SUBMISSION BY THE SOUTH AUSTRALIAN "JUSTICE REINVESTMENT WORKING GROUP" TO THE FEDERAL PARLIAMENT SENATE LEGAL AND CONSTITUTAL AFFAIRS COMMITTEE INQUIRY ON:

"THE VALUE OF A JUSTICE REINVESTMENT APPROACH TO CRIMINAL JUSTICE IN AUSTRALIA"

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BACKGROUND

In March 2012 a public forum on Justice Reinvestment was held at Parliament House in South Australia. There were approximately 40 participants representing a wide cross section of interested parties including, Government, Corrections, SAPOL, Legal Sector, Aboriginal organisations, Victim Support Services, Academics as well as a number of individuals who have an interest in justice issues.

Following the forum a group of interested individuals either in their own right or representing a variety of organisations formed a working group which has been meeting almost monthly since under the title "Justice Reinvestment Working Group".

The Working Group which is in its infancy, currently comprises:

- Ralph Bonig, Immediate Past President, Law Society of South Australia (Working Group Joint Co-ordinator)
- Khatija Thomas, Commissioner for Aboriginal Engagement (Working Group Joint Co-ordinator)
- The Honourable Robyn Layton AO QC
- Cheryl Axleby, Aboriginal Legal Rights Movement Inc
- Tony Waters, Victim Support Service
- Andris Banders, SA Network of Drug and Alcohol Services
- Emily English, SA Network of Drug and Alcohol Services
- Dale Agius, Office of Commissioner for Aboriginal Engagement
- Anne Bainbridge, Youth Affairs Council of South Australia
- Heather Agius, Aboriginal Elder
- Dr Anthea Krieg, Senior Medical Practitioner
- Professor Mark Halsey, Law School, Flinders University

This submission represents the collaborative views of that Working Group. Given that the Working Group has a South Australian focus this submission where possible, addresses the topic of Justice Reinvestment from a South Australian perspective.

We note that this inquiry has been asked to report on "The value of a justice reinvestment approach in Australia" with particular reference to ten identified topics. This submission will seek to address those topics from a South Australian perspective.

By way of an introductory comment the members of the working group are pleased that the Federal Parliament is taking an active interest on what can be done to address the increasing imprisonment rates in this country and the over representation of Aboriginal and Torres Strait Islander people in our prison system. It would be very easy for the Federal Parliament to point to the fact that the "correction system" is generally the responsibility of the States and that as such investigation and implementation of policies such as justice reinvestment falls to the States. However that is far too simplistic an approach and national leadership on this issue is required. This is no more obvious than in the case of Aboriginal and Torres Strait Islanders Australians who despite representing 2.5% of the Australian population (AIHW 2011) make up 26 per cent of the nation's prison population (ABS 2011). This statistic by itself should be cause enough to drive a Federal solution.

TOPICS ADDRESSED

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

There are a number of obvious factors that may influence changes in imprisonment rates the first of which is population growth. Over the last ten years alone Australia's population has grown by 16% or 3.1 million (ABS 2012 yearbook). However South Australia's population as a percentage of Australia's has in fact decreased over the same time. Over the last ten years it has decreased from 7.9% to 7.4% (ABS 2012 yearbook) and in fact over the last 50 years has decreased from 9.2% to 7.4% (ABS 2012 yearbook). Despite the decline in population numbers South Australia's imprisonment rate per 100,000 population over the last ten years has increased (ABS 4517.0 Prisoners in Australia) at a time when corresponding figures in some States such as Queensland and New South Wales have decreased.

If population growth in South Australia is not the answer then increases in sentencing outcomes does appear to have played a part. For at least the last ten years the South Australian State Government have run a "tough on crime" policy. This has resulted in legislative change in areas such as increased penalties and the introduction of "aggravated" offences (Criminal Law Consolidation Act sec. AAA) which in turn carry increased penalties.

The average "expected time to serve in custody in South Australia over the last five years has concerningly increased from 66.4 months to 70.6 months per prisoner (Department for Corrections Annual Report 2011-12).

The Department of Correctional Services has itself acknowledged the impact of these factors:

> *"A Correctional Services spokesman said a "whole range of factors" was responsible for record prison numbers, including prison growth, longer sentencing and legislation changes"* (Adelaide Now - 15 August 2011).

There are in addition, two further distinct factors which have influenced prisoner numbers in South Australia. The first is the relaxation of the limitation period for sex offences which has led to increased prosecutions, convictions and imprisonment. This has led to a threefold increase in prisoner numbers with sex offence convictions over the last ten years (Former Corrections CEO Peter Severin, Adelaide Now, 21 August 2012, ABS 4517.0 Prisoners in Australia 2012). The second is the dramatic increase in female prisoner numbers for offences such as, deception, acts likely to cause injury and homicide (Department for Correctional Services Annual Report 2011 – 12).

