

Justice Reinvestment

Reinvesting in alternatives to imprisonment



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Executive Summary

Prisons are failing. From 2014 to 2015, the imprisonment rate increased 6%.¹ Combined with the fact that it costs more than \$110,000 per year to incarcerate one person², and a recidivism rate of over 45%,³ it can no longer be denied that the current prison system has failed as a means of corrective services.

Justice Reinvestment strategies aim to reduce rates of incarceration, recidivism and overall costs. Funding that would ordinarily go to prisons would be diverted into prevention, early intervention programs and services in the community to address the underlying causes of criminal behaviour including homelessness, drug and alcohol dependency, mental illness and unemployment. Funding may also be directed into prisoner services such as electronic monitoring, security and mentoring to reduce recidivism and encourage community engagement. Justice Reinvestment also recognises the need to direct funds into victim services.

This report will delve into the layers of justice reinvestment including its rise to prominence, application in a world setting and an analysis of cost to the community. One particular focus of the report features the Aboriginal and Torres Strait Islander population as the main priority group affected. Despite only representing 2% of the Australian population, Indigenous people alarmingly make up 28% of the Australian prison population, and 50% of the Australian juvenile justice population.⁴ The community-focused aspect of Justice Reinvestment holds particular support by indigenous communities because of its inherent respect for community and element of self-determination. Hence, Justice Reinvestment practices continue to prove as a worthwhile alternative to imprisonment for crucial priority groups in the Criminal Justice System.

Introduction to Justice Reinvestment

Justice Reinvestment is the act of diverting resources from prisons to communities to address the underlying causes of crime. Justice Reinvestment models take a holistic approach to crime and envisage this problem as an issue regarding the wider community as opposed to an issue between the state and the individual. As a community, we can then enforce localised solutions through areas such as early intervention, crime prevention and diversionary programs.⁵

The notion of reinvestment begins with two main steps:

- Establishing communities with a high concentration of offenders
- Assessing the particular problems facing those communities.⁶

¹ Australian Bureau of Statistics, *Prisoners in Australia* (11 December 2015) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>>.

² The Greens, *Smarter, Safer, Stronger: Justice Reinvestment in Australia* (1 August 2013) <https://greens.org.au/sites/greens.org.au/files/Justice_Reinvestment_Initiative.pdf>.

³ Lenny Roth, 'Reducing Adult Reoffending' (Briefing Paper No 2, Parliamentary Library, Parliament of Australia, 2015) [2.3].

⁴ Jason Thomas, 'How much does it cost to keep people in Australian jails?', *SBS*, 2 Feb 2015 <<http://www.sbs.com.au/news/article/2015/02/02/how-much-does-it-cost-keep-people-australian-jails>>.

⁵ Just Reinvest NSW, *Just Reinvest NSW* (9 February 2016) <<http://www.justreinvest.org.au/about/home/>>.

⁶ Ibid.

Justice reinvestment has already had a huge positive impact on the juvenile justice system, evident by reducing recidivism by 22% in NSW.⁷ The 2010 report, “A Strategic Review of the New South Wales Juvenile Justice System (Noetic Report)”, which gathered data from the US and UK, found that investment in early intervention, prevention, and community based programs is the most cost-effective means to reduce re-offending⁸. Programs and methods utilised include juvenile drug courts, restorative justice for low-risk offenders, aggression replacement training, multi-systematic therapy, functional family therapy, multidimensional treatment, foster care and mentoring.

Momentum for Justice Reinvestment in Australia

Although only first coined in 2003, the concept of justice reinvestment has become increasingly popular in Australia over recent years.⁹ Since that time there has been significant growth in the number of community organisations, and politicians advocating for justice reinvestment, media attention on the topic, and the allocation of funding towards academic research in the area.

