

2014 SIR RONALD WILSON LECTURE

***‘Justice Reinvestment -
What difference could it make in
WA?’***

Presented by
Ms. Tammy Solonec (LLB)

Tuesday, 5 August 2014

INTRODUCTION

I start with our protocol of acknowledging the traditional owners of this land. I acknowledge that we are meeting today on the lands of the Whadjuk Noongar and acknowledge them and the Noongar Peoples of south west of WA generally, and pay respects to their Elders and ancestors. Thank you also to Matthew McGuire for his Welcome to Country and to Dr Jurgen Brohmer for his response. I would also like to acknowledge the consistent effort of Dean Curtis in organising this lecture, and the assistance of researcher Melanie Schawtz, who is an expert in this field and UWA intern Aisling Murray.

Thank you for the opportunity to present today about Justice Reinvestment and what difference it could make to Western Australia. This is a subject I have been involved in for some time in my work at the Aboriginal Legal Service of Western Australia, the National Congress of Australia's First Peoples and at Amnesty International, where we are embarking on a campaign aimed at reducing the detention of Aboriginal and Torres Strait Islander youth. Although the Justice Reinvestment approach to the criminal justice system is something I have worked on in all these organisations, please note that I speak today in my private capacity, rather than on behalf of any of these organisations.

Justice Reinvestment and the ideas surrounding prevention and diversion are seen as possible solutions to reverse the growing incarceration rates in Australia. This is a problem for our whole community, but it is a problem particularly for Aboriginal and Torres Strait Islander Peoples.

THE EXPERIENCE

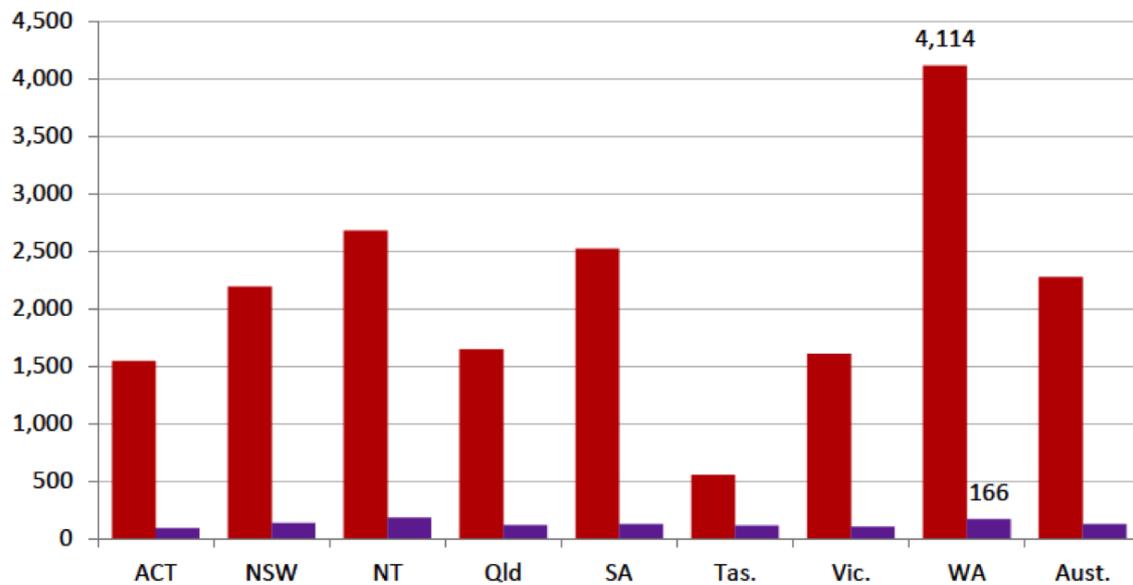
Before I go on to explain the mechanics of Justice Reinvestment, let me briefly touch on why the interaction between the experience of Aboriginal and Torres Strait Islander people and the justice system is particularly problematic.

I think everyone here would be aware of the vast overrepresentation of Aboriginal and Torres Strait Islander people in the justice systems,¹ and that Western Australian is often touted as one of the worst jurisdictions in this regard, especially where the comparative statistics are viewed by rate of imprisonment, as shown in the following table from 2012.²

¹ This trend has been evident over the 20 year recording period. In 2011, the rate of imprisonment of Indigenous offenders was 18 times higher at 2,276 per 100,000 population than the rate of 125 per 100,000 for non-Indigenous offenders: Australian Institute of Criminology, Australian Crime: Facts and Figures 2012, p 125. At http://www.aic.gov.au/media_library/publications/facts/2012/facts12.pdf (viewed 31 July 2014).

