

## Chapter 7

### Challenges to implementing a justice reinvestment approach in Australia

#### Introduction

7.1 As described in the preceding chapter, many submitters supported the introduction of a justice reinvestment approach in Australia. A range of benefits of justice reinvestment were noted, particularly its emphasis on an evidence-based approach to identifying integrated strategies to assist in strengthening communities. However, submitters acknowledged that the implementation of a justice reinvestment approach would not be without its challenges.

7.2 The following discussion canvasses the challenges identified in the evidence including a lack of clarity in the meaning of justice reinvestment, the level of economic benefits accruing in Australia, and data and evaluation concerns.

#### Clarity of the meaning of justice reinvestment

7.3 One significant challenge identified in the evidence was that the term 'justice reinvestment' is not clearly defined. While there is a generally accepted meaning of 'classic' justice reinvestment, as has been seen from overseas experience, justice reinvestment can take on various forms when implemented. As a consequence, there appears to be no one single definition with some commentators observing that justice reinvestment can 'mean many things to many people' and that it is 'an idea in progress rather than a full-fledged strategy'.<sup>1</sup>

7.4 Australian Justice Reinvestment Project, commented that there is a 'groundswell of commitment' to justice reinvestment in Australia without a really clear understanding of the defining features of justice reinvestment; its conceptual and theoretical foundations; how it relates to other criminal justice policy currently on the landscape; and the likely effects of its introduction in the Australian context.<sup>2</sup> Ms Melanie Schwartz, Australian Justice Reinvestment Project, argued that there was a danger that because of the lack of conceptual analysis of justice reinvestment 'the translation into the Australian context might involve major gaps in understanding about its fundamental concepts and also its potential pitfalls'. Some of the pitfalls are the sidelining of its 'broader focus on building social cohesion in high-crime neighbourhoods—or worse, operating as a cover for a strategy of disinvestment in state provision of prison and post-release services'.<sup>3</sup> Before justice reinvestment is adopted in Australia, the Australian Justice Reinvestment Project called for analysis of

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1 Law Council of Australia, *Submission 97*, p. 5.

2 Australian Justice Reinvestment Project, *Submission 114*, pp 9–10.

3 Ms Melanie Schwartz, Chief Investigator, Australian Justice Reinvestment Project, *Committee Hansard*, 1 May 2013, pp 56- 57.

the theoretical footings and socio-historical context of the emergence and popularity of justice reinvestment.<sup>4</sup>

7.5 Both Sara Hudson and the Attorney-General's Department commented that the difficulties in defining justice reinvestment may lead to it being used as a catch all phrase. Sara Hudson went on to state that it could describe any number of 'feel good' type programs such as 'culturally appropriate' initiatives. She argued that while these types of initiatives may help alleviate some of the 'symptoms' of disadvantage they will not address the causes.<sup>5</sup>

7.6 Mr Kym Duggan, Attorney-General's Department, noted that the phrase 'justice reinvestment' is used widely and thus there is a risk that it may become 'something of a buzz word or buzz phrase to be more precise'. As a consequence, the phrase may be emptied of substantive content. Mr Duggan concluded that it is important that 'justice reinvestment should be seen as a system-wide approach to community safety rather than just another way of stressing the importance of prevention, intervention and diversion activities'.<sup>6</sup> Furthermore, that justice reinvestment is best understood as an approach rather than necessarily a solution.<sup>7</sup>

7.7 While it was acknowledged that greater conceptual clarity is required, the Law Council of Australia noted that a significant number of articles and reports have been written about justice reinvestment. These enable the central aspects of the concept to be articulated, 'despite the fact that questions still remain in relation to the finer details of how it actually operates in practice'.<sup>8</sup>

7.8 Professor David Brown of the Australian Justice Reinvestment Project saw both benefits and weaknesses in the lack of a concise definition of justice reinvestment:

One of the other paradoxes, while we have been stressing the importance of having a clear idea of the theoretical roots of justice reinvestment—what it is attempting to achieve and making sure it isn't just seen as a cost-saving exercise—is that at the same time, the fact that it may be a bit vague and it appeals to a lot of people from different constituencies, can also be a strength, in a sense; it can let a hundred flowers bloom within what might be a rather nebulous and rhetorical slogan. As well as being a worry, that can be a strength.<sup>9</sup>

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4 Australian Justice Reinvestment Project, *Submission 114*, p. 10.

5 Sara Hudson, 'Panacea to Prison? Justice Reinvestment in Indigenous Communities', *Policy Monographs*, The Centre for Independent Studies, No. 134, 2013, p. 18.

6 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 13.

7 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 13.

8 Law Council of Australia, *Submission 97*, p. 5.

9 Professor David Brown, Chief Investigator, Australian Justice Reinvestment Project, *Committee Hansard*, 1 May 2013, p. 60.

## Multipartisan/multijurisdictional support

7.9 The success of justice reinvestment in the US has been due, in part, to bipartisan support. The need for multipartisan support was also raised in relation to implementation in Australia.<sup>10</sup> Ms Tammy Solonec, National Congress of Australia's First Peoples, commented that the biggest challenge for justice reinvestment is political support:

In order for justice reinvestment to be nationally successful, which is what we are advocating, it will require multi-party support and support from all states and territories. In this regard, the federal nature of political and justice systems is a real barrier.<sup>11</sup>

7.10 Submitters noted that justice reinvestment may require significant changes at the state government level to sentencing, parole and bail. Subsequent reinvestment in prevention, early intervention, diversionary, rehabilitative and post release programs will be required by both the Commonwealth and state and territory governments. A multipartisan approach will also be required to ensure that there is a long term commitment to the implementation of programs and services. In the past, funding of programs has reflected the election cycle, however, for a justice reinvestment approach to achieve its long term goals successive government will need to commit to a continuous funding model.<sup>12</sup> Ms Schwartz commented:

I do not think you can do it if you do not have the government onboard. That is why multipartisanism is so important, because it is not just the government of the day. Something like justice reinvestment does not work on election cycles; it is a long-term commitment. You need the government of the day and you need potentially the government of the future as well to make sure that, in three years time, you do not have a swing back to a different type of policy.<sup>13</sup>

7.11 Some submitters saw the adoption of a multipartisan approach as a significant challenge given that many Australian states have supported tough law and order approaches and strict sentencing provisions for minor offences such as motor vehicle offences, particularly in Indigenous communities.<sup>14</sup> On the other hand, it was noted by NATSILS that while bipartisanship between the current major parties in Australia is not very common, 'it can be argued that they are not as far apart on the political spectrum as Democrats and Republicans in the US'. NATSILS went on to state that

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10 See for example, Ms Emilie Priday, Senior Policy Officer, Australian Human Rights Commission, *Committee Hansard*, 1 May 2013, p. 3; Central Australian Aboriginal Legal Aid Service, *Submission 62*, p. 20; Australian Lawyers for Human Rights, *Submission 74*, p. 5; National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 29.

11 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Committee Hansard*, 17 April 2013, p. 19.

12 Just Reinvest NSW, *Submission 44*, p. 23.

13 Ms Melanie Schwartz, Chief Investigator, Australian Justice Reinvestment Project, *Committee Hansard*, 1 May 2013, p. 62.

14 See for example, Central Australian Aboriginal Legal Aid Service, *Submission 62*, p. 20.

'the broad appeal of justice reinvestment across diverse political constituencies may be just the thing to bring political parties together'.<sup>15</sup>

7.12 The AHRC also suggested that the economic rationalism argument of the approach may appeal to some governments with a strict law and order approach as it has done in the US. This could provide an incentive for governments to at least support a trial of justice reinvestment.<sup>16</sup>

### **Whole of government/whole of system approach**

7.13 A further challenge for justice reinvestment being applied in Australia is the nature of our federated system where some programs are funded and driven by the Commonwealth while the justice and corrections systems are the purview of the states.<sup>17</sup> The Australian Red Cross, for example, commented that inter-governmental collaboration will be required as the nine different governments have responsibility for the array of services and sectors that impact on crime, community safety and custodial outcomes.<sup>18</sup>

7.14 However, the Attorney-General's Department provided a slightly different view on inclusion of the Commonwealth in a whole of government approach:

One thing we do need to stress is that in viewing justice reinvestment as a system wide concept, experience in the US and, to a lesser degree, the UK, suggests that justice reinvestment is best applied at a whole-of-jurisdiction level. In Australia, as in the US, this means at the state or territory level. In Australia it is the states and territories that dominate spending on law and order measures. The overwhelming number of prisoners are incarcerated for offences against state and territory law and it is the states and territories, along with local government, that are best placed to respond to the factors that drive crime in particular localities.<sup>19</sup>

7.15 There were also concerns that within each level of government, it will be a challenge to break down administrative silos so that appropriate services can be delivered in an effective and integrated way.<sup>20</sup> Sisters Inside commented that, in its experience, addressing clusters of issues and needs is both more efficient and effective than referring women to a variety of services.<sup>21</sup> Mr Chris Twomey, Western Australian Council of Social Service, commented:

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15 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 29.

