

The Senate

Legal and Constitutional Affairs
References Committee

Value of a justice reinvestment approach to
criminal justice in Australia

June 2013

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ABBREVIATIONS

ADCA	Alcohol and other Drugs Council of Australia
AHRC	Australian Human Rights Commission
AIHW	Australian Institute of Health and Welfare
ALHR	Australian Lawyers for Human Rights
ANFPP	Australian Nurse Family Partnership Program
AVOs	apprehended violence orders
AYAC	Australian Youth Affairs Coalition
CAALAS	Central Australian Aboriginal Legal Aid Service
CIS	The Centre for Independent Studies
CSG Justice Center	Council of State Government
FASD	Fetal Alcohol Spectrum Disorders
HRLC	Human Rights Law Centre
JJ NMDS	Juvenile Justice National Minimum Data Set
NAAJA	North Australian Aboriginal Justice Agency
NATSILS	National Aboriginal and Torres Strait Islander Legal Services
NJCEOs	National Justice Chief Executive Officers
NPHDC	National Prison Health Data Collection
VACCHO	Victorian Aboriginal Community Controlled Health Organisation
WAAMH	Western Australian Association for Mental Health
WACOSS	Western Australian Council of Social Service
WANADA	Western Australia Network of Alcohol and Drug Agencies

Recommendations

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.

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.

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.

Recommendation 5

8.49 The committee recommends that the Commonwealth adopt a **leadership role in supporting the implementation of justice reinvestment, through the Council of Australian Governments.**

Recommendation 6

8.50 The committee recommends that the **Commonwealth commit to the establishment of a trial of justice reinvestment in Australia in conjunction with the relevant states and territories, using a place-based approach,** and that at least one remote Indigenous community be included as a site.

8.51 Further, the committee recommends that any trial actively involve local communities in the process, is conducted on the basis of rigorous justice mapping over a minimum time frame beyond the electoral cycle and be subject to a robust evaluation process.

Recommendation 7

8.52 The committee recommends that the Commonwealth provide funding for the trial of justice reinvestment in Australia.

Recommendation 8

8.53 The committee recommends that the Commonwealth, through the Standing Committee on Law and Justice, promote the **establishment of an independent central coordinating body for justice reinvestment with the following roles:**

- **provision of advice as to methodology regarding justice reinvestment;**
- **identification of the national, consistent data required for effective implementation of justice reinvestment;**
- **development of options for policy and initiatives to reduce levels of incarceration and identify potential savings for corrections budgets;**
- **assistance with justice mapping for identification of place-based communities and identification of existing services and gaps in services required to reduce crime;**
- **brokering agreements between stakeholders;**
- **independent evaluation of programs and savings; and**
- **monitoring reinvestment of savings in high stakes communities.**

Recommendation 9

8.55 The committee recommends that the Commonwealth refer to the Council of Australian Government the establishment of justice targets for Aboriginal and Torres Strait Islander people as part of the Closing the Gap initiative, directed to reducing the imprisonment rate of Aboriginal and Torres Strait Islander people.

Chapter 1

Referral of the inquiry

1.1 On 26 November 2012, the Senate referred to the Legal and Constitutional Affairs References Committee the matter of the value of a justice reinvestment approach to criminal justice in Australia for inquiry and report by 16 May 2013. The Senate subsequently agreed to extend the reporting date for the inquiry to 20 June 2013.¹

1.2 The terms of reference for the inquiry were:

- a) the drivers behind the past 30 years of growth in the Australian imprisonment rate;
- b) the economic and social costs of imprisonment;
- c) the over-representation of disadvantaged groups within Australian prisons, including Aboriginal and Torres Strait Islander peoples and people experiencing mental ill-health, cognitive disability and hearing loss;
- d) the cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures;
- e) the methodology and objectives of justice reinvestment;
- f) the benefits of, and challenges to, implementing a justice reinvestment approach in Australia;
- g) the collection, availability and sharing of data necessary to implement a justice reinvestment approach;
- h) the implementation and effectiveness of justice reinvestment in other countries, including the United States of America;
- i) the scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments; and
- j) any other related matters.

Conduct of the inquiry

1.3 The committee wrote to 307 organisations and individuals, as well as the Commonwealth and state and territory governments, inviting submissions by 15 March 2013. Details of the inquiry were also placed on the committee's website at www.aph.gov.au/senate_legalcon

1 *Journals of the Senate*, 26 November 2012, pp 3394–95; *Journals of the Senate*, 26 February 2013, p. 3659.

1.4 The committee received 131 submissions, and all public submissions were made available on the committee's website. A list of submissions to the inquiry is at Appendix 1. The committee held public hearings in Perth on 17 April 2013, Sydney on 1 May 2013 and Canberra on 17 May 2013. A list of witnesses who appeared at the hearings is at Appendix 2, and copies of the *Hansard* transcript are available through the committee's website.

Acknowledgement

1.5 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearings.

Structure of the report

1.6 This report is divided into eight chapters:

- Chapter 2 examines the drivers behind the past 30 years of growth in the Australian imprisonment rate;
- Chapter 3 canvasses the economic and social costs of imprisonment;
- Chapter 4 canvasses the over-representation of disadvantaged groups within Australian prisons;
- Chapter 5 explores the methodology and objectives of justice reinvestment as well the implementation of justice reinvestment in overseas jurisdictions;
- Chapter 6 canvasses the benefits of a justice reinvestment approach for Australia;
- Chapter 7 examines the challenges to implementing a justice reinvestment approach in Australia; and
- Chapter 8 identifies mechanisms to implement justice reinvestment in Australia.

Chapter 2

The drivers behind the growth in the Australian imprisonment rate

2.1 The imprisonment rate in Australia has risen over the last 30 years. Imprisonment rates are linked to the level of criminal activity, changes to justice policies and practices, and social and economic factors such as poverty, levels of substance abuse, unemployment, and levels of social and community cohesion. The following discussion provides an overview of the rate of imprisonment in Australia and canvasses the issues linked to changes in the rate.

Rates of imprisonment in Australia

2.2 There were 114 custodial facilities across Australia at 30 June 2012 of which 87 are government-operated prisons, eight are privately operated prisons, four are transitional centres, one is a periodic detention centre and 14 are 24-hour court-cell complexes.¹ In addition, all jurisdictions provide community corrections services which are responsible for non-custodial sanctions and deliver post-custodial interventions.

2.3 On average, 29,213 people per day (excluding periodic detainees) were held in Australian prisons during 2011–12. This was an increase of 1.7 per cent over the average daily number in 2010–11. The daily average prison population in 2011–12 comprised 92.9 per cent males and 7.1 per cent females.²

2.4 The number of unsentenced (those on remand) prisoners comprised 23 per cent of the total prison population at 30 June 2012. Over half (55 per cent) of all prisoners had served a sentence in an adult prison prior to the current episode.³

2.5 As at 30 June 2012, Aboriginal and Torres Strait Islander prisoners comprised just over a quarter (27 per cent or 7,982) of the total prisoner population. The age standardised imprisonment rate for Aboriginal and Torres Strait Islander prisoners was 1,914 per 100,000 adult Aboriginal and Torres Strait Islander population. This was 15 times higher than non-Indigenous prisoners for whom the age standardised imprisonment rate was 129 per 100,000 adult non-Indigenous population.⁴

2.6 The most common offences for sentenced male prisoners were acts intended to cause injury (17 per cent) and sexual assault (15 per cent) while for females the

1 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2013*, Vol. 1, p. 8.5.

2 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2013*, Vol. 1, p. 8.5.

3 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

4 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

most common were illicit drug offences (17 per cent of female prisoners) and acts intended to cause injury (14 per cent).⁵

Trends in imprisonment rates

2.7 Australia's adult imprisonment rate was 168 per 100,000 adults at 30 June 2012.⁶ This compares with 734 and 154 per 100,000 population in the United States and the United Kingdom respectively in 2010.⁷

2.8 While the Australian imprisonment rate is significantly less than that of the United States and comparable to the United Kingdom, the rate has been increasing over recent decades. In 1984, the rate of imprisonment was approximately 86 per 100,000.⁸ Since that time the rate has nearly doubled. While there was a recorded decrease in the rate of imprisonment between 2010 and 2011, the rate increased 11 per cent over the last ten years.⁹

2.9 All states and territories, with the exception of New South Wales and Queensland, recorded increased imprisonment rates compared to 2002, with fluctuations in imprisonment rates occurring within this ten year period. The Northern Territory recorded the largest percentage increase in the imprisonment rate between 2002 and 2012, rising 72 per cent (from 480 prisoners per 100,000 adult population to 826 prisoners per 100,000 adult population). Western Australia had an increase of 37 per cent (from 195 to 267 prisoners per 100,000 adults). The imprisonment rate in Queensland decreased between 2002 and 2012 (down 6 per cent, from 168 to 159 prisoners per 100,000 adults). The imprisonment rate in New South Wales also decreased – down 1 per cent (from 172 to 171 prisoners per 100,000 adults).¹⁰

2.10 As noted above, the Northern Territory has had the highest increase in the rate of imprisonment for the period 2002 to 2012. The Northern Territory also recorded the highest proportional increase in prisoner numbers between 2011 and 2012 – 11 per cent. The prisoner population decreased by 4 per cent in New South Wales and by 3 per cent in Tasmania between 2011 and 2012.¹¹

2.11 The fastest growing area of the prison population is women prisoners. While the overall prison population increased 1 per cent during 2011–12, the number of female prisoners increased 8 per cent. The female imprisonment rate increased at a rate 21 times higher than the male rate.¹²

5 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

6 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

7 NJCEOs Working Group, *Justice Reinvestment/Causes of Crime*, p. 4.

8 Youth Justice Advisory Committee, *Submission 125*, p. 2.

9 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

10 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*; Northern Territory Chief Magistrate, *Submission 119*, 3.

11 Australian Bureau of Statistics, *4517.0. Prisoners in Australia, 2012*.

12 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

Trends in re-offending rates

2.12 The Report on Government Services provides information on adult offenders released from prison who returned to corrective services within two years. For those released nationally in 2009–10, 39.3 per cent had returned to prison by 2011–12, while 46.1 per cent had returned to corrective services. The Northern Territory had the highest rate of return to prison (52.4 per cent) while the ACT had the highest rate of return to corrective services (56.1 per cent). South Australia recorded the lowest rate of return for both classes of returning prisoners (29.1 per cent and 41.3 per cent respectively).

2.13 The rate of return to prison under sentence has remained relatively stable since 2007–08 at about 40 per cent.¹³

Trends in incarceration of Aboriginal and Torres Strait Islander people

2.14 The Australian Bureau of Statistics reported that there were 7,979 prisoners who identified as Aboriginal and Torres Strait Islander at 30 June 2012.¹⁴ This represented just over one quarter (27 per cent) of the total prisoner population. Aboriginal and Torres Strait Islander prisoner numbers increased by 4 per cent between 2011 and 2012. The highest number of Aboriginal and Torres Strait Islander prisoners was in the Northern Territory (84 per cent of the total prison population) and the lowest in Victoria (8 per cent).

2.15 The age standardised rate of imprisonment for Aboriginal and Torres Strait Islander prisoners was 15 times higher than the rate for non-Indigenous prisoners at 30 June 2012, an increase in the ratio compared to 2011 (14 times higher). The highest ratio of Aboriginal and Torres Strait Islander to non-Indigenous imprisonment rates in Australia was in Western Australia (20 times higher for Aboriginal and Torres Strait Islander prisoners). Tasmania had the lowest ratio (four times higher for Aboriginal and Torres Strait Islander prisoners).

2.16 Between 2002 and 2012, imprisonment rates for Aboriginal and Torres Strait Islander Australians increased from 1,262 to 1,914 Aboriginal and Torres Strait Islander prisoners per 100,000 adult Aboriginal and Torres Strait Islander population. In comparison, the rate for non-Indigenous prisoners increased from 123 to 129 per 100,000 adult non-Indigenous population.

2.17 There were proportionally more Aboriginal and Torres Strait Islander prisoners than non-Indigenous prisoners with prior imprisonment. Nearly three-quarters (74 per cent) of Aboriginal and Torres Strait Islander prisoners had a prior

13 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2013*, Vol. 1, p. C.21.

14 The Australian Bureau of Statistics noted that the willingness of Aboriginal and Torres Strait Islander people to self identify may contribute to movements in Aboriginal and Torres Strait Islander prison numbers.

adult imprisonment under sentence, compared with just under half (48 per cent) of non-Indigenous prisoners.¹⁵

Trends in offending behaviour

2.18 In some jurisdictions, the growth in imprisonment rates may be linked to an increase in offending behaviour. For example, the Youth Justice Advisory Committee stated that over the last five years offending behaviour has increased in Alice Springs. This includes a 173 per cent increase in break-ins and an 80 per cent increase in motor vehicle theft. Overall, criminal offences increased 45 per cent over five years.¹⁶

2.19 However, in other jurisdictions crime rates have declined. In New South Wales, between 1990 and 2010, the rate of murder decreased 50 per cent, motor vehicle theft decreased 70 per cent and robbery with a firearm declined 66 per cent.¹⁷ In Victoria, crime rates have declined by an average of 18.4 per cent over the last 10 years. The St Vincent de Paul Society noted that 'taking national averages, it seems that violent crime has not increased over the last 20 years, while property crime rates have dropped significantly'.¹⁸

2.20 Some shift in the type of crime being attributed to certain groups was noted, with the Youth Justice Advisory Committee stating that property crime had been the main reason for youth offences in the Northern Territory but this has now shifted to personal violence offences.¹⁹

2.21 Jesuit Social Services argued that there is ample evidence that the Australian rate of imprisonment is largely independent of the incidence of crime. Jesuit Social Services concluded that the rate of imprisonment is:

...more a function of policy, the length of sentence imposed (and their summation) and, at any given time, the size of the operational police service.²⁰

2.22 This view was supported by other submitters including the National Association of Community Legal Centres which stated that the continued growth in imprisonment rate, despite falling crime rates, has been attributed to the introduction of harsher sentencing policies and political responses to social concerns about levels of crime.²¹

15 Australian Bureau of Statistics, *4517.0 – Prisoners in Australia, 2012*.

16 Youth Justice Advisory Committee, *Submission 125*, p. 4.

17 Juvenile Justice NSW, *Submission 124*, p. 3.

18 St Vincent de Paul Society, *Submission 108*, pp 2–3.

19 Youth Justice Advisory Committee, *Submission 125*, p. 4.

20 Jesuit Social Services, *Submission 104*, p. 6.

21 National Association of Community Legal Centres, *Submission 103*, pp 5–6.

Drivers behind the growth in the Australian imprisonment rate

2.23 As noted above, while crime rates have declined the rate of imprisonment has increased. Factors contributing to the rate of increase include changes to justice policies and practices including mandatory sentencing and more stringent bail conditions. There are also underlying economic and social determinants which contribute to criminal behaviour and thus bring people into contact with a more punitive criminal justice system.²²

2.24 The following section canvasses the drivers to the growth in the Australian imprisonment rate.

Changes to the justice system and attitudes to incarceration

2.25 Evidence received noted that the public response to crime in Australia has grown increasingly punitive. Generally, the public perception of crime is at odds with the actual incidence and trends in crime. This is attributed, in part, to the portrayal of crime in the media, especially more violent and sensational crime.²³ The Australian Justice Reinvestment Project stated many of the changes to judicial policy, such as mandatory sentencing, parole changes and restrictions to bail, have followed 'media-driven law and order campaigns around individual cases or as part of election campaigns seeking to demonstrate "tough on crime" credentials and sympathy towards victims of crime'.²⁴

2.26 Submitters commented that the growth of incarceration rates and 'tough on crime' policies are linked. The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) commented:

Crime rates have not been the driving force behind the growth of Australia's imprisonment rate. There has been no spike in the crime rate to which we can attribute such a significant increase in incarceration. Nor have increased incarceration rates led to any drop in the crime rate. Rather, the steady increase in imprisonment rates has been the result of legislative and policy changes implemented under the catch cry of being "tough on crime".²⁵

2.27 'Tough on crime' policies have been pursued in most jurisdictions. For example, it was submitted that the South Australian Government runs a 'tough on crime' policy that has resulted in increased penalties and the introduction of aggravated offences which also carry increased penalties.²⁶ Jesuit Social Services

22 See for example, Freedom Socialist Party, *Submission 12*; Justice Reinvest NSW, *Submission 44*; Alcohol and Other Drugs Council of Australia, *Submission 109*; Legal Aid NSW, *Submission 38*; Western Australian Council of Social Services, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*; South Australian Justice Reinvestment Working Group, *Submission 28*.

23 Juvenile Justice NSW, *Submission 124*, p. 3.

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

25 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, pp 4–5.

