



## **“Reinvestment in diversion”**

### **SMART JUSTICE FOR YOUNG PEOPLE’S RESPONSE TO THE SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS’ INQUIRY: ‘VALUE OF A JUSTICE REINVESTMENT APPROACH TO CRIMINAL JUSTICE IN AUSTRALIA’.**

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## **PART 1 - INTRODUCTION**

### **About Smart Justice for Young People**

Smart Justice for Young People is a broad coalition based in Victoria made up of youth advocates from community legal centres, youth services, peak bodies, and other community organisations interested in the legal and justice issues of young people.<sup>1</sup> Launched in November 2011, the work of Smart Justice for Young People is informed by an evidence-based, effective and human rights approach to youth justice and policing issues.

Smart Justice for Young People promotes community understanding of criminal justice policies and practices that have negative impacts on young people and suggests evidence-based alternatives with positive outcomes for young people and communities. There is evidence that smart approaches to justice issues, including early intervention and diversion, particularly in the formative years of a person's life, are far more effective in creating safer, happier communities now and in the future than punitive law and order responses.

### **Principles**

The work of Smart Justice for Young People is informed by an evidence-based human rights approach to youth justice and policing issues, as reflected in the following principles:

- Children and young people have special needs and rights that are reflected in both local and international legislation (the *Victorian Charter of Human Rights & Responsibilities* ['the Charter'] and the United Nations' *Convention on the Rights of the Child(CRC)*).
- Most youth offending is episodic and transitory - most young people mature out of criminal behaviour.
- The UN CRC recognises the importance of diverting young offenders from the formal processes of the criminal justice system, with the primary focus on rehabilitation and detention as a measure of last resort.
- Some groups of young people (including Aboriginal and Torres Strait Islander, young people with intellectual disabilities, homeless young people and young people with mental health issues) have a disproportionate level of contact with the criminal justice system.
- Developing policies and practices affecting children and young people in line with the latest rigorous research findings, in order to dispel myths or outdated understandings regarding youth justice.

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<sup>1</sup> Members of SJFYP include Centre for Multicultural Youth, headspace, Federation of Community Legal Centres, Jesuit Social Services, Law Institute of Victoria, Victorian Aboriginal Legal Service, Youth Affairs Council of Victoria, Youthlaw, Youth Support & Advocacy Service.

## **Scope of this Submission**

Smart Justice for Young People have developed an in principle response to the Senate Committees on Legal and Constitutional Affairs' inquiry 'Value of a justice reinvestment approach to criminal justice in Australia'. The response will respond to the following Terms of Reference:

- (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; and**
- (f) the benefits of, and challenges to, implementing a justice reinvestment approach in Australia.**

Our response is confined to our area of expertise, juvenile justice, and comes from a Victorian perspective, therefore the submission will not address:

- the benefits or otherwise of a justice reinvestment model for adults
- the suitability of a justice reinvestment model for all Australian states and territories.

However, it must be stressed that our support for the principles of justice reinvestment extend beyond the Victorian juvenile jurisdiction and we can see only benefits flowing from a comprehensive and genuine adoption of the model in Australia.

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## **PART 2 – POLICY STATEMENT**

### ***Juvenile sentencing principles***

The principle of a specialist approach in the administration of juvenile justice is a well-recognised concept both in Australia and internationally. In recognition of young people's relative immaturity, diminished capacity for decision-making, and their particular vulnerabilities, various legal instruments have specified that detention should be used as a last resort.<sup>2</sup> In Victoria, the *Children, Youth & Families Act 2005* has an emphasis on the rehabilitation of young people wherever possible, whilst minimising the stigmatising effects of contact with the criminal justice system.

These principles of rehabilitation and a specialist approach underpin the work of Smart Justice for Young People and are complemented by the group's evidence-based approach that advocates being 'smart on crime'.