16 Ms Emilie Priday, Senior Policy Officer, Australian Human Rights Commission, *Committee Hansard*, 1 May 2013, p. 3.

17 Mr Ralph Bonig, Joint Co-Ordinator, South Australian Justice Reinvestment Working Group, *Committee Hansard*, 1 May 2013, p. 16; Australians for Native Title and Reconciliation, *Submission 63*, p. 26.

18 Australian Red Cross, *Submission 113*, p. 35.

19 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 14.

20 South Australian Justice Reinvestment Working Group, *Submission 28*, p. 7.

21 Sisters Inside, *Submission 69*, p. 23.

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One of the biggest barriers—as well as this challenge of government silos—is that to address the underlying causes, it is not just the justice system; it is also about education, health and a whole range of different community services.<sup>22</sup>

7.16 The Australian Red Cross noted that various reports have pointed to the lack of coordination between relevant government departments, and the scattering of funding and programs across various localities without clear and cohesive objectives and leadership. Cross-portfolio thinking, actions and responses that emphasise integrated planning, pooled funds, intra-government committees and long term timeframes are required.<sup>23</sup> Professor Cunneen described it as not just 'moving the deckchairs' within a department. Rather:

It does require attention to sentencing reform, to issues around bail on remand, to issues around the availability of community based services in communities, and to issues around parole and parole revocations. All of those things are clearly identified as being required to be addressed.<sup>24</sup>

7.17 Mr Bonig, South Australian Justice Reinvestment Working Group, explained further:

Conversely, there are already a number of existing programs that would fall under the umbrella of a justice reinvestment landscape. If they were ...properly coordinated—and I once again come to this silo mentality—across a whole range of different departments under a justice reinvestment umbrella, they might be a source of funding to at least get the redelivery of some programs up and running. The working group is looking at the moment at about three or four potential communities—by 'communities' I mean discrete areas within suburbs and/or country areas—as potential pilots for a justice reinvestment program not by diverting money from the prison system but by re-engineering and using existing projects. Ultimately, if that works, that will then reduce offending and incarceration and we will then in the long term be able to free up money that might otherwise be used to build new prisons or expand prisons, which is the real concern.<sup>25</sup>

7.18 While the difficulty of addressing administrative barriers was acknowledged, it was also argued that if governments do not take a holistic and integrated view, the Australian Red Cross concluded that there will be a continuation of over investment in correctional facilities with the investments that are made 'most likely contributing to crime rather than reducing it'.<sup>26</sup>

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22 Mr Chris Twomey, Director Social Policy, Western Australian Council of Social Service, *Committee Hansard*, 17 April 2013, p. 8.

23 Australian Red Cross, *Submission 113*, pp 35–36.

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

25 Mr Ralph Bonig, Joint Co-Ordinator, South Australian Justice Reinvestment Working Group, *Committee Hansard*, 1 May 2013, p. 17.

26 Australian Red Cross, *Submission 113*, p. 36.

7.19 Just Reinvest NSW suggested that the challenges of a whole of government approach could be overcome through joint Key Performance Indicators and budget governance established through Memorandum of Understandings between departments.<sup>27</sup>

### *Devolution*

7.20 A further matter noted by some submitters was that a key component of justice reinvestment is devolving accountability and responsibility to the local level to find community-level solutions to community-level problems. However, the political arrangements are considerably different in Australia than in the US. Ms Sara Hudson, for example, commented that as a consequence there is not as much scope for the devolution of funding and responsibility between different governments as criminal justice is already the primary responsibility of state governments, and 'it is highly unlikely that local government authorities will be given this responsibility'.<sup>28</sup>

7.21 This issue was also addressed by Ms Schwartz who noted in the US there is a three-tier system of incarceration, and different county, state and federal responsibilities in relation to criminal justice. This means that any simple translation of justice reinvestment from the American context to Australia is likely to be artificial. Ms Schwartz went on to question what the devolution of funding and authority would mean in the Australian context.<sup>29</sup>

### **Public perception**

7.22 It was noted that public perception will have an impact on the acceptance of justice reinvestment. The public's knowledge of the criminal justice system is poor and views are often formed through the media, family and friends and through the political process. The Australian Red Cross observed that in many instances, 'the information is partial, one sided, sensationalised or inaccurate'. Further, the public appears to have a perception that crime is constantly increasing and that offenders are treated leniently while victims of crime have their lives disrupted if not destroyed.<sup>30</sup>

7.23 Submitters commented that there is a danger that a justice reinvestment approach will be seen as a 'soft on crime' option; that it allows offenders easy options in the community rather than punishment through imprisonment.<sup>31</sup> Should this occur, governments may be reticent to support a justice reinvestment approach. NATSILS argued that changing community perceptions about crime and educating the public as to what actually works to make them safer will be the most significant challenge to

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

28 Sara Hudson, 'Panacea to Prison? Justice Reinvestment in Indigenous Communities', *Policy Monographs*, The Centre for Independent Studies, No. 134, 2013, p. 15.

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

30 Australian Red Cross, *Submission 113*, p. 37.

31 Youth Advocacy Centre, *Submission 90*, p. 10; Youth Justice Advisory Committee, *Submission 125*, p. 13.

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building momentum behind justice reinvestment in Australia. NATSILS went on to comment:

If the general public could be made to understand that crime is not increasing, that tougher sentences will not actually make their communities safer, and that better outcomes could be achieved for less money, governments could then move away from "tough on crime" campaigns without jeopardising their election chances. However, rationality, evidence based and cost effective arguments may not address the emotive and retributive sentiments central to criminal justice politics.<sup>32</sup>

7.24 NATSILS concluded that, for there to be a change in public perception, both politicians and the media will need to change the way they talk about the justice system. Governments should seek to influence public perceptions and lead informed debates. In doing so they will need to 'move away from emotive language that arouses and exploits people's fears'. This, according to NATSILS, 'will take political courage and leadership'.<sup>33</sup>

### **Level of economic benefits**

7.25 The Attorney-General's Department noted that 'in its classic manifestation, justice reinvestment involves the diversion of money from mainstream law and order measures and money [from] corrections budgets into prevention, intervention and diversion'. Over time, this should result in savings across the system which can either be reinvested into further prevention, intervention or diversion activities or even harvested as general savings.<sup>34</sup>

7.26 A part of the attraction for governments of a justice reinvestment approach is savings and economic benefits. The level of savings expected were not quantified in evidence with some submitters stating that the level of economic benefit would be significant and others indicating that justice reinvestment would be budget neutral over the long term. NATSILS, for example, commented that savings in the future would justify initial costs and that there is 'great potential' for savings through preventing reoffending.<sup>35</sup> Just Reinvest NSW pointed to modelling that it had commissioned which suggests that justice reinvestment is a realistic fiscal option for government to be considering.<sup>36</sup>

7.27 It was also noted that the significant savings in the US were available because of the high rates of incarceration and the actual population size. It was noted that the economies of scale generated by reducing imprisonment in the US are likely to be much higher than the potential in Australia. In addition, the rates of incarceration of

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32 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 29.

33 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 29.

34 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 12.

35 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 18.

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

offenders are significantly different with three quarters of offenders in the US being given custodial sentences, whereas only one-fifth of offenders are subject to custodial sentences in Australia. Therefore, the savings incurred as a result of reducing prisoner numbers are unlikely to be as dramatic as those experienced in overseas jurisdictions.<sup>37</sup>

7.28 Juvenile Justice NSW also commented that in NSW there are already legislative mechanisms in place to divert young people with minor offences from custody, that is, the *Young Offenders Act 1997*. This means that there are comparatively fewer young people in custody that can be easily removed from the corrections system. As a consequence, less funds will be freed up for the initial investment in front end services.<sup>38</sup>

7.29 However, Mr Duggan, Attorney-General's Department, did acknowledge that while there are fewer budgetary savings, it did not mean that the implementation of a justice reinvestment approach would not result in significant social impacts.<sup>39</sup>

7.30 The Productivity Commission cautioned against an over-emphasis on the economic benefits of a justice reinvestment approach in Indigenous communities. Mr McDonald noted that although the Indigenous incarceration rates are 'very alarming and need to be addressed, the numbers involved are often small'. As there are under 1,000 juveniles in detention in Australia, and under 500 Indigenous juveniles, 'the economic pay-off from addressing that high detention rate may be relatively small'. Mr McDonald concluded that 'the main benefits are the social benefits to the individuals, families and the communities involved'.<sup>40</sup>

7.31 Mr McDonald provided the committee with further details of the potential 'pay-off' from improving outcomes for Indigenous people. He stated that for every one dollar spent on a non-Indigenous person in the public order and safety area, government spends about \$5.83 per Indigenous person. This provides potential for economic savings if the rates of involvement with the criminal justice system were more equivalent between non-Indigenous and Indigenous persons.<sup>41</sup>

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37 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 13; see also, Sara Hudson, 'Panacea to Prison? Justice Reinvestment in Indigenous Communities', *Policy Monographs*, The Centre for Independent Studies, No. 134, 2013.