The comments made so far only relate to prisoners who are incarcerated in government prison facilities. It is worth noting that there are a number of other ways persons charged with or convicted of crimes may be detained in places other than prison. This may be detention at home or in similar housing, as a consequence of home detention orders, parole conditions or probation orders. As at 30 June 2012 there were 6162 individuals under Department for Correctional Services supervision in the community (Annual Report 2011 – 12). Included in this figure were prisoners who were on parole and home detention as well as those who were given suspended sentences but the subject of probation orders. Although not the prime focus of a justice reinvestment strategy, these non-prison forms of detention should not be ignored when assessing cost v benefit. There is also another factor to be considered. In respect of those offenders 'detained' in the community there will invariably be a family member or friend who bears some responsibility for that offender's compliance with the terms of their detention. This can often result in considerable stress and angst.

There are therefore a variety of 'drivers' that have contributed to the growth in the imprisonment rate in South Australia.

"(b) The economic and social costs of imprisonment".

According to the South Australian Department for Corrections 2011-12 Annual Report:

- The Department has Current Assets of $411m and Net Assets of $346m.

  Its Annual Operating Expenses are $226.5 m deficit against budget $20m of which 61% are employee expenses.

- Total prisoner numbers by daily average 2078
  (males 93.55%)
  (average age 37)
  (Aboriginal and Torres Strait Islanders 22.39%)

Of the operating expenses $156m was spent on custodial services, $37m on rehabilitation and repatriation and $30m on community based services. Therefore using some basic maths the average annual cost per prisoner is somewhere between $226.5m/2078 = $108,999.00 and $156m/2078 = $75,000.00.

Although the economic cost of crime and imprisonment can be measured the social cost of imprisonment not only to offenders but also to their family and friends becomes almost impossible to calculate. Offenders suffer the consequences of exclusion from family and community. Imprisonment of a breadwinner and parent deprives the family of support financial and emotional. Children are deprived of a parent. There is also a significant intergenerational relationship between criminal offending in families and children in turn later become offenders and then prisoners. A failure to invest in the institutions and processes which hold society together leads to marginalisation and desperation in particular cohorts perpetuating an ongoing cycle of intergenerational dysfunction and criminality.

OARS Community Transitions has operated in some form or another in South Australia since 1886. It is a non-government crime prevention agency that has as its vision "strong communities with positive social connections underpinned by restorative practices" (Vision, Mission and Principles 2011). It operates a range of services primarily dedicated towards prisoners and their families with an emphasis on post release support. Then there are those who give their own time one example of which is the "Grannies Group" Monsignor David Cappo AO in his report "To Break the Cycle" described the work of this group as follows:

> *"The level of commitment of this group of Aboriginal elders to bettering outcomes for their young people was unquestionable…Through the efforts of elders and groups such as the Grannies Group capacity is being built within the*

Aboriginal community, however, this cannot be sustained without adequate support" (page 38).

When measuring the social cost, it must be remembered that justice reinvestment is primarily designed as a prevention strategy. Therefore it is not just the social cost of incarceration that should be considered but also the cost and consequences of crime itself that also needs to be considered. The cost to the justice system of crime and the impact of the crime on victims and their families including economic and social costs are considerable.

In South Australia in 2011 there were (ABS 4510.0 Recorded Crime-Victims, Australia 2011):

- 58 homicides (28% victims were male)
- 1354 sexual assaults (84% victims were female)
- 836 robberies (712% victims were male).

Of the sexual assaults Aboriginal and Torres Strait Islanders Australians recorded four times the number of victims than non-Aboriginal and Torres Strait Islanders.

These figures are but a snapshot but they do roughly correlate to those offences for which imprisonment was ordered (Department for Correctional Services Annual Report 2011-12).

The Department for Correctional Services supports a Registered Victim Programme. As at 30 June 2012 there were 721 registered victims (Annual Report 2011-12). In addition the South Australian Attorney General's Department provides some funding towards the Victim Support Service. This funding is insufficient to meet its full operational cost and it relies on alternate sources of funding. In 2011-12 it assisted 2780 clients with some 32,247 client contacts (Annual Report 2011-12).

All of these organisations, the people they represent and other individuals are impacted upon or deal with the impact of offending and imprisonment. Their cost and effort all goes into the equation when attempting to estimate the social cost of imprisonment.