### ***Evidence-based public policy***

A review of the evidence shows that prison is costly, has negligible or negative effects on re-offending and, in the case of young people, may inflict long-term damage, thereby squandering the opportunity for rehabilitation that is presented with young people.<sup>3</sup>

Given the damaging and non-therapeutic outcomes of imprisonment for young people, the costs to society extend beyond the immediate dollar value attached to housing young offenders in detention. Prison can significantly diminish the health, economic and social outcomes in a young person's life whilst also increasing the risk factors associated with offending. Any potential community safety benefits associated with prison are therefore diminished in light of this.

Smart Justice for Young People submits that resourcing programs in the community that address the underlying causes of offending by promoting rehabilitation and reintegration are key to reducing re-offending. This is particularly the case given the well known indicators of disadvantage that are characteristic of young people entering the criminal justice system, such as mental illness, substance abuse, homelessness and poverty. The diversion of public funds towards therapeutic interventions, along the lines of a justice reinvestment scheme, is therefore an approach we are strongly supportive of for juveniles.

### ***Juvenile justice system and economies of scale***

While the suitability of a justice reinvestment model to a juvenile justice setting, especially in Victoria, needs to be considered in light of the relatively small numbers

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<sup>2</sup> United Nations *Convention on the Rights of the Child*, Article 37(b); UN Standard Minimum Rules for the Administration of Juvenile Justice - *The Beijing Rules* (1985).

<sup>3</sup> Sentencing Advisory Council (SAC), *Does Imprisonment Deter? A Review of the Evidence*, (2011); Australian Institute of Criminology (AIC), *What makes juvenile offenders different from adult offenders? Trends and Issues in Crime and Criminal Justice* (2011).

of young people who are sentenced to detention, the value of alternative sentencing options that treat the causes of offending behaviour, often at a lower cost than detention, is indisputable.

In Australia, a recent government-commissioned review of the juvenile justice system in New South Wales recommended justice reinvestment as the most attractive policy option in terms of effectiveness and cost.<sup>4</sup>

Indeed, it is worth noting the lengthy history of juvenile justice reform in various jurisdictions in the United States along the lines of a justice reinvestment model. States such as California, Wisconsin and Ohio have trialled various financial incentive models with local counties, for example providing greater contributions to community-based sentences than for detention.<sup>5</sup>

### ***Young people are central to justice reinvestment***

A holistic approach to justice reinvestment must include an emphasis on the diversion of young people from prison wherever possible and practicable. Given the relationship between early offending and adult contact with the justice system, it is logical to invest some of the savings in services that address youth offending through case management and tailored support. Early intervention through work with families and schools is also key to limiting the numbers flowing into the corrections system in the future.

This inquiry presents a valuable opportunity to evaluate Australia's current approach to juvenile sentencing and to move towards a regime with positive long-term outcomes for offenders and communities. Whether this is a justice reinvestment model or some other alternative to imprisonment, it is pivotal that the solution adopted is based on the best practice principles of justice reinvestment with an emphasis on rehabilitation, early intervention and diversion of young people and reducing recidivism.

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<sup>4</sup> Noetic Solutions, *A Strategic Review of the New South Wales Juvenile Justice System* (2010).

<sup>5</sup> Butts, J & Evans, D, *Resolution, Reinvestment and Realignment: Three strategies for changing juvenile justice* (2011).

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## **PART 3 – ADDRESSING THE TERMS OF REFERENCE**

### **(a) the drivers behind the past 30 years of growth in the Australian imprisonment rate;**

Criminologists agree that overall crime rates in Australia have been falling for the past 10 years.<sup>6</sup> This downward trend has been attributed to various factors including changes in drug use patterns, improved economic conditions and more sophisticated security in homes and cars.<sup>7</sup> However, despite this trend, the prison population has continued to increase, pointing to a shift in sentencing policies. This is borne out by various State Governments' emphasis on 'tough' law and order policies, for example the introduction of minimum mandatory sentencing in several states.

The Victorian Ombudsman and the Victorian Auditor-General have both separately stated that shifts in sentencing policy are the biggest drivers behind Victoria's rapidly expanding prison population.<sup>8</sup>

Current forecasts show that Victoria's male prison population is set to grow by 44.7 per cent by June 2016.<sup>9</sup> The provision of 500 extra prison beds will not be enough to accommodate this increase, meaning that extra beds or new prison facilities will need to be provided. Both options involve significant cost.