26 South Australian Justice Reinvestment Working Group, *Submission 28*, p. 2.

provided the example of Victoria and stated that recent 'tough on crime' policies in Victoria had resulted in an increase of average daily prison population of 5.3 per cent compared to a national increase of 1.3 per cent between 2010–11 and 2011–12.²⁷ Similarly, Queensland has recently introduced more punitive measures by introducing legislation that increased the use of mandatory life sentences for certain sentences and standard non-parole periods.²⁸

2.28 It was also noted that the Western Australian Government has increased investment in prisons and has undertaken a 'tough on crime' approach including mandatory sentencing, minimum terms, and reduced parole. Despite these changes, there has been no reduction in offending rates or in recidivism rates.²⁹

2.29 In the Northern Territory, multiple governments have pushed for a more penalty driven justice system. The Central Australian Aboriginal Legal Aid Service (CAALAS) submitted that 'successive Northern Territory Governments have emphasised increased policing and tougher sentences as a key policy platform'. This has continued despite evidence presented that these policies were increasing incarceration rates.³⁰ It was further noted that a culture of incarceration is developing in the Northern Territory: imprisonment is not being used as a last resort; and bail is not granted to certain types of offenders who should be able to be sentenced to non-custodial options.³¹

2.30 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of Western Australia Inc., provided the following example to illustrate a culture of incarceration:

In 2005, I appeared for a 16-year-old boy from a place called Onslow who spent 12 days in custody for attempting to steal a \$2.50 ice cream. In 2009 I appeared for a 12-year-old boy who had never been in trouble who was charged with receiving a Freddo frog worth 70c. He did not come to court, because his mum got the dates confused, and he was remanded in custody. The police eventually withdrew that charge but defended the decision to prosecute on the basis that 'it was technically correct'.³²

2.31 The committee heard that the persistence of these punitive measures has directly resulted in the increased growth in rates of imprisonment due to 'the limited availability of non-custodial sentencing options, the limited availability of

27 Jesuit Social Services, *Submission 104*, p. 7; see also Freedom Socialist Party, *Submission 12*; Youth Affairs Council of Western Australia, *Submission 54*; Anti-Discrimination Commission Queensland, *Submission 71*.

28 Prisoner's Legal Service, *Submission 94*, p. 2.

29 Western Australian Council of Social Service, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*, p. 5.

30 Central Australian Aboriginal Legal Aid Service, *Submission 62*, p 7–8.

31 North Australian Aboriginal Justice Agency, *Submission 47*, p. 2.

32 Mr Peter Collins, Director, Legal Services, Aboriginal Legal Service of Western Australia Inc., *Committee Hansard*, 17 April 2013, p. 37.

rehabilitative programs and a judicial and political perception of the need for "tougher" penalties.³³

2.32 The South Australian Department for Correctional Services noted that the average length of sentences has increased. This contributes to increased incarceration rates:

...the number of prisoners in custody is primarily determined by the decisions of the Courts where in general, the key factors driving overall prisoner numbers are the numbers of offenders charged or sentenced to custody for serious offences and the length of sentences they receive. Average sentence lengths have increased from 66.4 months in 2007/8 to 70.6 months in 2011/12.³⁴

2.33 The National Congress of Australia's First Peoples noted that a study in New South Wales found that there was a rise in imprisonment rates between 2001 and 2008 but there had not been a corresponding rise in the conviction of Aboriginal and Torres Strait Islander peoples over this period. It was reported that this was due to changes in the justice system's response to offences rather than changes in offending itself.³⁵

Mandatory sentencing

2.34 Mandatory sentencing has been introduced in Western Australia and the Northern Territory. The Human Rights Law Centre (HRLC) noted that mandatory sentencing laws limit judicial discretion in sentencing and prevent courts from taking account of the cultural backgrounds and responsibilities of offenders, and the economic and social issues they face. The HRLC went on to comment that:

The arbitrary nature of mandatory sentencing laws is also compounded by some aspects of police practices. The exercise of police and prosecutorial discretion effectively determines whether or not an offender is subject to a period of imprisonment.³⁶

2.35 The St Vincent de Paul Society commented that mandatory sentencing 'disproportionately affects those who are compelled to have no choice but to commit crimes, for example, the mentally ill, those experiencing extreme poverty and children and young people'.³⁷ The Top End Women's Legal Service also commented on the use of mandatory sentencing laws and stated that they are likely to greatly increase the length of sentences imposed for violent offences and thus, significantly increase the prison population.³⁸

33 Justice Reinvest NSW, *Submission 44*, p. 9; see also Prisoners' Legal Services, *Submission 94*, p. 2.

34 Department of Correctional Services, South Australian Government, *Submission 110*, p. 3.

35 National Congress of Australia's First Peoples, *Submission 53*, p. 4.

36 Human Rights Law Centre, *Submission 120*, p. 19.

37 St Vincent de Paul Society, *Submission 108*, p. 3.

38 Top End Women's Legal Service, *Submission 116*, p. 4.

2.36 A further issue with mandatory sentencing laws raised by NATSILS was that they may actually increase the likelihood of reoffending as periods of incarceration diminish employment prospects, positive social links, and other protective factors that help prevent recidivism.³⁹

2.37 The Chief Magistrate of the Northern Territory provided the committee with evidence of incarceration rates as a result of the imposition of mandatory sentencing in the Northern Territory during the period 1997 to 2001. The Chief Magistrate noted that the imprisonment rate was 50 per cent higher during this period than following repeal of the laws. Non-custodial orders such as home-detention and community work were almost unused for property offences during the mandatory sentencing era.

2.38 In 2008, mandatory sentencing was introduced for first time assault offenders where the injury interferes with a person's health and results in 'serious harm'. Mandatory sentencing also exists for drink driving and drug driving offences and for breaches of Domestic Violence Orders. The Chief Magistrate noted that as acts intended to cause injury account for a significant number of matters before the Court in the Northern Territory, this could significantly affect imprisonment rates. In addition, in 2013, mandatory imprisonment periods were introduced for serious assaults and repeat offenders. Again, the Chief Magistrate stated that these changes are likely to result in significantly increased imprisonment rates particularly in regards to Aboriginal offenders.⁴⁰

Bail and remand

2.39 Changes in the criminal justice system have made it difficult for offenders to comply with strict conditions such as stringent bail conditions. An offender may be unable to meet bail conditions and may be remanded in custody for conditional or technical breaches of bail. The occurrence of bail being granted is decreasing, with offenders being refused bail due to an absence of appropriate accommodation or the lack of a responsible adult who can appropriately care for them.⁴¹

2.40 CAALAS provided the committee with information about changes to bail practices in the Northern Territory. In 2003, 230 breaches of bail were recorded in the Northern Territory. In 2010–2011, 1442 breaches were recorded. In March 2011, the Bail Act (NT) was amended to include a new offence of breach of bail. As a consequence, 2431 breaches were recorded in 2011–12. CAALAS stated that this represents a rise of 67 per cent over a single year and the breach of bail offence provision has meant that more people have been serving longer sentences in Central Australia.⁴²

2.41 NATSILS noted that in certain areas of Australia, if bail is breached and the offender is remanded, there are no legislated limits on the terms of remand, leading to

39 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 7.

40 Chief Magistrate of the Northern Territory, *Submission 119*, pp 5–6.

41 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 6.

42 Central Australian Aboriginal Legal Aid Service, *Submission 62*, p. 9.

a disproportionate amount of time the offender spends in prison. NATSILS submitted that, with increased court congestion, many offenders end up serving longer periods on remand than the sentence they eventually receive on conviction.⁴³

Parole, strict compliance and 'street time'

2.42 NATSILS and CAALAS drew the committee's attention to the impact of 'strict compliance' approaches to supervision and monitoring. NATSILS noted that in several jurisdictions, probation and parole officers are subject to internal guidelines which remove any element of discretion, and require all breaches to be reported, however minor. As a consequence, there are high rates of parole revocations. For example, in the Northern Territory in 2011, of the 46 parole revocations, only five were for offending. All the remainder were for breached conditions which may have been for single instances of failing to report at the required time, being exited from a residential rehabilitation program, or travelling without permission.

2.43 NATSILS also noted that in some jurisdictions, it is required that 'street time' be served out in the event that parole is revoked. Thus a prisoner whose parole has been revoked must serve the total number of days that were outstanding against his or her sentence at the date they were first released on parole. In some cases, this has resulted in individuals serving total periods of supervision that exceed the original full term date of their sentence by months or years.⁴⁴

2.44 In addition, because of the strict compliance requirements and street time provisions, probation and parole officers have become increasingly reluctant to recommend parole for those prisoners where it is perceived there are barriers to the successful completion of parole. NATSILS concluded that:

Such policies impact disproportionately on vulnerable parolees with unstable living arrangements, limited financial means, and support networks that lack understanding of the parole process. Aboriginal and Torres Strait Islander parolees face additional barriers to achieving or successfully completing parole, especially in cases where an individual does not speak English or seeks to reside in a remote or regional community.⁴⁵

Other factors contribution to increasing rates of incarceration

2.45 Submitters also noted that increased police presence in remote communities, as a result of the Territory Emergency Intervention, has been linked with the rising rate of imprisonment from 2007 onwards.⁴⁶ CAALAS commented that the greater police presence in many communities has led to the effective criminalisation of

43 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 6.

44 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, pp 7–8.

45 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 8.

46 Youth Justice Advisory Committee, *Submission 125*, p. 3.

driving, with police targeting unlicensed drivers and vehicles without registration or insurance.⁴⁷ The Australian Human Rights Commission (AHRC) commented:

Of particular concern, research has also found there has been a 62% increase in the recorded traffic and vehicle regulatory offences. According to analysis by Dr Thalia Anthony, the majority of these offences do not involve alcohol or lead to harm. Instead, they are regulatory offences such as not having a driver's license, driving unregistered or in an unroadworthy vehicle. According to Dr Anthony "the common trifecta is driving unlicensed, driving unregistered and driving with an unroadworthy vehicle." When these offences are prosecuted together there is a strong possibility of a custodial sentence.⁴⁸

2.46 As a consequence of greater policing, approximately 25 per cent of the Northern Territory prison population comprises driving offenders, of whom approximately 97 per cent are Aboriginal.⁴⁹ The AHRC concluded:

Enforcement of traffic offences has a role to play [in] increasing safety. However, it also needs to be acknowledged that the lack of public transport, access to suitable vehicles and licensing services in remote communities disproportionately disadvantages Aboriginal and Torres Strait Islander people in the Northern Territory.⁵⁰

2.47 Sisters Inside also commented that over policing can lead to further charges being laid against the person:

Over policing does not reduce crime in these communities or make them safer to live in, rather it creates a net-widening effect. There are many low level crimes that are often undetected and untargeted in non-Indigenous communities, however net-widening often results in these crimes being detected and charged within Indigenous communities. In addition, increased interaction with the police increases the risk that charges will become escalated with an individual also being charged with offences such as resisting arrest and assaulting police.⁵¹

2.48 The Chief Magistrate of the Northern Territory noted that mandatory reporting requirements have increased reporting of crime in the Northern Territory. This relates to domestic violence as well as mandatory reporting requirements for children. The Chief Magistrate commented:

Increased reporting does not alone signify an increase in crimes committed, only crimes recorded. In this sense the growth in imprisonment rates brought about by increased reporting may be a positive change.

47 Central Australian Aboriginal Legal Aid Service, *Submission 62*, p. 8.

48 Australian Human Rights Commission, *Answer to question on notice No. 1*, received 4 June 2013.

49 Central Australian Aboriginal Legal Aid Service, *Submission 62*, p. 8.

50 Australian Human Rights Commission, *Answer to question on notice No. 1*, received 4 June 2013.

51 Sisters Inside, *Submission 69*, p. 12.

Additionally, mandatory reporting allows for the community to take responsibility for violence. However, there are also concerns that it may deter victims from seeking medical treatment and whether it has in fact increased rates of reporting.⁵²

2.49 White Ribbon also commented that there has been a significant increase in domestic violence reporting and police response rates to family violence offences in all jurisdictions. White Ribbon stated that '[a]lthough it is difficult to conclude whether the increase is reflective of increases in the incidence of violence, it is arguable that this increase in reporting will lead to further pressure on the prison system as increases in prosecution ensue'.⁵³

Economic and social determinants of crime

2.50 The Anti-Discrimination Commission Queensland stated that a number of social and economic drivers relating to the growth of imprisonment rates in Australia have been identified over the years in numerous reports and academic journals. These drivers include:

- socio-economic conditions such as poverty;
- low or under education;
- lack of employment opportunities;
- mental health issues;
- lack of appropriate housing;
- the increasing availability and use of alcohol and drugs;
- the increase and diversity of the population and the challenges this presents;
- social exclusion; and
- systemic discrimination.⁵⁴

2.51 Submitters pointed to the study by Tony Vinson in 2007 which highlighted the association between crime and disadvantage, indicating that the bulk of crimes are committed by a small population which are densely located within a small number of poorer socio-economic localities.⁵⁵ The Victorian Alcohol and Drug Association stated that various research findings supported this association including that:

- 75 per cent of offenders have completed only up to year 10 of schooling (Australian Institute of Health and Welfare 2010);
- between seven and eight per cent of males and 11 per cent of women were homeless prior to their imprisonment (Willis 2004);

52 Chief Magistrate of the Northern Territory, *Submission 119*, p. 4.

53 White Ribbon, *Submission 115*, p. 3.

54 Anti-Discrimination Commission Queensland, *Submission 71*, p. 3.

55 Victorian Alcohol and Drug Association, *Submission 92*, p. 4.

- Aboriginal and Torres Strait Islander peoples are significantly overrepresented in prisons and generally experience more exacerbated adverse social determinants than other prisoners;
- 37 per cent report that they have had a mental health disorder at some stage in their lives and 18 per cent are currently on medication for mental health related conditions (Australian Institute of Health and Welfare 2010);
- 41 per cent are infected with Hepatitis C and 20 per cent infected with Hepatitis B (Victorian Ombudsman 2011);
- prisoners are heavy consumers of both licit and illicit drugs with 81 per cent being current smokers (compared with 16.6 per cent of the general population) (Ministerial Council on Drug Strategy 2010);
- 52 per cent of prisoners reported that they drink alcohol at harmful levels compared with 20.4 per cent of the general population (Preventative Health Taskforce 2009); and
- 71 per cent of prisoners had used illicit drugs in the past 12 months, compared with 13 per cent in the general community (Australian Institute of Health and Welfare 2010).⁵⁶

2.52 The National Association of Community Legal Centres stated that as criminal behaviour is closely associated with disadvantage in living standards, health, education, housing and employment, the 'failure to adequately address these issues in many urban and rural communities in Australia has ensured that people in these communities are more likely to offend and be put in prison'.⁵⁷

2.53 Similarly, Australian Lawyers for Human Rights (ALHR) commented on factors contributing to juvenile offending:

...juvenile offending is highly likely to lead to adult offending, particularly serious crimes...the findings [of research into this issue] reveal that unemployment, child abuse/neglect, drug and alcohol abuse, mental health issues and performance at school are all factors highly associated with juvenile offending.⁵⁸

2.54 The impact of poverty on incarceration rates for women was raised by Sisters Inside which commented that 'any attempt to divert women and children from the juvenile justice and criminal justice systems must address the fundamental issue of poverty'. Sisters Inside noted that prior to imprisonment 50 to 75 per cent of women prisoners were unemployed while the majority of criminalised women (and their children) survived on Centrelink benefits prior to incarceration.⁵⁹

56 Victorian Alcohol and Drug Association, *Submission 92*, pp 4–5.

57 National Association of Community Legal Centres, *Submission 103*, p. 6; see also Outcare, *Submission 61*, p. 5.

58 Australian Lawyers for Human Rights, *Submission 74*, p. 3.

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

Drug and substance abuse

2.55 Another factor that relates heavily to incarceration rates is drug and substance abuse. Crime and substance abuse seem to be intrinsically linked as 'substance use leads to crime; crime leads to substance use and substance use and crime are caused by the same factors'.⁶⁰

2.56 Alcohol abuse is observed as a significant factor in offending behaviour and is more prevalent than any other drug.⁶¹ The Alcohol and other Drugs Council of Australia (ADCA) cited South Australian police data reporting percentages of offensive behaviour that related to alcohol, such as:

- 81 per cent of incidents of assaulting police;
- 76 per cent of disorderly or offensive behaviour; and
- 77 per cent of hindering police/resisting arrest.⁶²

2.57 In addition, in 2008, 75 per cent of prison entrants in South Australia had a substance misuse history. This was most prevalent for younger offenders.⁶³ Nationally, the most frequently used drug prior to imprisonment was cannabis at 81 per cent, followed by amphetamines at 57 per cent, cocaine at 45 per cent and ecstasy at 44 per cent.⁶⁴

2.58 The South Australian Network of Drug and Alcohol Services pointed to a number of specific factors contributing to the rise in imprisonment rate associated with substance abuse, including:

- increase in the range of offences as a result of more drugs being listed as illegal drugs;
- improvements in drug detection technology;
- increasing intoxication rates at late night venues and frequency of police attending a range of incidents which carry potential prison sentences; and
- inadequate numbers and types of pre and post release programs, increase the risk of recidivism.⁶⁵

2.59 Recidivism through alcohol and substance abuse is substantial particularly for injecting drug users. Prisoners with a history of injecting drug use were found to be three times more likely to be re-incarcerated than their non-injecting peers.⁶⁶

60 Justice Reinvest NSW, *Submission 44*, p. 18.

61 Alcohol and other Drugs Council of Australia, *Submission 109*, p. 5.

62 Alcohol and other Drugs Council of Australia, *Submission 109*, p. 5.

63 South Australian Network of Drug and Alcohol Services, *Submission 37*, p. 3.

64 Justice Reinvest NSW, *Submission 44*, p. 11.

65 South Australian Network of Drug and Alcohol Services, *Submission 37*, p. 4.

66 Alcohol and other Drugs Council of Australia, *Submission 109*, p. 5.

Recidivism

2.60 The imprisonment rate is also driven by the rate of recidivism. Submitters suggested that the Australian corrections system does not assist in deterring offenders from reoffending. Rather, it reinforces offending behaviour as it does not address the underlying causes for incarceration, while placing an unnecessary burden on police forces and the justice system.⁶⁷ Sisters Inside also submitted that 'once a young person has experienced imprisonment...their likelihood of further imprisonment is increased', leading to a life cycle of reoffending.⁶⁸

2.61 The committee was also informed that there are many social and economic factors that are associated with recidivism that are not appropriately addressed by the justice system. These factors can include, for example, inadequate housing and poor nutrition as individuals without a safe residence or access to three meals a day are more likely to reoffend in order to acquire these necessities.⁶⁹

2.62 At times, the justice system reinforces recidivism by affecting offenders negatively and creating difficult release environments such as suspended drivers licences, transitory living arrangements, unpaid fines and prior records that can act as barriers to finding gainful employment.⁷⁰ With the growth in the Australian imprisonment rate, the overcrowding of prisons has made it difficult for prisoners to access programs that are aimed at addressing the underlying causes of offending behaviours. This is because the programs are unavailable due to funding issues or are oversubscribed.⁷¹

Growth in the incarceration of women

2.63 There has been a sharp rise in the incarceration of women. The South Australian Justice Reinvestment Group noted that the rate of women committing certain offences is increasing, particularly offences that include deception, acts likely to cause injury and homicide.⁷²

2.64 Factors contributing to female incarceration include poverty, poor education outcomes, unstable housing, domestic violence and/or sexual abuse and trauma. Women who have been incarcerated have a higher chance of substance abuse, mental health problems, debts and poor credit rating and socioeconomic disadvantage.⁷³

67 Australian Youth Affairs Coalition, *Submission 105*, p.16

68 Sisters Inside, *Submission 69*, p. 10.

69 Indigenous Social Justice Association Melbourne, *Submission 14*, p. 5.

70 New South Wales Reconciliation Council, *Submission 31*, p. 3.

71 Western Australian Council of Social Services, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*, p. 13.

72 South Australian Justice Reinvestment Group, *Submission 28*, p. 3.

73 Victorian Equal Opportunity and Human Rights Commission, *Submission 42*, p. 5; Flat Out, *Submission 51*, p. 2; Top End Women's Legal Service, *Submission 116*, p. 9.