² Australian Bureau of Statistics (2012) 4517.0 - Prisoners in Australia: Prisoner characteristics - states and territories, 2012
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02012?OpenDocument>, Table_1.

Figure 2: Adult imprisonment rate (per 100,000) by state & Indigeneity (2012)⁷



Currently in Western Australia, Aboriginal and Torres Strait Islander people make up 40% of the prison population, our youth make up 77% of juvenile incarceration and 67% of Juvenile Justice Orders,³ and our children make up 49.5% of those in protective care.

Sadly, our people are disproportionately affected by all areas of the justice systems – whether it be child protection, juvenile justice or adult justice. We are more likely to be removed as children, more likely to have children removed (or monitored / investigated), more likely to be victims of crime, more likely to have contact with police, more likely to be charged with offences, more likely to be convicted of offences, and more likely to receive harsher sentences for offences, including receiving higher fines. On the flipside, we are less likely to receive police cautions, less likely to receive sentences that are alternatives to incarceration, less likely to be granted parole once incarcerated, and less likely to receive access to rehabilitative and through care programs. The cycle then continues, with our people more likely to repeat offend. When we consider the system like this, it becomes clear that although it is called a ‘justice system’, it is hardly a ‘just system’.

The reasons for Aboriginal and Torres Strait Islander overrepresentation in the justice system involve a complex interplay of historical and contemporary factors and social determinants. I don’t have time today to go into the historical factors, but do note that the situation of dispossession, discrimination, oppression and institutionalisation that have been suffered by Aboriginal and Torres Strait Islander Peoples is similar to that which has been

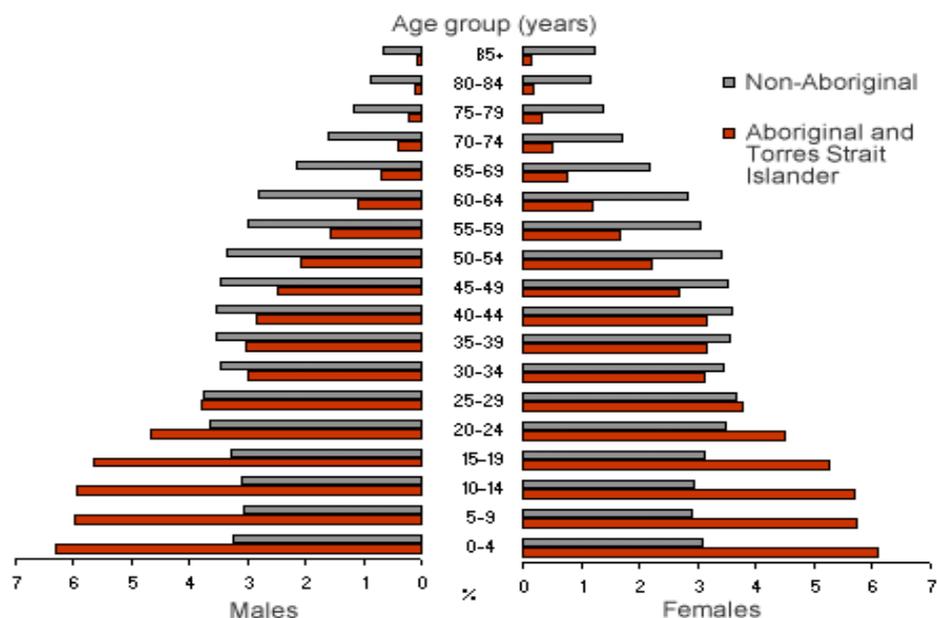
³ Department of Corrective Services, Government of Western Australia Weekly Offender Statistics Report as of 26 June 2014, available at <http://www.correctiveservices.wa.gov.au/files/about-us/statistics-publications/statistics/2014/cnt140626.pdf>.

suffered by Indigenous Peoples in many other nations around the world. If you are interested in learning more I would encourage you to read and consider the reports of the Royal Commission into Aboriginal Deaths in Custody, released in 1991, the 'Bringing Them Home' Report on the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, released in 1995; and the Country Report from the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, released in June 2010.⁴

The historical disadvantage suffered by our people is perpetuated by the disproportionate impact that a tough law and order regime has on disadvantaged minority groups, including Indigenous peoples and by targeting, over policing and discrimination against our people by the very individuals that uphold the laws including policy makers, police and the judiciary. This includes laws like mandatory sentencing, which take away the ability for the judiciary to consider circumstances.

