

Just Reinvest NSW

JUSTICE  
REINVESTMENT  
CAMPAIGN

for **Aboriginal** young people

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Submission to the Senate Inquiry “The value of a justice reinvestment approach to criminal justice in Australia.”

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March 2013

## **Notes**

While The Justice Reinvestment Campaign for Aboriginal Young People campaign is committed to reducing the over-representation of both Aboriginal young people and adults in the criminal justice, the campaign's primary aim is to reduce the over-representation of young people. Therefore this submission will focus on the needs and services related to the Aboriginal young people.

Dr Tom Calma and members of Just Reinvest NSW would be happy to appear before the Senate Committee to discuss anything written in this submission or other matters relating to justice reinvestment and its application in Australia.

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## **Introduction**

### **The Campaign**

The “Justice Reinvestment for Aboriginal Young People Campaign”, coordinated by Just Reinvest NSW, advocates to address the overrepresentation of Aboriginal young people in custody in NSW.

### **Who we are**

Just Reinvest NSW is an incorporated association, incorporated in NSW. It has the following objectives:

- The relief of suffering of Aboriginal and Torres Strait Islander young persons associated with poverty, homelessness, misuse of drugs and alcohol and violence;
- Research and advocacy regarding the causes of and contributing factors to criminal behaviour by Aboriginal and Torres Strait Islander young persons; and
- Research and advocacy regarding programs to reduce the incidence of and extent of interaction of Aboriginal and Torres Strait Islander young persons with the criminal and juvenile justice systems.

Just Reinvest NSW evolved from the work of a small group of people with a background in the criminal justice system and/or working with Indigenous young people. The group was concerned about the over-representation of Indigenous young people in custody and in particular about the inadequacy of drug and alcohol rehabilitation for Indigenous young people (which the group considered contributed to that over-representation).

In May 2012, Just Reinvest NSW launched the Justice Reinvestment for Aboriginal Young People Campaign. The campaign has been developed by a coalition of like-minded people and organisations with the single aim of bringing about a change in government policy through the adoption of justice reinvestment.

### **The Campaign Strategy Group**

- Aboriginal Legal Service NSW/ACT
- Kerry Graham
- Ashurst Australia
- Boxing Clever Pty Ltd.
- Weave Youth Family and Community
- Australian National Council on Drugs
- Redfern Aboriginal Medical Service & National Indigenous Drug and Alcohol Committee
- Aboriginal Drug and Alcohol Network
- Shopfront Youth Legal Centre & Youth Justice Coalition

- Australians for Native Title and Reconciliation (ANTaR) NSW
- Mission Australia
- UnitingCare Children Young People and Families
- NSW Reconciliation Council
- Luke Freudenstein, Superintendent Redfern Local Area Command & Central Metropolitan Regional Sponsor for Aboriginal and Community Issues
- Katherine Wiggins
- Zachary Armytage

### Campaign Champions

- Her Excellency Professor Marie Bashir AC CVO Governor of NSW
- Mr Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission
- Dr. Tom Calma AO, National Coordinator, Tackling Indigenous Smoking
- Rt. Hon. Malcolm Fraser AC CH GCL PC, Former Prime Minister of Australia
- Mr Bob Debus AM
- Prof. Mick Dodson AM, Director of the National Centre of Aboriginal Studies at the Australian National University
- The Hon. Michael Kirby AC CMG
- Ms Marcia Ella Duncan, Chairperson of the La Perouse Local Aboriginal Land Council
- Mr Jack Manning Bancroft, CEO of the Australian Indigenous Mentoring Experience
- Prof. Chris Cunneen, The Cairns Institute, James Cook University, Former Chairperson of the NSW Juvenile Justice Advisory Council (2000-2007)
- Mr Shane Phillips, Chairman and CEO of the Tribal Warrior Association
- Prof. Ted Wilkes, National Indigenous Drug and Alcohol Committee
- Mr Nicholas Cowdery, AM QC, Former NSW Director of Public Prosecutions
- Dr Naomi Mayer OAM & Mr Sol Bellea, Redfern Aboriginal Medical Service
- Mr Alistair Ferguson, Bourke Community Aboriginal Working Party
- Ms Tammy Solonec, Director (Chamber 3), Board Member of the National Congress of Australia's First Peoples

### Campaign Supporters

- Aboriginal Legal Service NSW/ACT
- Australians for Native Title and Reconciliation (ANTaR) NSW
- Mission Australia
- UnitingCare Children Young People and Families
- Youth Justice Coalition
- Souths Cares
- NSW Reconciliation Council
- Mr Alan Cameron AM
- Mr Lindon Coombes, Co-Chair of Weave Youth, Family and Community
- Mr Adam Goodes, Captain Sydney Swans AFL Team
- Auntie Millie Ingram, CEO Wyanga Aboriginal Aged Care Service
- Mr Graham West, Vice-President St Vincent De Paul Society Australia, National Council



- The Sydney Institute of Criminology
- Dr Chris Sarra, Director of the Stronger Smart Institute
- Mr Peter Stapleton, Chair The National Pro Bono Resource Centre, Honorary Board Member ALS NSW/ACT

## **Senate Inquiry Terms of Reference**

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

The Australian imprisonment rate has grown in most years since 1980 from 66 per 100,000 people (1980) to 167.5 per 100,000 people in 2012, which represents a 255 per cent increase. NSW has the third highest imprisonment rate out of the Australian States and Territories at 171.2 per 100,000 (Australian Bureau of Statistics (ABS) 2012).

The age standardised imprisonment rate for Aboriginal and Torres Strait Islander prisoners at 30 June 2012 was 1,914 Aboriginal and Torres Strait Islander prisoners per 100,000 adult Aboriginal and Torres Strait Islander population. The equivalent rate for non-Indigenous prisoners was 129 non-Indigenous prisoners per 100,000 adult non-Indigenous population (ABS 2011).

Indigenous people in NSW are now more overrepresented in custody than they were at the time of the 1991 Royal Commission in to Aboriginal Deaths in Custody at a rate of 15 times higher than the imprisonment rate for non-Indigenous Australians (ABS 2012).

### **Legal Factors contributing to the growth in the Australian imprisonment**

“Crime” and “offending” are concepts that are problematic to measure as not all “offending” is identified and recorded and concepts of “crime” change over years as reflected by legislative amendments. Therefore the factors contributing to the growth in the Australian imprisonment rate are complex. They may result from an increase in offending behaviours, an increase reporting and conviction rate, and / or more punitive measures by the criminal justice system.

