are often more effective than point-in-time interventions such as a standalone program'. The report proposes to direct efforts and resources into maximising crime prevention outcomes for offenders, their families and the community.<sup>77</sup>

### **Research projects**

6.63 There a number of major research projects into justice reinvestment currently underway in Australia. At the University of NSW, the Australian Justice Reinvestment Project is an Australia Research Council funded project which aims to examine the characteristics of justice reinvestment in other jurisdictions, and analyse whether such programs can be developed in the Australian context.<sup>78</sup>

6.64 At the Australian National University, the National Centre for Indigenous Studies and Indigenous Offender Health Capacity Building Group is undertaking a three year research project entitled 'Reducing Indigenous incarceration using Justice Reinvestment: an exploratory case study'. The project will use justice reinvestment methodology to explore the conditions, governance and cultural appropriateness of reinvesting resources otherwise spent on incarceration, into services to enhance juvenile offenders' ability to remain in their community.<sup>79</sup>

### **Concerns about a justice reinvestment approach for Australia**

6.65 The committee received evidence of general support for a justice reinvestment approach although it was acknowledged that there would be challenges for its implementation in Australia (these are discussed chapter 7). However, some submitters sounded a note of caution or did not support the approach at all, particularly in relation to its application to Indigenous communities.

6.66 The Indigenous Social Justice Association was unconvinced about the benefits of justice reinvestment and argued that the 'whole underpinning premise is wrong'. Rather than a starting point of addressing social disadvantage and genuinely assisting those in need, justice reinvestment is primarily focussed on 'saving money for tax payers and increasing public safety by investing resources in keeping the worst offenders incarcerated for longer'. The Association concluded that, based on the US experience, 'justice reinvestment is not a model to emulate' and that adequate resourcing of public housing, health and education is required in Australia.<sup>80</sup> The Freedom Socialist Party commented that to genuinely address the issues of

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77 Anti-Discrimination Commission Queensland, *Submission 71*, pp 21–23.

78 Australian Justice Reinvestment Project, *Submission 114*, p. 1.

79 National Centre for Indigenous Studies and Indigenous Offender Health Capacity Building Group, *Submission 83*.

80 Indigenous Social Justice Association Melbourne, *Submission 14*, pp 4, 9.

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disadvantaged groups, much more funding is required than what can be saved through reducing the number of people in prison.<sup>81</sup>

6.67 The lack, as yet, of demonstrated benefits of justice reinvestment in Australia was raised by Professor Michael Levy. He noted that there are clues to the potential benefits from the UK and US. However, 'when laid against the certainty that the current custodial enterprise projects, the challenges faced to the creation of an Australian body of evidence supporting (or otherwise) justice reinvestment, is stark'.<sup>82</sup>

6.68 CIS raised a range of issues including that justice reinvestment appears to be very similar to programs already in place. For example, the Aboriginal Community Justice Groups are described as being 'based on the idea that local Aboriginal people know their own communities and problems. Therefore, the groups can solve local community problems better by developing local community solutions'; a very similar approach to justice reinvestment.<sup>83</sup>

6.69 In addition, CIS stated that successive governments have, for more than 30 years, run community-based programs in Indigenous communities and, barring a few exceptions, such initiatives have not led to real social change. CIS commented that the belief justice reinvestment's localised community focus approach will reduce offending ignores the history of support for Indigenous communities. CIS went on to state that 'the focus on community involvement as a precursor to improving remote Indigenous people's lives disregards the fact that most Indigenous communities exist only because of passive service delivery by outside suppliers'.<sup>84</sup>

6.70 CIS argued that to address the underlying causes of Indigenous offending, the focus must be on education and employment as evidence shows that education and employment play a critical role in the high Indigenous incarceration rate.<sup>85</sup> Sara Hudson commented further 'justice reinvestment threatens to become a distraction from focussing on these fundamentals'.<sup>86</sup> This view was supported by Flat Out which concluded:

Reducing systemic poverty, racism, and gendered violence and discrimination, needs to be a basic budgetary and policy commitment of all governments, rather than a criminal justice approach to reducing crime. Ensuring access to mental health care, drug and alcohol programs, education and employment may lead to reduced prison numbers as a side-effect, but is primarily about ensuring human rights.<sup>87</sup>

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81 Freedom Socialist Party, *Submission 12*, pp 4–5.