As sad as the over representation and underlying causal factors are, what is worse is that the numbers of Aboriginal and Torres Strait Islander people who have contact with the justice system has been increasing in recent years, and they are projected to increase even more over the next 20 years due most specifically to our large youth population moving into adulthood, as demonstrated by the following population graph.⁵

There is a desperate need to take strategic action now to prevent these predicted increases, and to help those who have already had negative interaction with the child protection, juvenile justice and adult justice systems.



⁴ See references at the end of this paper.

⁵ 'Aboriginal and Torres Strait Islander population estimates, 2011 - preliminary', Australian Bureau of Statistics 12/2012. And see Jen Korff, "Aboriginal Population in Australia", May 2014, available at <http://www.creativespirits.info/aboriginalculture/people/aboriginal-population-in-australia>.

Unfortunately, in Australia, there has been a lack of political leadership to address these grave concerns and projected increases in overrepresentation, and little to hold governments to account. The incarceration and victimisation of our people has been normalised and there is a sense of government and broader community apathy about the situation.

Instead of trying to reduce incarceration, political leaders have historically pushed 'tough on crime' law and order campaigns, pumping out more and more laws with harsher penalties, incarcerating more and more people. A classic example of this is the *Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014* currently before the WA Parliament. This Bill, created to 'get tough' on home invasions, proposes to extend mandatory sentencing for burglary to juveniles by suspending the section of the Young Offenders Act which, in tandem with international law, gives judges discretion when it comes to sentencing children. As a result, if the Bill passes, children involved in home invasions in WA will be detained – regardless of the circumstances that brought them there.

Although tough on crime rhetoric may assist with the popular vote during elections, and make the broader community feel safer (whether it *in reality* makes them more safe or not), the fact of the matter is that the tough on crime approach to justice is simply not sustainable. For our peoples, it is not socially sustainable, and for everyone else, it is not financially sustainable, with enormous costs associated with incarceration. Over \$12.5 billion is spent on criminal justice in Australia every year.⁶ As Aboriginal and Torres Strait Islander prisoners make up about a quarter of the adult prison population, approximately \$3 billion is spent on imprisoning our men and women each year. If we add to that the costs of other aspects of the criminal justice system including juvenile detention and the costs associated with police, the judiciary and legal aid, we start to get a true picture of the enormous financial burden that our justice system imposes on society.

This is heightened by recidivism (repeat offending) rates, which are higher for Aboriginal and Torres Strait Islander inmates than that of the non-Aboriginal prisoner population. The 2010 report from the WA Parliament, 'Making Prisons Work' noted that the Aboriginal recidivism rates were 70% for Aboriginal male adults, 55% for Aboriginal female adults, 80% for Aboriginal male juveniles and 34% for Aboriginal female juveniles.⁷

WAYS FORWARD

With this in mind, the time for change is imminent and around the world, particularly in Western countries that have inherited the British system of justice, policy makers are looking for alternatives. In Australia, calls for reform to the justice system, especially from Aboriginal

⁶ Australian Institute of Criminology, Australian Crime: Facts and Figures 2012, p 135. At http://www.aic.gov.au/media_library/publications/facts/2012/facts12.pdf (viewed 31 July 2014).

⁷ WA Parliament, Community Development & Justice Standing Committee 'Making Our Prisons Work' – An Inquiry into the efficiency and effectiveness of prisoners education, training and employment strategies, Report No. 6 in the 38th Parliament, available at [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/6228E6A9C090FDB9482578310040D2B8/\\$file/Report+No.+6+Final+report+Prisons+November+2010.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/6228E6A9C090FDB9482578310040D2B8/$file/Report+No.+6+Final+report+Prisons+November+2010.pdf).

and Torres Strait Islander people are growing stronger each day and we are starting to see change including a plethora of diversionary programs being developed, which are gaining funding and community support.

These reforms are all about a pushing for a shift in thinking, a change in the rhetoric, from 'tough on crime' to 'smart on crime' approaches, also referred to 'solution based policy', using prevention, early intervention, diversion and rehabilitation. In particular, in regards to Aboriginal and Torres Strait Islander peoples, there is a push for programs that involve the participants learning their cultures. There are a number of programs in Australia including Halo Leadership here in Perth and the Yirriman Project in the Kimberley, that have had positive results in diverting our people from the justice system and slowing recidivism rates by offering rehabilitative programs, which are founded on the concept of 'culture as a preventative mechanism'.