2.65 Submitters commented on Aboriginal and Torres Strait Islander women who enter the corrections system. In particular, the impact of family violence and trauma on women was noted. The Victorian Equal Opportunity and Human Rights Commission stated that:

Family violence and other stressors manifest across the life cycle, and across generations. This cycle is typified by periods in prison, which entrenches trauma, family breakdown, contact with child protection and out-of-home-care systems, homelessness, family violence, substance misuse and mental health episodes. These inform further contact with the criminal justice system, re-imprisonment, post-release breakdown, re-offending and re-imprisonment.⁷⁴

2.66 The issue of recidivism is just as significant when it comes to female prisoners as it is with the general prison population, with at least 40 per cent of women leaving prison subsequently reoffending – 17 per cent of those within 12 months and 27 per cent within two years.⁷⁵

Conclusion

2.67 It is acknowledged that the Australian imprisonment rate has been growing and that prison populations have reached an unacceptable level. Drivers behind the increase in imprisonment rates include changes in the justice system and the introduction of more punitive measures as a result of 'tough on crime' policies. In addition, the underlying social and economic determinants of crime compound systemic changes. To halt the increasing incarceration rate in Australia, all drivers of crime must be addressed.

74 Victorian Equal Opportunity and Human Rights Commission, *Submission 42*, p. 5.

75 Sisters Inside, *Submission 69*, p. 10.

Chapter 3

The economic and social costs of imprisonment

Introduction

3.1 This chapter examines the economic and social costs of imprisonment. As prison populations increase, so do infrastructure costs leading to an unsustainable justice system and rising economic costs. Imprisonment also has social costs for individuals, families and communities.

Economic costs

Direct costs of imprisonment

3.2 The Report on Government Services 2013 provides information on the costs of the justice system. For 2011–12, the costs for police services, courts (criminal and civil) and corrective services was \$14.02 billion. This was an increase from \$12.3 billion in 2007–08. The average annual growth rate for total costs was 3.3 per cent over the period 2007–08 to 2011–12 with the growth rate for expenditure increasing for criminal courts by 3.5 per cent and corrective services by 2.9 per cent.¹

3.3 The economic costs of imprisonment in Australia are substantial. As noted in chapter 2, there are 114 custodial facilities. Reported recurrent expenditure on prisons and periodic detention centres was \$2.4 billion in 2011–12, with an additional \$0.5 billion expenditure on community corrections. Net operating expenditure on corrective services including depreciation was \$3.1 billion in 2011–12; this was an increase of 4.8 per cent over the previous year.²

3.4 The Report on Government Services 2013 provided further information on the costs of the justice system:

- cost per prisoner/offender – nationally in 2011–12, the total cost per prisoner per day, comprising net operating expenditure, depreciation, debt servicing fees and user cost of capital, was \$305;
- real net operating expenditure – nationally 2011–12 was \$226, this was a decrease from \$235 in 2007–08;
- offender-to-staff ratio – nationally, on a daily average basis, there were 17 offenders for every one (full-time equivalent) community corrections staff member in 2011–12; and

1 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2013*, Vol. 1, p. C.9. Expenditure is for real recurrent expenditure in 2011–12 dollars.

2 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2013*, Vol. 1, pp 8.3–8.4.

- prison utilisation – prison utilisation was 94 per cent of prison design capacity, for open prisons 90 per cent and 96 per cent for secure facilities.³

3.5 The committee was provided with details of expenditure in various jurisdictions. The Western Australian Department of Corrective Services calculated that the cost per day for juvenile detention was \$624 per person, and for juvenile community custody \$77 per person. The cost of detaining a young person was \$227,760 per annum.⁴

3.6 In South Australia, annual operating expenses for the Department of Correctional Services were \$226.5 million of which 61 per cent were employee expenses. Of the operating expenses, \$156 million was spent on custodial services, \$37 million on rehabilitation and repatriation and \$30 million on community based services. The average annual cost per prisoner is between \$108,999 and \$75,000.⁵

3.7 In New South Wales in 2011–12, approximately \$130.6 million was spent on custodial sentences and \$70.4 million on community based supervision.⁶ Recent modelling by the University of NSW found that the whole of life institutional costs of a female Aboriginal offender in NSW with a history of homelessness, drug and alcohol misuse, family violence and mental illness to be in the order of \$1,118,126.⁷

3.8 The cost of detaining a juvenile offender in NSW in 2010–11 was \$652 per day compared to the cost of supervision in the community by Juvenile Justice NSW of \$16.73 per day.⁸

3.9 CAALAS provided information on the costs of imprisonment in the Northern Territory. The average cost per person per day in prison in the Northern Territory is \$243.20. Given the high rates of imprisonment, the cost per day of imprisonment is approximately \$2 per adult Territorian per day (\$733 per year). This compares with the national average daily cost of imprisonment of 52 cents per adult Australian per day (\$193 per year).⁹

3.10 Direct economic costs of imprisonment are expected to grow with a new prison currently in development in Darwin expected to cost approximately \$495 million.¹⁰

3 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2013*, Vol. 1, pp 8.24, 8.27, 8.28.

4 Commissioner for Children and Young People, *Submission 23*, p. 4.

5 South Australian Justice Reinvestment Working Group, *Submission 28*, p. 4.

6 Juvenile Justice NSW, *Submission 124*, p. 4.

7 Victorian Equal Opportunity and Human Rights Commission, *Submission 42*, p. 4.

8 Juvenile Justice NSW, *Submission 124*, p. 4.

9 Central Australian Aboriginal Legal Aid Service, *Submission 62*, pp 13–14.

10 Central Australian Aboriginal Legal Aid Service, *Submission 62*, p. 13.

Indirect economic costs

3.11 Coupled with the enormous direct economic cost of imprisonment, there are indirect economic costs. These include loss of employment and deterioration of skills. For instance, the imprisonment of juveniles can create a lifecycle of offending that can disrupt schooling and preclude the individual from developing skills. They have little hope of gaining employment.¹¹

3.12 Governments also experience indirect costs through increased demand for health and welfare services both for prisoners and their families.

Social costs

3.13 The South Australian Justice Reinvestment Working Group argued that the 'social costs of imprisonment not only to offenders but also to their family and friends becomes almost impossible to calculate'.¹² The social costs of imprisonment include costs to families and children for the loss of a parent and/or breadwinner; loss of employment opportunities; poor health outcomes for prisoners, including a relatively high risk of mortality post-release; and loss of engagement with the community.

3.14 Many submitters pointed to the breakdown of social and family bonds as a result of incarceration. The Victorian Equal Opportunity and Human Rights Commission submitted that:

High rates of imprisonment break down the social and family bonds that guide individuals away from crime, remove adults who would otherwise nurture children, deprive communities of income, reduce future income potential, and engender a deep resentment toward the legal system. As a result, as communities become less capable of managing social order through family or social groups, crime rates go up.¹³

3.15 The situation is exacerbated when the individual incarcerated is the main breadwinner or a parent. The lack of a parent creates difficult circumstances for a child, with a less stable and predictable home life, generating a higher chance of the child offending in the future.¹⁴ A 2010 report indicated that 38,500 children in Australia experienced the incarceration of a parent per year.¹⁵

3.16 Aboriginal children are particularly at risk of having a parent in prison with the North Australian Aboriginal Family Violence Legal Services noting that 'up to 80% of Aboriginal women in prison are mothers...and an estimated 20.1% of Indigenous children in Australia will be affected by parental incarceration in their lifetime'.¹⁶

11 Youth Advocacy Centre, *Submission 90*, pp 5; 9.

12 South Australian Justice Reinvestment Working Group, *Submission 28*, p. 4.

13 Victorian Equal Opportunity and Human Rights Commission, *Submission 42*, p. 6.

14 Community Legal Centres NSW, *Submission 102*, p. 10.

15 National Association of Community Legal Centres, *Submission 103*, p. 8.

16 North Australian Aboriginal Family Violence Legal Service, *Submission 55*, p. 4.

3.17 The 2010 report also found that children with an incarcerated parent commonly experience a similar pattern of traumatic events, often witnessing their parent's crime and arrest, losing a parent, the disruption of their family environment, and the difficulties associated with visiting their parent within the prison system.¹⁷ Children with parents in prison are also more at risk of abusing drugs and alcohol, dropping out of school and exhibiting aggressive and/or antisocial behaviours.

3.18 When a mother is imprisoned, family breakdown is exacerbated particularly as there are a relatively small number of women's prisons and they are typically located in areas inaccessible by public transport.¹⁸ Children may also face an uncertain future when their mothers are imprisoned, and often come to the attention of child welfare agencies. As a consequence, they may be placed in out-of-home care.¹⁹ Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, noted that Indigenous youth are '10 times more likely to be in out-of-home care, currently comprising 31 per cent of all children in care'.²⁰

3.19 The Victorian Equal Opportunity and Human Rights Commission noted that the cost of one child in out-of-home care was \$104,443 per annum.²¹

3.20 The committee heard that Indigenous prisoners are affected profoundly with the breakdown of links with family members and communities. Indigenous communities are also affected as every individual has a role to play including financial and social. If an individual or group of individuals is removed, the community is heavily burdened, weakening the community and exacerbating economic distress creating prime conditions for further offending behaviour.²² Ms Solonec commented:

In regard to the economic and social costs of imprisonment, we would like to note that the social costs of imprisonment on Aboriginal and Torres Strait Islander people is heightened because our identities are often shaped by our connection with our country, our culture and our families.

The Royal Commission into Aboriginal Deaths in Custody and international research have emphasised the devastating impact that a disconnect with country and culture caused by incarceration has on the identity and well-being of Indigenous people. Both conclude that

17 National Association of Community Legal Centres, *Submission 103*, p. 8.

18 Sisters Inside, *Submission 69*, p. 15.

19 National Family Violence Prevention Legal Services Forum, *Submission 39*, p. 4.

20 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Committee Hansard*, 17 April 2013, p. 18.

21 Victorian Equal Opportunity and Human Rights Commission, *Submission 42*, p. 4.

22 North Australian Aboriginal Family Violence Legal Service, *Submission 55*, pp 3–4; see also Law Council of Australia, *Submission 97*, p. 12; Australians for Native Title and Reconciliation, *Submission 63*, p. 11.

connection to culture can serve as a preventive measure against risk-taking behaviours.²³

3.21 The NSW Reconciliation Council noted that while the removal of a small number of serious offenders to prison may act as a deterrent and make communities safer, in Indigenous communities, the impact is significant:

...the frequent incarceration of Aboriginal people from communities ruptures social structures and affects Aboriginal peoples' capacity to fully participate in life in both their community and the broader Australian community. We cannot continue to lock up our most disadvantaged minority in this way.²⁴

3.22 The impact of imprisonment on young people was described by the Australian Youth Affairs Coalition (AYAC). AYAC stated that incarceration of young people can have negative impacts resulting in a decrease in wellbeing, disengage the person from education and involvement with the labour force, disrupt positive relationships and socially exclude the person, and an increase in offending or recidivism.²⁵

3.23 A further impact on imprisonment occurs when the person leaves the corrections system. The Law Council of Australia explained:

For some individuals, imprisonment can have a detrimental impact on their ability to turn their life around once they are released. Indeed, one of the significant difficulties encountered by individuals after they have been released from prison is re-integrating into society. Many people experience difficulties in overcoming the stigma associated with being imprisoned once they are released. This is particularly the case when it comes to finding employment. Indeed, as noted by the LSWA, difficulties in obtaining legitimate employment can increase the pressure on former offenders to earn income through illegitimate means which can then lead to re-offending.

Other individuals may suffer from serious psychological and physical health conditions post release which may also negatively impact their ability to effectively function and re-integrate into society.²⁶

Prisoner health

3.24 Submitters commented on the health impacts of imprisonment. The increase in prison populations has caused overcrowding in prisons, which impacts on prisoner health. Drug use and related health issues are a concern with a higher rate of hepatitis C and HIV manifesting in prison populations due to needle sharing. The overall prevalence of hepatitis is estimated to be between 23 and 47 per cent for male prisoners and between 50 and 70 per cent for female prisoners. As many prisoners

23 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Committee Hansard*, 17 April 2013, p. 18.

24 NSW Reconciliation Council, *Submission 31*, p. 4.

25 Australian Youth Affairs Coalition, *Submission 105*, p. 16.

26 Law Council of Australia, *Submission 97*, p. 12.

move in and out of the corrections system quickly, these infections pose a risk to both the inmate and public health. Prisoners with histories of substance abuse are also at a higher risk of death once released, particularly death from drug overdose.²⁷

3.25 The prison population is also at risk in relation to mental health. There is a high rate of mental health illness in the justice system with 31 per cent of imprisoned individuals reporting they had been told by a health care professional that they had had a mental health disorder in their lifetime, 'a rate 2.5 times higher than the general population'.²⁸

3.26 It was also submitted that prisoners with mental ill-health do not have access to effective treatment programs, and often wait long periods of time before receiving support. Without adequate care, individuals suffering from mental ill-health are released back into the community without proper rehabilitation, with the possibility that their condition has worsened during their term of imprisonment. Western Australian Council of Social Service (WACOSS), Western Australian Association for Mental Health (WAAMH), Western Australia Network of Alcohol and Drug Agencies (WANADA) noted a 2011 report on Western Australian prisons which stated that 'with problematic prison overcrowding, the mental wellbeing of prisoners will only worsen as living conditions become more cramped...and interpersonal difficulties inevitably occur'.²⁹

3.27 The Victorian Aboriginal Community Controlled Health Organisation (VACCHO) submitted that prisoners are more likely to die or be hospitalised, especially Aboriginal prisoners. Hospitalisation costs (based on bed days) of Aboriginal prisoners in the first year of release has been costed at \$5.4 million in Western Australia alone, driven predominantly by mental and behavioural disorders and injuries. More than a third of Aboriginal women released from prison were hospitalised.³⁰

3.28 VACCHO went on to comment that Aboriginal people are also much more likely to die after they are released from prison, most commonly through suicide, motor vehicle accidents, circulatory system diseases and drug-related deaths. Aboriginal prisoners also experience poorer health, with much higher rates of sexually transmitted infections, blood borne viruses, high blood sugar and diabetes, liver-disease markers, asthma and more. These health problems lead to poor quality of life and premature death and results in grief, loss, and trauma among family, friends, and

27 National Drug and Alcohol Research Centre, *Submission 40*, p. 4.

28 Western Australian Council of Social Service, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*, p. 22; see also, Just Reinvest NSW, *Submission 44*, pp 14, 23–24.

29 Western Australian Council of Social Service, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*, p. 14.

30 Victorian Aboriginal Community Controlled Health Organisation, *Submission 112*, p. 6.

communities. VACCHO concluded that these imprisonment costs are a significant economic burden and an unquantifiable social cost.³¹

3.29 Ultimately, the social factors created by imprisonment reinforce recidivism increasing the economic cost on the state. Sisters Inside explained that:

The social costs of imprisonment are self-evident. With every new generation of criminalised women and children the net widens. Increasing numbers of individuals and families are being drawn into the cycle of criminalisation, child protection, poverty and despair – at great cost to the state. At the same time, they are being drawn away from social and economic productivity and contribution.³²

3.30 The over-representation of disadvantaged groups within prisons, including Aboriginal and Torres Strait Islander peoples and people experiencing mental ill-health, cognitive disability and hearing loss will be examined in Chapter 4.

Conclusion

3.31 The increase in prisoner numbers is putting financial strain on the Australian justice system, which is quickly becoming unsustainable. Released prisoners are finding it difficult to find work and are facing multiple barriers to reintegrating with society. In addition, the removal of an individual from a community or family can have long lasting effects, as well as increasing financial burden. Due to the overcrowding of prisons, prisoner health is deteriorating and those health issues are being transferred to society with the release of prisoners. Governments need to address the long term economic and social costs of imprisonment to prevent further development of intergenerational offending, and occurrences of recidivism.