NSW

In 2010 a review of the New South Wales Juvenile Justice System, recommended an implementation of justice investment strategies. The review found that there was a ‘Substantial body of evidence which suggests that prevention and early intervention are the most cost-effective ways to reduce juvenile offending.’¹⁰

ACT

In the Australian Capital Territory (ACT), funding was allocated to two justice reinvestment projects in the 2014-15 ACT budget. The first project was the ‘Justice Reinvestment Strategy’ to be developed over the next four years, with the intention to reduce recidivism and divert offenders from the justice system. The second project involved supporting the Australian Research Councils Linkage Grant, which was designed to explore how the ACT can achieve zero prison population growth by 2020.¹¹

Government Advocates

Due to the fact that the key feature of these practices is the efficient and effective allocation of public resources, justice reinvestment has an appeal across the political spectrum. In the United States, many proponents of justice reinvestment are conservatives enticed by the political advantage to be gained by reducing public expenditure and easing the tax burden.¹²

Since 2010 The Australian Greens have incorporated Justice Reinvestment into their policy platform. Their plans include allocating \$10 million to the establishment of a National Centre

⁷ Peter Murphy et al, ‘A Strategic Review of the New South Wales Juvenile Justice Sydney: Report for the Minister for Juvenile Justice’ (Report, Noetic Solutions, 13 April 2010) iv – ix.

⁸ Smart Justice, above n 4.

⁹ David Brown, ‘Justice Reinvestment: the circuit breaker?’ (2013) 8 *Insight* 36.

¹⁰ Murphy, above n 7.

¹¹ ACT Government, *Justice Reinvestment Terms of Reference*.

https://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/Justice_Reinvestment_Terms_of_Reference.pdf

¹² Brown, above n 9, 37.

for justice reinvestment, as well as \$50 million towards a justice reinvestment grants program.¹³

On 18th November 2015, opposition leader Bill Shorten advocated for justice reinvestment to reduce Indigenous incarceration rates. Shorten revealed that a Labor government would fund trials of justice reinvestment programs in three separate locations.¹⁴ Earlier in 2015, the NSW Labor Party announced that it would commit significant resources towards justice reinvestment, including investing \$4 million into three pilot projects run by non-government organisations based on the strategy of justice reinvestment. Shadow Attorney General Paul Lynch observed that ‘Labor is excited by the possibilities of Justice Reinvestment – and looks forward to partnering with non-government organisations on worthwhile projects.’¹⁵ During the state election campaign, NSW Attorney-General Brad Hazzard also commented that the policy of justice reinvestment is ‘potentially a game changer.’¹⁶

Non-government Advocates

Momentum for justice reinvestment has also been growing in the non-government sector. Since May 2012 a group called ‘Just Reinvest NSW’ has been lobbying the NSW State government to implement justice reinvestment reforms. As well as advocacy work, Just Reinvest has already made significant progress in implementing programs for Justice Reinvestment. Since March 2014, the organisation has been managing one such program in Bourke, funded by the Dusseldorp Forum and the Vincent Fairfax foundation, and is currently working on producing a watertight case for justice reinvestment that will be presented to parliament in May 2016.¹⁷

The confluence of government and non-government advocates pushing for justice reinvestment is positive. It reveals how justice reinvestment’s proposed cost benefits have bi-partisan appeal, while its clear benefits for individuals also compel many non-government organisations to get involved. The considerable work done by organisations such as Just Reinvest NSW, particularly in Bourke, provides a solid foundation for governments to build on should they choose to allocate sufficient funding for the cause.

Justice Reinvestment in Foreign Jurisdictions

USA

Several states of America have also turned to justice reinvestment techniques with considerable success. Through use of evidence-based options for adult and juvenile corrective programs as well as the implementation of prevention strategies, the states have saved an estimated total of \$2 billion, and have also witnessed reductions in crime rates.

¹³ The Greens, above n 2.

¹⁴ Lenore Taylor, ‘Labor Promises “Justice Reinvestment” to Reduce Number of Indigenous Prisoners’, *The Guardian* (online), November 18 2015 <<http://www.theguardian.com/australia-news/2015/nov/18/labor-promises-justice-reinvestment-to-reduce-number-of-indigenous-prisoners>>.

¹⁵ NSW Labor, *Labor Proposes new Approach to Tackle Aboriginal Incarceration* (February 5 2015) <http://www.lukefoley.com.au/labor_proposes_new_approach_to_tackle>.

¹⁶ Michaela Whitbourn, ‘Just Reinvest NSW: Program to Tackle Indigenous Over-representation in Jail could be a ‘Game Changer’, *Sydney Morning Herald* (online), February 4 2015, <<http://www.smh.com.au/nsw/just-reinvest-nsw-program-to-tackle-indigenous-overrepresentation-in-jail-could-be-a-game-changer-20150202-134maw.html>>.

¹⁷ Justice Reinvestment NSW, *The Maranguka Justice Reinvestment Project, Bourke NSW* <<http://www.justreinvest.org.au/projects/jr-in-bourke/>>.