38 Juvenile Justice NSW, *Submission 124*, p. 13.

39 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 13.

40 Mr Lawrence McDonald, Assistant Commissioner, Productivity Commission, *Committee Hansard*, 17 May 2013, p. 8.

41 Mr Lawrence McDonald, Assistant Commissioner, Productivity Commission, *Committee Hansard*, 17 May 2013, p. 8.



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### *Initial funding*

7.32 There were also differing views as to whether the implementation of justice reinvestment would be self-sustaining or if it would require a level of up-front or longer term funding from government. Some submitters argued that by generating savings in spending before reinvestment occurs, justice reinvestment does not require significant levels of new funding and thus, the barrier of finding new money in tight government budgets is overcome.<sup>42</sup>

7.33 Other submitters, including the AHRC, suggested that while justice reinvestment is about shifting funding, not new funding, there is a need for a 'modest' amount of seed funding. This funding would be required for technical support and coordination services. Ms Priday, AHRC, commented that the funding could be provided by the Commonwealth and that 'it would be a very strategic way to use some of the \$40 million recently allocated to crime prevention by the Prime Minister'.<sup>43</sup>

7.34 The St Vincent de Paul Society supported the need for additional short term funding on the basis that, at the present time, the state of prisons is such that it is not reasonable to decrease prison funding to spend on justice reinvestment.<sup>44</sup> NSW Justice and Forensic Mental Health Network also argued for the continuation of expenditure for custodial services, particularly health services as these services play a vital health care function for those who enter custody. The Network commented that, for many, the services accessed in the criminal justice or forensic mental health system represent an important and, for some, the first opportunity to address their individual health needs.<sup>45</sup>

7.35 Submitters went on to comment that any initial funding would be repaid. Once initial funding has been obtained, and community programs are running effectively, savings will accrue as offenders are rehabilitated and provided with treatment to deal with the underlying causes of their behaviour and reoffending is significantly reduced.<sup>46</sup>

7.36 The Attorney-General's Department provided its views. Mr Duggan stated that justice reinvestment was probably not budget neutral. It is a long term strategy and savings will not be generated from law and order budgets in the short term. Potentially, significant upfront funding will be needed with savings 'hopefully' becoming available in the long term.<sup>47</sup>

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

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

44 St Vincent de Paul Society, *Submission 108*, p. 7.

45 NSW Justice and Forensic Mental Health Network, *Submission 13*, p. 1.

46 Youth Advocacy Centre, *Submission 90*, p. 10; St Vincent de Paul Society, *Submission 108*, p. 7.

47 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 13.

## Urban bias

7.37 In the US, justice reinvestment has been aimed primarily at urban populations as disadvantage and high offender numbers are concentrated in tight geographic locations in cities and towns. Submitters commented that, in Australia, many communities with high incarceration rates are small Indigenous communities located in very remote, remote and rural areas.<sup>48</sup> This will have implications for how data can be mapped and how program and service delivery is undertaken in these locations.

7.38 Very remote communities have poor access to criminal justice initiatives and services generally, and the Law Council of Australia stated that:

...whilst remote and very remote communities are well-positioned for place-based intervention, the remoteness of these communities inhibits the participation of offenders in community-based programs. Particular programs such as conditional bail support programs, which successfully divert offenders away from court processes in other areas, may not be appropriate in remote areas.<sup>49</sup>

7.39 Ms Schwartz commented that careful consideration will need to be given to how the problems in remote service delivery can be overcome and whether the justice reinvestment approach can be adapted to provide sufficient services to these communities to gain the promised benefits.<sup>50</sup> In addition, the justice reinvestment process 'calls for a consciously democratic consensus-based approach to decision making in relation to the needs of high-stakes communities'. The Australian Justice Reinvestment Project noted that this appears to fit well with the observation of former Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma that 'the only way that Indigenous service delivery and policy can succeed is through working in partnership with communities'. However, the Australian Justice Reinvestment Project cited the New South Wales Ombudsman as stating that the 'rhetoric about "partnering" with communities, too often...is not translated into communities having genuine involvement in decision-making about the solutions to their problems'. The Australian Justice Reinvestment Project concluded that there was a need to explore whether the urban bias of programs overseas can be 'rethought' so that justice reinvestment in remote Australia can achieve successful results, and 'to consider what the structural assumptions or practices in JR are that might inhibit its usefulness in the Australian geographical context'.<sup>51</sup>

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48 Ms Melanie Schwartz, Chief Investigator, Australian Justice Reinvestment Project, *Committee Hansard*, 1 May 2013, p. 57; see also, Mission Australia, *Submission 99*, p. 9; Just Reinvest NSW, *Submission 44*, pp 22–23; Anti-Discrimination Commission Queensland, *Submission 71*, p. 23; Youth Justice Advisory Committee, *Submission 125*, p. 13.

49 Law Council of Australia, *Submission 97*, p. 17.

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

51 Australian Justice Reinvestment Project, *Submission 114*, pp 11–12.

7.40 While the committee agrees that the delivery of services in remote and rural areas will need to be carefully considered, nonetheless during the course of the inquiry evidence was received which pointed to the successful delivery of some justice programs. For example, NAAJA provided evidence on the Ponki (Peace in Tiwi) Mediation approach which was established in 2009. The model seeks to unify traditional Tiwi dispute resolution processes with contemporary Western mediation practices. It places emphasis on skin groups with the Ponki mediators including representatives from all of the four Tiwi skin groups. The appropriate mediators in a particular matter will vary according to the skin groups of the parties to a particular dispute. NAAJA stated that the skin group approach to mediation in the Tiwi Islands enables the Ponki Mediation to work in a culturally safe, culturally relevant process consistent with traditional Tiwi dispute resolution practices. The mediators have received ongoing training and support from the Community Justice Centre (CJC).

7.41 The Ponki mediators currently mediate local disputes as well as in the CJC's Correctional Centre conferencing program, where families of a victim and offender are provided with an opportunity to attend mediation with the offender at Darwin Correctional Centre prior to their release. They also write reference letters for the Court.<sup>52</sup>

7.42 Mr Woodroffe, NAAJA, explained the success of this approach:

The credibility of this organisation and its strength is that [it] has now been ongoing for three years. They are a credible group of people...that we utilise in the Supreme Court. They provide context in relation to the person's family, the community and particularly the attitude of the person. I can even say to the point that they will recognise that the person is someone who is mucking up and is not wanted back in the community. They do not pull any punches.<sup>53</sup>

### **Disadvantaged groups**

7.43 A further matter raised with the committee was the challenge of tailoring a justice reinvestment approach to the needs of disadvantaged groups who are not clustered in one particular location.

7.44 The AHRC suggested that the justice reinvestment approach could accommodate the needs of particular disadvantaged groups by analysing the characteristics of the prison population in pilot communities and then targeting appropriate programs in a reinvestment strategy. The AHRC gave the example of young people coming into contact with the juvenile justice system. As part of the analysis required under a justice reinvestment approach, it may be discovered that non-attendance at school and suspension rates in the community where offenders are located are also very high. Strategies could be implemented to address school attendance and suspensions as well as specific programs to improve future

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52 North Australian Aboriginal Justice Agency, *Submission 47*, p. 5.