82 Professor Michael Levy, *Submission 25*, p. 4.

83 The Centre for Independent Studies, *Submission 46*, p. 3.

84 The Centre for Independent Studies, *Submission 46*, p. 3.

85 The Centre for Independent Studies, *Submission 46*, pp 3–4.

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

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

6.71 Other submitters responded to these arguments. Mr Bonig, South Australian Justice Reinvestment Working Group, noted that investment in education and employment is part of a justice reinvestment program:

One of the submissions the committee received from an organisation was in fact saying, 'We don't need justice reinvestment; we need money spent on housing, education and the like.' But ultimately that is the thrust of a proper justice reinvestment program—looking at the socioeconomic needs of people so that they are not incarcerated. We also have for adults an inability in some circumstances to properly supervise them in the community and therefore they are forced to be on remand.<sup>88</sup>

6.72 Mr Ian Coverdale, from the Australian Red Cross, commented:

There is enough evidence around the world, particularly in the US and emerging in the UK, to say that there is something around justice reinvestment. I think it is important that we try and work out what it means in Australia. The US system is very different to Australia's. We are functioning much better than that, and I think we need not just to be guided by what happens in the US but to know what is happening here and see what is going to happen in Australian conditions. So we need to go into those areas that people are coming from, and demonstrably people are coming from certain communities. We need to go into place-based approaches to build communities and make them more resilient and safer. That is why we think that some well-researched pilot projects are necessary. That allows us to understand this in the Australian context.<sup>89</sup>

6.73 NAAJA acknowledged that justice reinvestment was not a 'silver bullet' as the problems of Indigenous incarceration are complex and are deeply connected to social disadvantage and to marginalisation.<sup>90</sup> However, the committee notes the comments from Mr Huynor that the advantage and the benefit of justice reinvestment is that 'it helps shift the conversation, helps shift the focus, and gets our politicians to be leaders and recognise that the answers do not lie in doing work at the bottom of the cliff in locking more people up'.<sup>91</sup>

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88 Mr Ralph Bonig, Joint Co-Ordinator, South Australian Justice Reinvestment Working Group, *Committee Hansard*, 1 May 2013, p. 18.

89 Mr Ian Coverdale, National Manager, Australian Red Cross, *Committee Hansard*. 1 May 2013, p. 33.

90 Mr Jonathon Hunyor, Principal Legal Officer, North Australian Aboriginal Justice Agency, *Committee Hansard*, 1 May 2013, p. 13.

91 Mr Jonathon Hunyor, Principal Legal Officer, North Australian Aboriginal Justice Agency, *Committee Hansard*, 1 May 2013, p. 13.

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## Conclusions

6.74 It is acknowledged that imprisonment has failed as an effective way of addressing crime in Australia and that prisons are essentially a failed institution as they do not rehabilitate and tend to breed more criminality.

6.75 While very serious offenders need to be incarcerated to protect the public, for other offenders, imprisonment may not be the most effective way to address criminal behaviour.

6.76 The consequences of the failure to effectively address criminal behaviour and the underlying causes of crime can be seen in the continued increase of incarceration rates and the failure to improve public safety. High levels of incarceration result in economic costs for governments and communities as well as social costs. The consequences are particularly severe in Indigenous communities where the very fabric of the community can be undermined through high levels of incarceration; where early and repeated interactions between juveniles and the justice system lead to dysfunction and intergenerational incarceration; and where great disadvantage fosters crime.

6.77 There is little doubt that there is support within justice and community organisations and the community itself for a justice reinvestment approach for Australia. The support arises from its community-focussed, evidenced-based approach to providing savings, diverting offenders, addressing the causes of crime, and strengthening communities.

6.78 There also appears to be support emerging within some governments for a justice reinvestment approach. In part, this is driven by concerns about the sustainability of the criminal justice system. States and territories are facing decisions about funding for new prisons as well as how to curb the growth of expenditure in policing and the court system. At the same time, government budgets are under pressure through the current changes to economic circumstances.

6.79 The committee considers that the time is right for governments to consider more effective solutions to tackling crime: solutions that not only provide a significant economic advantage in the short term but perhaps also an even greater economic advantage in the long term. The committee considers that justice reinvestment provides economic benefits in the long term through shifting resources away from incarceration towards prevention, early intervention and rehabilitation. Benefits will accrue to government through improved economic participation of offenders and potential offenders, decreased use of the welfare system and improved health outcomes.

6.80 While there will be economic benefits to government, the committee considers that the benefits through a justice reinvestment for individuals and communities will be more important. By addressing the social determinants of crime – unemployment, homelessness, health and education issues – justice reinvestment has the potential to improve the life outcomes of individuals and build strong, safe and cohesive communities.

6.81 Although there is much support for a justice reinvestment approach, the committee acknowledges that there will be challenges to its adoption in Australia. However, the committee considers that justice reinvestment deserves serious consideration and examination of how it might work in Australia. In this regard, the committee notes the comments of Professor Andrew Coyle:

There is no suggestion that Justice Reinvestment is a single panacea which will solve the problem of overuse of imprisonment in Australia and especially the disproportionate overuse of imprisonment for aboriginal and first nation people. However, it does have some potential as a tool to achieve this aim. Its importance lies in the fact that it is a mechanism which allows us to redefine the problem of safety and security in our communities. None of the [overseas justice reinvestment] models...can be lifted off the shelf and used to resolve the problems of Australia. But they do offer a number of principles which can be translated into the Australian context.<sup>92</sup>

6.82 The challenges for implementing a justice reinvestment approach are described in chapter 7.

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92 Professor Andrew Coyle, *Submission 122*, p. 9.