The states of Kansas and Texas experienced such results, recording savings of \$80 million and \$210.5 million respectively.¹⁸

As a result of a 22% increase in the prison population of Kansas, officials sought technical assistance from the Council of State Governments Justice Centre. The Centre identified several problems, discovering that prohibition and parole revocations accounted for 65% of prison admissions. This cost \$53 million annually. 90% of those revocations were for condition violations and 32% of the revocations were drug or alcohol related. The Centre also found that most people being released from prison weren't participating in rehabilitative or educational programs, with over half needing substance abuse treatment and 72% needing vocational education. In order to remedy this lack of rehabilitation, Kansas invested in the community to improve public safety and education. In 2006, rather than establishing a new prison, Kansas reinvested the money into the community by implementing vocational education programs, as well as programs aiming to prevent and reduce substance abuse. The programs were aimed at young people, and Kansas saved over \$80 million and witnessed a 7.5% reduction in the prison population¹⁹.

The state of Oregon was one of the first states to adopt justice reinvestment strategies in 1997. Counties were permitted to supervise juvenile offenders within their communities, instead of incarcerating the offenders. As such, the money that would have been spent on incarceration was instead redirected into communities, and was used to fund neighbourhood projects and community based supervision. Within a year of adopting the justice reinvestment strategies, Oregon recorded the most significant decrease in incarceration rate in history, an astonishing 72%. Other states soon employed justice reinvestment schemes.

UK

Justice reinvestment is also being explored in the UK. A favourable report from the British House of Commons revealed that by adopting Justice Reinvestment strategies, Britain would reduce costs associated with short term re-offenders by approximately £7-£10 billion per year²⁰. The UK criminal justice system has been restructured in order to reflect the link between social exclusion and criminal behaviour. Funding has been redirected to the implementation of programs that aim to fulfil local needs and providing the necessary services within communities²¹. This has been achieved through investing in preventative social measures such as welfare to work and neighbourhood renewal.²²

Cost Analysis

Not only are reinvestment methods more humane and efficient, but they are also cost-effective compared to incarceration and provide a preferable alternative to the existing approach according to a University of Queensland report.²³ The report estimated that an investment of only \$10 million over 4 years in justice reinvestment could potentially save the

¹⁸ Smart Justice above n 4.

¹⁹ Smart Justice, above n 4.

²⁰ House of Commons Justice Committee, *Cutting Crime: the Case for Justice Reinvestment*, House of Commons Paper No 1, Session 2009-10 (2009).

²¹ Richard Garside, 'Crime and Social Justice' in Ben Shimshon, *Social Justice: Criminal Justice* (The Smith Institute, 2006)

²² Ibid.

²³ Alexandra Bratanova and Jackie Robinson, 'Cost Effectiveness Analysis of a "Justice Reinvestment" Approach to Queensland's Youth Justice Services' (Report, University of Queensland, 2014).

state government budget approximately \$263 million by 2030. The Greens party have similar enthusiasm about the ideas, and have invested \$10 million into an independent National Centre for Justice Reinvestment to provide high quality information and research.²⁴ By addressing the sources of criminal behaviour through an alternate approach, there will be fewer individuals in the programs through greater recidivism reduction, and hence a lower cost of funding in the long term. Australia currently spends over \$3 billion on adult imprisonment every year, and it ought not to be difficult to set aside a small portion for reinvestment options.

Indigenous Australians

Incarceration and police brutality are long held concerns within the Aboriginal community. While it has been 20 years since the final report of the Royal Commission's Inquiry into Aboriginal Deaths in Custody, recent years have shown that police brutality towards Indigenous Australians is still very much a reality. The current approach to police and the justice system is evidently not working for Indigenous Australians. However, it is possible that justice reinvestment techniques may prove to be much more effective. For example, the Noetic Report identified that communities with high rates of Indigenous and youth incarceration, such as Mt Druitt, Dubbo, Kempsey, Bourke and Wagga Wagga, would benefit from the implementation of justice reinvestment strategies.