53 Mr David Woodroffe, Managing Solicitor, North Australian Aboriginal Justice Agency, *Committee Hansard*, 1 May 2013, p. 9.

employment prospects. The AHRC commented that a justice reinvestment approach provides the means 'to offer location specific crime prevention strategies and customised programs for young people'.<sup>54</sup>

7.45 Analysis of communities may also identify a high level of offenders with psychosocial disability or cognitive impairment in a particular location. Again, strategies and programs could then be put in place to support these communities.<sup>55</sup> In addition, it was noted that the skilling of services within a justice reinvestment approach would ensure that adequate diversion, support and mentoring is available to meet the particular needs of disadvantaged groups.<sup>56</sup>

### **Availability of data**

7.46 The justice reinvestment approach is underpinned by collection and rigorous evaluation of data both at the initial stage with justice mapping and with the evaluation of the programs implemented. The importance of data was highlighted in evaluations of the justice reinvestment approach implemented in the UK. Ms Hudson commented that accurate mapping was difficult in the UK because of the particular challenges of the UK administrative system and its diverse data sets. Ms Hudson stated that, as a consequence, most justice reinvestment initiatives in the UK 'lack the sophisticated, economically driven system-level analysis characteristic of Justice Reinvestment in the United States'.<sup>57</sup>

7.47 Data requirements were also identified by the House of Commons Justice Committee in its review of justice reinvestment. The two key data elements required at the justice mapping stage are the availability of data to input into the mapping process and data on costs of current service provision to offenders in a particular locality both within, and external to, the criminal justice system. At the evaluation stage, the elements of effective evaluation include appropriate performance measures (for example, the amount of 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 House of Commons Justice Committee also noted that there needs to be expertise and capacity to undertake justice mapping and interpret the analysis as well as expertise to interpret results at the evaluation stage.<sup>58</sup>

7.48 The data needed to drive justice reinvestment in the US is extensive and ensures that rigorous and sophisticated analysis can be undertaken. The US Bureau of

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54 Australian Human Rights Commission, *Submission 85*, p. 10.

55 Australian Human Rights Commission, *Submission 85*, p. 10.

56 Ms Emilie Priday, Senior Policy Officer, Australian Human Rights Commission, *Committee Hansard*, 1 May 2013, p. 6.

57 Sara Hudson, 'Panacea to Prison? Justice Reinvestment in Indigenous Communities', *Policy Monographs*, The Centre for Independent Studies, No. 134, 2013, p. 13; see also, The Centre for Independent Studies, *Submission 46*, p. 13.

58 House of Commons Justice Committee, *Cutting crime: the case for justice reinvestment*, First Report of Session 2009–10, Vol. 1, HC 94-1, pp 118, 152.

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Justice Assistance data requirements for sites seeking grants for local justice reinvestment projects includes annual and monthly prison admissions and releases for the last 5 – 10 years; information on the nature of the criminal justice population; and the composition of the prison population.<sup>59</sup>

7.49 The South Australian Justice Reinvestment Working Group provided a list of data which it considered was needed to properly evaluate a suitable area for a justice reinvestment pilot:

- offenders residence at time of offending;
- prisoners release residential address;
- nature and type of offending;
- social demographics of the residential areas;
- prisoners family and cultural background; and
- what services have been and are currently on offer in the residential areas.<sup>60</sup>

#### ***Data availability***

7.50 Submitters noted that there were gaps in the data sets that would be required at both the mapping and evaluation stages of justice reinvestment. The inadequacy of data relating to evaluation is discussed below.

7.51 One of the major sources of data on the justice system is the *Report on Government Services*. The Productivity Commission noted that some indicators included in the report are considered fully developed as there are complete and comparable data for them, so comparisons of performance across states and territories can be made. However, for some other indicators, inadequate data means that reports cannot be made against an indicator, for example, prisoner health. In other areas, data is available but it is not comparable across states and territories, because they collect the data in different ways so the available data is reported with caveats.<sup>61</sup>

7.52 Where data is available, it is often at the state level. Professor Cunneen commented that state-based figures are not the 'fine-grained' information used in the US.<sup>62</sup> In addition, as noted above, some data sets are neither collected nor presented in a consistent manner, making comparison and analysis difficult. Sisters Inside and the National Congress of Australia's First Peoples called for a nationally consistent

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59 Australian Justice Reinvestment Project, *Submission 114*, p. 14.

60 South Australian Justice Reinvestment Working Group, *Submission 28*, p. 10.

61 Mr Lawrence McDonald, Assistant Commissioner, Productivity Commission, *Committee Hansard*, 17 May 2013, p. 9.

62 Professor Chris Cunneen, Chief Investigator, Australian Justice Reinvestment Project, *Committee Hansard*, 1 May 2013, p. 63.

collection of data including the collection of data on family violence, health and housing, referrals to diversionary courts, and access to parole or early release.<sup>63</sup>

7.53 In relation to data that is not available at all, it was noted that in Western Australia there is currently a lack of quality data measuring alcohol and other drug use, mental health rates, and other social issues identified as being found disproportionately amongst the prison population.<sup>64</sup> CAALAS commented that while data collection has improved in the Northern Territory as a result of the Closing the Gap and Stronger Futures initiatives, some critical data relevant to youth offending is not available. This includes data on youth recidivism and the involvement of children in care in the criminal justice system. CAALAS reported the findings of the Review of the Northern Territory Youth Justice System:

To complement its consultative framework, the Review sought to obtain and analyse all relevant data about youth justice in the Territory. Throughout this process however, it became clear that data collection itself was an issue, and a recommendation would be required to improve the collection of all necessary information relating to youth offending.<sup>65</sup>

7.54 Professor David Brown, Australian Justice Reinvestment Project, pointed to figures for receptions into prison as a further example of inadequate data collection. While there are figures derived from the census conducted once a year, this does not provide a complete picture of receptions as it tends to emphasise people on long sentences and misses those moving quickly in and out of the corrections system, for example, those on remand. Professor Brown noted:

The New South Wales inquiry into bail showed...that a very significant proportion, nearly 70 per cent, of prison receptions in a year were people on remand. And about half of those were on remand for less than a week. So there is that picture of large numbers of people going in and out incredibly quickly—and, apart from anything else, causing all sorts of problems for the prison system and its ability to process them. That is completely hidden by looking at the census figures and its snapshot of one day a year.<sup>66</sup>

7.55 The Federation of Community Legal Centres pointed to the situation in Victoria where, unlike New South Wales, Western Australia and South Australia, there is no agency which independently compiles, analyses and publishes crime statistics and prison trends or evaluates court and corrections program outcomes. While the Victorian Ombudsman recommended consideration of the establishment of an independent agency, this has not yet occurred.<sup>67</sup>

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63 National Congress of Australia's First Peoples, *Submission 53*, p. 13; Sisters Inside, *Submission 69*, p. 24.

64 Western Australian Council of Social Services, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*, p. 35.

65 Central Australian Aboriginal Legal Aid Service, *Submission 62*, pp 20–21.

66 Professor David Brown, Chief Investigator, Australian Justice Reinvestment Project, *Committee Hansard*, 1 May 2013, p. 64.

67 Federation of Community Legal Centres, *Submission 93*, p. 4.

7.56 It was also noted that there is little data in some key areas at community level. CAALAS commented that most of the data released by Northern Territory government agencies is Territory-wide, which makes it difficult to provide quantitative evidence on the needs of particular communities.<sup>68</sup> Mr Bonig also indicated that the type of data not available at the community level included offending rate by number of people in the community; rate of return to that community for people post release; and underlying socioeconomic data behind those elements such as housing, education, health, age groups of people that are dropping out of school in that area, prevalence of mental health issues within that area, and family relationship status. Mr Bonig commented that if the data is available, it is probably not being captured for the defined area and is certainly not being made publicly available. Mr Bonig concluded that 'to have a proper justice reinvestment program which is economically and data driven, you need to drill down and get that sort of information'.<sup>69</sup>

### *Sharing of data*

7.57 Submitters commented that in some circumstances, data is available but it cannot be accessed. For example, community organisations submit data for contractual reporting to government however it is rarely made available for research and evaluation. WACOSS commented that:

Unfortunately in practice, data collection and submission for the purposes of contractual reporting is too often a one-way process, where the data gathered is driven by agency priorities and concerns, rather than the interests of evaluating outcomes. Where data *is* submitted by community service organisations, it is seldom seen again; rarely analysed and reported on in a meaningful fashion; and information gathered about comparable programs, agencies or service types is seldom, if ever, accessible to independent researchers.<sup>70</sup>

7.58 It was argued that the current lack of accessibility of government held data by non-government organisations impedes research and non-partisan policy development by community sector organisations.<sup>71</sup> Mr Chris Twomey, WACOSS, stated:

It is actually critically hard to get hold of that data out of many of the government agencies that are funding programs, particularly if we are talking about corrective services and police and so on. The data sharing—and making sure that the data is comparable and consistent—is really

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68 Central Australian Aboriginal Legal Aid Service, *Submission 62*, p. 21; see also Ms Jill Rundle, Chief Executive Officer, The Western Australian Network of Alcohol and Other Drug Agencies, *Committee Hansard*, 17 April 2013, p. 10.

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

70 Western Australian Council of Social Services, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*, p. 30.

71 Community Legal Centres NSW, *Submission 102*, pp 15–16.

critical. So this is why we think there is a crucial leadership role that the Commonwealth can play in this space.<sup>72</sup>

### ***Addressing inadequate data collection***

7.59 While the difficulties with data availability were clearly outlined, evidence was also received that action is being undertaken to address this situation.