The growth of the incarceration rate has been attributed to a range of administrative, legal and technical factors including: sentencing law and practice, restrictions on judicial discretion, changes to bail eligibility, changes in parole and post –release surveillance, the limited availability of non-custodial sentencing options, the limited availability of rehabilitative programs and a judicial and political perception of the need of “tougher” penalties (Cooper 2012).

### **Young People**

Young people account for almost one in five (19 per cent) of the total prison population. This reflects the general trend that involvement in crime tends to peak in adolescence and early adulthood (Fagan & Western 2005; Farrington 1986). Research shows that this peak in offending rates during adolescence is due to the brain development in the second decade of life. This is a period of rapid change,

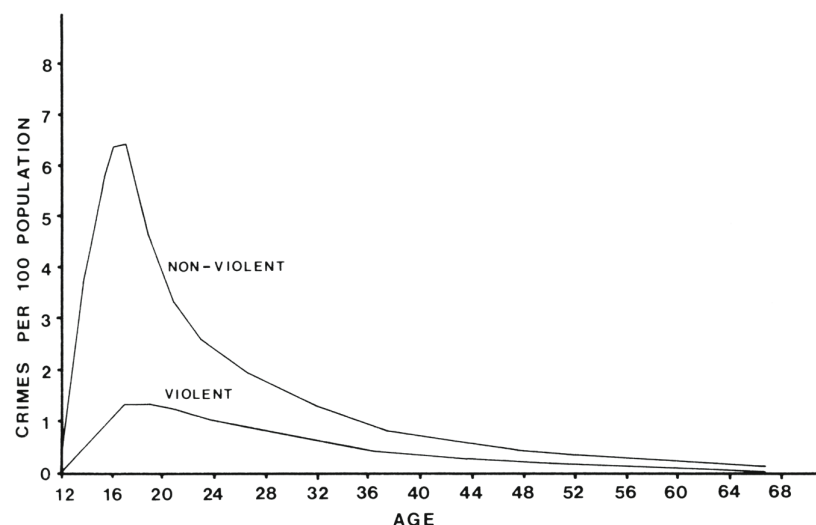
particularly in the areas of the brain associated with response inhibition, the calibration of risks and rewards and the regulation of emotions (Steinberg 2005).

However most young people 'grow out' of offending (Richard 2011), as demonstrated in Figure 1, unfortunately, once incarcerated young people are more likely to reoffend and progress to adult custody (Hill, A 2011). In addition, vulnerable young people such as those with a difficult home life, are more likely to be harshly treated by criminal justice agencies, as noted by Walker, D & McDonald, D (1995):

*“Anything which indicates prior involvement with the criminal justice system, or symptoms of "rootlessness" as demonstrated by unemployment or a dysfunctional family situation, can lead to police adopting arrest and detention procedures rather than proceeding by summons or caution.”*

The Australian Institute of Criminology (2011) notes there are certain types of offences (such as graffiti, vandalism, shoplifting and fare evasion) that are committed disproportionately by young people while very serious offences (such as homicide and sexual offences) are rarely perpetrated by young people.

**Figure 1**



Source, Farrington 1986.

### **Social Factors contributing to the growth in the Australian imprisonment**

Much has also been written about the social determinants of crime. Prison inmates are characterised by disadvantage with histories of disrupted family and social backgrounds; abuse, neglect and trauma; poor educational attainment and consequent limited employment opportunities; unstable housing; parental incarceration; juvenile detention; dysfunctional relationships and domestic violence; and previous episodes of imprisonment.

The 2009 Young People in Custody Health Survey (Devon et al 2011) noted the following alarming statistics:

## Social Determinants

- Over half (52 per cent) of men and just under half (45 per cent) of women did not finish year 10 of schooling.
- Just over one in ten (11 per cent) participants were living in unsettled accommodation or had no fixed abode prior to their current incarceration, a slight increase since 1996 (8 per cent).
- Half (50 per cent) of men and two-thirds (67 per cent) of women were unemployed in the 6 months before their incarceration.
- Much of this unemployment was long-term with 30 per cent of men and 44 per cent of women being unemployed for five years or longer.
- An increased proportion (30 per cent) of 2009 participants had a history of being placed in care before the age of 16 years compared to 2001 (21 per cent).
- Just under one in five (18 per cent of men, 17 per cent of women) had a history of parental incarceration during their childhood.
- Over half (54 per cent) of women and just under half (46 per cent) of men have a disability or illness that had impacted on their health for six months or more.
- Half (52 per cent) of men and 35 per cent of women had a history of a head injury resulting in unconsciousness. The prevalence of head injuries has decreased among women from 39 per cent in 2001 to 35 per cent in 2009, but increased among men from 45 per cent in 2001 to 52 per cent in 2009. Most of these head injuries (47 per cent) occurred over ten years previously and involved only a short period of unconsciousness (51 per cent less than ten minutes).

## Access to Healthcare

- One in six (17 per cent) men and 4 per cent of women have never accessed healthcare outside of prison.

## Alcohol and Other Drugs

- Risky alcohol consumption in the year before incarceration is much higher than the community average, with 63 per cent of men and 40 per cent of women drinking alcohol at hazardous/harmful levels in the year before prison. In particular, a high proportion (35 per cent of men, 16 per cent of women) were drinking at levels suggestive of alcohol dependence.
- (84 per cent) have used illicit drugs, compared to just over a third (38 per cent) in the general community. The proportion of women who had used illicit drugs decreased slightly between 1996 and 2009 (from 82 per cent to 78 per cent), while use of drugs increased among men from 69 per cent in 1996 to 86 per cent in 2009.
- Cannabis is the most common drug ever used (81 per cent), followed by amphetamines (57 per cent), cocaine (45 per cent) and ecstasy (44 per cent).

## Mental Health

- The majority (87 per cent) of young people were found to have at least one psychological disorder, and nearly three-quarters (73 per cent) were found to have two or more psychological disorders.
- Young women were significantly more likely than young men to have an attention or behavioural disorder (82 per cent vs 68 per cent), an anxiety

disorder (54 per cent vs 28 per cent), a mood disorder (56 per cent vs 19 per cent) or two or more psychological disorders (92 per cent vs 70 per cent).