31 Victorian Aboriginal Community Controlled Health Organisation, *Submission 112*, pp 6–7.

32 Sisters Inside, *Submission 69*, p. 15.

Chapter 4

The over-representation of disadvantaged groups within Australian prisons

Introduction

4.1 This chapter examines the over-representation of disadvantaged groups within Australian prisons including Aboriginal and Torres Strait Islander peoples and individuals experiencing mental ill-health, cognitive disability and hearing loss. Other issues were also identified such as an increase of juvenile representation in the justice system, the correlation between the completion of high school and offending behaviour, as well as the link between incarceration and language impairment.

Young people in the justice system

4.2 In Australia, the upper age limit for treatment as a young person in the justice system is 17 in all states and territories except Queensland, where the limit is 16. However, some young people aged 18 and older are involved in the youth justice system—reasons for this include the offence being committed when the young person was aged 17 or younger, the continuation of supervision once they turn 18, or their vulnerability or immaturity.¹

4.3 The Australian Institute of Health and Welfare (AIHW) administers the Juvenile Justice National Minimum Data Set (JJ NMDS). Both Western Australia and the Northern Territory have not contributed to the NMDS since 2007–08. The AIHW estimates national totals based on previous data supplied from those jurisdictions.²

4.4 AIHW data indicated that on an average day in 2011–12, there were almost 7,000 young people aged 10 and older under youth justice supervision. A total of 13,830 young people were supervised at some time during the year. Among those aged 10–17, this equates to a rate of 26 young people per 10,000 under supervision on an average day and 52 per 10,000 during the year.³

4.5 Most young people under supervision are male and the majority are aged 14–17. Most young people are supervised in the community with 1,000 (14 per cent) in detention on an average day in 2011–12.⁴

4.6 Most young people in supervision were from cities (49 per cent) and regional areas (40 per cent). Young people aged 10–17 from remote areas were almost four

1 Australian Institute of Health and Welfare, *Youth justice in Australia 2011–12: an overview*, Bulletin 115, April 2013, p. 3.

2 Australian Institute of Health and Welfare, *Submission 73*, p. 2.

3 Australian Institute of Health and Welfare, *Youth justice in Australia 2011–12: an overview*, Bulletin 115, April 2013, p. 4.

4 Australian Institute of Health and Welfare, *Youth justice in Australia 2011–12: an overview*, Bulletin 115, April 2013, p. 1.

times as likely to be under supervision on an average day as those from major cities (63 per 10,000 compared with 17 per 10,000), while those from very remote areas were six times as likely (103 compared with 17 per 10,000). The AIHW added that, based on postcode of last address, almost 2 in 5 young people under supervision on an average day were from the areas of the lowest socioeconomic status. Young people aged 10–17 from the areas of lowest socioeconomic status were five times as likely to be under supervision as those from the areas of highest socioeconomic status (42 per 10,000 compared with 9 per 10,000).⁵

4.7 The AIHW commented that nationally, the numbers and rates of young people under justice supervision have remained relatively stable over the four years from 2008–09 to 2011–12.⁶

4.8 The Youth Affairs Council of Western Australia submitted that the daily rate of young people in detention in Western Australia between 2007 and 2011 increased by 33 per cent.⁷ The Commissioner for Children and Young People WA also provided information on youth detention, including trends, in Western Australia. While the number of proceedings taken against young people by police in Western Australia decreased (by 20 per cent in 2010–11), the average daily population in juvenile detention grew by 2.1 per cent. Over the five years from 2005, there was a 40 per cent increase. The Commissioner also noted that Western Australia has the second highest rate of juvenile detention in Australia, 0.69 young people per 1,000 in detention, second only to the Northern Territory at 1.55 per 1,000.⁸

4.9 The cost of detaining juveniles is high. The cost of housing a young person in a correction facility is significantly higher than the costs of accommodating adult prisoners. In NSW, just under half of the Department of Juvenile Justice budget is spent on keeping juvenile offenders in custody.⁹

Indigenous young people

4.10 Indigenous young people are over-represented in the justice system. Although less than 5 per cent of young people are Indigenous, on an average day in 2011–12, 39 per cent of those under supervision were Indigenous. In detention, this proportion was higher, where almost half (48 per cent) are Indigenous. Indigenous young people under supervision were younger, on average, than non-Indigenous young people.

5 Australian Institute of Health and Welfare, *Youth justice in Australia 2011–12: an overview*, Bulletin 115, April 2013, p. 6.

6 Australian Institute of Health and Welfare, *Youth justice in Australia 2011–12: an overview*, Bulletin 115, April 2013, p. 16.

7 Youth Affairs Council of Western Australia, *Submission 54*, p. 14.

8 Commissioner for Children and Young People WA, *Submission 23*, p. 2.

9 The Centre for Independent Studies, *Submission 46, Attachment 1*, Sara Hudson, 'Panacea to Prison? Justice Reinvestment in Indigenous Communities', *Policy Monographs*, The Centre for Independent Studies, No. 134, 2013, p. 4.

About 1 in 4 Indigenous young people under supervision on an average day were aged 10–14, compared with 1 in 8 non-Indigenous young people.¹⁰

4.11 Nationally, there were 236 Indigenous young people per 10,000 aged 10–17 under justice supervision on an average day in 2011–12, compared with just 15 non-Indigenous young people per 10,000. Thus, Indigenous young people aged 10–17 were almost 16 times as likely to be under supervision as non-Indigenous young people.

4.12 This over-representation was most notable in detention where Indigenous young people aged 10–17 were 15 times as likely as non-Indigenous young people to be under community based supervision and almost 25 times as likely to be in detention.¹¹ While the Northern Territory and Western Australia have not provided data for the NMDS which covers the whole justice system, data is provided for detentions. In the Northern Territory, there were 39 Indigenous young people aged 10 to 17 in detention on an average night in the June quarter 2011–12. This was a rate of 3.29 per 1,000 Indigenous young people. In Western Australia, the rate was 8.90 per 1,000 Indigenous young people.¹²

4.13 The trend in Indigenous young people under justice supervision is different to the national trend: between 2008–09 and 2011–12, there was an increase in the rate of Indigenous young people aged 10–17 under supervision on an average day from 226 to 236 per 10,000 population.¹³ The level of Indigenous over-representation increased in unsentenced detention over the period from 24 to 31 times the likelihood of non-Indigenous young people.¹⁴

Drivers of juvenile incarceration

4.14 There are multiple reasons for the increased juvenile representation in prisons. These include the disproportionate over-representation of Aboriginal young people held in detention. The AHYW reported that data collections show that young people from areas of low socioeconomic status or remote areas and young people who are homeless or in the child protection are also over-represented in the youth justice supervision system.¹⁵ Other factors include the increasing number of sentenced young

10 Australian Institute of Health and Welfare, *Youth justice in Australia 2011–12: an overview*, Bulletin 115, April 2013, p. 9.

11 Australian Institute of Health and Welfare, *Youth justice in Australia 2011–12: an overview*, Bulletin 115, April 2013, p. 10.

12 Australian Institute of Health and Welfare, *Juvenile detention population in Australia 2012*, Juvenile justice series No. 11, 2012, Tables S2, S10.

13 Australian Institute of Health and Welfare, *Youth justice in Australia 2011–12: an overview*, Bulletin 115, April 2013, p. 16.

14 Australian Institute of Health and Welfare, *Juvenile detention population in Australia 2012*, Juvenile justice series No. 11, 2012, p. vii.

15 Australian Institute of Health and Welfare, *Submission 73*, p. 3.

people being held on remand; the limited implementation of bail and supervision orders; and the geographic concentration of young offenders in disadvantaged areas.¹⁶

4.15 Legal Aid NSW commented that young people are often released on bail subject to onerous conditions such as curfews, requirements to be in the company of a parent, requirements to follow the directions of a parent, and place restrictions. Because of the stringency of such conditions, there is an increased likelihood that the conditions will be breached. Legal Aid NSW also commented that police appear to be giving more attention to bail compliance checking. As a result, the number of bail breach matters coming before the Children's Court has increased dramatically.¹⁷

4.16 This trend has several adverse consequences: a young person breaching bail will end up on remand; and if the young person comes into contact with the adult criminal justice system at a later stage having breached bail multiple times as a juvenile, that person is treated by the courts as a person with a lengthy criminal history which, among other things, decreases the chances of that person being granted bail in the future.¹⁸

4.17 In addition, a disproportionately larger number of juveniles are currently being held on remand in comparison to the rest of the prison population, for example, 53 per cent of the 320 juveniles and young people in custody in NSW held on remand. One of the reasons for remand being that 'a substantial number are refused bail because they are homeless'.¹⁹ The North Australian Aboriginal Justice Agency (NAAJA) observed that on 31 January 2013, 24 of 65 juvenile detainees in the Northern Territory were on remand.²⁰ Many young people are being held on remand due to their difficulty in upholding strict bail conditions and yet over 80 per cent of young people in remand in Western Australia will not receive a custodial sentence once they appear in court.²¹

4.18 The offending behaviour of young people is linked to their circumstances: 'there is strong evidence that children who suffer abuse or neglect are more likely to engage in criminal activity than those who do not'.²² The AIHW noted that almost 15 per cent of young people under juvenile justice supervision received homelessness support in the year before their most recent supervision. There is also an overlap between youth justice and child protection systems. Almost 10 per cent of those who

16 Youth Affairs Council of Western Australia, *Submission 54*, p. 13.

17 Legal Aid NSW, *Submission 38*, p. 3.

18 Legal Aid NSW, *Submission 38*, p. 3.

19 Sara Hudson, 'Panacea to Prison? Justice Reinvestment in Indigenous Communities', *Policy Monographs*, The Centre for Independent Studies, No. 134, 2013, p. 19.

20 North Australian Aboriginal Justice Agency, *Submission 47*, p. 7.

21 Youth Affairs Council of Western Australia, *Submission 54*, pp 14; 17.

22 Western Australian Council of Social Services, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*, p. 28.

have had some supervision have also had at least one substantiated child protection notification.²³

Aboriginal and Torres Strait Islander peoples

4.19 Aboriginal and Torres Strait Islander peoples are the most over-represented in Australia's justice systems. The Report on Government Services Indigenous Compendium provided the following information for 2011–12:

- the daily average number of Indigenous prisoners was 7757, 26.6 per cent of prisoners nationally;
- the national (crude) imprisonment rate per 100,000 Indigenous adults was 2246.3 compared with a corresponding rate of 123.7 for non-Indigenous prisoners;
- the national age standardised imprisonment rate per 100,000 Indigenous adults was 1749.7 compared with a corresponding rate of 129.1 for non-Indigenous prisoners.²⁴

4.20 It was noted that there has been an increase in the incarceration of Indigenous prisoners. In 1991, the number of adult Indigenous prisoners was 2,140 and 14 per cent of all adult prisoners identified as Indigenous. Currently, Indigenous people comprise only 2.5 per cent of Australia's population they also incorporate over a quarter of the prison population.²⁵ NATSILS also commented that Aboriginal and Torres Strait Islander peoples are incarcerated at a rate 14 times higher than non-Aboriginal and Torres Strait Islander peoples. This rate has increased between 2000 and 2010 by almost 59 per cent for Aboriginal and Torres Strait Islander women and 35 per cent for Aboriginal and Torres Strait Islander men.²⁶

4.21 The National Justice Chief Executive Officers (NJCEOs) also commented on the trend in Indigenous incarceration and stated that if the rate of Indigenous imprisonment is maintained at current levels, in 2021 the number of Indigenous people in prison on an average day will increase to 10,313. However, if the rate continues to trend upwards as it has over the last decade, in 2021, the number of Indigenous people in prison on an average day will reach 13,558. The NJCEOs stated that this would represent 'a virtual doubling of the number of Indigenous adults in prison over a period of 12 years'.²⁷

23 Australian Institute of Health and Welfare, *Submission 73*, p. 3.

24 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2013 Indigenous Compendium*, pp 8.3–8.4.

25 Sara Hudson, 'Panacea to Prison? Justice Reinvestment in Indigenous Communities', *Policy Monographs*, The Centre for Independent Studies, No. 134, 2013, p. 5. Note: Hudson commented that the increase in the proportion of Indigenous offenders is partly due to more Aboriginal offenders identifying as Indigenous and not just the result of increases in offending rates.

26 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 9.

27 NJCEOs Working Group, *Justice Reinvestment/Causes of Crime*, p. 5.

4.22 The South Australian Justice Reinvestment Working Group submitted it is the rate of reoffending of Indigenous people, as well as their over-representation in the justice system, which is of concern. In 2011, 70 per cent of Aboriginal and Torres Strait Islander prisoners convicted of a violent offence had a previous conviction and 81 per cent who were convicted of non-violent offences had a previous conviction.²⁸

4.23 Sisters Inside pointed to the increasing incarceration rate of Indigenous women and stated that not only are Indigenous women the most over-represented population in prison, they also have the fastest growing rate of imprisonment. Nationally, the increase in incarceration rates between 2000 and 2010 was greater for Aboriginal and Torres Strait Islander women than any other cultural group. Over the last decade there was a 58.6 per cent increase in incarceration for Indigenous women compared with a 22.4 per cent increase for non-Indigenous women. The increase in incarceration for Indigenous men was 35.2 per cent. Indigenous women are also more likely to return to prison than non-Indigenous women.²⁹ Indigenous women are also more likely to be in prison on remand and less likely to be granted conditional release or post prison community-based release.³⁰

4.24 Sisters Inside pointed to the significant level of trauma and abuse suffered by Indigenous women beginning in childhood. Many face high levels of ongoing family violence which have been connected to their offences and convictions with 80 per cent of women prisoners in one NSW study stating that they believed their offending was a direct consequence of their victimisation. The effects of repeated victimisation are well documented and can lead to low self-esteem, anxiety, depression, other mental health issues and substance abuse. Sisters Inside concluded:

These factors are all correlated with increased risk of offending and in the case of substance abuse can constitute an offence in itself. Therefore many Indigenous women and girls are not only stuck in cycles of abuse as victims, but also get stuck in cycles of offending in an effort to cope with their difficult life situations.³¹

Drivers of high Indigenous incarceration rates

4.25 It was noted that violent offending is the primary driver of Indigenous incarceration and that offences against justice procedures have a considerable impact. Violent offences account for 48 per cent of all prison sentences and offences against justice procedures 17 per cent.³²

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

29 Sisters Inside, *Submission 69*, p. 6; see also Anti-Discrimination Commission Queensland, *Submission 71*, p. 8.

30 Anti-Discrimination Commission Queensland, *Submission 71*, p. 9; Victorian Aboriginal and Community Controlled Health Organisation, *Submission 112*, p. 8.

31 Sisters Inside, *Submission 69*, pp 6–7.

32 NJCEOs Working Group, *Justice Reinvestment/Causes of Crime*, pp 6–7.

4.26 Other drivers behind the over-representation of Aboriginal and Torres Strait Islander people in Australia's prisons are linked to disadvantage: high levels of poverty, poor education outcomes and high rates of unemployment, lack of housing and homelessness, family dysfunction and loss of connection to community and culture.³³ The lack of access to adequate services such as housing, health and schooling also has a direct impact on the growing rates of imprisonment of Aboriginal and Torres Strait Islander people.³⁴ The impact of drug and alcohol abuse on incarceration rates is high, with suggestions that 'alcohol is a factor in up to 90 per cent of all Indigenous contact with the criminal justice system'.³⁵

4.27 The changes to judicial processes have also been linked to increases in Indigenous incarceration. For example, submitters pointed to the impact of mandatory sentencing laws. NATSILS submitted that:

By removing discretion, mandatory sentencing has resulted in inappropriate sentences of imprisonment, disproportionately high imprisonment rates in those jurisdictions in which it exists, and has contributed to the overwhelming overrepresentation of Aboriginal and Torres Strait Islander peoples in the prison population of those jurisdictions.³⁶

4.28 Furthermore, strict bail and monitoring conditions are becoming increasingly difficult to follow for some individuals with unstable living arrangements or a lack of financial means. These pose further issues for Indigenous populations 'especially in cases where an individual does not speak English or seeks to reside in a remote or regional community'.³⁷ The NSW Reconciliation Council also commented that 'police continue to use arrest for minor offences, meaning that Indigenous people are far more likely than non-Indigenous people to be arrested, charged, taken to court and given bail conditions'.³⁸

4.29 A further matter raised in evidence was 'normalisation' of imprisonment. As a consequence, imprisonment loses much of its deterrent effect and becomes a 'rite of passage' for disenchanting young people. Mr Craig Comrie, Youth Affairs Council of Western Australia, stated:

Unfortunately, I have heard numerous stories—in Western Australia particularly, given our distance and the location of our juvenile facility in Perth—of young people in regional areas offending merely so they can be with their friends and peers, because they know that they are in the prison here. I think as well there is an element of young people seeing it as a rite of passage. I would hazard to say that I do not think it is the main contributor that puts young people into the detention system, but it is

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

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

35 Law Council of Australia, *Submission 97*, p. 15.

36 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 7.

37 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 8.