7.60 The NJCEOs have also identified issues with the prisoner data sets and have written to the National Corrective Services Statistics Unit (NCSSU) Board of Management requesting it consider specific improvements to the data sets. The request is being considered as part of a review of the ABS corrective services, Australia data set.<sup>73</sup>

7.61 The AIHW also maintains some important data sets including the Juvenile Justice National Minimum Data Set (JJ NMDS). AIHW publishes the reports *Youth justice in Australia* and *Youth detention population* each year. The National Prison Health Data Collection (NPHDC) was carried out in 2009, 2010 and 2012.<sup>74</sup>

7.62 The AIHW noted the importance of the ability to identify the communities that produce a disproportionate number of offenders for a justice reinvestment approach. Information contained in the JJ NMDS could be used to identify the communities where young people under youth justice supervision come from as the JJ NMDS is 'a person-level, longitudinal data set with high levels of quality and coverage'. As it has the ability to track the complete supervision history of chronic young offenders and to identify changes in supervision patterns over time, it would be useful for the purposes of justice reinvestment.

7.63 The AIHW indicated that it is currently working with the states and territories to develop a data set to measure juvenile recidivism. The AIHW advised that the collection 'would allow for the effectiveness of approaches aimed at reducing offending, such as a justice reinvestment approach, to be monitored and evaluated'.<sup>75</sup>

7.64 The data collected by the NPHD has also expanded with data relating to prisoners preparing for discharge from prison being collected from 2012. The AIHW stated that it is holding discussions with jurisdictions to develop new and expanded data in the prisoner health area.<sup>76</sup>

7.65 The Attorney-General's Department also commented that the national partnership arrangements under the COAG Reform Council was one way for progressing further improvements. Mr McDonald commented that it showed some

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72 Mr Chris Twomey, Director Social Policy, Western Australian Council of Social Service, *Committee Hansard*, 17 April 2013, p. 8.

73 Senate Legal and Constitutional Affairs Legislation Committee, *Budget Estimates 2012–13, Answer to question on notice No. 183, Attorney-General's Department*.

74 Australian Institute of Health and Welfare, *Submission 73*, pp 2–3.

75 Australian Institute of Health and Welfare, *Submission 73*, p. 4.

76 Australian Institute of Health and Welfare, *Submission 73*, p. 4.



promise as a mechanism, if the Commonwealth wanted to influence the states and territories in relation to improved data collection. He noted that in areas such as hospital waiting lists and immunisation rates, the states and territories have changed their practices in response to national partnership agreements. Mr McDonald concluded that 'I think in this space, where you might be looking for responses on the education front or on the economic front rather than a direct justice intervention, that might be a good mechanism to go forward'.<sup>77</sup>

## **Policy and program options**

7.66 The second step of the justice reinvestment approach is to develop policy and program options to address the identified drivers of crime. Options within two areas have generally been identified: those within the criminal justice system (often legislative) such as bail and remand arrangements; and programs within communities and the corrections system which seek to divert offending and reoffending and address the determinants of crime.

### ***Criminal justice options***

7.67 In jurisdictions in Australia, legislation aims to divert people away from the corrections system, for example, the Young Offenders Acts in New South Wales, Western Australia and South Australia seek to divert young people with minor offences from custody. However, recent changes to the state and territory justice systems will mean increased incarceration. These include the introduction of mandatory sentencing, minimum terms, stop and search powers, stricter sentences for minor offences and reduced parole.<sup>78</sup>

7.68 The issue of mandatory sentencing was addressed in evidence. It was noted mandatory sentencing takes away judicial discretion to divert offenders to non-custodial programs and increases incarceration rates. Often the time spent in prison is short: in the Northern Territory, which has mandatory sentencing legislation, 60 per cent of Indigenous prisoners are incarcerated for less than six months, and 38 per cent for less than three months. The cycling of prisoners through the corrections system is particularly detrimental, as well as costly. Professor Cunneen stated:

...the constant cycling is in fact more destructive than prisoners serving longer periods of time because it is not just pulling those people out; it is when they re-enter the community that the problems re-occur.<sup>79</sup>

7.69 It was argued that incarceration rates would decrease if incarceration was seen by governments as a last resort.<sup>80</sup> However, it was noted that often these laws have

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77 Mr Lawrence McDonald, Assistant Commissioner, Productivity Commission, *Committee Hansard*, 17 May 2013, p. 9.

78 Mr Chris Twomey, Director Social Policy, Western Australian Council of Social Service, *Committee Hansard*, 17 April 2013, p. 8.

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

80 Mr Craig Comrie, Chief Executive Officer, Youth Affairs Council of Western Australia, *Committee Hansard*, 17 April 2013, p. 26.

been part of a tough on crime/law and order agenda and that governments have chosen to react to public perceptions rather than evidence of actual increases in crime.<sup>81</sup>

7.70 At the same time that some governments have pursued a tough on crime agenda, economic considerations have resulted in the closure of diversion courts such as drug and alcohol courts, for example SMART Court in the Northern Territory. This court was specifically designed to bring a therapeutic jurisprudence approach to people with drug and alcohol issues.<sup>82</sup> In Queensland, all diversion courts, including the Special Circumstances Court, have recently been closed.<sup>83</sup> In NSW, the Youth Drug and Alcohol Court was closed.<sup>84</sup> Dr Caitlin Hughes commented:

Certainly there have been some concerning changes in many parts of Australia—the Northern Territory and also Queensland—with the closure of three drug courts there. This was in spite of a very significant evidence base showing that the programs not only worked but that they were making significant contributions to the offenders and the community. So the steps against the use of the proven strategy are certainly retrograde.<sup>85</sup>

7.71 However, the committee received evidence that a new mental health court has been recently established in Western Australia.<sup>86</sup>

### ***Program options***

7.72 A necessary part of the justice reinvestment approach is having programs available which will successfully address the drivers of crime. As Mr McDonald, Productivity Commission, stated 'justice reinvestment only pays off if the interventions themselves are successful'.<sup>87</sup>

7.73 The NJCEOs commented that 'because justice reinvestment strategies are underpinned by projections of the quantifiable impact of crime reduction initiatives and associated cost reductions, the existence of a strong evidence base is considered

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81 See for example, Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Committee Hansard*, 17 April 2013, p. 18; Youth Affairs Council of Western Australia, *Submission 54*, p. 21.

82 Mr Jared Sharp, Advocacy Manager, North Australian Aboriginal Justice Agency, *Committee Hansard*, 1 May 2013, p. 14.

83 Mrs Debbie Kilroy, Chief Executive Officer, Sisters Inside Inc, *Committee Hansard*, 1 May 2013, p. 42; Anti-Discrimination Commission Queensland, *Submission 71*, p. 12.

84 Dr Caitlin Hughes, Research Fellow, National Drug and Alcohol Research Centre, *Committee Hansard*, 1 May 2013, p. 52.

85 Dr Caitlin Hughes, Research Fellow, National Drug and Alcohol Research Centre, *Committee Hansard*, 1 May 2013, p. 51.

86 Mr Rodney Astbury, Chief Executive Officer, Western Australian Association for Mental Health, *Committee Hansard*, 17 April 2013, p. 14.

87 Mr Lawrence McDonald, Assistant Commissioner, Productivity Commission, *Committee Hansard*, 17 May 2013, p. 8; see also, Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 14.

essential'.<sup>88</sup> However, many submitters pointed to the difficulties of obtaining robust evidence about effective measures to reduce crime and incarceration, particularly in relation to the outcomes of programs for Indigenous offenders. This is particularly the case when trying to draw a conclusive connection between programs aimed at the determinants of crime – education and training, housing, health – and the change to justice outcomes. The Department of Communities and Social Inclusion, South Australian Government, commented:

Simply shifting resources to unproven wish list programmes will not however support sustainable change. The experience in the United Kingdom of expending a great deal of funding on parenting programmes, for example, showed limited outcomes in preventing local area crime when the programmes implemented were directed as general support programmes rather than targeted programmes.<sup>89</sup>

7.74 The following discussion canvasses the problems of evaluation of programs followed by challenges in the delivery of programs, particularly in Indigenous communities.