Juvenile prison numbers in Victoria have shown a steady upward trend in the rate of sentenced juveniles in detention (as opposed to un-sentenced) over the 2007-2011 period.<sup>10</sup> This was in contrast to a fairly steady rate across Australia during the same period. In terms of prisoner numbers, Victoria's juvenile cohort increased by 35 per cent over 2007-2011.<sup>11</sup> Given the relatively small total numbers in detention, this figure should be treated with caution, however if increases of this scale continue there is cause for concern. Any policy or legislative changes in juvenile sentencing will have a further adverse impact on these numbers.

### **(b) the economic and social costs of imprisonment;**

#### ***Economic costs of prison***

Prisons are costly to build and run. The Victorian Government estimates that it currently costs approximately \$528 a day to keep a young person in a youth justice facility, compared to approximately \$54 a day for community based supervision.<sup>12</sup>

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<sup>6</sup> AIC, *Australian Crime: Facts & Figures 2011* (2012)

<sup>7</sup> Weatherburn, D, 'Half as many murders, and nobody knows why', *Sydney Morning Herald*, 12 June 2010.

<sup>8</sup> Victorian Ombudsman, *Conditions for persons in custody* (2006); Victorian Auditor-General's Office (VAGO), *Prison capacity planning* (2012).

<sup>9</sup> VAGO, (2012).

<sup>10</sup> AIHW, *Juvenile detention population in Australia 2011* (2011).

<sup>11</sup> AIHW, (2011).

<sup>12</sup> Minister For Community Services (Victoria), 'Strengthening Youth Justice And Helping Young People avoid a life of crime', media release, 3 May 2011. Available at: <http://www.premier.vic.gov.au/media-centre/media-releases/750-strengthening-youth-justice-and-helping-young-people-avoid-a-life-of-crime.html>

The cost of an increasing prison population in Victoria is significant, as reflected in new prison infrastructure and the expansion of current prisons in Victoria at a cost of hundreds of million of dollars.<sup>13</sup> Housing these extra prisoners will generate further budgetary pressures. Any additional budget allocations for corrections has significant impacts on other service areas, most of which operate at a fraction of the very costly amounts needed to build and run prisons.

Together, the expenditure on adult and juvenile supervision represents a significant sum of money. Examining the costs of imprisonment in terms of future outcomes for offenders demonstrates that the true cost to communities of sending people to prison is far greater, particularly in the case of young people. A United Kingdom study by an economics think tank estimated that the indirect costs of detaining a young person (including reduced chances of employment and increased likelihood of homelessness) added at least 40,000 Pounds to the total bill of a year-long prison sentence.<sup>14</sup> The total cost outweighed the savings to government and community of reduced offending by a ratio of 28:1.

This type of cost-benefit analysis holds relevance for every jurisdiction, given the well-documented negative effects of prison on an individual's future outcomes, which may be termed the 'social costs'.

### ***Social costs of prison***

Young people who are diverted from the justice system are unlikely to experience the same difficulties as those who serve custodial sentences. In particular, they avoid the issues associated with re-integrating into the community, finding employment and housing and re-connecting with family and community. The reduced opportunities and social alienation resulting from a custodial sentence can lead to further disengagement and, possibly, future offences.

It is these negative long-term effects of prison that are perhaps of most significance, however these are the hardest to quantify. A number of studies on post-release outcomes have attempted to illustrate the damage to individuals of periods in detention.

According to one UK study, those finding work post-release report the lowest rates of recidivism, bolstering the anecdotal link between unemployment and crime. However, the prospects for finding work are considerably lower for those with a criminal record, with approximately one-quarter finding employment after leaving prison.<sup>15</sup> YMCA Victoria estimates that 57 per cent of people with a criminal record cannot find work.<sup>16</sup>

Imprisonment has at best, no effect on a person's offending trajectory, and in many cases, is likely to have a negative impact, particularly on young offenders. Exposure to a criminal learning environment<sup>17</sup> and negative associations forming in detention centres and gaols can lead to an increased likelihood of reoffending.