38 NSW Reconciliation Council, *Submission 31*, p. 3.

something that we need to look at, and at providing young people with better opportunities and better support in their own communities so that it does not sound like a good thing to head down to Perth to go to Banksia Hill.³⁹

People suffering from mental ill-health

4.30 A large number of individuals suffering from mental ill-health are contained in Australia's justice system. The AIHW 2010 National Prisoner Health Census found that 31 per cent of people coming into prison reported having ever been told that they had a mental health disorder. Female prison entrants were more likely to have a history of mental health disorder than males. The proportion of prison entrants with a history of mental health disorder was about 2.5 times higher than the general population.⁴⁰ Australians for Native Title and Reconciliation submitted that if personality disorder and substance use disorder is included as a mental health problem the figure goes up to about 90 per cent for women and 75 per cent for men.⁴¹

4.31 This data is supported by the Human Rights Law Centre which stated that:

...around one in every five prisoners in Australia suffers from serious mental illness. There is both a causal and consequential link between imprisonment and mental illness; people with mental illness are more likely to be incarcerated, particularly having regard to the lack of support provided by the poorly resourced community mental health sector, and people in prison are more likely to develop mental health problems, with prisons not being conducive to good mental health.⁴²

4.32 The reasons behind the high rates of incarceration for individuals suffering from a mental illness include their incidence of homelessness and economic difficulties, the deinstitutionalisation and isolation of those suffering from mental illness, and increased alcohol and substance abuse among the general population as well as among the mentally ill.⁴³

4.33 The National Centre for Indigenous Studies and Indigenous Offender Health Capacity Building Group explained that due to a lack of appropriate mental health services 'people with mental illness are often incarcerated rather than treated'.⁴⁴ Once an individual suffering from a mental illness is imprisoned, the situation is often exacerbated as a result of inadequate prison health care. These individuals are

39 Mr Craig Comrie, Chief Executive Officer, Youth Affairs Council of Western Australia, *Committee Hansard*, 17 April 2013, p. 29.

40 Australian Institute of Health and Welfare, *The mental health of prison entrants in Australia*, Bulletin 104, June 2012, p. 6.

41 Australians for Native Title and Reconciliation, *Submission 63*, p. 7.

42 Human Rights Law Centre, *Submission 120*, p. 7.

43 Public Interest Advocacy Centre, *Submission 88*, p. 16.

44 National Centre for Indigenous Studies and Indigenous Offender Health Capacity Building Group, *Submission 83*, p. 2.

managed in other ways, including through segregation, and such methods can have a further detrimental effect on mental health and can cause psychological harm.⁴⁵

4.34 An individual with a mental illness also has a higher chance of being incarcerated if that person also abuses drugs or alcohol as it 'drastically increases a person's risk of negative interactions and outcomes, in particular as it relates to involvement in the criminal justice or forensic mental health system'.⁴⁶

4.35 The National Congress of Australia's First Peoples also commented on the association between mental health conditions and imprisonment rates for Aboriginal and Torres Strait Islander peoples. A recent study of Aboriginal and Torres Strait Islander people in Queensland prisons found that 72.8 per cent of men and 86.1 per cent of women had at least one mental health disorder, compared to a prevalence rate in the general community estimated at 20 per cent. The study concluded that the overrepresentation of Aboriginal and Torres Strait Islander people in prison, the high prevalence of mental disorder, and the frequent transitioning to and from prison, would have flow-of effects in Aboriginal and Torres Strait Islander communities.⁴⁷

Alcohol and substance abuse

4.36 Another disadvantaged group that is over-represented in the penal system is those individuals with a history of alcohol and substance abuse. The South Australian Justice Reinvestment Working Group cited the AIHW's 2010 report on prisoner health which stated that:

- 65 per cent of Australia's prisoners had used illicit drugs in the 12 months prior to incarceration (compared with 15 per cent of the general population using illicit drugs in the previous 12 months);
- 50 per cent reported drinking alcohol at levels that put them at risk; and
- 73 per cent of Aboriginal and Torres Strait Islander prisoners reported alcohol issues.⁴⁸

4.37 A high number of prison inmates blame intoxication for their imprisonment. A review of inmates in NSW and the ACT found that 61 per cent of inmates in NSW and 72 per cent of inmates in the ACT stated that their current imprisonment was due to being intoxicated while offending, showing the direct link between alcohol and drug use and involvement in the justice system.⁴⁹

4.38 Some offences have a high correlation with drug and alcohol use such as homicide, with 47 per cent of 1,565 homicides over six years being categorised as

45 Human Rights Law Centre, *Submission 120*, pp 20–21.

46 Alcohol Tobacco and Other Drug Association ACT, ACT Council of Social Service, Mental Health Community Coalition ACT, *Submission 117*, p. 6.

47 National Congress of Australia's First Peoples, *Submission 53*, p. 8.

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

49 National Centre for Indigenous Studies and Indigenous Offender Health Capacity Building Group, *Submission 83*, p. 2.

alcohol related, with both the victim and the offender having consumed alcohol prior to the offence.⁵⁰ Violent offences are in general linked to drugs and alcohol, with drunkenness fueling aggression and hostility. Potent stimulants, for example methamphetamines, can cause severe hostility including aggression, breaking property, or threatening and assaulting individuals with a weapon.⁵¹

4.39 Furthermore, drug and alcohol dependency can push an individual with limited income to commit property crime in order to sustain their habit. Conversely, an individual may resort to drug dealing to finance their addiction. This can create a higher chance of further offending as '[a]mong higher level dealers violence is associated with the drug trade'.⁵²

4.40 For female offenders, there is a stronger association between incarceration and drug and alcohol dependency than for male offenders. The Women in Prison Advocacy Network submitted that the reason for this was that 'women are more inclined to abuse substances as a form of self-medication or coping mechanism for the psychological and emotional distress correlated with their historical trauma'.⁵³ The historical trauma itself may have been the result of the alcohol and drug abuse of a partner, with the partner becoming more aggressive and physically violent.⁵⁴

Fetal Alcohol Spectrum Disorders

4.41 Drug and alcohol abuse can have intergenerational effects, especially for individuals that have been exposed to alcohol in the womb. Fetal Alcohol Spectrum Disorders (FASD) are conditions that are unique to an individual who has been exposed to alcohol during pregnancy and is characterised by:

...a spectrum of conditions which are unique to an individual and which may be physical and/or neurobehavioural...fetal alcohol exposure is often noticed as behaviours which result in a disparity between individual abilities and environmental expectations which increase over time. Frequently undetected, FASD is referred to as the "invisible disability". This may be attributed to the current lack of a comprehensive understanding of FASD among many health professionals and service providers.⁵⁵

4.42 The Royal Australian and New Zealand College of Psychiatrists submitted that the resulting brain damage from prenatal exposure to alcohol can increase involvement in criminal activity due to the following characteristics of FASD:

- a lack of impulse control;

50 Alcohol and other Drugs Council of Australia, *Submission 109*, pp 5–6.

51 Families and Friends for Drug Law Reform, *Submission 123*, pp 9–10.

52 Families and Friends for Drug Law Reform, *Submission 123*, p. 10.

53 Women in Prison Advocacy Network, *Submission 50*, p. 6.

54 North Australian Aboriginal Family Violence Legal Service, *Submission 55*, p. 3.

55 National Organisation for Fetal Alcohol Spectrum and Related Disorders, *Submission 106*, p. 7.

- trouble identifying future consequences of current behaviour;
- difficulty planning and connecting cause and effect;
- difficulty empathising with others and taking responsibility for actions;
- difficulty delaying gratification or making good judgments;
- a tendency toward explosive episodes; and
- vulnerability to social influences such as peer pressure.⁵⁶

4.43 There are other factors that can increase the probability of an individual with FASD committing offending behaviours. Dr Raewyn Mutch, Telethon Institute for Child Health Research, explained:

These conditions are characterized by significant central nervous system dysfunction leading to learning, developmental, sensory and behavioural problems. They are primary disabilities that then go on to develop secondary and tertiary disabilities such as depression, school failure, low self-esteem...They can also go on to develop other mental health disorders and substance dependency.⁵⁷

4.44 Dr Mutch also noted that studies from North America have estimated that juveniles with FASD are 19 times more likely to be incarcerated than those without FASD.⁵⁸

4.45 The National Organisation for Fetal Alcohol Spectrum and Related Disorders also pointed to a North American study which found that '60% of adolescents and adults diagnosed with FASD had been in trouble with the law and 50% had experienced a type of confinement'. Other indicators of higher rates of offending behaviour included '61% of individuals having a disrupted school experience...35% experienced alcohol and other drug problems and 49% had displayed inappropriate sexual behaviours on multiple occasions'.⁵⁹

Cognitive disability

4.46 Individuals with an intellectual disability are similarly overrepresented in Australia's justice system. The Royal Australian and New Zealand College of Psychiatrists referenced a study that examined '1,325 prisoners in Queensland and found that 9% of prisoners had an intellectual disability...three times higher than the prevalence in the normal population (3%)'.⁶⁰ Just Reinvest NSW cited a 2009 NSW

56 The Royal Australian and New Zealand College of Psychiatrists, *Submission 19*, pp 8–9.

57 Dr Raewyn Mutch, Post-Doctoral Research Fellow, Alcohol, Pregnancy and FASD Research Group of the Telethon Institute for Child Health Research, *Committee Hansard*, 17 April 2013, p. 1.

58 Dr Raewyn Mutch, Post-Doctoral Research Fellow, Alcohol, Pregnancy and FASD Research Group of the Telethon Institute for Child Health Research, *Committee Hansard*, 17 April 2013, p. 1.

59 National Organisation for Fetal Alcohol Spectrum and Related Disorders, *Submission 106*, p. 8.

60 The Royal Australian and New Zealand College of Psychiatrists, *Submission 19*, p. 9.

survey that found that 17 per cent of young people in prison had 'cognitive functioning scores consistent with a possible intellectual disability, and 10 per cent met both IQ and adaptive behaviour deficits consistent with... criteria for intellectual disability'.⁶¹

4.47 National Disability Services cited a recent Victorian Law Reform Committee report which found that 'anecdotal evidence and the limited statistical evidence that is available strongly suggest that people with an intellectual disability or cognitive impairment form a large and disproportionate proportion of offenders and victims of crime'.⁶²

4.48 The explanations given for the over-representation of individuals with intellectual disabilities are varied. For example, the Advocacy and Support Centre submitted that there may be some behavioural issues exhibited by people with disabilities that brings them into contact with the prison system, such as 'poor impulse control; lack of insight into offending behaviours; lack of self-control; lack of knowledge around social norms/rules; and difficulties in learning and communication'.⁶³

4.49 The high rate of incarceration of individuals with an intellectual disability could also be a result of a possible susceptibility to 'delinquent behaviour' due to mental disabilities; vulnerabilities in court processes as a result of incomprehension; or psychological and socio-economic disadvantage.⁶⁴ Additionally, it can be particularly difficult for a person with an intellectual disability to communicate instructions to legal representatives, or understand court processes, or the significance of legal issues.⁶⁵

4.50 Specifically, individuals with a complex cognitive disability 'broadly defined as a mental health disorder with an intellectual disability' have a much higher rate of early contact with the justice system than those with a single disability or without a disability.⁶⁶ Prisoners with an intellectual disability have high rates of deferral of parole due to a lack of post-release accommodation with appropriate support. In addition, prisoners with an intellectual disability have a higher average number of prison incidents recorded against them.⁶⁷

4.51 Recidivism rates of this group are also uncharacteristically high with prisoners suffering from an intellectual disability in NSW being 78 per cent more likely to return to prison.⁶⁸

61 Just Reinvest NSW, *Submission 44*, p. 16.

62 National Disability Services, *Submission 41*, p. 3.

63 The Advocacy and Support Centre, *Submission 21, Attachment 1*, p. 4.

64 The Advocacy and Support Centre, *Submission 21, Attachment 1*, p. 11.

65 Redfern Legal Centre on behalf of the CRPD Shadow Report Project Group, *Submission 84*, p. 15.

66 National Disability Service, *Submission 41*, p. 3.

67 National Disability Service, *Submission 41*, p. 2.

68 The Advocacy and Support Centre, *Submission 21, Attachment 1*, p. 11.

4.52 Another issue for individuals suffering from an intellectual disability is the difficulty these individuals have during exchanges with law enforcement. The Advocacy and Support Centre submitted as an example that 'a person with an intellectual disability [is] more likely to admit to offences, including those offences that they may not have committed, due to a desire to please an authority figure (police) or a desire to conceal the fact they do not understand the questions being asked'.⁶⁹

4.53 Difficulties exist for law enforcement as well due to a lack of training to identify individuals with signs of mental health issues or a cognitive disability. NATSILS stated that it:

...often see the failure of police to deal with the mental illness and cognitive/intellectual disabilities of a person who has come into contact with the criminal justice system, for relatively minor offending, without resorting to judicial proceedings and detention.⁷⁰

4.54 The absence of a procedural guide for law enforcement with regards to cognitive disability indicates that these individuals are not necessarily diverted to rehabilitative programs or other alternatives when necessary.⁷¹ Furthermore, there are occasions when an individual with a cognitive disability has to be detained as there are no rehabilitative programs available or they are oversubscribed or underfunded.⁷²

Young people with a cognitive disability

4.55 Legal Aid NSW noted that young people with a cognitive disability or mental health issue are more likely to be placed in care as a consequence of their problematic behaviour. Legal Aid NSW stated that the police and the justice system are increasingly being relied upon in lieu of adequate behaviour management, especially in relation to children with complex needs. For example, a common bail condition imposed on children in out-of-home care is the condition to 'obey the directions of carer'. As a result, children are reported to the police for breaching bail by carers and are subsequently arrested for demonstrating the type of behaviour that, if they were living in a functioning family environment, may have been dealt with without police intervention. In addition, both care workers, using occupational health and safety mandates, and parents have applied for apprehended violence orders (AVOs) against young people as a way of dealing with their behaviour. Legal Aid NSW stated that breaches are common because young people with cognitive and mental health impairments often lack the capacity to understand the conditions attached to AVOs.⁷³

69 The Advocacy and Support Centre, *Submission 21, Attachment 1*, p. 37.

70 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 13.

71 Public Interest Advocacy, *Submission 88*, p. 23.

72 Redfern Legal Centre on behalf of the CRPD Shadow Report Project Group, *Submission 84*, p. 21.

73 Legal Aid NSW, *Submission 38*, pp 3–4.

People suffering from hearing loss

4.56 Many submitters commented on the representation of individuals suffering from hearing loss in the justice system.⁷⁴ An individual with hearing loss can have early contact with the criminal justice system due to problematic linguistic development during childhood, which results in poor written literacy and communication, and subsequent poor education and employment outcomes. It was noted that within the justice system, people with hearing loss are disadvantaged. They may face more severe penalties if they cannot communicate effectively with police, if they cannot participate or fully understand court proceedings or cannot understand bail conditions or a parole order because of undetected hearing loss.⁷⁵

4.57 Hearing loss is particularly prevalent in Indigenous communities with over half of Aboriginal and Torres Strait Islander children experiencing some form of hearing loss, and 11 per cent having chronic otitis media.⁷⁶ Aboriginal and Torres Strait Islander people suffer hearing loss at ten times the rate of non-Indigenous people.⁷⁷

4.58 The Anti-Discrimination Commission Queensland submitted that statistical data on hearing loss was not available for those among the general prison population, nor for the Indigenous prison population, however 'informed estimates suggest that the incidence may be very high indeed'.⁷⁸

4.59 Other submitters provided evidence of hearing loss in prison populations. Juvenile Justice NSW referenced a survey conducted in 2009 that found that '18% of young people [in custody] had mild to moderate hearing loss in one or both ears, with a further 32% having at least one ear with a degree of hearing loss'.⁷⁹ NATSILS stated that an investigation among inmates in the Northern Territory corrections facilities found that more than 90 per cent of Aboriginal and Torres Strait Islander inmates had significant hearing loss.⁸⁰

4.60 Hearing loss can have a direct link to recidivism with an individual breaching parole or bail due to miscommunication. NATSILS provided an example of this in its submission:

...a client, who has an undetected hearing impairment, indicates that they understand what has transpired and that they understand the conditions of a

74 See for example, National Congress of Australia's First Peoples, *Submission 53*; Anti-Discrimination Commission Queensland, *Submission 71*; National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*; Juvenile Justice NSW, *Submission 124*.

75 National Congress of Australia's First Peoples, *Submission 53*, p. 6; National Association of Community Legal Centres, *Submission 103*, p. 10.

76 National Congress of Australia's First Peoples, *Submission 53*, p. 6.

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

78 Anti-Discrimination Commission Queensland, *Submission 71*, p. 8.

79 Juvenile Justice NSW, *Submission 124*, p. 7.

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

bail or parole order when in fact they haven't actually been able to hear a thing. Consequently, not being aware of their bail conditions, the client is then released only to unknowingly breach the order and be remanded in custody.⁸¹

4.61 The Senate Community Affairs References Committee report, *Hear Us: Inquiry into Hearing Health in Australia*, expressed concern regarding the links between hearing impairment and incarceration:

The committee is gravely concerned about the potential implications of hearing impairment on Indigenous Australian's engagement with the criminal justice system. Those most vulnerable are Indigenous people from remote areas who do not have English as their first language, or indeed who, due to early onset untreated hearing loss, have little means of communication at all.⁸²

4.62 The Community Affairs Committee stated that any improvements in Indigenous hearing health would have a subsequent positive impact on the reduction in incarceration rates.⁸³

Other disadvantaged groups

4.63 The committee identified other disadvantaged groups during its inquiry, including individuals with an oral-language impairment, who experienced difficulties when interacting with the justice system.

