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Supplementary evidence to the Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into Indigenous youth and the criminal justice system

Australian Human Rights Commission

Submission by the Aboriginal and Torres Strait Islander Social Justice Commissioner

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1 Introduction

1. The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Mick Gooda, (the Commissioner) provided a written submission to the Inquiry into Indigenous youth and the criminal justice system (the Inquiry) on 14 January 2010.

2. The Commissioner and Emilie Priday (Policy Officer, Social Justice Unit) attended the Roundtable Hearing on 4 March 2010 and presented evidence around justice reinvestment and other relevant initiatives for Indigenous young people in the criminal justice system.

3. Further to this, the Committee has requested answers to a number of questions on justice reinvestment. This supplementary evidence will attempt to answer these questions, although it is noted that some of these questions are outside of the scope of our current research.

2 Supplementary questions on justice reinvestment

2.1 What are the challenges involved with justice reinvestment?

4. *Gaining bipartisan support.* The reason justice reinvestment is working so well in the United States is that politicians from both sides have agreed on the urgency of reducing imprisonment, based on both fiscal and social responsibility. Bipartisan support removes the 'law and order auction' where both sides are striving to be seen as tougher on crime, without due consideration of the costs and efficacy of imprisonment.

5. Bipartisan support in Australia will be a challenge, however, the level of bipartisan agreement on Indigenous affairs through the Closing the Gap agenda at a federal level may be a starting point.

6. *Getting government departments to work together.* A trial program would need the cooperation of the Courts, Police, Juvenile Justice/Corrections, Community Services (for a juvenile trial), Health, as well as Non Government Organisations and of course the community.

7. This challenge is not insurmountable and there are good examples of interagency cooperation in programs like the NSW Youth Drug and Alcohol Court.

8. Interagency cooperation is also a key part of the federal government's Social Inclusion Strategy that guides all social policy development.

9. *Getting the community involved.* Justice reinvestment is not just a bureaucratic tool. In its essence it is about returning more control of justice to the local area. Indigenous communities will need to feel they have real engagement and that it is not just another policy imposition from government. This also means moving at a pace that the community feels comfortable with.

10. *Finding the right support services and programs in local areas to invest in.* It is crucial that priority funding goes to Indigenous organisations rather than mainstream government departments and organisations where the culturally security of the programs may be in question. While there is certainly a role for investing in government services at the front end of the corrections continuum, for example, court based diversionary programs and offender treatment programs run by corrections/juvenile justice departments, there should be a considered strategy for building the capacity of Indigenous organisations and service providers.

2.2 How practically would funding be reinvested in Australian criminal justice systems?

11. Often justice reinvestment has come about in the US is when states are faced with the prospect of needing to build a new jail. This is when politicians have the opportunity to think about alternative ways to use the money that is ear marked for building the new prison. All the states and territories around Australia have either commenced building or planning for new prisons/ juvenile detention centres, making it a practical time to consider reinvesting in Australian criminal justice systems.

12. For instance, it is estimated that if the current growth in prisoners continues in NSW, the government will need to build another new jail every two years. This will come at cost of $170 million extra each year from 2015 just to run the prisons, not including building costs.

13. The NT is also spending $350 million on a new prison and the WA are also building a new prison in the Kimberley which will house mainly Indigenous offenders. Indigenous community groups in both those places have argued that the money would be better spent on services and support for communities.

14. In the *Social Justice Report 2009* we recommended that all state and territory governments consider justice reinvestment in tandem with their plans to build new prisons. A percentage of funding that is targeted to prison beds should be diverted to trial communities where there are high rates of Indigenous offenders.

15. One of the key principles of justice reinvestment is the strong research methodology and evidence based decision making. Trial sites should be selected based on demographic mapping to find out which communities have both high concentrations of offenders and low levels of targeted service delivery.

16. Our very preliminary research the *Social Justice Report 2009* highlights places like Mt Druitt, Dubbo, Kempsey, Bourke, Broome, Port Augusta as possible locations for juvenile/ young adult trial sites.

17. Once trial communities are agreed, it would be necessary to involve community, service providers and government to develop a local area justice

reinvestment plan. It is envisaged that where possible the local Indigenous community justice groups will be central to this process.