A further factor to be considered in respect of those offenders 'detained' in the community, there will invariably be a family member or friend who bears some responsibility for that offender's compliance with the terms of their detention. The stress and angst that this causes is immeasurable.

"(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".

We have already commented on the over representation of Aboriginal and Torres Strait Islander Australians. What is even more alarming is that in 2010-11 49% of juveniles in detention in Australia were Aboriginal and Torres Strait Islander Australians (Australian Institute of Health and Welfare 2012).

It is not only their over representation which is a cause for concern but also their rate of reoffending. In their report August 2012 entitled "An economic analysis for Aboriginal and Torres Strait Islander offenders, prison vs. residential treatment, the National Indigenous Drug and Alcohol Committee (NIDAC) identified the following trends:

- In 2011 70% of Aboriginal and Torres Strait Islander prisoners convicted of a violent offence had a previous conviction (page VII, page 18).

- 81% who were convicted of non-violent offences had a previous conviction (page 18).

In their 2013 report entitled "Bridges and Barriers" NIDAC again reports on the rate of Aboriginal and Torres Strait Islander incarceration and notes that:

> *"Indigenous adults are over 14 times more likely to be imprisoned than other Australians"* (page 3).

A significant proportion of prisoners have some health related issue. For instance:

- In 2010 31% of prisoners reported a mental health problem. This is 2.5 times the general population (Australian Government – Australian Institute of Health and Welfare June 2012 – The mental health of prison entrants in Australia).

- In its September 2011 publication entitled "The health of Australia's prisoners 2010" the Australian Institute of Health and Welfare reported:
  - 65% of prisoners had used illicit drugs in the 12 months prior to incarceration.
  - 50% reported drinking alcohol at levels that put them at risk.
  - In respect of Aboriginal and Torres Strait Islander prisoners only 23% reported mental health issues however 73% reported alcohol issues.

- In its August 2012 report NIDAC reported that:
  - Half of Aboriginal and Torres Strait Islander prisoners reported their offending due to drug or alcohol use (page 15).

The majority of prisoners have a low level of educational background with 35% not having completed year 10 (Australian Institute of Health and Welfare 2010 report).

These socio economic and demographic factors invariably underpin and/or are a direct cause of offending. It is these factors that a justice reinvestment programme seeks to target.

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

Any form of analysis of this topic is beyond the current capacity of this working group. We do however note that there have been no doubt a number of varied programmes devised, trialled and implemented that sought to address these issues.

What the data and statistics would appear to suggest is that whatever has been implemented to date has not resulted in reversing incarceration rates or the length and cost of incarceration. There are a number of possible explanations for this:

- "Get tough on crime" policies focus on punishment rather than prevention.

- Increased penalties are not always a deterrent. "Making sentences longer or more draconian in itself will not reduce the likelihood of reoffending."[1]

- Incarceration does not equate to rehabilitation.

- The delivery of some programmes is fragmented and is not provided as a linked cohesive strategy around the needs of the person, instead there can be a "silo" approach to the delivery of some social services.

- Similarly some programmes may be available but they may be either inappropriate or not targeted to the needs of the recipient.

Critics of justice reinvestment might point to the existence of these types of programmes, but it is the failure of these programs to provide positive outcomes which requires a 'rethink' on their delivery. This is particularly the case with mainstream programmes being provided to Aboriginal and Torres Strait Islander offenders.

"(e) The methodology and objectives of justice reinvestment"

In its traditional form Justice Reinvestment involves a shifting of spending away from detention to prevention. It is a diversion of funds away from prisons and into programs to address the causes of crime in the communities. It is about smarter spending not increased spending[2] communities. Money allocated for future imprisonment cost is shifted into community-based programmes and services that address the underlying causes of crime in high need areas. The approach is based on evidence that a significant proportion of offenders come from, and return to, a small number of communities.

Demographic mapping is used to identify those communities which will benefit most from targeted investment in prevention, early intervention, diversionary and rehabilitation programs.

If properly implemented, Justice Reinvestment can reduce crime and imprisonment, improve public safety and strengthen our most disadvantaged communities, all without breaking the budget.

The best way to deal with crime is to prevent it. When people, and particularly young people, offend there are often other issues at play like homelessness, cognitive disability, drug and alcohol use, poverty, family breakdown, discrimination and normalisation of violence. The more we spend on prisons, the less we have to spend on other essential services such as health and education. If we are about breaking the cycle of crime and inter-generational poverty, we need to reduce imprisonment rates.