- Aboriginal young people were significantly more likely than non-Aboriginal young people to have an attention or behavioural disorder (75 per cent vs 65 per cent) or an alcohol or substance use disorder (69 per cent vs 58 per cent).
- Young women were also significantly more likely to have high psychological distress (55 per cent vs 24 per cent), to have ever attempted suicide (23 per cent vs 8 per cent), to have ever self-harmed (35 per cent vs 14 per cent) and to have ever been admitted to a psychiatric unit (28 per cent vs 6 per cent).
- Over half (60 per cent) of young people had a history of child abuse or trauma. Significantly more young women reported a history of abuse than young men (81 per cent vs 57 per cent). A high proportion of young women had been physically (61 per cent) or sexually abused (39 per cent).
- Intellectual ability in the range indicating possible intellectual disability was common. One in five (20 per cent) Aboriginal young people were assessed as having a possible intellectual disability (IQ scores less than 70);

### Aboriginal and Torres Strait Islander Peoples

The NSW Young People in Custody Health Survey 2009 has further identified that Aboriginal young people are particularly disadvantaged, with high levels of trans-generational trauma and associated exposure to mental illness, drug and alcohol issues, family violence and poverty.

It has been argued that crime rates amongst Aboriginal people can be further attributed to “institutionalised racism” in government service departments (Richey Mann 1995). For example, some Aboriginal people experience greater difficulties in accessing services that assist in reducing offending behaviours, for example schooling and adequate housing.

## **(b) The economic and social costs of imprisonment**

### **Direct Imprisonment Costs**

It has been suggested that the problems of Indigenous over-representation in custody is not just a social justice or human rights issue, it is also an economic issue (Aboriginal and Torres Strait Islander Social Justice Commissioner 2009).

In NSW, expenditure across the justice system exceeds \$6 billion every year. On average, over the last five years, Corrective Services NSW has overrun its budget by about \$80 million each year (NSW Commission of Audit, 2012). In 2010-2011, Corrective Services NSW had a current expenditure of \$1.1 billion (growing at an average of 7.3 per cent each year for the last decade) and capital expenditure of \$99 million (growing at an average of 13.3 per cent a year). This is almost double the corrective services expenditure in all other states (NSW Commission of Audit 2012).

Juvenile Justice NSW had a current expenditure of \$192 million in 2010-2011 and \$24 million for capital expenditure (NSW Commission of Audit, 2012). The daily cost of keeping a young person in juvenile detention has been rising steadily, with an increased of 17.3 per cent in 2011-2012 (NSW Auditor-General 2012).

The economic costs of imprisonment have led the NSW Commission of Audit to make the following critical comments of the NSW prison system:

*“Custodial sentences for low level offences have negative consequences. For example the risk of recidivism increases, imprisonment rate is costly and custody is not the correct remedy for many offences... Prison facilities are becoming the default setting for those with mental health problems. This is not appropriate and must be addressed... Whole-of-Government preventative and early intervention approaches are required to tackle juvenile crime. This is line with Government policy.”*

The NSW Commission of Audit, Final Report, 2012:121

### **Reoffending**

Reoffending rates can identify the inefficient nature of imprisonment for crime prevention post sentence. A 2005 study found that 68 per cent of those that appeared for the first time in Children’s Court in 1995 reappeared at least once again in a juvenile or adult court (Shuling et al 2005).

Among young Aboriginal people in custody 90.5 per cent reappeared in an adult court within those 8 years and 30.6% with a custodial sentence (Shuling et al. 2005).

### **The Reduction in Employment Viability Post Incarceration – Young People**

Whilst there have been no studies on the effect of juvenile detention on juvenile employment in Australia, the Bureau of Crime Statistics and Research (BOCSAR) (Weatherburn, 2009) has concluded that custodial penalties should be used sparingly with young people due to the adverse effects on employment outcomes and the absence of strong evidence that custodial penalties act as a deterrent.

The Justice Policy Institute of America (Holman and Ziedenberg 2006) suggests that young people who spend time in incarceration experience three weeks less work a year (and for African-American young people, five weeks less work a year) compared to young people with no incarcerated history of incarceration. Furthermore the National Bureau of Economic Research has noted:

*“Having been in jail is the single most important deterrent to employment...the effect of incarceration on employment years later [is] substantial and significant”*

Holman and Ziedenberg, 2006:10

This report goes on to state that economists have shown that incarcerating young people reduces their future earnings and their ability to remain in the workforce, and could change formerly detained young people into less stable employees (Holman and Ziedenberg 2006).

## **The Impact on Children – Intergenerational Effects and Isolation from Family and Community**

Differences exist in the Aboriginal and non-Aboriginal young peoples' experience of custody (The Royal Commission into Aboriginal Deaths in Custody 1991). As noted in Term of Reference A, Aboriginal young people have high rates of mental illnesses and anxiety, these may be additionally exacerbated due to the large geographical distance from family and country, and the lack of cultural competency and responsiveness within the prison system (Primm et al 2005).

Another difference is the high proportion of Aboriginal people affected by the past practices of forcible child removals have now also had their own children taken from them in turn through custodial orders (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children (NISATSIC) 1997). A process of subsequent generation removal is also recorded. Therefore it can be argued that the high levels of criminalisation and incarceration of Aboriginal young people in Australia amounts to a new practice of forced separation (Cunneen 1997).

Isolation is a key problem for Aboriginal young people in juvenile detention. The United Nations notes that young people should have the right to regular and frequent visits of at least twice each week, as well as the right to communicate by writing or telephone at least twice each week (NISATSIC, 1997). However according to the Stolen Children Report (NISATSIC, 1997), a survey of NSW juvenile detainees found that 90% received less than the minimum standard in relation to visits and 76% less than the minimum standard in relation to telephone communications.

Isolation also stems from the fact that most detention centres in NSW are concentrated around Sydney metropolitan or in key regional centres (see [http://www.djj.nsw.gov.au/Contactus\\_Location\\_map.htm](http://www.djj.nsw.gov.au/Contactus_Location_map.htm)). These are often hundreds or thousands of kilometres away from many Aboriginal communities (NISATSIC, 1997). For children outside of these regional and metropolitan centres, the distances between their hometowns and these centres can be vast and their families cannot make the journey because of the distance and expense (NISATSIC, 1997).