4.64 Oral language impairment is a common factor in young male offenders, with approximately 50 per cent having deficits in both comprehension and spoken language. Associate Professor Pamela Snow and Professor Martine Powell submitted that 'young people with more serious offence histories (i.e. involving interpersonal violence) are particularly likely to have language impairment'.⁸⁴

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

82 Senate Community Affairs References Committee, *Hear Us: Inquiry into Hearing Health in Australia*, May 2010, p. 147.

83 Senate Community Affairs References Committee, *Hear Us: Inquiry into Hearing Health in Australia*, May 2010, p. 147.

84 Associate Professor Pamela Snow and Professor Martine Powell, *Submission 18*, p. 1.

Chapter 5

The methodology and objectives of justice reinvestment

Introduction

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

What is justice reinvestment?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Methodology of a justice reinvestment approach

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

Justice mapping

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

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

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

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

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

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

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

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

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

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

Develop options for reducing offending and to generate savings

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

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

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

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

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

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

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

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

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

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

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

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

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

Implementation

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

Evaluation

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

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

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

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

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

Justice reinvestment in overseas jurisdictions

United States

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Texas

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

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

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

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

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

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

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

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

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

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

Kansas

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

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

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

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

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

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

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

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

Pennsylvania

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

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

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

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

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

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

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

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

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

United Kingdom

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Evaluation of justice reinvestment approaches in overseas jurisdictions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Committee view

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

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

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

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

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

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

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

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

Chapter 6

The benefits of a justice reinvestment approach for Australia

Introduction

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

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

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

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

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

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

6.5 The Anglican Diocese of Brisbane submitted:

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

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

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

Benefits of a justice reinvestment approach

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Economic benefits

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

6.15 Submitters pointed to significant savings that can be made in Australia across both state and Commonwealth budgets.¹⁷ For example, it was noted that the new prison for the Northern Territory was expected to cost some \$495 million. On current projections the new prison will be 83 beds short when it opens in 2014 and the Northern Territory will require another 1000 bed prison by December 2016.¹⁸ Any decrease in future demand for prison beds in the Northern Territory would lead to significant savings.

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

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

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

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

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

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

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

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

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

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

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

Benefits for communities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Indigenous communities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Localism

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

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

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

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

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

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

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

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

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

Community control

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

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

Focus on disadvantage

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

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

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

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

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

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

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

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

Benefits for individuals

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

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

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

People with mental illness and cognitive/intellectual disability

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

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

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

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

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

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

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

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

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

Juvenile justice

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

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

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

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

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

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

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

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

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

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

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

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

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

Emergence of support for a justice reinvestment approach in Australia

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Research projects

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

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

Concerns about a justice reinvestment approach for Australia

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

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

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

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

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

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

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'.¹

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.² 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'.³ Before justice reinvestment is adopted in Australia, the Australian Justice Reinvestment Project called for analysis of

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.⁴

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.⁵

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'.⁶ Furthermore, that justice reinvestment is best understood as an approach rather than necessarily a solution.⁷

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'.⁸

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.⁹

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.¹⁰ 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.¹¹

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.¹² 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.¹³

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.¹⁴ 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

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'.¹⁵

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.¹⁶

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.¹⁷ 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.¹⁸

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.¹⁹

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.²⁰ 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.²¹ Mr Chris Twomey, Western Australian Council of Social Service, commented:

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.

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.²²

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.²³ 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.²⁴

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.²⁵

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'.²⁶

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.²⁷

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'.²⁸

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.²⁹

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.³⁰

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.³¹ 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

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.

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.³²

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'.³³

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.³⁴

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.³⁵ 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.³⁶

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

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.³⁷

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.³⁸

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.³⁹

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'.⁴⁰

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.⁴¹

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.

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.⁴²

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'.⁴³

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.⁴⁴ 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.⁴⁵

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.⁴⁶

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.⁴⁷

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.⁴⁸ 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.⁴⁹

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.⁵⁰ 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'.⁵¹

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.⁵²

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.⁵³

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

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'.⁵⁴

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.⁵⁵ 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.⁵⁶

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'.⁵⁷

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.⁵⁸

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

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.

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.⁵⁹

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.⁶⁰

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.⁶¹

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.⁶² 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

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.⁶³

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.⁶⁴ 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.⁶⁵

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.⁶⁶

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.⁶⁷

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.⁶⁸ 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'.⁶⁹

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.⁷⁰

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.⁷¹ 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

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.⁷²

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.⁷³

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 2012.⁷⁴

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'.⁷⁵

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.⁷⁶

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

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'.⁷⁷

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.⁷⁸

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.⁷⁹

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

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.⁸¹

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.⁸² In Queensland, all diversion courts, including the Special Circumstances Court, have recently been closed.⁸³ In NSW, the Youth Drug and Alcohol Court was closed.⁸⁴ 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.⁸⁵

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

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'.⁸⁷

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

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'.⁸⁸ 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.⁸⁹

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.⁹⁰ 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'.⁹¹ 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.⁹² Evaluations may also be expensive, and many small programs that may be successful do not have funding to undertake an effective evaluation process.⁹³

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

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

89 Department of Communities and Social Inclusion, South Australian Government, *Submission III*, 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.⁹⁴

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.⁹⁵

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.⁹⁶

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'.⁹⁷

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.⁹⁸ 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;

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.⁹⁹

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'.¹⁰⁰

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.¹⁰¹

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

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.¹⁰²

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.¹⁰³

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.¹⁰⁴ However, the success rates have been high with a reoffending rate of about 10 per cent for the clients in the program. This

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.¹⁰⁵

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'.¹⁰⁶

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.¹⁰⁷

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.¹⁰⁸ 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.¹⁰⁹ 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

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.¹¹⁰

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.¹¹¹

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.¹¹²

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.¹¹³ 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

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.¹¹⁴

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.¹¹⁵

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.¹¹⁶ 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.¹¹⁷

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.¹¹⁸

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

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.¹¹⁹ 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'.¹²⁰

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.¹²¹

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.¹²² Community Legal Services NSW commented that there is a lack of individuals with the relevant high level skills sets.¹²³ 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.¹²⁴

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.¹²⁵

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'.¹²⁶

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.¹²⁷ 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.¹²⁸

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.¹²⁹

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

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'.¹³⁰

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)'.¹³¹

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.¹³²

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.¹³³

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

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.

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.

Chapter 8

Towards a justice reinvestment approach for Australia

Introduction

8.1 The committee's inquiry elicited a great deal of interest from many stakeholders in the justice and community sectors. That interest, and indeed the large amounts of evidence provided to the committee, shows that justice reinvestment is a concept which is attracting attention across Australia as a means of addressing increasing incarceration rates in an evidence-based and community focussed approach.

8.2 This chapter draws together the evidence presented in the previous chapters and provides the committee's conclusions and recommendations on its inquiry into the value of a justice reinvestment approach for Australia.

The value of a justice reinvestment approach in Australia

8.3 While it is acknowledged that the rate of imprisonment in Australia is substantially less than in some overseas jurisdictions, most notably the United States, during 2011–12, on average, there were 29,213 people (excluding periodic detainees) held in Australian prisons. Just over a quarter of these people were Aboriginal and Torres Strait Islander prisoners. The rate of imprisonment for Aboriginal and Torres Strait Islander prisoners was 15 times higher than the rate for non-Indigenous prisoners.

8.4 The rates of imprisonment in Australia have increased over the last three decades. At 30 June 2012, the adult imprisonment rate was 168 per 100,000. In 1984, the rate of imprisonment was approximately 86 per 100,000. The changes to rates of imprisonment have varied between jurisdictions over the last ten years: in the Northern Territory, the rate has increased 72 per cent, while in Western Australia the rate increased 37 per cent.

8.5 Prisons are a very expensive undertaking: in 2011–12, expenditure on the corrections system exceeded \$3 billion in total across Australia. Added to the cost of police services and courts (criminal and civil), the total justice system expenditure was \$14.02 billion. The costs borne by government through welfare, health and other services are significant and the social costs borne by communities and families are immense.

8.6 These figures indicate that jurisdictions across Australia have relied, and continue to rely, on incarceration as a deterrent to criminal offending at great cost to the taxpayer and society generally. While governments continue to support the expensive corrections system, it has not been successful in addressing offending behaviour – prison is not a deterrent and recidivism rates continue to hover around 40 per cent.

8.7 It appears to the committee that given the significant failures of the current justice system, it is time to look at where and why crime occurs and to address the underlying drivers of offending and reoffending. The committee considers that justice reinvestment has a proven track record in achieving successful outcomes through both lowering incarceration rates and targeting the drivers of crime. It is a community-focussed, evidenced-based approach that provides savings, diverts offenders, addresses the causes of crime, and strengthens communities.

8.8 The four step methodology of justice reinvestment – demographic/justice mapping and analysis of data; development of options; implementation; and evaluation – ensures that limited government resources are effectively targeted at communities where most offenders come from and return to. The evaluation mechanisms embedded within the justice reinvestment approach also ensure that the savings gained are only spent on programs which show positive outcomes in reducing offending behaviour.

8.9 The methodology of justice reinvestment requires an extensive range of community-level data, sophisticated and robust analysis of data, identification of policy options and evaluation of programs. One of the challenges of implementing a justice reinvestment approach in Australia will be the lack, and the inaccessibility, of the data required. However, the committee considers that this is not an insurmountable obstacle and indeed, improvements in data collection and analysis will provide benefits for many sectors of government.

8.10 There will need to be both government and community support if a justice reinvestment approach is to succeed. In addition, trialling of justice reinvestment will provide valuable insight into how it may be applied in Australia. The committee considers that the Commonwealth can play a key role in fostering support for the concept of justice reinvestment as well as trialling the approach in communities.

Commonwealth role

8.11 The importance of the role of the Commonwealth in supporting justice reinvestment in Australia was highlighted in evidence. Submitters acknowledged that the states and territories have the primary responsibility for criminal justice but argued that increasing incarceration rates are occurring in all jurisdictions. As such, there appears to be a benefit in a national approach to tackling this problem through justice reinvestment. It was stated that there are opportunities for the Commonwealth to encourage and support justice reinvestment. Indeed, the AHRC commented that 'the success of justice reinvestment in Australia relies on a cooperative relationship between the Australian Government and the states and territories'.¹

8.12 It was argued that there are a number of reasons why the Commonwealth should support a justice reinvestment approach. The successful implementation of a justice reinvestment approach would provide benefits to the Commonwealth, particularly economic benefits through a decrease in the need for welfare services and

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

income support.² Mr Hunyor, NAAJA, added this comment in relation to Indigenous communities:

... the Commonwealth invests masses of money in the Territory, and I guess in some respects subsidises the Territory because of issues like remoteness, because of the large Indigenous communities and because of its strategic placement in Australia and the region. So the Commonwealth is currently spending many billions of dollars every year on Territory and Aboriginal communities, and it has a real interest in seeing that that is not money wasted.³

8.13 In addition, it was noted that the principles of justice reinvestment align with the aims of policies such as Closing the Gap. Mission Australia submitted:

The significant over-representation of Aboriginal Australians within the justice system also provides a logical point of involvement for the federal government. This is consistent with a number of the recommendations in *Doing Time – Time for Doing* as well as the social inclusion agenda. The Aboriginal & Torres Strait Islander Social Justice Commissioner has stated that 'In effect, justice reinvestment could become a very powerful tool for ensuring that Indigenous Australians are socially included. It meets the concerns of policy makers 'mindful of the costs and benefits and evidence of returns for investment', the need for holistic early intervention and evidence based policy'.⁴

8.14 The compatibility of justice reinvestment with respect for human rights was also raised by the HRLC. The HRLC noted that 'in its recommendations to Australia in 2010, the UN Committee on the Elimination of Racial Discrimination specifically recommended that Australia "adopt a justice reinvestment strategy, continuing and increasing the use of Indigenous courts and conciliation mechanisms, diversionary and prevention programs and restorative justice strategies"'.⁵

8.15 There were various suggestions about the role the Commonwealth could undertake within a justice reinvestment approach. Principally, that role was seen as one of leadership.⁶ Mr Rodney Astbury, WAAMH, commented that:

The role of the Commonwealth in providing leadership around that is really critical, because there is a history of attempts to address this complex issue across government agencies that have had very limited success.⁷

2 Noetic Group, *Submission 98*, p. 9.

3 Mr Jonathon Hunyor, North Australian Aboriginal Justice Agency, *Committee Hansard*, 1 May 2013, p. 15; see also, Mission Australia, *Submission 99*, pp 10–11.

4 Mission Australia, *Submission 99*, p. 10.

5 Human Rights Law Centre, *Submission 120*, p. 1.

6 See for example, Western Australian Council of Social Service, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*, p. 41; Noetic Group, *Submission 98*, p. 9.

7 Mr Rodney Astbury, Western Australian Association for Mental Health, *Committee Hansard*, 17 April 2013, p. 11.

8.16 NATSILS saw the Commonwealth leadership role as significant in 'securing the necessary buy in from state and territory governments'.⁸ The AHRC submitted that the Commonwealth could set a policy landscape, together with the states and territories, that moves away from imprisonment and towards diversion and crime prevention.⁹

8.17 There were other areas where it was considered that the Commonwealth could provide leadership. The South Australian Justice Reinvestment Working Group suggested that the starting point would be for the Commonwealth to recognise the benefits of justice reinvestment as a 'concept'.¹⁰ It was also suggested that the Commonwealth could use the COAG process to influence state government, particularly around justice targets.¹¹ Mission Australia added that 'any commitment at the COAG level would also ensure that there was cooperation across all levels of government and all departments; substantially reshaping how we deal with over-representation'.¹² Mission Australia went on to state:

Supporting Closing the Gap is the National Indigenous Law and Justice Framework which aims to eliminate Indigenous disadvantage in law and justice by providing a national approach to addressing interactions between Aboriginal Australians and the justice systems in Australia. This too could be a mechanism for the federal government action as the framework is intended to support Closing the Gap in relation to community safety. It is considered the framework will be instrumental in achieving COAG objectives so could provide a suitable mechanism by which to incorporate justice reinvestment into policy.¹³

8.18 The Attorney-General's Department responded to calls for the Commonwealth to play a role in the implementation of justice reinvestment. Mr Duggan emphasised that the states and territories have primary responsibility for the justice system:

The Commonwealth can play an important role in encouraging the adoption of such approaches, bring the states and territories together to share approaches and experiences, and disseminate information about approaches overseas. Those are all roles that we have attempted to take in the recent past. The decision to adopt the justice reinvestment approach—and the extent to which the approach is adopted—is ultimately a question for each state and territory in consultation with the Commonwealth.¹⁴

8 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 30.

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

10 South Australian Justice Reinvestment Working Group, *Submission 28*, p. 11.

11 Ms Kerry Graham, Just Reinvest NSW, *Committee Hansard*, 1 May 2103, p. 26.

12 Mission Australia, *Submission 99*, p. 11.

13 Mission Australia, *Submission 99*, p. 11.

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

8.19 Mr Duggan went on to comment that there was a much greater debate on justice issues and some signs of change:

I have to indicate to you that we believe that there is much greater debate and discussion now that we can have with states and territories on these issues, not least because the cost of constantly incarcerating more people is causing a rethink. We think there is at least bipartisan support at the Commonwealth level for a consideration of these issues. This is purely a personal point of view, of course, if you will excuse that, but we think there is a real opportunity emerging at the moment for there to be a debate almost across party lines on this issue. We are quite encouraged by some of the contacts we have with our counterparts in states and territories where you have coalition governments. So it is not quite as simplistic as perhaps it once was—that we have a law and order debate every time there is an election. I think there is a much more nuanced discussion capable of being had at the moment. And, indeed, it is happening.¹⁵

8.20 It was also suggested that the Commonwealth could support the establishment of the justice reinvestment structures needed in the states and territories.¹⁶ In addition, it was argued that the Commonwealth should support the improvement of data collection and analysis.¹⁷ For example, consistent data collection, or aggregation of consistent data from state agencies, as a means to provide a national framework for justice reinvestment. In this regard, Commonwealth action would be on a scale beyond that possible by any single jurisdiction. Mission Australia suggested that the Commonwealth could commit to making its own data available from any Commonwealth agencies that align with justice reinvestment initiatives.¹⁸

8.21 Mr Bonig also commented on data issues and the Commonwealth's role following the South Australian working group's difficulties in trying to establish whether sufficient data exists to support a trial of justice reinvestment. Mr Bonig stated:

One of the things the South Australian working group has been trying to do is get to the bottom of some data and look at whether or not a pilot program is feasible. It does not appear that there is a consistent recording of data and it appears that different departments record data differently. There is no central database where we can go to get some of the data that we need. The federal government could coordinate the bringing together of existing programs. There appears to be what is colloquially known as a silo mentality, which means that some programs are being delivered by some

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

16 Ms Melanie Schwartz, Chief Investigator, Australian Justice Reinvestment Project, *Committee Hansard*, 1 May 2013, p. 59.

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

18 Mission Australia, *Submission 99*, p. 10; see also Ms Kerry Graham, Just Reinvest NSW, *Committee Hansard*, 1 May 2013, p. 26.

departments without consultation with other departments. The federal government could assist in bringing together existing programs. A lot of this could be driven through COAG adopting justice reinvestment and working with the states, as is done with the mental health project and some of the other national projects which still have a state focus. Obviously the Standing Council on Law and Justice would also be able to have some input.¹⁹

8.22 A further avenue for the Commonwealth to assist in improved data collection suggested by WACOSS was through grants and service agreements to encourage and support the collection of relevant and comparable data relating to justice and service delivery outcomes. A similar arrangement could also be negotiated into National Partnership Agreements and other joint funding arrangements.²⁰

8.23 Funding was one area where submitters suggested that the Commonwealth would have a key role.²¹ The Victorian Alcohol and Drug Association supported the use of incentives by the Commonwealth to influence state and territory governments to implement justice reinvestment.²² In addition, the National Association of Community Legal Centres suggested that the Commonwealth support justice reinvestment through directly funding programs, much as occurs in the US where federal grants are provided to government agencies and non-profit organisations for justice reinvestment programs.²³

Trials of justice reinvestment

8.24 It was noted that currently there is limited evidence to shape the way in which justice reinvestment might be realised in Australia. Submitters therefore recommended that pilot justice reinvestment projects be conducted to prove the concept.²⁴ This would help to inform the implementation of future projects²⁵ and allow the states and territories to fund justice reinvestment with the confidence that it will deliver future benefits.²⁶ Ms Graham, Just Reinvest NSW, stated:

I believe even more strongly that, if a justice reinvestment trial site happened in Australia then...there would be an evaluation in place that allowed the field to grow. Service providers and governments would learn from a demonstration site more quickly to get greater outcomes and policy

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

20 Western Australian Council of Social Service, Western Australian Association for Mental Health, Western Australia Network of Alcohol and Drug Agencies, *Submission 64*, p. 41.