JUSTICE REINVESTMENT IN THE USA

So now, let's move to a full discussion of Justice Reinvestment, a concept that emerged in the United States just over a decade ago, driven by main four factors. First, spending on corrections in the US had risen faster in the 20 years from 1988 to 2008 than spending on nearly any other state budget item—increasing from about \$12 billion to \$52 billion a year. Second, despite mounting corrections spending, the rates of recidivism remained high and, by some measures, it had actually worsened. Third, research was pointing to practices and programs that can effectively reduce crime and rates of recidivism and finally it was becoming clear that policymakers often did not have information about factors that are driving crime, re-offence rates, and the growth of correctional populations, resulting in poor policy making.

The pioneering influence came from the George Soros Open Society Institute, in a 2003 report entitled "Ideas for an Open Society: Justice Reinvestment".⁸ Its overarching aim was to reduce the high levels of, and the subsequent financial burden of incarceration. However, this was not simply a task of rethinking and redirecting public funds. It was driven by a need to devolve accountability and responsibility to the local level; thus seeking 'community level solutions to community level problems'.⁹

The idea gained traction, and was coordinated by the Justice Center, an organisation within the Council of State Governments, a national nonprofit organisation that serves policymakers at the local, state, and federal levels from all branches of government. It

⁸ Ideas for an Open Society: Justice Reinvestment, Open Society Institute, Volume 3, Number 3, November 2003, available for download from <http://www.rethinking.org.nz/assets/Justice%20Reinvestment/Soros%20ideas%20reinvestment.pdf> (accessed 27 November 2013).

⁹ Susan Tucker and Eric Cadora, 'Justice Reinvestment: Ideas for an Open Society', *Open Society Institute*, 3(5) 2003, 3.

provides practical, nonpartisan advice and consensus-driven strategies—informed by available evidence—to increase public safety and strengthen communities.¹⁰

In the US, Justice Reinvestment has been pushed along with a redefinition of ‘public safety’. The focus became: “What can be done to strengthen the capacity of high incarceration neighborhoods to keep their residents out of prison?” Not, “where should we send this individual?” The solution to ‘public safety’ was locally tailored and locally determined.¹¹

In a 2013 paper co-authored by a group of researchers, analysts, and advocates dedicated called, ‘Ending Mass Incarceration’, summarised the success so far, where 27 US states have participated in one way or another in this reform. Of the 27, approximately 18 of these states have enacted legislation for the purposes of implementing Justice Reinvestment Strategy.¹²

Adopting Justice Reinvestment legislation in Connecticut (2004), Kansas (2007), Texas (2007), Rhode Island (2008), and Arizona (2008), allowed these states, at a local level, to reduce violations of parole and probation, holding parole hearings at the point of parole eligibility, or re-establishing earned “good time” credits. Additionally, in Oregon, using Justice Reinvestment, they were able to reduce the juvenile incarceration rate by a staggering 72%, and in Dallas in Texas, for the first time ever, the incarceration stopped growing and they have recently closed three prisons. The US example, as a success, not only reduced the financial burden (reducing cost to tax payers of the justice system), but socially and culturally, it decreased crime, and improved community safety.

To demonstrate the success that Justice Reinvestment has had in the US, I’d like to show an interview from ABC Lateline earlier this year with Jerry Madden, the former Chairman of the Texas House of Representatives Corrections Committee and Senior Fellow with Right On Crime about how investment in crime prevention has worked in Dallas.

<http://www.abc.net.au/lateline/content/2013/s3738637.htm>

As you can see, there is much to learn from the American experience.

THE FOUR STEPS

I now want to briefly talk through mechanics of Justice Reinvestment. The first advocate to really start pushing for its adoption in Australia was the former Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma, in his last report delivered as Social

¹⁰ Rethinking Crime and Punishment, Justice Reinvestment in the USA, available for download from <http://www.rethinking.org.nz/Default.aspx?page=3656> (accessed 27 November 2013).

¹¹ Susan Tucker and Eric Cadora, ‘Justice Reinvestment: Ideas for an Open Society’, *Open Society Institute*, 3(5) 2003, 4.