## **The Impact of Incarceration on Mental Health Conditions**

According to the NSW Commission of Audit (2012), prison facilities are becoming the default setting for people with mental health problems. In NSW, 54 per cent of women in prison and 39 per cent of men in prison have been diagnosed as having a "psychiatric problem" at some point, with suicide rates also high. The frequency of mental illness among inmates is far higher than that of the general population and probably higher than reported (NSW Commission of Audit, 2012).

The Justice Policy Institute notes that research has identified the following:

- Poor mental health combined with the conditions of confinement lead to an increased risk of suicide and self-harm (Holman and Ziedenberg 2006);
- Upwards of 2/3 of incarcerated young people could meet the criteria for having a mental disorder (Holman and Ziedenberg 2006),
- Over 1/3 of young people in detention need ongoing clinical care – a figure that is double that of the general adolescent population (Holman and Ziedenberg 2006).

- For one-third of incarcerated youth diagnosed with depression, the onset of the depression occurred after they began their incarceration (Kashani et al, 1980)
- Young people in detention have remarkably poor health, both physical and mental. The transition into incarceration may be what is responsible for some of those effects (Forrest et al, 2000).
- The rates of current and lifetime suicidal ‘ideation’ and past suicide attempts are higher in delinquent adolescents in a juvenile detention centre – particularly elevated amount girls (Rhode et al, 1997).
- Smith (2006) concluded that there is substantial variation in the impact of segregation on inmates. Specifically, he pointed to the duration and characteristics of confinement and individual qualities of the inmate as determining the impact on that individual. Notwithstanding this variability, he argues that the evidence indicates that solitary confinement is a harmful practice in that it “causes serious health problems for a significant number of inmates” (Smith, 2006), and the negative effects of isolation can be even more pronounced for inmates with mental illness.

**(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**

As noted previously in section A, Aboriginal people are imprisoned at a rate of at least 14 times higher than the general population, with 22 per cent of adult males and 29 per cent of adult females in custody, identifying as being Aboriginal (2174 from a total of 9680), and approximately half of young people in custody (168 from 391).

As noted in the Inmate Health Survey (2009) (Indig et al 2010) and the Young People in Custody Health Survey (2009) (Indig et al 2011) the needs of Aboriginal people in custody are growing with the prevalence of mental health issues, chronic disease and high risk alcohol use increasing. Aboriginal people in custody have poorer physical and mental health than Aboriginal people in the community, and are more likely to be from regional areas where there is less access to health and support services.

**Mental Health Problems, Drug and Alcohol Abuse and Imprisonment**

There is evidence of a clear link between mental health problems, drug and alcohol abuse and imprisonment. The 2007 National Survey of Mental Health and Wellbeing (Australian Bureau of Statistics 2008) found that, among individuals who reported having ever been incarcerated, the 12-month incidence of anxiety, affective or substance disorder was more than twice that for people who reported that they had never been incarcerated (41.1 per cent vs 19.4 per cent).

When specific mental disorders were analysed, individuals who reported having ever been incarcerated had almost five times the 12-month incidence of substance use disorders compared with those who had never been incarcerated (22.8 per cent vs 4.7 per cent), more than three times the incidence of an affective disorder (19.3 per cent vs 5.9 per cent) and twice the incidence of an anxiety disorder (27.5 per cent vs 14.1%) (Smith and Trimboli 2010).

The Drug Use Monitoring Program found in 2009-10 that of 75% of detainees nationwide who agreed to a drug test, 66 per cent tested positive to at least one substance (Sweeney and Payne 2012).

Among young people this link is even more apparent. The majority (87 per cent) of young people were found to have at least one psychological disorder, and nearly three-quarters (73 per cent) were found to have two or more psychological disorders. Young women were significantly more likely than young men to have an attentional or behavioural disorder (82% vs 68%), an anxiety disorder (54 per cent vs 28 per cent), a mood disorder (56% vs 19%) or two or more psychological disorders (92 per cent vs 70 per cent).

Aboriginal young people were significantly more likely than non-Aboriginal young people to have an attention or behavioural disorder (75 per cent vs 65 per cent) or an alcohol or substance use disorder (69 per cent vs 58 per cent) (Indig et al. 2011).

There is also a clear link between mental health issues and reoffending. A study found that within 24 months of their release from prison, 65 per cent of the total sample had reoffended, and their rate of re-offending was related to their mental health disorder/s. The weighted rate of re-offending was greater in prisoners who had comorbid substance and non-substance mental health disorders (67 per cent compared with prisoners who had: only a substance disorder (55 per cent), a non-substance mental health disorder (49 per cent), and no mental health disorders (51 per cent) (Smith and Trimboli 2010, 1).

## **Intellectual Disability**

A report in 1988 indicated that 13 per cent of the adult prison population had an intellectual disability (IQ below 70=2.4 per cent) or borderline ranges (IQ 70–80=10.4 per cent) (Hayes et al 1988). More recent estimates of the prevalence of adult prisoners with intellectual disability could be up to 20 per cent (Hayes, S: 2000). According to the recent Young People in Custody Health Survey 2009, 17 per cent of young people in custody had cognitive functioning scores consistent with a possible intellectual disability, and 10 per cent met both IQ and adaptive behaviour deficits consistent with DSM-IV criteria for intellectual disability. Fifteen per cent of young people on community orders had an IQ of less of 70 (Kenny et al 2008).

A review of the prevalence of intellectual disabilities among prisoners internationally found few are identified, with typically 0.5-1.5 per cent of prisoners diagnosed with an intellectual disability (Fazel 2008). Despite the over representation and significant difficulties of this population, several reviews indicate offenders with an intellectual disability rarely receive any specialised treatment (New South Wales Law Reform Commission 2010, Simpson et al 2001).

Corrective Services NSW reported that recidivism for people with an intellectual disability for the period 1990 to 1998 was 68 per cent compared to 38 per cent for the total prison population. The proportion for those with no prior convictions was higher with 60 per cent of people with an intellectual disability reoffending compared to 25 per cent of the total inmate population and 72 per cent vs. 49 per cent for those with prior convictions (Langford 2002).



Anecdotal evidence shows that within the intellectual disability spectrum, people with borderline intellectual disability are at most at risk of coming into contact with the criminal justice system as they are capable enough to commit the crime, but not capable enough “get out of it”. For example, people with borderline intellectual disability may not fully understand their bail conditions so break them inadvertently, and are consequently then remanded in custody. However borderline intellectual disability is often not recognised by the disability services, as the IQ is in the 70 – 80 range, and so do not meet the criteria for support.