18. A local justice reinvestment plan will outline the areas of need that might respond best to crime prevention strategies. Based on the US experience and Australian research on Indigenous offender needs, it is likely that funds would be allocated particularly for community based rehabilitation, alcohol and other drug treatment, mental health services, healing services and youth recreation and development programs.

2.3 What are the short term and long term justice reinvestment options? Are there potentially adverse outcomes in the short term for prisoners following any reallocation of funds consistent with a justice reinvestment strategy?

19. The most realistic short term option for getting a justice reinvestment trial up and running are either reallocating a portion of capital work funding as outlined above, or allocating a specific amount of money for an initial trial. In consultation with the community, this money would be used to fund innovative crime prevention programs in the local area. The funding allocation would be assessed through an evaluation of the trial implementation and outcomes.

20. While funding is obviously a crucial element in the success of justice reinvestment, it is also important to ensure that the necessary research underpins the process in both the short and long term.

21. This is a two-fold process. Firstly, it is important to have the demographic mapping component to ensure that the right communities are targeted, based on the number of prisoners from particular local areas. This research is still not fully developed in Australia but the Commission is aware that the Australian Institute of Criminology is currently investigating these methodologies.

22. Secondly, there needs to be an analysis of the factors impacting on Indigenous young people entering the criminal justice system. For instance, our previous submission noted the impact of NSW bail legislation on Indigenous young people being remanded. Similarly, harsh penalties for traffic offences in the Northern Territory is also leading to a large number of Indigenous young people being imprisoned. In both cases, justice reinvestment proposes a change to these systemic factors that lead to imprisonment.

23. Legislative change is a longer term option but if a local trial was established which included key interagency partners, and in particular cooperation with local Magistrates, it is likely that informal diversionary processes could be established.

24. In relation to potential short term adverse consequences for prisoners following reallocation of funds, evidence from the United States does not seem to indicate any adverse consequences for prisoners. In fact, in many cases

there have been positive consequences for prisoners as justice reinvestment has been used to fund additional drug and alcohol treatment beds in custody.

2.4 What measures does the Australian Human Rights Commission propose could be implemented to ensure the rehabilitative capacity of custodial institutions is not diminished?

25. It would be counterproductive if justice reinvestment resulted in a diminished rehabilitative capacity of custodial institutions. However, as outlined above, justice reinvestment has actually increased the rehabilitative capacity of some prisons by funding drug and alcohol treatment beds in custody that would not have been available without the justice reinvestment funding. This happened in Texas where 1500 new beds were funded in an intensive prison substance abuse program.

26. With rapidly growing populations in both juvenile and adult correctional centres, there is pressure on the ability of correctional centres to deliver rehabilitative programs. For example, we know that in the NSW juvenile justice remand centre there have been times where young people have been locked down in their cells for 20 hours at a time due to overcrowding. Time spent in lock down means young people are not able to access education and rehabilitative programs.

27. With a smaller prisoner population, the pressure will be taken off correctional centres and they will be able to return to operating as they were intended, with access to education, rehabilitation, health and other programs designed to reintegrate offenders back into society.

2.5 Available evidence tells us that diversionary and preventative interventions take a generation to build momentum. How does the Australian Human Rights Commission account for the rapid decline in the prisoner numbers following the implementation of justice reinvestment in the United States? Are there jurisdictional specificities eg. bail regimes and parole regimes that underpin the apparent success of justice reinvestment strategies in the United States?

28. Justice reinvestment in the United States has led to a rapid decline in prisoner populations because it has addressed the drivers of imprisonment in a holistic way. Analysing and then addressing the systemic and legislative drivers, (for example, bail legislation and parole policy) provided a way to cut prison entries quite quickly. For instance, in Kansas, making changes to the parole system resulted in a 48% reduction in the parole revocation rate and 70% reduction in the number of parole absconders. In May 2007 the Kansas Legislature passed a package of criminal justice reforms including: a performance based grant program for local community corrections to design local strategies to reduce parole revocations by 20%; 60 day early release

credit to prisoners who completed educational, vocational and treatment programs prior to release; and time credits for good behaviour for non violent offenders in prison.