¹² Ending Mass Incarceration: Charting a New Justice Reinvestment, 17 April 2013, p 1 available at <http://sentencingproject.org/doc/Charting%20a%20New%20Justice%20Reinvestment%20FINAL.pdf>.

Justice Commissioner in 2009.¹³ In that report the Commissioner identified four clear steps, which are.

1. Analysis and Mapping,
2. Development of options to generate savings and improve local communities,
3. Quantify savings and reinvest in high needs communities, and
4. Measure and evaluate impact.

Let's go through these four steps in more detail.

Step One: Analysis and Mapping

The first stage of Justice Reinvestment involves a statistical mapping of the prison populations to determine where the offenders come from (their home community) and where the offences occurred. From this statistical analysis, high-risk communities are identified. It also seeks to understand the underlying causal reasons for the offending. For example, it might be the case that much of the crime is related to drug and alcohol abuse, or domestic violence, or bored youth, or driver and vehicle licensing issues. This is not as easy as it might sound, which I will explain soon when I go into some of the challenges.

Step Two: Development of options to generate savings and improve local communities

The second step is about developing options to generate savings, particularly in the high-risk communities. Some of the rhetoric has been that the answer is to simply stop building more prisons and divert that money into the high-risk communities, but it really is not that simple. It involves determining ways to save prison costs so that funds can be spent in communities.¹⁴ This involves considering why prison and return to custody rates are high.¹⁵ The reasons may relate to technical matters like bail and parole laws, as well as social issues.¹⁶ Each community will have different options and needs, so consultation and engagement around causes and solutions to crime is central.¹⁷

Sometimes, the changes can be simple. For example, with regards to Juvenile Justice, one of the simplest and most effective ways of reducing juvenile detention is for police to give out more cautions and warnings. We are not saying that bad behavior should be ignored, on the contrary, the youth can be cautioned and diverted into youth related programs, rather than charged and detained. For example, in WA we have had cases where Aboriginal children caught stealing things as minor as a chocolate bar have been charged and detained.

¹³ Calma, T - Aboriginal and Torres Strait Islander Commissioner (2009) Social Justice Report 2009, Australian Human Rights Commission
http://humanrights.gov.au/social_justice/sj_report/sjreport09/chap2.html (Viewed March 12, 2013).

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

Step Three: Quantify savings and reinvest in high needs communities

The third step is to quantify the savings and use those savings to reinvest in the high-risk communities, according to the needs identified in the mapping. For example, if the mapping shows that a high-risk community has a high incidence of crime related to drug and alcohol abuse, then drug and alcohol services will be located in those communities. This stage can involve the participation of non-governmental community organisations and groups, including local Aboriginal and Torres Strait Islander people and organisations and possibly even Local Government. Also, once resources are invested into high-risk communities, judges can be more confident about sentencing offenders to community based options, thereby reducing incarceration and providing genuine alternatives to imprisonment.¹⁸

Step Four: Measure and evaluate impact

The final step is to measure and evaluate the impact in the identified communities. The methodology will operate differently in each location due to administrative and community differences, and should be amended according to its results.¹⁹ Through this system of evaluation, programs that are effective can be nurtured and adapted to other communities, and programs that are not effective can be retired. Eventually, there will be an expansive database of programs and organisations, which have proven results in diverting people from crime and from incarceration. This step, like step one, depends on appropriate monitoring systems to collate data across agencies on outcomes and the capacity of agencies to collect, record and monitor the data required.²⁰

The whole series of steps are a cycle, so that the mapping is done on a regular basis, and high-risk communities are continually identified and invested in. It is an incredibly convincing social net to provide common sense policy initiatives for the most vulnerable and disadvantaged people in our community.

CHALLENGES

Now, I want to briefly talk you through what I consider to be some of the challenges of a Justice Reinvestment system being adopted in Australia.

Our Federal System of Government

The first challenge is our Federal system of Government, and law and order being under the jurisdictions of the states and territories. If Justice Reinvestment is to be adopted nationally, it will require agreement and cooperation of all states and territories and the federal

¹⁸ Ibid.

¹⁹ Calma, T - Aboriginal and Torres Strait Islander Commissioner (2009) Social Justice Report 2009, Australian Human Rights Commission
http://humanrights.gov.au/social_justice/sj_report/sjreport09/chap2.html, (viewed March 12, 2013).