Anecdotal evidence suggests that people with mental health conditions and intellectual disability may be rejected by mental health services and disability services as the services blame the “other” condition as the primary presenting problem. In cases where people are supported it is rare that mental health clinicians and disability workers provide joint case management due to confidentiality issues between departments. Disability support services, as with community mental health services, are sometimes reluctant to accept a patient who has been in custody due to the stigma attached and the perceived high-risk of the patient. This is also true of the educational system whereby young people released from detention have difficulty being accepted into schools on release (this can have major implications as education is a protective factor for the young people).

In addition many services are not equipped to deal with the additional complex issue of intellectual disability in combination with the affective disorder. This also has implications for people with an intellectual disability which could be diverted on a section 32 or 33 of the Mental Health Forensic Provisions Act 2007 NSW, but due to no available suitable support services in the community they are not able to be diverted and instead receive a custodial order.

### **Mental Health and Intellectual Disability Comorbidity**

Evidence shows that people with an intellectual disability have at least two to three times the prevalence of mental health presentations compared to the general population (Doody et al 1998). Despite these findings, research is suggesting that many people with intellectual disability are not being provided with appropriate and adequate mental health services (Mohr, C, et al 2002). This pattern of mental health and intellectual disability also exist in the custodial population.

It is well established that people with mental health and comorbid intellectual disability are over represented in custody, particularly in NSW (NSW Law Reform Commission 2001, NSW Law Reform Commission. 2010). A study by Vanny et al 2009 assessed the prevalence of dual diagnoses of intellectual disability and psychiatric disorder in a sample of people appearing before four Magistrates Courts in Sydney found people with intellectual disability were over-represented with 10 per cent of participants assessed as having an IQ below 70 (mild ID range) and a further 20 per cent in the 70-79 (borderline) range. The prevalence of mental illness in the group with intellectual disability was 46 per cent, compared with a prevalence of 36 per cent for those without intellectual disability (Vanny et al 2009). Additional research shows that young people with an intellectual disability have a three to four times greater risk of developing a psychiatric illness than the general population with an estimated 40 per cent of young people with an intellectual disability having a mental health presentation (Lask et el 2003).

These findings highlight the high-level of intellectual disability and mental health co-morbidity in the criminal justice system population.

### **Affective Disorders**

Affective disorders, also known as mood disorders, are characterized by a consistent, pervasive alteration in mood, and affecting thoughts, emotions, and behaviours. Examples of affective disorders include; Bipolar Disorder - characterized by an alternation between extreme euphoria and mania, and deep depression; Dysthymia - which is a chronic, different mood disturbance where a person reports a low mood almost daily over a span of at least two years, and; Major Depressive Disorder - where a person has one or more major depressive episodes where the mood is persistently low or sad, persists for at least two weeks and affects the person's appetite, sleeping patterns, concentration, motivation, drive and energy levels (ICD 10).

According to the 2001 New South Wales Inmate Health Survey (Butler et al 2003) 23.4 per cent of adult remand prisoners, and 14.0 per cent of adult sentenced prisoners surveyed reported suffering at least one type affective disorder in the prior 12 months. Females, both remanded and sentenced, presented with significantly higher rates of affective disorder than males (33.9 per cent vs 21.1 per cent – remand, 20.4 vs. 12.4 sentenced). The most common type of mood disorder was depression, followed by dysthymia, the least present was mania (included bipolar disorder) (Butler 2003). The report commented that "...having had any affective disorder in the year prior to interview [for the research] was 3.4 times more common among NSW Prisoners than in the Australian community (20% vs 5.8 per cent)" (Butler, T 2003).

### **Drug and Substance Abuse**

In both affective disorders and intellectual disability there is high use of drug and alcohol, the high-usage within this population group may be due to self-medication to manage the symptoms. This appears to be especially prevalent in young people, which can have the further negative impact of hindering adolescent brain development. In an American study 50 11 to 17 year olds were screened at a juvenile detention centre, the researchers reported a strong association between affective disorder and conduct disorder and substance abuse (Pliszka et al 2000).

In a study that surveyed 2,135 adult male offenders incarcerated in prisons in Queensland, Western Australia, Tasmania, and the Northern Territory it was concluded that substance use leads to crime; crime leads to substance use; and substance use and crime are caused by the same factors (Makkai et al 2003). It has been established that the strongest future offending behaviour variable (Mullen 2001).

Interestingly, in a research study using rats (several generations were bred to exhibit affective disorders) there was a propensity for the rats susceptible to affective disorder behaviours to have a strong tendency to consume alcohol, amphetamine and cocaine (Weiss 2008).

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

There are some services in NSW that have been developed to provide early intervention, diversion and post release support.

In Australia the Indigenous Justice Clearing House ([www.indigenousjustice.gov.au](http://www.indigenousjustice.gov.au)) has started to compile research about these alternatives to imprisonment. However, there remains a lack of publicly available peer reviewed data about the costs, availability and effectiveness of alternatives to imprisonment. Justice Reinvestment addresses such information deficits as i; it requires building an evidence base about these programs.

In the United States, the Washington State Institute of Public Policy (WIPP) ([www.wsippa.wa.gov](http://www.wsippa.wa.gov)) is an example of the type of institution that carries out this research. WIPP is governed by a board of directors, which represents the Washington State legislature, governor and public universities. It carries out practical, non-partisan research – at legislative direction – on issues of importance to Washington State, including justice reinvestment (Drake et al 2009).

The Justice Reinvestment Campaign for Aboriginal Young People recommends a similar research institution be created with a national brief to research and disseminate information about the cost, availability and effectiveness of alternatives to imprisonment.

Details of other services, including their costs efficiency, are identified as part of “(h) The implementation and effectiveness of justice reinvestment in other countries, including the United States of America.”

**(e) The methodology and objectives of justice reinvestment;**

**The methodology**

The aim of Justice Reinvestment (JR) is to redirect funding from the corrections system to the community to fund programs and services to support people in the community to reduce offending behaviours and build community capacity (Tucker & Cadora 2003). The Justice Reinvestment for Aboriginal Young People Campaign advocates that the methodology and objectives of justice reinvestment must be:

- Data driven
- Place based
- Fiscally sound
- Supported by a centralised strategic body

Data driven

JR is premised on the fact that it is possible to identify which communities produce large numbers of offenders, and to strategically use that information to guide investment in community programs to most effectively reduce imprisonment numbers. 'Justice mapping' or 'prison geographies, allow policy makers to identify 'million dollar blocks' - literally, a block of housing that is home to people whose incarceration costs over \$1 million per year' - where prison related expenditure is concentrated. Using data mining techniques to create detailed prisoner density maps

in residential areas, decisions can be strategically made about how and where to allocate funds to most effectively bring about a reduction in crime.