#### *Evaluation of programs*

7.75 Evaluation is a critical part of justice reinvestment in the United States where evaluation is rigorous, sophisticated and effective.<sup>90</sup> However, it was argued that evaluation of most programs in Australia does not reach the benchmarks required of a justice reinvestment approach. Mr McDonald commented that social programs are 'often more difficult to evaluate and they are often longer term, so the number and the rigour of the evaluations is relatively limited'.<sup>91</sup> In addition, evaluations are not undertaken with a view to assessing outcomes rather they focus on process (ensuring that the programs are well administered), are undertaken internally and/or are not publicly available.<sup>92</sup> Evaluations may also be expensive, and many small programs that may be successful do not have funding to undertake an effective evaluation process.<sup>93</sup>

7.76 Mr Duggan, Attorney-General's Department, commented on the scarcity of evidence:

Unfortunately, in Australia there is currently...a scarcity of robust evidence about effective measures to reduce rates of crime and incarceration. That

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88 NJCEOs Working Group, *Justice Reinvestment/Causes of Crime*, p. 9.

89 Department of Communities and Social Inclusion, South Australian Government, *Submission 111*, p. 10.

90 James Austin et al, *Ending Mass Incarceration: Charting a new Justice Reinvestment*. 2013, p. 4.

91 Mr Lawrence McDonald, Assistant Commissioner, Productivity Commission, *Committee Hansard*, 17 May 2013, p. 11.

92 NJCEOs Working Group, *Justice Reinvestment/Causes of Crime*, p. 10.

93 Ms Emilie Priday, Senior Policy Officer, Australian Human Rights Commission, *Committee Hansard*, 1 May 2013, p. 4.

does not mean there are not good programs out there that are doing good work; it just means that we cannot prove they do. This is particularly so in relation to outcomes for programs for Indigenous participants. The current quantity, quality and availability of evaluations about what justice programs work in this area is not good.<sup>94</sup>

7.77 Submitters stated that problems with evaluation arise because of a lack of adequate data. Data needed for evaluations must be built into programs before they are rolled out. This does not always occur, either because it is not considered during the development phase or because of funding concerns.<sup>95</sup>

7.78 Another issue identified is that evaluation is hampered by the method of funding of programs. Often programs are funded for a pilot and then the program is defunded after a period so that no evaluation can be carried out as to whether or not the program has been successful.<sup>96</sup>

7.79 Mr McDonald also commented on the difficulties that silos place on evaluation. For example, the Productivity Commission would like to develop an indicator which measures whether people get access to appropriate support services when they leave prison that will help them integrate into the community and to get a job. However, once a person leaves prison, they become the responsibility of a different portfolio, and the two data systems are not comparable. As a consequence, the proportion of people who leave prison leave into a case managed or a supported system cannot be identified. Mr McDonald concluded that '[a]lthough it is an indicator we would like to work on, the silos are stopping us from developing an appropriate data set to support it'.<sup>97</sup>

7.80 There are additional difficulties in evaluating programs in Indigenous communities with the Productivity Commission agreed that evaluation of Indigenous programs was inadequate. The lack of robust evaluation of interventions was identified during a roundtable into the role of evaluation in improving Indigenous policy.<sup>98</sup> The unique methodological and political challenges in evaluating Indigenous programs were identified as:

- Indigenous communities are often quite small and as a result most data sources are unsuitable for Indigenous program evaluation because they do not have sufficient numbers of respondents for analysis;

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94 Mr Lawrence McDonald, Assistant Commissioner, Productivity Commission, *Committee Hansard*, 17 May 2013, p. 14.

95 Mr Jonathon Hunyor, Principal Legal Officer, North Australian Aboriginal Justice Agency, *Committee Hansard*. 1 May 2013, p. 12.

96 Mr Jonathon Hunyor, Principal Legal Officer, North Australian Aboriginal Justice Agency, *Committee Hansard*. 1 May 2013, p. 12.

97 Mr Lawrence McDonald, Assistant Commissioner, Productivity Commission, *Committee Hansard*, 17 May 2013, p. 9.

98 Productivity Commission, *Better Indigenous Policies: The Role of Evaluation*, Roundtable Proceedings, Canberra, 22–23 October 2012.

- difficulties with defining a meaningful control group against which to measure impacts;
- the population of Indigenous communities are fluid, thus it is difficult to estimate the effect of community targeted treatment on the individuals treated;
- effects of the Indigenous community selection process itself – normally long drawn-out negotiations between government and Indigenous elders – will be a component of what is measured in the estimated treatment impact; and
- given the number of programs which can run concurrently for the Indigenous population, it is very difficult to evaluate any single program in a particular Indigenous community.<sup>99</sup>

7.81 The NJCEOs also commented on evaluation of Indigenous programs and stated that 'without robust evaluations of Indigenous justice programs which demonstrate quantitative outcomes, it will be difficult for Australian governments to develop and confidently implement justice reinvestment strategies'.<sup>100</sup>

#### *Examples of existing programs*

7.82 While there are substantial difficulties in undertaking evaluations, the effectiveness of some existing programs have been evaluated. The following discussion looks at programs in the areas of diversion within the justice system; post-release strategies; and the social determinants of crime.

7.83 The 2006 review of the Western Australia Drug Court found that the Drug Court was more expensive than a community-based order but far less costly than a custodial order. However, savings of approximately \$67,000 per Drug Court client were calculated based on a comparison of the sentence received and that which the person would have received if not involved with the program. When the lower reoffending rates of Drug Court participants were taken into account, the study estimated that each fresh offending episode cost the Drug Court just over \$36,000 compared with \$43,000 for the community-based group and \$47,000 for the prison group, thus rendering the Drug Court more cost effective than the other options. In addition, Drug Court involvement had a beneficial effect on recidivism with participants being 17 per cent less likely to return to correction than prisoners and 10.4 per cent less likely than those on community orders.<sup>101</sup>

7.84 The committee was also provided with the recently completed economic analysis for Aboriginal and Torres Strait Islander offenders in relation to prison versus residential treatment. The analysis was undertaken by Deloitte Access Economics on behalf of the National Indigenous Drug and Alcohol Committee of the Australian

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99 DA Cobb-Clark, 'The case for making public policy evaluations public', in Productivity Commission, *Better Indigenous Policies: The Role of Evaluation*, Roundtable Proceedings, Canberra, 22–23 October 2012, pp 85–86.

100 NJCEOs Working Group, *Justice Reinvestment/Causes of Crime*, p. 9.

101 Western Australian Council of Social Services, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*, pp 20, 31.

National Council on Drugs. The cost-benefit analysis found considerable benefits associated with the diversion of Indigenous offenders into community residential drug and alcohol rehabilitation services instead of incarceration. These benefits were not only financial but also improvements in health and mortality of offenders and included:

- The total financial savings associated with diversion to community residential rehabilitation compared with prison are \$111 458 per offender.
- The costs of treatment in community residential rehabilitation services are substantially cheaper than prison. Diversion would lead to substantial savings per offender of \$96 446, based on a cost of community residential rehabilitation treatment of \$18 385 per offender). Even if the high side estimate of the cost per offender for residential rehabilitation treatment was used (\$33 822), the saving would still be substantial at around \$81 000.
- Community residential treatment is also associated with better outcomes compared with prison — lower recidivism rates and better health outcomes, and thus savings in health system costs. The savings associated with these additional benefits of community residential treatment are approximately \$15 012 per offender.
- In addition, treatment of Indigenous offenders in the community rather than in prison is also associated with lower mortality and better health-related quality of life. In monetary terms, these non-financial benefits have been estimated at \$92 759 per offender.<sup>102</sup>

7.85 A highly successful pre and post release program is the Throughcare Project in the Northern Territory. Throughcare is funded by the Commonwealth Government, initially as a pilot, and supported by NAAJA. It provides intensive rehabilitation and reintegration services for Aboriginal prisoners. It utilises a strength-based approach to assist prisoners to address their diverse transitional needs including rehabilitation, accommodation, employment, education, training, health, life skills, reconnection to family and community and social connectedness.<sup>103</sup>

7.86 The goal of the Project is to enable clients to succeed upon their return to their community and reduce repeat offending. Caseloads are small (a maximum of 15 clients) to ensure that clients receive an appropriate level of support. The client is case managed for six months prior to and post release. Ms Collins, NAAJA, stated that the work is very intensive and detailed.<sup>104</sup> However, the success rates have been high with a reoffending rate of about 10 per cent for the clients in the program. This

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102 Deloitte Access Economics, *An economic analysis for Aboriginal and Torres Strait Islander offenders: prison vs residential treatment*, ANCD research paper 24, 2013, p. xi.