Justice Reinvestment is not about getting rid of prisons altogether. Prisons will always be needed to house serious and dangerous offenders. Nor it is about stripping money away from already underfunded prison services and programs. In the US, additional monies have often been shifted to fund both community and in-prison mental health and substance abuse

[1] Michael O'Connor Victims Rights Commission, 8 October 2012
[2] Tom Calma , 17 October 2012

services. And importantly, Justice Reinvestment is a not a short-term, one size fits all, top-down approach. It requires a collaborative partnership between government and community.

The Working Group notes the announcement by the NSW Attorney General on 27 February 2013 of an early intervention scheme for juveniles entitled "Youth on Track". Parts of the release read very much like a justice reinvestment project. For instance he is quoted as saying:

> *"Targeted services will respond to the underlying causes of crime which can be changed, and help these young people deal with issues like substance abuse, educational problems, anger issues, mental illness, and family dysfunction", he said.*
>
> *"This is not about diverting young people from the legal process – it is about improving community safety and breaking the cycle of reoffending. It is about turning them away from crime and getting them back on track," he said.*

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

The former CEO of the South Australian Department for Corrections, Peter Severin was quoted on the eve of his departure from the position in August 2012 as saying that South Australia will require additional facilities and that"

> *"It will be inevitable that we have to expand the existing prison capacity. How that is best done, through a stand-alone new facility or through the expansion of a prison like Mobilong which has great potential for that the Government will have to decide"* (Adelaide Now 21 August 2012).

The challenge that faces South Australia is that the Government currently has no funds available to commit to an expansion of our prisons. In fact in 2009 it "shelved" an earlier election commitment to spend $750m on a new "super" facility.

Conversely the obvious benefit to a successful justice reinvestment programme is that new facilities would not be required, or certainly not to the extent previously contemplated as offending rates decrease. Having said this, in South Australia the standard of some of our

existing prison facilities is well below suitable standards and that their replacement may well be inevitable in any event. It is the need for extensive expansion that may be curtailed.

To date, with the exception of the Youth on Track programme in NSW, attempts to advocate for and establish justice reinvestment programmes have fallen to a variety of local interest groups (i.e. Justice Reinvestment Campaign for Aboriginal Young People). In the absence of State and Territory Government support, well-intentioned groups may not be able to achieve any more than to raise the awareness of the utility of justice reinvestment and to advocate for at least trial programmes to be implemented. The Federal Parliament can assist in taking these efforts to the next level.

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

The Working Group has been considering what data might exist and be available to as least identify suitable suburbs/areas/towns for pilot programmes in South Australia.

There is no doubt some publically available data on crime locations and the like. However to properly evaluate a suitable area date such as:

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

would need to be made available. It is not entirely clear to us whether data in this level of detail is even captured. In some instances it may not be captured in this format and or may not be available because of its "sensitivity".

We do note that the NSW programme has identified three specific sites, that it has estimated a possible number of cases that may be delivered. We presume that this approach is data driven and that with appropriate State Government support the right data can be sourced.

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

Much has been written and published about the American experience and we do not intend to repeat that here. Tom Calma in his "2009 Social Justice Report" in paragraph 2.2 summarises and reports on the overseas experience. In paragraph 2.4 he makes a strong argument for the application of this experience to Aboriginal and Torres Strait Islanders Australians. The Working Group does not see any reason why over three years since his report, that the methodology is still not applicable and capable of being implemented today.

"(i) The scope for Federal Government action which would encourage the adoption of justice reinvestment policies by State and Territory Governments".

As we identified at the outset it would be easy to say this is not a Federal issue. However the South Australian experience is not peculiar to this State and is replicated in most other States and Territories. In some cases (particularly WA and NT) the statistics are far worse.

As such there would appear to be some benefit in a national approach to at least the development of a common framework. The starting point would be for the Federal Government to recognise the benefits of Justice Reinvestment as a concept. It should then put it on the agenda for its COAG meetings.

The issue that will face some of the States and Territories is how to fund any pilot studies. As this justice reinvestment is not just about incarceration but seeks to address a number of underlying socio economic problems which underpin the cause for offending such as, health, welfare and education there is a Federal responsibility to assist in the implementation of a justice reinvestment programme. Therefore consideration could and should be given to some national funding.

CONCLUSION

1. This working group commends the Federal Parliament for instigating this inquiry.

2. We urge the Parliament to encourage national acceptance of justice reinvestment as a concept.

3. The Federal Parliament has a role to play in the future over sight of the implementation of suitable programmes by States and Territories.

4. As some of the socio economic and demographic factors that underpin high rates of offending and imprisonment are a Federal responsibility, funding should be committed where appropriate to assist in the delivery of justice reinvestment programmes.

Dated 15 March 2013