²⁰ House of Commons, Justice Committee, *Cutting Crime: the case for justice reinvestment* (2009), p 152 (pt 363) <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/94i.pdf> (Viewed January 31, 2013)

Government. As we know, getting these layers of governments to agree on anything is difficult – but not impossible. It will require strong leadership at all levels and a commitment to addressing the underlying causal factors of offending, including with regards to Aboriginal and Torres Strait Islander Peoples.

There has been a national commitment of this magnitude in this area before, regarding the Royal Commission into Aboriginal Deaths in Custody, but that was over 20 years ago and many of the recommendations have still not been implemented. One thing that is favourable to Justice Reinvestment over the recommendations of the Royal Commission (of which there were 339), is that it is far more simple, and not designed just for Aboriginal and Torres Strait Islander people. On the contrary, Justice Reinvestment is a system for everyone, however due to the massive overrepresentation of Aboriginal and Torres Strait Islander people in the justice system, we know that our people will benefit from it.

If it cannot be agreed that all of Australia will adopt Justice Reinvestment, there is certainly scope for it to be implemented on a state and territory basis, such as what has occurred in the US. With the high rates of detention and recidivism of Aboriginal and Torres Strait Islander people in Western Australia – there is every reason why Western Australia could exercise this leadership and be the first state in Australia to trial the approach.

Data Collection

The next big challenge is data collection, which is the cornerstone of Justice Reinvestment and 'smart on crime' approaches to justice. Unfortunately, in Australia we do not have standardised data collection and the methods of collection and data recorded by each State and Territory is different. At Congress, we were advocating for standardised data collection and nationally consistent approaches to:

- identification of Aboriginal and Torres Strait Islander people, based on self identification;
- the length of time taken to finalise criminal matters in court;
- rates of assault for crime victims who report to police;
- family violence;
- the effectiveness of programs for perpetrators of family violence, to inform the development and delivery of these programs;
- measuring the effectiveness of diversionary programs, including warnings, cautions, conferences and treatment programs that seek to address drug, alcohol and mental health issues; and
- the health and housing status of people released from prison and youth detention.

Once again, this will require a commitment and cooperation of all states and territories. There have been a number of ideas floated as to how this will occur, including that the data be collected by one agency such as the Australian Bureau of Statistics or the Productivity Commission, however, even if this is the case it would still require the cooperation of state and territory based police, judicial and corrective service institutions. For this reason, once again, it may be easier to implement Justice Reinvestment on a state / territory jurisdictional basis rather than federally.

Tough on Crime Rhetoric

Another challenge I have alerted to, is political will. Tough on crime promises are always floated, particularly by state and territory governments and it will take some doing to be able to counter the historical propaganda that has been fed to people about prisons making our communities safer. However, things are starting to change, and campaigns such as the NSW campaign, 'Justice Reinvestment Now', the Victorian initiative 'Smart Justice', the Western Australian Aboriginal Deaths in Custody campaign, 'Build Communities not Prisons', the Queensland Campaign 'Project 10%' and many more are all, bit by bit, influencing popular voting. However, to really change peoples thinking, strong leadership is needed in the area of justice, particularly on state and territory levels and with time, that leadership will come.

Western Australia showed promising signs earlier this year when it established the Youth Justice Advisory Board²¹ specifically to reduce youth detention. However we're at the same time seeing concerning steps backwards such as the Bill before the WA parliament I made mention of earlier. In order for change to be effective, it must occur at all stages of governance including Parliament and the Executive.

Geography & Remoteness

Another challenge, which is specific to Australia, is our geography and remoteness. For example, in the US, Justice Reinvestment has been most effective in high-density ghetto like suburbs, where the highest concentration of offending was found. It is much cheaper to put diversionary programs into suburbs of cities than into remote communities. However, because of the remoteness, the feasibility of Justice Reinvestment reduces. This does not suffice as a good enough reason *not* to at least trial Justice Reinvestment in Australia.

Identifying High-Risk Communities

A final challenge I would alert you to, is the identification of high-risk communities. In order to get the 'political buy-in' of all the states and territories, they will all want to benefit from the adoption of Justice Reinvestment. Alongside the Northern Territory, Western Australia locks up high numbers of people and may well have more at risk-communities than other States and Territories. The challenge for decision makers is prevent the identification of high-risk communities becoming a political football. Again, narrowing the implementation to a state / territory level could reduce these tensions.