21 Anti-Discrimination Commission Queensland, *Submission 71*, p. 24.

22 Victorian Alcohol and Drug Association, *Submission 92*, p. 16.

23 National Association of Community Legal Centres, *Submission 103*, p. 20.

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

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

26 Noetic Group, *Submission 98*, p. 9.

change than if we tried to retrospectively mine all of the programs that are being funded and find out what works.²⁷

8.25 It was recommended to the committee by many submitters, including the AHRC, that the Commonwealth, in partnership with the states and territories, support trials in selected Aboriginal and Torres Strait Islander communities where there is a high level of offending.²⁸ The South Australian Justice Reinvestment Working Group also advocated Commonwealth funding:

The issue that will face some of the States and Territories is how to fund any pilot studies. As this justice reinvestment is not just about incarceration but seeks to address a number of underlying socio economic problems which underpin the cause for offending such as, health, welfare and education there is a Federal responsibility to assist in the implementation of a justice reinvestment programme. Therefore consideration could and should be given to some national funding.²⁹

8.26 The AHRC stated that trial sites should be communities with high concentrations of Aboriginal and Torres Strait Islander imprisonment and any trials should be accompanied by a research and evaluation strategy to ensure any lessons around design, process and implementation can be used in other sites.³⁰

8.27 The National Congress of Australia's First Peoples suggested that some trials should be undertaken in remote communities:

Once you look at remote communities, the feasibility starts [to] go down, but that does not mean it should not be attempted or trialled. We would suggest that we should at least attempt some trials in some remote communities first. One of the core things of justice reinvestment is that all the programs that are funded are really thoroughly evaluated to see what is working and what is not.³¹

8.28 However, the AHRC commented that care should be taken to ensure that there is capacity and a good local governance structure within the community to support a trial. Ms Priday, AHRC, stated that 'there is no point in us going into the community with the most challenging problems in the first instance and asking them to do something that is quite complex without having the capacity there'.³²

8.29 A further matter raised in relation to conducting a trial was the need to ensure that appropriate cooperation and support is provided by the relevant state or territory government. The AHRC commented that in some states, particularly NSW, justice

27 Ms Kerry Graham, Just Reinvest NSW, *Committee Hansard*, 1 May 2103, p. 22.

28 Australian Human Rights Commission, *Submission 85*, p. 11.

29 South Australian Justice Reinvestment Working Group, *Submission 28*, p. 11.

30 Australian Human Rights Commission, *Submission 85*, p. 11.

31 Ms Tammy Solonec, National Congress of Australia's First Peoples, *Committee Hansard*, 17 April 2013, p. 22.

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

reinvestment groups had been working to gain support of the government and the community for justice reinvestment so that there are areas that would be receptive to a trial.³³

Independent body

8.30 There was much support from submitters from the establishment of a central body to provide coordination, support and research services for justice reinvestment. Submitters pointed to the experience in the US where bodies such as the Council of State Government Justice Center have played a pivotal role in the success of justice reinvestment.

8.31 The creation of a central body was seen as an essential step in the implementation of justice reinvestment in Australia. Ms Graham, Just Reinvest NSW, stated:

This strategic body would be absolutely, as we see it, central to and essential in helping that community, and then in helping many others replicate that for their own needs. And we do not see it as being a lot of money invested. It really would be an aggregator of best practice, a support to community capacity-building and an evaluation support. Those would be its key roles.³⁴

8.32 Ms Schwartz provided the Australian Justice Reinvestment Project view on the role of the body in guiding justice reinvestment:

The body would have responsibility for coordinating the various stakeholders; developing choices for initiatives to initially reduce levels of incarceration or make initial savings to the corrections budgets; broker agreements as to the policy initiatives to be put into effect; and conduct independent evaluation.

The auspicing body would also ensure that an agreed proportion of the money saved from the corrections budget is actually reinvested in high-stakes communities, and in this way the body will have a crucial role in ensuring that JR is not in fact used as a foil for disinvestment in communities where money saved is channelled elsewhere and not into the high-stakes communities. We would submit that this is a possible role that the federal government can play in supporting and resourcing this type of auspicing body.³⁵

8.33 NATSILS also supported the creation of a central body, arguing that a central independent coordinating body would provide non-partisan advice on effective, evidenced-based justice reinvestment initiatives; collect data and identify communities for justice reinvestment initiatives; assist in strategic development of justice

33 Ms Emilie Priday, Senior Policy Officer, Australian Human Rights Commission, *Committee Hansard*, 1 May 2013, p. 5.

34 Ms Kerry Graham, Just Reinvest NSW, *Committee Hansard*, 1 May 2013, p. 25.

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

reinvestment plans; and assist with building community capacity, monitoring selected policy options and ongoing evaluation of social and economic outcomes.³⁶

8.34 Submitters commented that the Commonwealth could provide support to such a body, including financial support.³⁷ NATSILS went further and provided recommendations in relation to the establishment of a central body:

That the Commonwealth Government work with the Standing Council on Law and Justice to secure agreement with State and Territory governments to commit to jointly establishing an independent central coordinating agency for justice reinvestment.

In securing agreement with State and Territory governments, that the Commonwealth Government consider the potential for attaching relevant conditions to the funding it provides to State and Territory governments.

In the event that agreement is not secured, that the Commonwealth Government itself establish an independent central coordinating agency for justice reinvestment.

That the central coordinating agency focus on building the evidence base that will inform justice reinvestment initiatives. Such will not only assist in identifying locations for justice reinvestment initiatives but will also provide the necessary data to inform modelling as to the fiscal benefits that could be achieved which could serve to convince any State and Territory governments which have not yet signed on.³⁸

8.35 The National Centre for Indigenous Studies recommended that an authority be established through Commonwealth and state and territory uniform legislation and that the authority have a mandate to comprehensively implement and evaluate justice reinvestment policy. The Centre submitted that a legislative basis for the authority would ensure that the justice reinvestment agenda would be progressed. Further, that the Commonwealth should provide adequate start-up funding for the authority.³⁹

8.36 Mr McDonald, Productivity Commission, sounded a note of caution in relation to the establishment of a central body. He stated:

I am just not sure of what the current level of knowledge is within government and what the government policymakers already have and whether you are running the risk of setting up a body to tell governments their core business, which is running the justice system. Potentially, you would hope that they know about the interactions between the justice system and their social and economic policies. More information is always

36 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, pp 29–30; see also, Ms Emilie Priday, Senior Policy Officer, Australian Human Rights Commission, *Committee Hansard*, 1 May 2013, p. 2.

37 National Association of Community Legal Centres, *Submission 103*, p. 20.

38 National Aboriginal and Torres Strait Islander Legal Services, *Submission 72*, p. 31.

39 National Centre for Indigenous Studies and Indigenous Offender Health Capacity Building Group, *Submission 83*, p. 9.

good, but I would just need to be convinced that there was gap to be filled.⁴⁰

Justice targets

8.37 Submitters supported the implementation of justice targets.⁴¹ The Australian Human Rights Commission recommended that the Commonwealth and state and territory governments commit to justice targets:

Beyond this the commission recommends that the Australian government set up the policy landscape so that we move from imprisonment towards diversion and crime prevention. Justice targets should be set to reduce the imprisonment rate for Aboriginal and Torres Strait Islander people. Targets should be implemented as part of a properly funded community [Safe Communities] National Partnerships program as part of the Closing the Gap strategy.⁴²

8.38 The Commissioner for Children and Young People WA noted that measuring the achievement in any areas requires the establishment of a baseline and effective targets to ensure progress is measurable. The Commissioner has called for the integration of criminal justice targets into the COAG Closing the Gap Initiative. The Commissioner went on to state that:

It is essential in aiming for targets in health, early childhood, education and employment that the rate of Aboriginal over-representation is addressed as part of the effort to close the gap on Aboriginal disadvantage.⁴³

8.39 The National Congress of Australia's First Peoples commented that the lack of a justice target is a 'gaping hole' in the Closing the Gap framework. While there are COAG targets in other areas, such as educational attainment, there is no justice target. Congress stated that the target should be aimed at reducing the incarceration rate by 50 per cent. Ms Solenec commented:

We believe that, if justice reinvestment is implemented on a national level with the standardised data collection, they are going to be able to meet these targets. It has been quite difficult for state governments, particularly governments like [the Western Australian Government], to commit to justice targets. Every time it has come up at the committee on law and justice, governments such as this one say: 'We can't do that. We're not going to admit to these targets.' But we think that, if justice reinvestment were in tandem with the targets so that both things happened at the same time and

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

41 See for example, Community Legal Centres NSW, *Submission 102*, p. 18; National Association of Community Legal Centres, *Submission 103*, p. 20.

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

43 Commissioner for Children and Young People WA, *Submission 23*, pp 6–7.

they are both going to go down, we are going to be able to meet the targets and have all the benefits from justice reinvestment.⁴⁴

8.40 The National Centre for Indigenous Studies also supported the development of justice targets commenting that, without a target in Australia, there will be little imperative for change. The Centre stated that 'ultimately, national incarceration rates should reflect, *at the very most*, no more than the 2.5% Indigenous population rate'. An indicative incarceration rate target for Australia should be set by the proposed justice reinvestment body. It was stated that an associated indicative task could be that the proposed body works with all jurisdictions to determine an agreed level by which the incarceration levels in each will be reduced and the commensurate savings would be diverted from the corrections sector for reinvestment to justice reinvestment initiatives in those jurisdictions.⁴⁵

8.41 The committee notes that the Standing Committee on Attorneys-General its Communique of 12 and 22 July 2011 stated:

Ministers discussed the unacceptable rates of incarceration of Indigenous Australians, including the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs' Doing Time – Time for Doing Report and agreed:

(a) to significantly reduce the gap in Indigenous offending and victimisation and to accurately track and review progress with a view to reviewing the level of effort required to achieve outcomes

(b) to ask First Ministers to refer to COAG the possible adoption of justice specific Indigenous closing the gap targets, acknowledging that in many instances their relative occurrence are due to variable factors outside the justice system.⁴⁶

Conclusion

8.42 The committee acknowledges that incarceration is a necessary option within the sentencing regime. However, incarceration should be seen as a last resort and only for serious offenders. Incarceration should also not be used because of the absence of adequate alternative solutions. The committee is particularly concerned that people with mental health issues, cognitive disability and alcohol and drug problems are sent to prison because there are no other options available for courts to consider.

8.43 The committee considers that the present approach to justice does not adequately address the determinants of crime with the result that Australia is facing ever increasing incarceration rates. This provides compelling reasons to explore other options.

44 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Committee Hansard*, 17 April 2013, p. 21.

45 National Centre for Indigenous Studies and Indigenous Offender Health Capacity Working Group, *Submission 83*, p. 10 (revised).

46 Standing Committee on Attorneys-General, *Communique*, 12 and 22 July 2011.

8.44 Justice reinvestment provides a mechanism to address these issues, particularly Indigenous incarceration. Any move toward a justice reinvestment approach will require the support of all governments. The committee considers that the Commonwealth should take the lead in this regard and place the implementation of justice reinvestment on the COAG agenda.

8.45 The committee further considers that given the challenges of implementing a justice reinvestment approach in Australia identified in the evidence, comprehensive trialling is necessary. The use of trials will allow for an evaluation as to whether justice reinvestment is in fact a viable option in Australia.

8.46 In order to conduct a trial, the data issues must be addressed and coordination, support, evaluation and research services would be necessary. The committee believes that a central, independent body would be best placed to provide these services for the benefit of any State or Territory willing to undertake such a trial. The benefits of an independent body are well established by the experience in the United States where organisations such as the Council of State Governments Justice Center have played an important facilitative, non-partisan role in assisting the implementation of a justice reinvestment approach.

8.47 In addition, the committee notes the current research work being undertaken by the Australian Justice Reinvestment Project, University of New South Wales. The committee considers that the development of a trial should have regard to the work of the Project.

8.48 The committee considers that the establishment of a central body should be supported by the Commonwealth but will also require support and commitment from state and territory governments.

Recommendation 5

8.49 The committee recommends that the Commonwealth adopt a leadership role in supporting the implementation of justice reinvestment, through the Council of Australian Governments.

Recommendation 6

8.50 The committee recommends that the Commonwealth commit to the establishment of a trial of justice reinvestment in Australia in conjunction with the relevant states and territories, using a place-based approach, and that at least one remote Indigenous community be included as a site.

8.51 Further, the committee recommends that any trial actively involve local communities in the process, is conducted on the basis of rigorous justice mapping over a minimum time frame beyond the electoral cycle and be subject to a robust evaluation process.

Recommendation 7

8.52 The committee recommends that the Commonwealth provide funding for the trial of justice reinvestment in Australia.

Recommendation 8

8.53 The committee recommends that the Commonwealth, through the Standing Committee on Law and Justice, promote the establishment of an independent central coordinating body for justice reinvestment with the following roles:

- provision of advice as to methodology regarding justice reinvestment;
- identification of the national, consistent data required for effective implementation of justice reinvestment;
- development of options for policy and initiatives to reduce levels of incarceration and identify potential savings for corrections budgets;
- assistance with justice mapping for identification of place-based communities and identification of existing services and gaps in services required to reduce crime;
- brokering agreements between stakeholders;
- independent evaluation of programs and savings; and
- monitoring reinvestment of savings in high stakes communities.

8.54 The final matter which the committee wishes to address is the issue of justice targets. The committee considers that there are sound reasons to establish a target to reduce the imprisonment rate for Aboriginal and Torres Strait Islander people.

Recommendation 9

8.55 The committee recommends that the Commonwealth refer to the Council of Australian Government the establishment of justice targets for Aboriginal and Torres Strait Islander people as part of the Closing the Gap initiative, directed to reducing the imprisonment rate of Aboriginal and Torres Strait Islander people.

Senator Penny Wright

Chair

MINORITY REPORT BY COALITION SENATORS

Introduction

1.1 The promise inherent in a justice reinvestment ("JR") approach to our criminal justice system holds great appeal: that is, by diverting focus and resources away from a reactive approach to the incidence of crime and towards a preventative approach, we drive down rates of offending, rates of imprisonment and recidivism. The value of such an approach in social and economic terms, if successfully implemented, needs no debate.

1.2 At the heart of this argument is the failure of our system of sentencing and penal servitude to properly identify the causes of criminality and address them so as to reduce the rate at which offenders return to prison and perpetuate a criminal lifestyle. This problem is, arguably, as old as Australia's establishment as a penal colony of Britain in the 18th century.

1.3 Coalition senators warmly endorse the principle of justice reinvestment. However, we cannot endorse the approach taken in the majority report – particularly the recommendations – because it overlooks two critical problems in the Commonwealth implementing a new approach on JR:

- a. The dearth of evidence that any JR programs to date are sufficiently successful to allow reduced spending on the court and prison systems.
- b. The criminal justice system (for the most part) and the prison system (in its entirety) are the responsibility of the states and territories, not the Commonwealth.

1.4 Coalition senators are broadly supportive of further investment in exploring the potential of JR, but we see the approach emerging from the majority report as one of the Commonwealth assuming policy and funding leadership over JR across the nation, an approach which is potentially very costly and which intrudes into the fundamental responsibilities of the second-tier of Australian government.

Limitations on application of Justice Reinvestment

1.5 In *The Promise of Justice Reinvestment*, the authors list some of the risks with JR:¹

- Ambiguity
- Lack of a clear theoretical and normative base
- Potential to be used to justify 'disinvestment' strategies

1 D. Brown et al, *The Promise of Justice Reinvestment* AltLJ Vol 37:2, 96, 2012, pp 100–101.

- The extent to which the 'rationality' of 'evidence-based' and cost arguments fail to address the emotive and retributive sentiments central to criminal justice politics
- The difficulty in securing key pre-conditions in the Australian context, including bipartisan approaches to law and order, and
- The appropriate political structure for the devolution of funding and responsibility.

1.6 In relation to bipartisanship, the article states:

Justice Reinvestment approaches require changes to sentencing, parole and bail, and subsequent reinvestment in post release and community programs – all of which may be difficult to implement where opposition political parties continue to run a popular punitive 'tough on law and order' line, seeking to exploit fear and division for perceived electoral advantage.

1.7 In the absence of clear solutions to the problems Brown et al identify at the state and territory level, a wholesale takeover of national leadership in JR policy development by the Commonwealth would be ill-advised.

Role of the Commonwealth in Justice Reinvestment

1.8 These problems at the state and territory government level demonstrate the complexity in the field and the need to implement policy within context, particularly if the aim in the policy is to have a harmonised and uniform approach across the jurisdictions. It is already open to jurisdictions to pursue harmonisation at the national level through COAG (in particular the Standing Council on Law and Justice). This has often occurred when there is a will and a demonstrated need to have a national approach to a particular program.

1.9 However as the implementation involves the divestment of State monies into particular State areas identified to have high statistics of recidivism, the relevance and power of the Commonwealth (how to tell the States to spend their budgets) is highly problematic. Under section 96 of the Constitution, the Commonwealth can grant funds to States on any terms and conditions. However this is not a coercive power and does also not extend to local governments (see below).