103 North Australian Aboriginal Justice Agency, *Submission 47*, p. 3.

104 Ms Priscilla Collins, Chief Executive Officer, North Australian Aboriginal Justice Agency, *Committee Hansard*, 1 May 2013, p. 10.

has been mainly associated with breaching conditions rather than reoffending. Mr Sharp, NAAJA, commented:

In the Northern Territory the recidivism rate is closer to 50 per cent. That is an example of an Aboriginal-specific approach to intensive case management. When you support people to reintegrate back into the community there is a lower incidence of reoffending.<sup>105</sup>

7.87 Mr Sharp acknowledged that the program has been running for only two years, however the recidivism rate was not the only measure of its success. He stated that Throughcare targeted clients most at risk of reoffending. While reoffending may occur, 'even in those instances, we can see [the] enormous strides that they are taking in their lives to address some of the issues. Sure, they may go back to jail that next time but they might be on a trajectory where they are committing less serious offences and less likely to reoffend in the future'.<sup>106</sup>

7.88 The Attorney-General's Department commented that it considered that the Throughcare model provided benefits to assist with lowering recidivism. Mr Duggan stated that investment in breaking the cycle of recidivism improves community safety.<sup>107</sup>

7.89 In the United States, a particularly successful early intervention program was the Nurse Family Partnership (NFP) program. The NFP pairs nurses with first-time, low-income mothers during the child's first two years.<sup>108</sup> It is used in 29 states in the US, for example in Texas the program was provided to 2000 families in high risk communities in its first year of operation.<sup>109</sup> The model has been replicated in the United Kingdom.

7.90 Evaluation of the NFP has pointed to a range of positive outcomes including improved prenatal health, reduction in childhood injuries, increased involvement by fathers, higher child developmental scores, improved readiness for school, less involvement in the criminal justice system of teenagers (15–20 year follow up of NFP children) and lower rates of substance misuse in teenagers (NFP children) and mothers.

7.91 The Commonwealth is funding the NFP model as part of the Closing the Gap initiative. In announcing the establishment of the NFP in Australia in 2008, the then Minister for Health and Ageing, the Hon Nicola Roxon, stated that the NFP 'will be

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105 Mr Jared Sharp, Advocacy Manager, North Australian Aboriginal Justice Agency, *Committee Hansard*, 1 May 2013, p. 11.

106 Mr Jared Sharp, Advocacy Manager, North Australian Aboriginal Justice Agency, *Committee Hansard*, 1 May 2013, p. 11.

107 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 16; see also Mr Andrew Walter, Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 17.

108 Council of State Governments Justice Center, *The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime, and Corrections Spending*, 2011, p. 59.

109 Just Reinvest NSW, *Submission 44*, p. 24.

adapted here to reflect the Australian health care system and the geographic and cultural diversity across Indigenous communities'. The Government committed to initially establish up to 10 sites to support the program.<sup>110</sup>

7.92 The Australian Nurse Family Partnership Program (ANFPP) is open to women less than 28 weeks pregnant with an Indigenous child and living (or intending to stay) in a Service Area. Mothers will be supported by trained staff through structured programs. ANFPP teams will consist of a nurse supervisor, nurse home visitor and Aboriginal Community Workers. The ANFPP aims to:

- improve health outcomes for women pregnant with an Aboriginal and/or Torres Strait Islander child by helping women engage in good preventative health practices;
- support parents to improve their child's health and development; and
- help parents develop a vision for their own future, including continuing education and finding work.<sup>111</sup>

7.93 Currently there are three organisations in the program located at Cairns, Alice Springs and Wellington.

7.94 A formative evaluation of the ANFPP was undertaken by Ernst & Young in 2011. The evaluation found that despite the short time in which the program had been running, three of the four sites taking part in the evaluation believed they were seeing significant benefits from the program. Further, the long establishment period and consequent deficit in reliable data describing the entire span of program delivery, suggests more time is required to fully assess the program's appropriateness and effectiveness.<sup>112</sup>

7.95 The Attorney-General's Department provided information on evaluations of programs under the National Indigenous Law and Justice Framework. As part of the Framework, the Commonwealth provided \$2 million to undertake evaluations of state and territory programs. Five evaluation projects looked at 40 different activities across Australia.<sup>113</sup> Mr Duggan commented that the evaluation did not identify any standout programs. Some programs were unable to demonstrate outcomes because of difficulties in evaluation such as poor data collection and lack of evaluation processes built into programs. Those that could demonstrate outcomes were 'more around the integrity and legitimacy of the justice process rather than having a big effect in terms of reducing recidivism'. Other programs which were able to demonstrate genuinely

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110 The Minister for Health and Ageing, the Hon Nicola Roxon, MP, 'Helping close the gap through innovative home visit program', *Media Release*, 5 February 2008.

111 Central Australian Aboriginal Congress, *From America to our homes: ANFPP – A new program to support young Indigenous mums and their children*.

112 Ernst & Young, *ANFPP Stage 1 Formative Evaluation Final Report*, <http://www.anfpp.com.au/evaluation>

113 Mr Andrew Walter, Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 15.



positive outcomes were very specific, location based and quite small. A number of good diversion programs exist, but it was stated that their success to a large degree depends on the person running the program.<sup>114</sup>

7.96 As a result of its evaluations and analysis, the Attorney-General's Department stated that justice reinvestment might look at reducing recidivism in violent offenders post release:

In comparison to the US, most Australian prisoners are incarcerated exactly for that—for serious or violent offences. In the short term, this may mean that rather than looking at options to reduce the likelihood of violent offenders being sentenced to prison, a justice reinvestment strategy in the Australian context might focus on reducing violent recidivism post release.<sup>115</sup>

7.97 In support of this focus, Mr Duggan noted that modelling undertaken by the New South Wales Bureau of Crime Statistics and Research in 2009 found that reducing the rate of reimprisonment among Indigenous prisoners by 10 per cent would reduce the Indigenous sentenced prison population by an estimated 365 inmates. A 10 per cent reduction in the rate at which new-sentenced Indigenous prisoners arriving in custody would only reduce the prison population by 16 inmates.<sup>116</sup> Australian Bureau of Statistics data also indicated that there is a very high recidivism rate amongst violent offenders. In addition, a high proportion of those facing reimprisonment were being reimprisoned because of violent offences, even if they had been imprisoned for a different type of offence initially.<sup>117</sup>

7.98 Mr Duggan concluded:

The evidence, we believe, is overwhelming that that is where that greater investment is needed, because if you break the cycle of recidivism you also improve community safety, but it is not an easy political argument to have because, effectively, you are putting resources into what is sometimes the hard end of this process.<sup>118</sup>

### *The Closing the Gap Clearinghouse*

7.99 The Productivity Commission noted that there is an urgent need for more research and evaluation to identify successful Indigenous programs and the reasons for their success. The Council of Australia Governments (COAG) has established the

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114 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 14.

115 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 13.

116 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 13.

117 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, pp 13-14.

118 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 16.

Closing the Gap Clearinghouse to compile, disseminate, and promote research and program evaluation in the field of Indigenous policy. The Productivity Commission noted that the Clearinghouse is becoming a valuable resource for policy makers and Indigenous communities, and is the source of some of the 'things that work' case studies in this report.<sup>119</sup> The Productivity Commission went on to comment that 'the Clearing House will only achieve its full potential if governments commit to funding and publishing more evaluations and research'.<sup>120</sup>

7.100 Mr McDonald also commented that the Clearing House looks at programs across all of the Closing the Gap strategic areas, which include safe and supportive communities that have a particular justice focus within them. He stated that justice programs are some of the weaker areas in this work as there are not very many evaluated programs available.<sup>121</sup>

### ***Delivery of programs***

7.101 One of the key issues in the delivery of justice reinvestment programs in the community was the level of service capacity and integration of NGOs, community commitment and access to technical advice and support.<sup>122</sup> Community Legal Services NSW commented that there is a lack of individuals with the relevant high level skills sets.<sup>123</sup> This issue was also highlighted by Juvenile Justice NSW which pointed to the difficulties with the management of adolescents and young people with challenging behaviours and the limited skills in the NGO sector to do so. Juvenile Justice NSW stated that it has frequently experienced problems sourcing services from NGOs as young people have often burned their bridges at refuges, crisis accommodation and other support services. The challenging behaviour of these young people is symptomatic of their complex needs, which if left unmet, often lead them to the justice system. It was argued that a concerted capacity building program to expand the knowledge base of NGOs was required.<sup>124</sup>

7.102 Mr Twomey, WACOSS, commented that building capacity for service integration will be important to ensure that the various services accessed by an individual or family are addressing all their needs. In particular, services will need the capacity to identify and address underlying issues such as housing stress or alcohol and drug issues which may impact on achieving a sustainable outcome.<sup>125</sup>

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119 Productivity Commission, *Overcoming Indigenous Disadvantage 2011*, p. 2.11.