Justice reinvestment is widely supported in the Aboriginal community. Mick Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner for the Australian Human Rights Commission, said "if we are serious about closing the gap in life outcomes for Aboriginal and Torres Strait Islander people, we have to get serious about tried and tested alternatives like justice reinvestment".²⁵

Circle Sentencing is a restorative justice initiative that aims to reduce offending and incarceration rates among the Indigenous community. It involves the offender, the victim, their support groups, social and criminal justice personnel, and an Elder from that particular community. These participants come together in a circle to discuss the offence and the harm it has caused, and aim to heal the damage the offence has inflicted on the community. Circle Sentencing has proven to reduce the barrier between Indigenous communities and the courts, increasing support for those involved. Circle Sentencing also helps empower the victim by holding the offender accountable for their actions, without resorting to incarceration.

Mentoring

Mentoring presents a path to reintegration into society, particularly for juvenile offenders. The Australian Institute of Criminology has noted that these programs reduce crime and substance abuse, and increase the successful completion of juvenile justice orders and participation in education, training, and employment.²⁶ By creating relationships between at-risk youth and their pro-social peers, mentoring programs enhance the social, cognitive

²⁴ The Greens, above n 2.

²⁵ Just Reinvest NSW, *Mick Gooda* (June 2013) <<http://www.justreinvest.org.au/mr-mick-gooda/>>.

²⁶ Australian Institute of Criminology, 'Mentoring and Crime Prevention: What is Good Practice?' (Australian Institute of Criminology, 7 March 2006).

and emotional development of youth through interaction with role models, dialogue and listening.²⁷

Overtime, it has been evident that multi-faceted mentoring programs produce higher quality service than independently organised programmes. Therefore, it is important that such programs are embedded into the wider scope of justice reinvestment. Common additional elements include drug education and life skills programmes, career skills, job-seeking techniques and educational assistance. These services are also more cost-effective and efficient when integrated into other programs.²⁸

Research into existing programs has also shown that flexibility and adaptability are essential elements to any mentoring program²⁹ Consequently, program goals need to be realistic and easily attainable, with full descriptions of the role of each participant, an assessment of need, and clear goals, objectives and timelines for all aspects of the program.

Restorative Justice

Restorative Justice brings together parties involved in offences to identify and address harms, needs and obligations as part of the healing process. The purpose is to create direct interaction between offenders, communities and victims in order to achieve understanding and acceptance of responsibility. It puts the people most affected by crime - the victims - at the centre of the process³⁰, and works in tandem with different stages of the criminal justice process, including diversion from court prosecution, action taken in parallel with court decisions and victim-offender meetings during the criminal justice process (e.g. pre-sentencing, arrest and prison release).³¹ It has been used by Indigenous communities and young offenders and even in adult criminal and civil matters. Restorative justice programs include but are not limited to: family treatment, circle sentencing, forum sentencing, mediation, reparation, and victim-offender conferences.

If funds were redirected from incarceration to restorative justice programs, it would give offenders a chance to accept responsibility for their actions in a process that involves working with community mediators, learning new skills, and overcoming guilt.

Intensive Corrections Orders

An ICO is a rehabilitative approach to sentencing that allows the offender to serve their imprisonment within a community setting rather than a correctional facility. Focusing on a sense of restorative justice, ICOs seek to reintegrate offenders into society to allow positive growth, away from the issues that prison may present. Whilst the official title of the order differs between state jurisdictions, all variants impose a community-based order that involves conditions such as extended periods of community service, curfews and mandatory

²⁷ Vicki-Ann Ware, 'Mentoring Programs for Indigenous Youth at Risk' (Resource Sheet No. 22, Australian Institute of Health and Welfare, September 2013).

²⁸ Victorian Ombudsman, *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria* (17 September 2015).

²⁹ Jonathan Aitken, 'Meaningful Mentoring' (Policy Paper, Centre for Social Justice, 2014).

³⁰ Corrective Services NSW, *Restorative Justice* (28 December 2011)

<<http://www.correctiveservices.nsw.gov.au/information/restorative-justice>>.

³¹ Kathleen Daly and Hennessey Hayes, 'Restorative Justice and Conferencing in Australia' (Report No. 186, Australian Institute of Criminology Trends & Issues, 2001).

involvement in personal development and rehabilitation programs. Ultimately, these programs are designed to reduce an offender's risk of recidivism through the provision of intensive rehabilitation and encouragement of positive reintegration into the community, thereby allowing the offender to remain in contact with family and employment.³²

To learn more about ICOs, visit our report on our website.

³² NSW, *Parliamentary Debates*, Legislative Council, 22 June 2010 (John Hatzistergos).