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<sup>13</sup> Minister for Corrections, 'New prison places to address legacy of neglect, create new jobs', media release, 1 May 2012. Available at: <http://www.premier.vic.gov.au/media-centre/media-releases/3759-new-prison-places-to-address-legacy-of-neglect-create-new-jobs.html>

<sup>14</sup> New Economics Foundation, *Punishing Costs* (2010), p.5.

<sup>15</sup> Prison Reform Trust, *Out for Good: Taking responsibility for resettlement* (2012), p.54.

<sup>16</sup> YMCA Victoria, 'Opening doors and hearts for real change: The Bridge Project' (2011). Available at: <http://www.leadershipvictoria.org/projects/opening-doors-and-hearts-for-real-change--the-bridge-project-with-video>

<sup>17</sup> SAC, (2011).

The cumulative effect of these negative social outcomes is an increase in the risk factors associated with offending, which is borne out in the rates of re-offending amongst former detainees. In Victoria, the most recent data shows re-offending rates of 57 per cent amongst juveniles sentenced to detention.<sup>18</sup>

**(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;**

The following profile of juvenile justice clients in Victoria illustrates the prevalence of disadvantage amongst those who end up in the corrections system:

- 38 per cent had previous Child Protection involvement
- 65 per cent were victims of abuse, trauma or neglect prior to incarceration
- 68 per cent had been suspended or expelled from school
- 40 per cent presented with mental health issues
- 32 per cent had a history of self harm or suicidal ideation
- 39 per cent presented with issues concerning their intellectual functioning
- 22 per cent were registered with Disability Services
- 84 per cent were drug users
- 10 per cent were parents<sup>19</sup>

The significant cross-over between individuals with child protection backgrounds and those in the youth justice system is extremely concerning and indicates the need for more funding and support at an early stage of vulnerable children's lives, to prevent their trajectory into the criminal justice system.

Similarly, the high levels of young people with intellectual disability and mental health issues in detention prompt questions of whether these young people are receiving the health care they need.

In line with data from other Australian states and territories, statistics from Victoria show that Aboriginal and Torres Strait Islander (ATSI) young people are over-represented in detention at a ratio of 14:1.<sup>20</sup> The continuing over-representation of ATSI young people in Australia's criminal justice system has prompted the launch of a Justice Reinvestment campaign specifically for Aboriginal young people, with the support of Mick Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner, amongst others.

Area-based data from Victoria shows that 25 per cent of children who received a youth justice order in 2010 came from 2.6 per cent of postcodes, indicating that crime is indeed place-based and a justice reinvestment approach may be suitable.<sup>21</sup>

**(d) the cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures;**

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<sup>18</sup> Department of Human Services (Victoria) (DHS), *Recidivism Among Victorian Juvenile Justice Clients 1997-2001* (2001), p.18.

<sup>19</sup> Youth Parole Board, *Annual Report 2011-2012* (2012), p.12.

<sup>20</sup> AIC, *Juveniles in Detention in Australia 1981-2008* (2010), p.33.

<sup>21</sup> Jesuit Social Services, *Thinking Outside: Alternatives to remand for young people* (2013), p.14.



### ***Effectiveness of non-custodial interventions***

Victorian data shows a 57 per cent reoffending rate amongst those who have been in youth detention.<sup>22</sup> Comparisons between young people receiving a custodial sentence and a non-custodial sentence show a 16 per cent difference in rates of recidivism, with lower rates amongst those given non-custodial sentences.<sup>23</sup>

In contrast, alternative sentencing measures such as diversion and youth justice conferencing have been evaluated and shown to have greater success at keeping young people out of the justice system:

- Rates of re-offending of young people participating in Victoria Police's ROPES program are around 10 to 12 per cent.<sup>24</sup>
- A local program in Victoria, Right Step, which deals with more complex cases than ROPES, has a 65 per cent success rate amongst participants.<sup>25</sup>
- KPMG found that within 24 months only 19 per cent of group conference participants re-offended, compared to 43 per cent of young people placed on Probation or a Youth Supervision Order.
- The Court Integrated Services Program (CISP), for adult offenders in Victoria, links them with support services to address the factors related to their offending. An independent evaluation found that CISP clients are 20 per cent less likely to re-offend than non-participants while they also had a 30 per cent drop in re-offending frequency.<sup>26</sup>

Such data undermines the purported efficacy of imprisonment as a response to offending behaviour and further strengthens the financial case for alternatives to imprisonment.

### ***Availability of diversion as a sentencing alternative***

Unfortunately, the availability of diversion as an alternative youth justice intervention has historically been inconsistent in Victoria. This is due to a number of factors, outlined below:

- **Lack of legislative framework for children and young people**  
Since 2009, the adult system has benefited from a Criminal Justice Diversions Program in the Magistrates' Court of Victoria, which provides mainly first time offenders with the opportunity of diversion and avoiding a criminal record. No such system exists in the Children's Court of Victoria, meaning that current diversion programs for children and young people are ad hoc, often inaccessible, and operate in a patch work fashion without any legislative basis.
- **Access limited by police informants refusing diversion**  
Young people's entry to diversion is subject to police discretion. Police decide who will be diverted through informal and formal cautions, and they act as a

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<sup>22</sup> See n 14

<sup>23</sup> DHS (2001), p.17. A study from NSW also reported at 16per cent difference in reoffending rates. See Michael Cain, *Recidivism of Juvenile Offenders in New South Wales* (1996).

<sup>24</sup> KPMG, *Evaluation Report on Victoria Police ROPES program* (2010).

<sup>25</sup> Louise Clifton Evans, 'Moorabbin police's step in right direction', *Moorabbin Leader*, 29 September 2011. Available at: <http://moorabbin-leader.whereilive.com.au/news/story/step-in-right-direction-1/>

<sup>26</sup> Department of Justice (Victoria), *Court Integrated Services Program: Tackling the causes of crime*, (2010). Available at: [http://www.justice.vic.gov.au/resources/5fa85c11-aff8-49fa-9ef9-3c8447e9172f/cisp\\_tackling\\_the\\_causes\\_of\\_crime.pdf](http://www.justice.vic.gov.au/resources/5fa85c11-aff8-49fa-9ef9-3c8447e9172f/cisp_tackling_the_causes_of_crime.pdf)

primary gatekeeper to diversion programs such as Youth Support Service, the ROPES program and Right Step programs. Data from Victoria shows considerable variation in the use of cautions between regions and also by offence type.<sup>27</sup>

- **Access limited by geography**

Young people residing in rural, regional and remote areas are less likely to have access to the current diversionary programs. The very real concern is that young offenders living in certain remote rural and regional areas are not offered the same opportunities to offenders with identical circumstances because of the difference in available diversion opportunities throughout the state. This access issue is compounded by the paucity of appropriate support services in some regional, rural and remote areas.

- **Restrictive eligibility criteria for diversion programs**

Despite a significant nexus between young people in the child protection system and the youth justice system, children on child protection orders are not eligible for support from the Youth Support Service or the Intensive Bail Support programs.

The assumption underpinning this policy we imagine is that these children are already linked to case management support. But the well documented reality is that many of these children are not having their complex issues effectively addressed by their case managers, and require additional attention and support and should also be able to benefit from diversionary programs.

- **Funding Arrangements**

Current funding arrangements, such as pilot programs and one-off grants, are unsustainable and make it difficult for providers to improve service delivery and remain responsive to client needs. Such ad hoc funding arrangements do not represent a long-term investment in juvenile justice interventions. Service agreements may restrict the areas in which programs operate and the type of clients that may be assisted, further excluding some young offenders from diversion opportunities.