120 Productivity Commission, *Overcoming Indigenous Disadvantage 2011*, pp 3, 15–16.

121 Mr Lawrence McDonald, Assistant Commissioner, Productivity Commission, *Committee Hansard*, 17 May 2013, p. 10.

122 National Association of Community Legal Centres, *Submission 103*, pp 16–17.

123 Community Legal Centres NSW, *Submission 102*, pp 15–16

124 Juvenile Justice NSW, *Submission 124*, pp 12, 15.

125 Mr Chris Twomey, Director Social Policy, Western Australian Council of Social Service, *Committee Hansard*, 17 April 2013, p. 16.

7.103 In relation to building capacity, the Report of the Youth Justice Think Tank recommended that 'community sector peak bodies be funded to build capacity and provide coordination for a collaborative approach to justice reinvestment, including evidence-based service planning and evaluation, data collection and analysis, policy development and advocacy'.<sup>126</sup>

7.104 At the program level, many submitters pointed to difficulties with accessing and retaining funding for programs. This is in part due to funding programs reflecting the electoral cycle so that many programs receive between only one and four years of funding. These funding cycles inhibit the building of trust with communities, increases the program staff attrition rate and ultimately reduces the efficiency of the programs resulting in poor cost efficiency.<sup>127</sup> Ms Hopkins, Just Reinvest NSW, for example, commented that

Often they will lose their funding or have their funding cut. In justice reinvestment, if a program is funded, the monitoring and evaluation mechanisms would require that that program demonstrate outcomes. If it demonstrated outcomes, the government would commit under a justice reinvestment framework to reinvest a proportion of savings into those sorts of programs. So there would be a model for long-term sustainability of funding. That would have a positive influence on the effectiveness of these programs and, indeed, the evidence base around these programs which is so sadly lacking.<sup>128</sup>

7.105 Mr Duggan provided information which indicated that lack of long term funding commitment is being addressed by government. He stated that there has been a move towards longer term funding contracts more generally with the Commonwealth committed to achieving this under the national compact with the not-for-profit sector. While the Attorney-General's Department currently funds programs for three years, it would like to move, for some of those programs, to five-year contracts.<sup>129</sup>

#### *Delivery of Indigenous programs*

7.106 The delivery of programs in Indigenous communities was seen as particularly challenging. NATSILS cited comments which indicated that the processes which characterise justice reinvestment 'align well with what is acknowledged to be "best-practice" in program implementation in Indigenous communities'. These processes include bipartisanship and consensus-driven solutions, the devolution of decision-making to the local level, the localisation of solutions, and the high level of input from the high-stakes communities about what might address criminogenic factors in that

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126 YACWA, WACOSS, Youth Legal Services, *The report and recommendations of the Youth Justice Think Tank*, February 2013, p. 3.

127 Just Reinvest NSW, *Submission 44*, pp 22–23.

128 Ms Sarah Hopkins, Just Reinvest NSW, *Committee Hansard*, 1 May 2103, p. 23.

129 Mr Kym Duggan, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 17 May 2013, p. 16.

particular place. In addition, the democratic nature of decision-making in the justice reinvestment methodology 'is a significant departure from the way that government has traditionally approached policy making for Indigenous communities, but it coheres with what Indigenous advocates have always said about how to give programs implemented in Indigenous communities the best chance of success: by letting communities lead the direction of those strategies'.<sup>130</sup>

7.107 However, other submitters argued that past experience of Indigenous communities with government programs has often been less than satisfactory, for example, funding changes have meant the cessation of programs. In order for justice reinvestment programs to be implemented in Indigenous communities, governments will have to rebuild trust within the community.

7.108 CIS also questioned whether Indigenous communities would be able to support the alternative solutions to be delivered within a justice approach. For example, there are low levels of literacy, numeracy and work readiness in Indigenous communities. CIS pointed to the strategy to get members of remote South Australian Aboriginal communities to become community constables. This is failing, with 9 out of 12 community constable positions vacant. CIS commented that civil society relies on the effective functioning of civil institutions: if these are 'weakened (or do not exist, as is the case for remote Indigenous communities such as Yuendumu), then the normative foundation for a shared commitment to the rule of law is undermined (or does not exist)'.<sup>131</sup>

7.109 The lack of interpreter services was raised by the Law Society Northern Territory. The Society argued that the most significant barrier to the effectiveness of programs is that interpreters are not used. As a consequence, the impact is limited and this substantially limits access to rehabilitation for remote Aboriginal prisoners.<sup>132</sup>

7.110 Mr Hunyor concluded:

...that we do have a lot of data that categorically establishes what we know does not work, and that is prison. It is harder for us to have the hard evidence to establish what things may work, although we have a fair idea from working in the sector and from seeing the results what we think will work. But what we are confident in saying does not work, and everyone should be confident in saying does not work, is jail.<sup>133</sup>

## Conclusion

7.111 The preceding discussion highlights some of the challenges of implementing a justice reinvestment approach in Australia. The committee does not consider these challenges to be so difficult or so complex as to negate the value of a justice

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

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

132 Law Society Northern Territory, *Submission 101*, p. 3.

133 Mr Jonathon Hunyor, Principal Legal Officer, North Australian Aboriginal Justice Agency, *Committee Hansard*, 1 May 2013, p. 12.

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reinvestment approach. Rather, they present an opportunity to identify new approaches within the overarching philosophy of justice reinvestment.

7.112 The committee acknowledges that without a multipartisan approach there is the potential for justice reinvestment in Australia to fail. However, the committee considers that there are opportunities to promote multipartisan/multijurisdictional support for justice reinvestment as evidence was received of shifts in the thinking of some governments.

7.113 The systemic challenges such as barriers between and within government that hamper the comprehensive and integrated approach to the delivery of policy options, are complex and long standing. While it will be difficult to address these matters, there are benefits for governments and the community in integrated, effective and efficient service delivery.

7.114 There was debate in the evidence in relation to the economic benefits to be gained through a justice reinvestment approach in Australia. The committee acknowledges that there are significant differences between the corrections landscape in Australia and that of the United States. However, it is not only the savings in the corrections system that result from a justice reinvestment approach; there are the direct savings in other services such as police and courts. In addition, the committee considers that the long term savings to the economy of addressing the social determinants of crime are significant and may far outweigh the immediate impact on the corrections budget.

7.115 The committee has noted the problems with the availability of data and the lack of rigorous evaluation of programs. This is a significant problem, but one which the committee considers can be addressed. In relation to data, lack of consistency in data sets across jurisdictions is a long standing problem. This is being addressed by the Australian Institute of Health and Welfare, the Productivity Commission and the Australian Bureau of Statistics in many areas. However, the committee considers that the particular data needs within justice reinvestment require a concerted effort to improve data collection.

### **Recommendation 1**

**7.116 The committee recommends that the Commonwealth take a leading role in identifying the data required to implement a justice reinvestment approach and establish a national approach to the data collection of justice indicators.**

### **Recommendation 2**

**7.117 The committee recommends that the Commonwealth make a commitment to sharing relevant data held by Commonwealth line agencies with justice reinvestment initiatives in other jurisdictions.**

7.118 The committee notes the evidence received about the need for sustainable funding of programs, beyond the electoral cycle, to enable their proper development, and the building of trust with communities, thereby maximising their efficiency and the opportunity to obtain a realistic appraisal of their effectiveness.

7.119 The committee also notes the evidence received about evaluations of programs, particularly the comments of the Attorney-General's Department. The committee considers that while there are difficulties in ensuring robust evaluation, there are many justice reinvestment type programs being delivered which have been shown to have significant positive outcomes. In addition, the committee considers that some successful programs may not have been identified as having an outcome on the justice system because of a lack of focus on this aspect.

### **Recommendation 3**

**7.120 The committee recommends that the Commonwealth, State and Territory governments recognise the importance of long term, sustainable funding for programs including adequate provision for robust evaluation.**

7.121 The committee has also considered the Attorney-General Department's view that justice reinvestment in Australia might focus on reducing violent recidivism post release and acknowledges the success of the Throughcare program in the Northern Territory in this regard. However, the committee notes that, while this is a very worthwhile aspect, this would represent a very narrow focus on what must be an integrated approach to addressing the determinants of crime.

7.122 The committee notes the work of the Closing the Gap Clearinghouse. The committee also considers that a central clearinghouse is required to assist in identifying successful justice reinvestment strategies within all communities in Australia.

### **Recommendation 4**

**7.123 The committee recommends that the Commonwealth consider the establishment of a justice reinvestment clearinghouse to compile, disseminate, and promote research and program evaluation in all communities.**

7.124 Addressing disadvantage, particularly where disadvantage is deep and persistent, is complex. There will be significant challenges in identifying the right policies, services and criminal justice responses; implementing those policies, and conducting evaluations. Also the benefits of justice reinvestment may take some time to eventuate. However, the committee considers that justice reinvestment has sufficiently attractive attributes to warrant genuine consideration in Australia.