Incarceration maps, on the other hand, show concentrations of prison admissions in particular areas so that public investment can be targeted towards the places that most need reshaping in terms of local infrastructure, production of social capital and better governance.

It is, however, important to note that the justice reinvestment approach is not purely data driven. While mapping underpins the identification of focus communities and, to some extent, the assets available to build community capacity, this is supplemented by years of research, countless conversations, and a network of local and national participants' committed to the justice investment approach. 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.

#### Place based - "Not individual cases, but particular places".

JR has been developed with a view to 'improve[ing] the prospects not just of individual cases but of particular places' (Allen 2007).

In other words, JR is focused on communities rather than individual offenders.

JR adopts best practice characteristics of place-based initiatives that include:

- 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
- 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 JR 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 JR initiatives
- The capacity of the community is enhanced to identify and tackle their own challenges
- Sufficient time and resources are allocated over the long-term

#### Fiscally sound

A JR approach must be fiscally sound offering long-term costs efficiency. For this to be achieved, the current costs of the criminal justice system, (in particular the incarceration of young people and adults) and effects to criminal recidivism in a

particular geographical region should be identified. Cost benefit ratios and economic modelling should then be conducted for alternative service and program models (along with community consultation) to ensure the lowest risk – highest benefit program is selected for the area. The spending must then be tracked. However there must also be a commitment to long-term funding. The most successful community programs are those that have built trust with the community. It would be un-safe and ineffective to only commit to short term funding: it would be unlikely that the community would readily engage with the project.

Central to the JR approach is the idea that the fiscal framework incentivises communities to keep people away from the criminal justice system and prison by making a commitment: if community initiatives result in a reduction of people in that community having contact with the criminal justice system and being imprisoned, then government will reinvest a proportion of those savings back into the community. This commitment ensures the long-term sustainability of effective, evidence-based programs.

A JR approach:

- Quantifies the current costs that exist in the criminal justice system, breaking down these costs at different stages within the criminal justice system
- Quantifies the current costs that exist in the human services, which are consumed by individuals who are involved in the criminal justice system
- It estimates the savings associated with potential policy changes
- It is an iterative process that tracks spending and achieves tangible savings

#### Supported by a centralised strategic body monitoring and quantifying outcomes

Critical to the success of a JR policy is an independent centralised body.

A Statutory Authority will ensure longevity: a small body with a focused agenda to work across departments and to monitor and quantify social and economic outcomes of JR initiatives. A Centralised strategic Body would have the following roles:

- To support the Government in identifying appropriate communities and monitoring initiatives
- To support the Local Government System by collecting data, assisting in strategy development and building community capacity.

In the US, an example of a justice reinvestment advisory body is The Council of State Governments Justice Centre. The Justice Centre is bi-partisan not-for-profit organisation funded by a combination of Federal, State and private philanthropic funds. Its functions are to:

- Identify communities for a JR approach
- Support community based strategy development, including advising on what evidence-based initiatives will reduce offending / re-offending, increase community safety, and address disadvantage
- Build the capacity of the community to implement the JR strategy and initiatives  
Monitor and quantify the social and economic outcomes

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

**Benefits**

- Increased cost effectiveness for the Country and States and Territory
- Reduced levels (severity and occurrence) of crime
- Reduced number of victims
- Reduced incarceration and the pattern of young offenders progressing to adult prisoners (this is particularly relevant in view of the ageing prison population and the huge projected increases in prison costs including healthcare (AIC 2011)).
- Reduction in the negative impacts of incarceration in the lives of young people
- Safer communities
- Aboriginal leaders and communities support a JR approach.
- Increased capacity in the community to solve social challenges
- Increased focus on evidence-based practice

**Challenges**

Whole of Government

A JR approach will necessitate multiple Government Departments, both federal and state, working together. Considerations around joint Key Performance Indicators and budget governance will be required. Memorandum of Understandings will need to be created across Departments.

Whole of Community

Successful JR approaches will need the backing and supporting of the community, including the media. The clear facts of JR should be highlighted including the reduced victim rates and the consequent cost effectiveness and benefits to the economy. It is vital that JR approaches are not “watered-down”, or added to with additional punishments to the young people to ensure the Government at the time is perceived as being “Tough on Crime”.

Access to Data

How data is made public is something that requires sensitivity and careful planning. Justice Reinvestment should not stigmatize communities; it applies a strength-based approach to communities and recognises communities understand their problems and have solutions to those problems.

The benefits however of adopting a justice reinvestment policy to address current data deficits include:

- Understanding the size and scope of the challenge in a justice reinvestment appropriate community
- Evaluating fiscal and social benefits
- Breaking down information silos resulting from data held by individual government line agencies
- Improving and identifying localised data collection

### Geographical Considerations

The geographical landscape of Australia is very different to that of other countries that have employed justice reinvestment strategies such as United States of America. It is vital that the unique geographical landscape of Australia is considered when designing and implementing justice reinvestment strategies. Many populated areas are located in regional and remote regions with scarce service provision and perhaps hundreds of kilometres between services. In these regions it is essential that sufficient funding for travel is built into justice reinvestment budgets and that the communities are equipped with transportation in order to access the services.

### Building Trust with Communities

Due to the negative affects of historical Government policies in regard to Aboriginal peoples it is vital that the trust between Government and Communities is developed. This will have an impact on funding as programs and services will require time for the fostering of trust. This trust needs to be built prior to consultation to ensure the communities engage with the consultation. It must be noted that some communities may have “consultation fatigue” and may have a distrust of government consultations due to previous consultation that may not have produced benefits to the community (Queensland Government, Department for State Development Infrastructure and Planning 2011). In addition, once a program or service have been implemented it is essential that funding continues.

### Evidence based programs

Implemented programs and services need to be developed using an evidence base with the consultation of both criminologists, Forensic mental health clinicians and academics – not simply policy makers implementing watered down programs at the request Ministers, perhaps without training or experience in the area.