29. However, legislative and policy changes have been bolstered by the longer term crime prevention programs in the communities which will prevent offending in first place. Again in Kansas, the New Communities Initiative is an example of successful community crime prevention and community development as part of a justice reinvestment strategy. The New Communities Initiative operates in the very neighbourhoods where there are high concentrations of offenders. Based on partnership between community, government and business, innovative early intervention, youth programs and employment programs have been established which will aim to reduce crime in the longer term.

30. We recommend that a similar approach be taken in Australia with legislative and policy reform backed up by crime prevention programs in the trial communities.

2.6 Taking into account the differences in justice systems in the United States and Australia, can the United States justice reinvestment experience appropriately reflect potential outcomes in Australia?

31. The US does have quite a different system of government and justice. Justice reinvestment in the US has also largely dealt with disadvantaged communities with high levels of African Americans, not Indigenous peoples. Nonetheless, the concept and methodology are broad enough to apply to the Australian context.

32. Justice reinvestment in the US talks about 'million dollar blocks' where literally millions is spent imprisoning a small number of individuals from the same neighbourhood. We might not have million dollar blocks but we do know that we have Indigenous communities where there are very high levels of imprisonment.

33. As previously noted, our very preliminary research in the *Social Justice Report 2009* highlights places like Mt Druitt, Dubbo, Kempsey, Bourke, Broome, Port Augusta as possible locations for juvenile/ young adult trial sites.

34. As well as the focus on locational disadvantage, we also see similarities in the entrenched poverty faced by the United States communities and the Indigenous Australian communities. In both cases there are multiple disadvantages to tackle, in tandem with systemic racism.

2.7 What are the lessons from the United States and other countries which have undertaken a justice reinvestment strategy?

35. The US is the only country that has introduced justice reinvestment so far.

Key lessons for the United States:

36. Justice reinvestment has appealed to people's common sense. People on both sides of politics recognise that prison doesn't make good financial sense when it does so little to prevent recidivism. Bringing the economics into the argument takes some of the punitive focus out of the criminal justice debate.

37. Data is important because it ensures the reinvestment is targeted at the right communities.

38. Bipartisan support is crucial.

39. There are points in the criminal justice system where reforming legislation and policies will lead to substantial reductions in imprisonment. For example, in Kansas, making changes to the parole system resulted in a 48% reduction in the parole revocation rate and 70% reduction in the number of parole absconders.

40. The UK has been actively considering justice reinvestment with a House of Commons Parliamentary Inquiry into Justice Reinvestment recommending the UK government move towards justice reinvestment. The recommendations from the UK inquiry are particularly salient to the Australian situation given our similar legal and political systems.

Relevant UK recommendations:

41. Establish a National justice reinvestment working group at the Cabinet Office level.

42. Set targets to initially cap imprisonment and then reduce by two thirds the current prison population. Scotland has already set a target to reduce imprisonment from 8000 to 5000.

43. Develop a national justice reinvestment fund based on a business case for the long term movement of resources from the criminal justice system to local areas. Justice reinvestment funds are sourced from previously allocated funding for the building of new large accommodation prisons and the annual allocations used to support the cost of new prison places.

44. Devolve criminal justice policy and funding to local area authorities. This process is beginning in Scotland with Community Justice Authorities responsible for planning and monitoring of community justice services.

2.8 What role does the Australian Human Rights Commission consider the Commonwealth government should take on justice reinvestment given the responsibility of justice systems is with the state and territories?

45. The *Social Justice Report 2009* recommends that the Australian Government set criminal justice targets that are integrated into the Closing the Gap agenda.

46. Last year the Standing Committee of Attorneys Generals indicated that they would include justice targets in further COAG reforms. This has not happened yet.

47. Targets should be informed by the principles of justice reinvestment, ensuring that special consideration is given to areas with high concentrations of Indigenous prisoners, as well as the legal and policy factors that increase Indigenous imprisonment.

48. A commitment at the COAG level would ensure cooperation across all levels of government and across all departments.

49. The Standing Committee of Attorney Generals has the capacity to look at justice reinvestment as a priority issue under the Indigenous Law and Justice Framework. The Commonwealth Attorney Generals Department could lead this process by undertaking the necessary research and scoping to inform trial sites.

50. There are also synergies between justice reinvestment and the federal government's social inclusion policy framework. The Social Inclusion Board, with the backing of the Social Inclusion Unit in the Prime Minister and Cabinet Office could alternatively take the lead in the initial scoping.