1.10 The Promise of Justice Reinvestment also makes an important point about the issue of cross jurisdictional co-ordination:

A second precondition is that in the Australian context it is necessary to identify both an agency to take a coordination role...and the political structure for devolution of funding and responsibility. Local government authorities favoured in the UK are unlikely candidates in Australia. Given that criminal justice is primarily a state function, it would seem that state governments would need to take the lead (except perhaps in the Indigenous area). Devolution of funding and responsibility might involve an expanded role for NGOs, church, welfare and charitable organisations currently running local social services, together with financial transfers to these agencies and within and between government departments.

1.11 It would be difficult for the Commonwealth to have a role to redress these apparent problems, particularly in the aftermath of the Williams case in the High Court (the Chaplaincy case) where the chaplaincy scheme was not supported by legislative underpinning, and where the court said that the executive power (section 61) was insufficient to validate the scheme. In relation to local governments, without constitutional change, the Commonwealth cannot deal directly with local governments. It has to go through the states.

1.12 The fact is that the cockpit for implementation and reform on JR is the states and territories, not the Commonwealth. The inquiry heard encouraging evidence of initial signs of success from some JR programs being auspiced at this level. The conditions governing the success or failure of such programs may well vary from state to state, and even from region to region – particularly to the extent that they involve indigenous communities. The "fine touch" approach which State governments can engineer in these circumstances may be better suited than a nationwide approach. In any event, COAG provides mechanisms at Ministerial and bureaucratic levels to share best practice.

Diversion of Resources Not yet Warranted on the Evidence

1.13 The concept of diverging resources from the courts and prisons to JR programs relies on some clear evidence that spending on the former can be withdrawn as spending on the latter increases; unfortunately, no such evidence was available to this inquiry.

1.14 Several organisations appearing before the committee gave evidence of JR programs exhibiting signs of "success"; however, in no case did any program proved sufficiently successful in diverging offenders from the criminal justice system that some reduction of resourcing of that system would become possible.

1.15 This problem was highlighted when officers of the Attorney General's Department appeared before the committee in Canberra to discuss the national evaluation of JR programs:

Senator HUMPHRIES: From the evidence you have seen already, does it appear as though there are any outstanding programs that are being run anywhere in the country which, if applied on a more universal basis, could actually start to ratchet down significantly the cost of the criminal justice system—bearing in mind that the ultimate objective of the justice reinvestment movement is to stop building these prisons we are building and close some of the ones we already have?

Mr Walter: I think the answer is no: there are no stellar examples about which you would say, 'Wow, if we rolled this out across the country, this would be fantastic'—out of those evaluations. A number of them that were able to demonstrate outcomes were really around sentencing courts and those kinds of things. And the outcomes they were demonstrating were

more around the integrity and legitimacy of the justice process rather than having a big effect in terms of reducing recidivism or anything like that.²

1.16 To acknowledge the lack of such evidence at this time is not to deny that such programs can or will in the future deliver results sufficient to warrant a diversion of resources away from the criminal justice system. But it is a stark warning that the premature diversion of resources could weaken the protections afforded by our criminal justice system without in any way lessening the pressures on it.

1.17 Coalition senators warmly endorse the programs underway across Australia that seek to identify and deal with causes of criminal offending. We believe a much greater focus must ultimately be put on such endeavours if we are to ensure that the failings of our present system are addressed. But we do not believe it is sound public policy to use the partial indicators of success from such programs thus far as the basis for a major shift in jurisdictional responsibility for such programs or, more fundamentally, for transferring resources away from existing institutions on the basis of those partial indicators of success.

1.18 Coalition senators accordingly recommend a continued Commonwealth role in supporting programs at the state and territory level in pursuit of JR, and the sharing of information with other jurisdictions to that end. But we cannot support the approach of the committee majority that demands Commonwealth leadership in this area or the commencement of major new funding programs. We believe that this approach has the potential to cut across much good work going on in state, territory and local government without necessarily producing any better outcomes.

Senator Gary Humphries

Senator Michaelia Cash

Senator Sue Boyce

Senator Bridget McKenzie

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

APPENDIX 1

SUBMISSIONS RECEIVED

Submission Number	Submitter
1	Ms Nadia Chester
2	Mr Michael Mardel
3	Ms Frances de Jong
4	Ms Tracy Rice
5	Ms Anita Olsen
6	Mr Colin McKellar
7	Ms Marion Treasure
8	Ms Apeetha Arunagiri
9	Ms Maureen Keady
10	Ms Anna Shepherd
11	Ms Virginia McGill
12	Freedom Socialist Party
13	NSW Justice and Forensic Mental Health Network
14	Indigenous Social Justice Association Melbourne
15	Queensland Council for Civil Liberties
16	Older Women's Network New South Wales
17	BoysTown
18	Associate Professor Pamela Snow and Professor Martine Powell
19	The Royal Australian and New Zealand College of Psychiatrists
20	Professor Andrew Day
21	The Advocacy and Support Centre

- 22 Dr Kevin Ronan and Mr Gene Davies
- 23 Commissioner for Children and Young People WA
- 24 Mr Kendall Lovett and Mr Mannie De Saxe
- 25 Professor Michael Levy
- 26 Queensland Network of Alcohol and Other Drug Agencies
- 27 Goldfields Land and Sea Council
- 28 South Australian Justice Reinvestment Working Group
- 29 Civil Liberties Australia
- 30 Ms Marianne Mackay
- 31 New South Wales Reconciliation Council
- 32 Central Australian Aboriginal Family Legal Unit Aboriginal Corporation
- 33 Elizabeth Hoffman House Aboriginal Women's Services
- 34 Dr Margaret Giles
- 35 Australian Housing and Urban Research Institute
- 36 Anglican Diocese of Brisbane Social Responsibilities Committee
- 37 South Australian Network of Drug and Alcohol Services
- 38 Legal Aid NSW
- 39 National Family Violence Prevention Legal Services Forum
- 40 National Drug and Alcohol Research Centre
- 41 National Disability Services
- 42 Victorian Equal Opportunity and Human Rights Commission
- 43 Big hART
- 44 Just Reinvest NSW
- 45 Office of the Public Advocate (Queensland)

46	The Centre for Independent Studies
47	North Australian Aboriginal Justice Agency
48	Ms Rhianne Goltz
49	Mr Stewart O'Connell
50	Women in Prison Advocacy Network
51	Flat Out
52	Aboriginal Family Violence Prevention and Legal Service Victoria
53	National Congress of Australia's First Peoples
54	Youth Affairs Council of Western Australia
55	North Australian Aboriginal Family Violence Legal Service
56	Ms Bridie Turpeinen
57	Mr Leonard William
58	Mr Warren Redding
59	Ms Pamela Romanis
60	Castan Centre for Human Rights Law
61	Outcare
62	Central Australian Aboriginal Legal Aid Service
63	Australians for Native Title and Reconciliation
64	Western Australian Council of Social Service, Western Australian Association for Mental Health and Western Australia Network of Alcohol and Drug Agencies
65	Uniting Church in Western Australia
66	Ms Helen Miles
67	Ms Lisa Barry
68	Mr David Fry
69	Sisters Inside

- 70 Bethlehem House
- 71 Anti-Discrimination Commission Queensland
- 72 National Aboriginal and Torres Strait Islander Legal Services
- 73 Australian Institute of Health and Welfare
- 74 Australian Lawyers for Human Rights
- 75 Dr Heleanor Feltham
- 76 Mr Kevin McDonnell
- 77 Ms Sue Collings
- 78 Ms Dereka Ogden
- 79 Mr John Nicholson SC
- 80 SCALES Community Legal Centre
- 81 NSW Aboriginal Land Council Northern Region Local Aboriginal Land Councils
- 82 Ms Monique Bond
- 83 National Centre for Indigenous Studies and Indigenous Offender Health Capacity Building Group
- 84 Redfern Legal Centre on behalf of the CRPD Shadow Report Project Group
- 85 Australian Human Rights Commission
- 86 Bourke Aboriginal Community Working Party
- 87 ACT Human Rights Commission
- 88 Public Interest Advocacy Centre
- 89 Ms Marnie Weule
- 90 Youth Advocacy Centre
- 91 Smart Justice for Young People
- 92 Victorian Alcohol and Drug Association

93	Federation of Community Legal Centres
94	Prisoners' Legal Service
95	Council of State Governments Justice Center
96	Australian National Council on Drugs and National Indigenous Drug and Alcohol Committee
97	Law Council of Australia
98	Noetic Group
99	Mission Australia
100	Aboriginal Legal Service (NSW/ACT)
101	Law Society Northern Territory
102	Community Legal Centres NSW
103	National Association of Community Legal Centres
104	Jesuit Social Services
105	Australian Youth Affairs Coalition
106	National Organisation for Fetal Alcohol Spectrum and Related Disorders
107	Australian Legal Assistance Forum
108	St Vincent de Paul Society
109	Alcohol and Other Drugs Council of Australia
110	Department for Correctional Services, South Australian Government
111	Department for Communities and Social Inclusion, South Australian Government
112	Victorian Aboriginal Community Controlled Health Organisation
113	Australian Red Cross
114	Australian Justice Reinvestment Project
115	White Ribbon

- 116 Top End Women's Legal Service
- 117 Alcohol Tobacco and Other Drug Association, ACT Council of
Social Service and Mental Health Community Coalition ACT
- 118 North West Queensland Indigenous Catholic Social Services
- 119 Ms Hilary Hannam, Chief Magistrate of the Northern Territory
Magistrates Court
- 120 Human Rights Law Centre
- 121 Mr Peter Hamann
- 122 International Centre for Prison Studies
- 123 Families and Friends for Drug Law Reform
- 124 Juvenile Justice NSW
- 125 Youth Justice Advisory Committee
- 126 Mr David Gray
- 127 Commissioner for Victims' Rights
- 128 Ms Robyn Holder
- 129 Kimberley Aboriginal Law and Culture Centre
- 130 Dr Liz Curran
- 131 Southern Cross University

ADDITIONAL INFORMATION RECEIVED

- 1 'Antisocial personality disorder and therapeutic justice court programs', provided by Dr Andrew Cannon on 10 December 2012
- 2 'Out of Sight, Out of Mind: People with an Acquired Brain Injury and the Criminal Justice System', provided by Brain Injury Australia on 8 January 2013
- 3 'Massive Prevalence of Hearing Loss Among Aboriginal Inmates in the Northern Territory', provided by Dr Damien Howard on 16 January 2013
- 4 'Next Generation: Better outcomes for vulnerable families in contact with Australian criminal justice systems', provided by the Victorian Association for the Care and Resettlement of Offenders on 5 March 2013
- 5 Information on sentencing in Commonwealth criminal matters, provided by the Commonwealth Director of Public Prosecutions on 19 March 2013
- 6 'Fetal Alcohol Spectrum Disorders (FASD) within the Criminal Justice Sector in Queensland', provided by the Foundation for Alcohol Research and Education on 5 April 2013
- 7 'Fetal Alcohol Spectrum Disorder: Knowledge, attitudes and practice within the Western Australian justice system', provided by the Foundation for Alcohol Research and Education on 5 April 2013
- 8 'Exploring the feasibility of Justice Reinvestment in the Australian Capital Territory', provided by Dr Jill Guthrie on 6 April 2013
- 9 'Is Justice Reinvestment needed in Australia?' provided by Dr Jill Guthrie on 6 April 2013
- 10 'Interaction with the Western Australian Criminal Justice System by People Affected by Mental Illness or Impairment', provided by Mental Health Law Centre WA on 12 April 2013
- 11 'Justice Reinvestment: The Economic Benefits for Victoria', provided by Ms Kate Burns on 30 April 2013
- 12 Document tabled by the Australian Youth Affairs Coalition at public hearing on 1 May 2013 – 'Addendum – List of Endorsing Organisations'
- 13 'Evaluation of the Step Out Initiative', provided by the Australian Red Cross on 2 May 2013
- 14 'Evaluation of the Prisoner Support Program in Tasmania', provided by the Australian Red Cross on 2 May 2013
- 15 Document tabled by the Attorney-General's Department at public hearing on 17 May 2013 – 'Justice Reinvestment/Causes of Crime: Report of the NJCEOs Working Group'

- 16 Response to question on notice provided by the Australian Justice Reinvestment Project on 17 May 2013
- 17 National Indigenous Law and Justice Framework, provided by the Attorney-General's Department on 21 May 2013
- 18 National Indigenous Law and Justice Framework Good Practice Appendix, provided by the Attorney-General's Department on 21 May 2013
- 19 Evaluations of Indigenous justice programs under the National Indigenous Law and Justice Framework, provided by the Attorney-General's Department on 21 May 2013
- 20 Response to question on notice provided by the Attorney-General's Department on 24 May 2013
- 21 Response to question on notice provided by the Australian Human Rights Commission on 4 June 2013
- 22 Response to question on notice provided by Just Reinvest NSW on 4 June 2013
- 23 Response to question on notice provided by the Alcohol and other Drugs Council of Australia on 7 June 2013

APPENDIX 2

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Perth, 17 April 2013

ASTBURY, Mr Rodney, Chief Executive Officer, Western Australian Association for Mental Health

AVERY, Mr Scott, Senior Policy Officer, National Congress of Australia's First Peoples

COLLINS, Mr Peter, Director Legal Services, Aboriginal Legal Service of Western Australia Inc

COMRIE, Mr Craig, Chief Executive Officer, Youth Affairs Council of Western Australia

COPELAND, Ms Anna, Director, Clinical Legal Programs, SCALES Community Legal Centre

CUBILLO, Mr Eddie, Executive Officer, National Aboriginal and Torres Strait Islander Legal Services

DAVIES, Dr Deirdre, President, Outcare Incorporated

EGGINGTON, Adjunct Professor Dennis, Chief Executive Officer, Aboriginal Legal Service of Western Australia Inc

FEUERHEERD, Miss Autumn, Student Paralegal, SCALES Community Legal Centre

HUDSON MILLER, Ms Rosemary, Associate General Secretary, Justice and Mission, Uniting Church in Australia, Synod of Western Australia

MITCHELL, Ms Carol, Policy and Research Officer, Outcare Incorporated

MORRISON, Mr Daniel, Chief Executive Officer, Aboriginal Alcohol and Drug Service Inc

MUMME, Ms Sarah, Policy Officer (Vulnerable People), Western Australian Council of Social Service

MUTCH, Dr Raewyn, Post-Doctoral Research Fellow, Alcohol, Pregnancy and FASD Research Group of the Telethon Institute for Child Health Research

MYERS, Miss Debra, Creative Producer, Yijala Yala Project, Big hART

RUNDLE, Ms Jill, Chief Executive Officer, The Western Australian Network of Alcohol and Other Drug Agencies

SOLONEC, Ms Tammy, Director, National Congress of Australia's First Peoples

TWOMEY, Mr Christopher, Director Social Policy, Western Australian Council of Social Service

WYN-JONES, Mr Shaun, Communications and Policy Officer, Youth Affairs Council of Western Australia

Sydney, 1 May 2013

BONIG, Mr Ralph, Joint Co-Ordinator, South Australian Justice Reinvestment Working Group

BROWN, Professor. David, Chief Investigator, Australian Justice Reinvestment Project

COLLINS, Ms Priscilla, Chief Executive Officer, North Australian Aboriginal Justice Agency

COVERDALE, Mr Ian, National Manager, Social Inclusion, Australian Red Cross

CUNNEEN, Professor Chris, Chief Investigator, Australian Justice Reinvestment Project

FARRELL, Professor. Michael, Director, National Drug and Alcohol Research Centre

GRAHAM, Ms Kerry, Chair, Policy and Government Committee, Just Reinvest New South Wales

HOPKINS, Ms Sarah, Chair, Strategy Development Committee, Just Reinvest New South Wales

HUGHES, Dr Caitlin, Research Fellow, National Drug and Alcohol Research Centre

HUNYOR, Mr Jonathon, Principal Legal Officer, North Australian Aboriginal Justice Agency

KILROY, Mrs Debbie, Chief Executive Officer, Sisters Inside Inc.

McGRATH, Ms Kerry, Head, Community Programs, Australian Red Cross

PRIDAY, Ms Emilie, Senior Policy Officer, Aboriginal and Torres Strait Islander Social Justice Team, Australian Human Rights Commission

REODICA, Mr Reynato, Deputy Director, Youth Sector, Australian Youth Affairs Coalition

SCHWARTZ, Ms Melanie, Chief Investigator, Australian Justice Reinvestment Project

SHARP, Mr Jared, Advocacy Manager, North Australian Aboriginal Justice Agency

TICKNER, Mr Robert, Chief Executive Officer, Australian Red Cross

WOODROFFE, Mr David, Managing Solicitor, North Australian Aboriginal Justice Agency

Canberra, 17 May 2013

CRANE, Ms Meredythe, Manager, Policy and Strategic Communications, Alcohol and Other Drugs Council of Australia

DUGGAN, Mr Kym, First Assistant Secretary, Social Inclusion Division, Attorney-General's Department

GILL, Mr Rob, Policy and Strategic Communications Officer, Alcohol and Other Drugs Council of Australia

McDONALD, Mr Lawrence, Assistant Commissioner, Productivity Commission; and Head of Secretariat for the Steering Committee for the Review of Government Service Provision

ROBINSON, Ms Jessica, Director, Indigenous Policy and Engagement Section, Attorney-General's Department

TEMPLEMAN, Mr David, Chief Executive Officer, Alcohol and Other Drugs Council of Australia

WALTER, Mr Andrew, Assistant Secretary, Indigenous Justice and Safety Branch, Attorney-General's Department