In light of the current system of diversion in Victoria, Smart Justice for Young People submits that a more comprehensive scheme be introduced that is supported by legislation, government commitment and realistic funding to achieve significant changes in juvenile offending.

### **(e) the methodology and objectives of justice reinvestment;**

While this submission will not address the specific methodology of a justice reinvestment approach, the following are some best practice elements that have been identified as critical to the success of implementing a justice reinvestment scheme.

- **Justice and asset mapping**

The initial data collection that precedes implementation of justice reinvestment policies is critical and must be done in a comprehensive way. Without an independent crime statistics body in Victoria (and in other states),

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<sup>27</sup> Dr Lucinda Jordan and James Farrell, Unpublished research, Deakin University Centre for Rural Regional Law and Justice.

it is recommended that a national crime statistics bureau be established to collate the necessary data and detail for any implementation plan.

- **Comprehensive adoption**  
To generate the budgetary savings required for meaningful investment in local services and supports, the commitment to reducing prisoner numbers must be far-reaching and long-term. The learnings from the United States are that those schemes that have been implemented thoroughly and holistically have had greater successes.
- **Bipartisan commitment**  
The significant number of stakeholders and long timeframes involved in justice reinvestment necessitate bipartisan support for any scheme.<sup>28</sup> The long-term nature of justice reinvestment – it may be many years before results are visible – mean that commitment to the scheme must extend beyond the electoral cycle. Similarly, the number of government departments, local organisations, decision makers and the various levels of government potentially involved requires a commitment to the concept on its merits, rather than any political point-scoring.
- **Community involvement**  
Consultation with local communities on the problems in their area and possible solutions to these is central to the success of justice reinvestment. Rather than adopting ‘top-down’ or ‘one size fits all’ approaches, it is important for implementing agencies to make local communities central to the planning and design of justice reinvestment in order to guarantee effective and sustainable initiatives.
- **Reinvestment, not divestment**  
It is important to note that justice reinvestment is committed to the reduction in rates of recidivism, not simply the downsizing of corrections budgets or the numbers of people in prison. Meaningful initiatives that focus on achieving positive outcomes by diverting individuals and funds away from prison are in line with the spirit of justice reinvestment. Divestment is not.

**(f) the benefits of, and challenges to, implementing a justice reinvestment approach in Australia;**

It must be acknowledged that the low numbers of juveniles sent to prison in Victoria may not generate the level of budgetary savings that will allow investment of the scale required to truly address the causes of offending in local settings.

However, there are opportunities to realise savings in the youth justice system through changes to bail and remand practices, for example. The high numbers of young people on remand in some jurisdictions, such as Western Australia and Northern Territory, and the significant jump in rates of remand in Victoria, provide scope for at least re-assessing the extensive use of detention as a substitute for services or temporary accommodation in Australia.<sup>29</sup>

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<sup>28</sup> Brown, D et al, ‘The promise of justice reinvestment’, *Alternative Law Journal* 37 (2) (2012).

<sup>29</sup> AIHW (2011).

Further, the upward trend in Victoria's sentenced detention rate, coupled with the possibility of minimum sentences for juveniles, will have a negative impact on the capacity of youth justice detention facilities. These trends must be watched closely.

There are considerable opportunities to divert money away from adult prisons in Victoria, which are currently being expanded to cope with unprecedented population increases. Despite the most recent budget commitments, it is predicted that Victoria's prison system will still fall 1,400 beds short of the required capacity by 2016.<sup>30</sup> In light of this burgeoning growth, it is clear that the cost of continuing prison expansion will be significant and with detrimental effects on other areas of the economy. Implementing a justice reinvestment scheme in Victoria and halting any further prison construction would release hundreds of millions of dollars in revenue.

A holistic reinvestment approach should focus not only on delivery of services to those adults at-risk of re-offending but also on the early intervention services that prevent future generations of offenders from emerging. We submit that it is this two-pronged strategy of reinvesting corrections funds in both adult and children's services that will deliver the results that justice reinvestment is aiming for.

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<sup>30</sup> VAGO (2012).