### Bipartisan Agreement Ensure Long-Term Commitment

To ensure that trust can be built with communities long-term commitment to the implementation of programs and services is required. Due to the implementation of programs in coloration with the electoral cycle at best many programs receive between only one and four years of funding. These funding cycles inhibit the building of trust with communities, increase the program staff attrition rate and ultimately reduce the efficiency of the programs resulting in poor cost efficiency.

## **(g) The collection, availability and sharing of data necessary to implement a justice reinvestment approach**

It is essential that principles of individual consent are built into data sharing strategies. In addition, as Aboriginal people are over represented in the criminal justice system it will follow that if data sharing is improved there will be more data sharing about Aboriginal people. This will need to be done in consultation with Aboriginal community groups to ensure that Aboriginal people are not seen as being penalised.

## **(h) The implementation and effectiveness of justice reinvestment in other countries, including the United States of America**

### **United States of America**

The Justice Reinvestment Initiative is a project sponsored by the US Department of Justice's Bureau of Justice Assistance (BJA) and the Public Safety Performance Project of the Pew Center on the States. The Initiative provides technical assistance and financial support to states, counties, cities, and tribal authorities that seek to reform their criminal justice systems using a data-driven approach ([www.vera.org/project/justice-reinvestment-initiative](http://www.vera.org/project/justice-reinvestment-initiative)).

It is noted that in general programs are commonly classified according to whether they are *interventionist* (aiming to correct behaviour that is undesirable once it has occurred) or *preventative* (which aim to prevent criminal activity/undesirable behaviour before it occurs by removing 'risk factors') (Murphy, P ert al 2010). Secondly, prevention programs may be categorised as primary, secondary or tertiary prevention programs: where primary programs refer to universal approaches applicable to all; secondary prevention programs target individuals who display signs of violent or anti-social behaviour; and tertiary prevention programs which target individuals who have already become involved in crime.

### **Texas**

Texas, one of the original JR states, which has been independently evaluated, shows real results both in terms of rates of incarceration and in terms of dollars saved.

In 2007, when Texas officials estimated that the state would need to spend \$2 billion over the next five years to construct new facilities and beds to meet a projected increase in the young people and adult offender population. Rather than expend resources to construct new prisons and new prison beds, the Texas legislature opted to reinvest a portion of the funds proposed for construction in alternative strategies. That year, Texas committed \$241 million to strengthen existing drug and mental health treatment programs for incarcerated youth and adults and persons released from confinement.

The state saw positive results over the next two years. By halting the construction of new prisons, the reinvestment generated budget savings of \$444 million in the following fiscal year (Council of State Governments Justice Center 2007). Crime decreased state-wide and the number of parole and probation violations declined. Predictions about the rate at which the state prison population would increase were revised downward significantly; current forecasts now predict it will grow at 10 per cent of the rate estimated in 2007. \$4.3million was pulled from the 2008 – 2009 corrections budget for a violence prevention program, the Nurse-Family Partnerships to be delivered to 2000 families in identified 'high stakes' communities.

### **Illinois, St Clair County**

Redeploy Illinois is a state initiative that offers financial incentives to counties to provide community-based alternatives to youth incarceration. St Clair was one of the first 4 Illinois counties to participate in the initiative.

St Clair County Youth Coalition - an existing community group that consisted of 100 stakeholders and service providers - developed a successful proposal to become a pilot site. It worked in conjunction with Southern Illinois University to assess the



needs of the community, develop a plan and implement and evaluate outcomes. The group identified gaps in existing service delivery and met weekly to develop a detailed plan.

Implementation commenced in 2005 and included a number of programs including: multisystemic therapy, functional family therapy, and aggression replacement training. The community group remained in role as the oversight board.

In 2010 a cost benefit analysis of Redeploy in St Clair noted an 82% reduction in custodial placements. By 2011, 27 counties across Illinois had participated in Redeploy and 800 young people had been diverted from custody. Redeploy has now been extended to adults in other counties.

#### Other Programs in the United States of America

The National Institute of Justice notes statistics that recognise that crime rates are much higher for Native Americans when compared to the national average: American Indians between 25-34, violent crime rates are more than double that for the national average (National Institute of Justice 2013). Consequently some programs have been designed specifically for indigenous people. Specific to Indigenous Youth Justice, the Minister for Juvenile Justice (America) has noted that several good practice measures exist, which should be made available to government to ensure an effective Indigenous juvenile justice system. These include:

- maximum access to and utilisation of alcohol and substance abuse programs;
- avoidance of incarceration wherever possible;
- emphasis on prevention and early intervention;
- the provision of culturally relevant programs; and
- a high level of participation by the Indigenous community in formulating and implementing responses to Indigenous youth crime (National Institute of Justice (2013)).

#### Tribal Youth Program (TYP), administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP)

In brief: The TYP program provides support to prevent tribal delinquency and improve juvenile justice systems for American Indian and Alaska Native Youth by awarding grants to federally recognised tribes and Alaskan villages to support culturally-sensitive programs in:

- Prevention services to impact risk factors for delinquency;
- Interventions for court-involved tribal youth;
- Improvements to the tribal juvenile justice system;
- Alcohol and drug abuse prevention programs; and
- Mental health program services.

Funding is also used for research, program evaluation, training and technical assistance through the Tribal Youth Training and Technical Assistance Centre.

Grants details: The OJJDP awarded grants (in 2008) ranged between \$300,000 - \$500,000, and \$4 million in funding to mentoring programs (Pearson, 2009). Details of the OJJDP's commitment to the TYP include that since 1999 it has awarded 321 grants to 299 federally recognised tribes in support of the 5 program areas identified above (Office of Juvenile Justice and Delinquency Prevention 2009).

In total the OJJDP has funded awards amounting to \$268 million in 2012, (Office of Justice and Delinquency Preventions 2012) but it is not clear what percentage of that amount relates to tribal community juvenile justice programs. The funding is limited to \$500,000 with a program budget of 24 months, able to be extended for a further year.

The following are just some of the programs have been funded through this initiative:

Confederated Tribes of Grand Ronde, living on the Oregon Coast. (Case example noted from the 5 funded TYP programs discussed in *Strengthening Indian Country Through Tribal Youth Programs*).

Background: Involves a community attempting to gain self-sufficiency, with most of the elders of the reservation having grown up in boarding schools without knowledge of their Native culture or language.

TYP Grant: awarded in 2003 to form the Youth Project Team. The TYP provides intensive after school and weekend service for 35-50 tribal and non-native youth who are at risk (screened according to five risk factors: school performance, self-esteem, substance abuse, peer relations, family functioning). Activities are organised to address these risk factors, and include a youth canoe club.

Outcomes: Project described as successful, with an aim to expand the program to meet the needs of older youth.

The Alaskan Native Justice Centre ([www.anjc.org](http://www.anjc.org)) provides a range of programs and services in Indigenous youth justice.

Background: The Centre's work includes:

- Providing advocacy and technical assistance to Indigenous communities and local governments;
- Developing and implementing restorative justice and culturally competent practices.
- Increasing indigenous employment in the justice and child welfare systems
- Promoting indigenous education and employment through scholarships and internships.
- Providing an alternative to the state juvenile justice system through Justice Centre's Rural Youth Court, restorative justice program for first time offenders
- Providing the **United Youth Courts of Alaska Project**: which aims to promote the development of innovative youth justice courts throughout Alaska. (See further detail below).
- The Centre also provides advice on Native youth justice matters: e.g. with the State of Alaska, Division of Juvenile Justice, it conducted a Foetal Alcohol Syndrome and Alcohol Related Birth Defects research project to assess and provide recommendations for improving treatment options.

## United Youth Courts of Alaska Project

In brief: Youth Courts are a restorative justice alternative to the formal juvenile justice for minor and first-time offenders between 14-16 years of age. Rather than risking formal prosecution and to avoid a stain on their legal record, teen court/youth courts may impose community service orders and fines for the damage they have caused. The youth court is handled by specially trained volunteers in informally adjudicating other youth. Within Alaska, State laws set the procedures and eligibility for teen court operations ([www.anjc.org](http://www.anjc.org)).

Evaluation: Noted as demonstrably successful through an assessment of recidivism rates, a 2002 study evaluation of Anchorage Youth Court by the Urban Institute noted that only 6% of young people sentenced through the youth court reoffended within a 6-month period after their sentence. (Buck et al 2002).

Other benefits to the affected community include increased rates of volunteerism among youth and adults; improvements in listening, communication and public speaking skills; cultivation of a sense of empowerment and motivation to be involved in their communities (Buck et al 2002).

## Canada

### In Search of Your Warrior, Native Counselling Services of Alberta (NCSA)

In Search of Your Warrior program (men), Spirit of A Warrior Program (women) and the TAPWE Youth Warrior Program (youth) promote a view that a warrior is a protector and provider, not a perpetrator or abuser (Amellal 2012)

The Warrior program is only available to men who plead guilty, as a key element to the warrior course is accepting responsibility and being accountable. The programs were designed by Native Counselling Services of Alberta to assist Aboriginal people who are caught in a “cycle of violence”. The Warrior programs usually require 30 days to complete, based upon a six-hour program day. The programs are founded on the basic principles of Natural Law (caring, kindness, respect, love and self-determination), which are learned through ceremony and ritual.

The Warrior Program is delivered by two trained facilitators, under the guidance and with the participation of an Elder. The typical group size is 10-14 participants.

The programs goals are to help Aboriginal people better understand their personal intergenerational cycle of violent behaviour, build knowledge and skills that will reduce and eventually eliminate violent behaviour in participants, and facilitate the participants’ connection and commitment to their life-long healing journey.

Effectiveness/Outcomes: up to 80 per cent of participants did not reoffend.

## New Zealand

The Ministry of Justice in New Zealand has produced policy and protocol to reduce offending in indigenous and non-indigenous peoples. The project entitled “Drivers of Crime” is a whole-of-government approach to reducing offending and victimisation, with a particular focus on improving outcomes for Māori. The Social Sector Forum, which is made up of chief executives from major government departments, leads on

the Drivers of Crime work. The Ministry of Justice, New Zealand notes that strengthening and building inter-agency working is vital to success.

The “Drivers of Crime” refer to the underlying causes of criminal offending and victims' experiences of crime. It recognises that certain circumstances of people's lives are associated with a greater likelihood of offending and victimisation.

Addressing the Drivers of Crime involves:

- A shared responsibility across a range of government agencies and service providers
- A focus on improved value for money through better co-ordinated, better targeted and more effective services and programmes
- A particular focus on improving outcomes for Māori providing the right services, at the right time, to the people most in need of them.

The drivers of crime project also notes the importance of health services in reducing harm caused by alcohol and related offending as noted by their Health Minister Tony Ryall:

*"Health professionals are improving maternity and early parenting support, particularly for vulnerable and hard to reach populations, addressing behavioural problems in young children...Health services are also key in helping reduce the harm from alcohol. For example, we've doubled the number of alcohol and drug treatments offered to offenders with community sentences since 2006 to 12,271 last year and the Ministry is currently training 20 Police Youth Aid officers to assist in screening for alcohol problems and early referral."*

Press Release: “Drivers of Crime: Health services vital to changing lives”, 6 July, 2011

This project is in the early stages so the effectiveness has not yet been evaluated, however the methods of implementation are in line with a culturally responsive justice reinvestment approach.

i) **The scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments**

- COAG target for the reduction of Aboriginal and Torres Strait Islander people in custody nationally.
- The creation of a National Centralised Strategic Body similar in nature to the Council of State Governments Justice Centre in the USA to assist State/Territory Government and communities implement Justice Reinvestment initiatives.
- Co-funding with a State or Territory Government an Australian demonstration site
- A Federal policy commitment to share relevant data held by Commonwealth line agencies with Justice Reinvestment initiatives. In order for this to be achieved data must be collected effectively and information sharing pathways must be agreed amongst agencies. Communities need to be engaged in the data collection from the outset and regularly updated to ensure that the community agrees with the collection, storage and sharing pathways while still complying with community consent.

j) **Any other related matters.**

- It is not just the main Government agencies that criminal justice system that would benefit the community from ensuring they are implementing culturally responsive programs and services, all Government agencies, including Housing, Community Services, Disability and Education would benefit the community through the delivery of services operating in accordance with cultural responsiveness protocols.
- Another activity that may improve future generations understanding the importance of cultural responsiveness is for Aboriginal history to become part of the National Curriculum. In this way we will be able embed the importance of Aboriginal history and cultural responsiveness in the next generation of police, lawyers, teachers, health care workers and politicians.

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