We do need to carefully think about these challenges, as proceeding with Justice Reinvestment will be the most radical overhaul of the justice system in Australia ever. Despite the challenges however, the benefits to our nation, both socially and economically are too great to ignore. No one wants their child, their partner or even their friends to end up

²¹ For information about the Board see <https://www.correctiveservices.wa.gov.au/youth-justice/youth-justice-board.aspx>.

in jail, and a system that can prevent and divert people from such a life is one worth fighting for.

AUSTRALIAN CONTEXT

Despite these challenges, there has been a lot of work done to promote Justice Reinvestment and its underlying philosophies in Australia. Since first introduced by Tom Calma back in 2009, Justice Reinvestment has been spoken about at many conferences and forums, there have been many articles written and campaigns launched to encourage its adoption and it has been referred to in a number of Government inquiries. This combined advocacy resulted in a Senate Inquiry into the 'Value of a Justice Reinvestment approach to criminal justice in Australia',²² which released its report on 20 June 2013. The Inquiry received over 120 submissions, almost all of a supportive nature, and the ground swell for support was obvious.

The key recommendations of the report were:

- that the Commonwealth take a lead role in data collection and sharing,
- that long term sustainable funding be committed to Justice Reinvestment,
- the establishment of a Justice Reinvestment clearinghouse,
- that the Commonwealth take a leadership role through COAG,
- that the Commonwealth fund some trials for Justice Reinvestment, including in a remote Aboriginal community,
- that the Standing Committee on Law and Justice promote the establishment of an independent central coordinating body, and
- that justice targets be included as part of Close the Gap framework.

The current Australian Government must respond to the Inquiry, even though there has been a change in Government.

Outside of the Federal Government there has been a groundswell of activity continuing to push for the adoption of Justice Reinvestment Australia. A stand out is the Just Reinvest Campaign for Aboriginal young people in NSW.²³ Their website states:

Just Reinvest NSW aims to reduce the shameful over-representation of Aboriginal young people in custody. The purpose of Just Reinvest NSW is to convince the New South Wales Government to adopt a Justice Reinvestment approach to Aboriginal young people and their communities.

²² Senate Legal and Constitutional Affairs Committee, 'Value of a justice reinvestment approach to criminal justice in Australia', at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/justice_reinvestment/index.htm (accessed 20 February 2013).

²³ For more information see <http://justicereinvestmentnow.net.au/> (accessed 27 November 2013).

We believe the time is right for the New South Wales Government to significantly shift policy and spending away from incarceration, towards prevention, early intervention and treatment for Aboriginal young people at risk.

The campaign is well structured, with community champions, organisational members and a strong push for a pilot program in the community of Bourke, which is well underway with significant support. I don't have time to go into the Bourke pilot – but if you'd like more information please go to the Just Reinvest website.

Their campaign is focused around young Aboriginal people in NSW and uses cases studies to bring home the message, as shown in this short video from Just Reinvest NSW:

http://www.youtube.com/watch?v=Q4Hq_OqjVcs.

Another project gaining momentum is the Australian Justice Reinvestment Project (AJR Project), which is a national research project investigating the characteristics of Justice Reinvestment.²⁴ It draws together senior researchers across the disciplines of law and criminology to examine Justice Reinvestment programs in other countries and analyse whether such programs can be developed in Australia. One of their researchers Melanie Schwartz, recently visited the US, seeking to learn from their 10 years of experience. She asked Justice Reinvestment experts in the US what they thought the preconditions for a successful Justice Reinvestment strategy in Australia might be, based on the American experience. They offered a range of fascinating suggestions, some of which were:

- *Have very clear aims, including what counts as success. Is success about particular outcomes (and which ones?)? The integrity of the process? The scope of reforms achieved? Or all of the above?*
- *Balance the involvement of government, experts and community. For example, get locals involved with data mapping: that way, they can give guidance about what data would be most useful, and the knowledge that arises out of the data won't just be 'owned' by the experts;*
- *Make sure that there is a broad enough representation of stakeholders around the table – not just justice and corrections people, and not just policy makers;*
- *The timeframe for justice reinvestment programs should be long enough to ensure true community buy-in, allow proper assessment of the impact of policy changes, and to have technical and other support embedded in a location long enough to guide follow through, not just set up; and*
- *Build in independent evaluation of justice reinvestment programs to collect up lessons learned and guide future directions.*²⁵

²⁴ For more information see <http://justicereinvestment.unsw.edu.au/> (accessed 27 November 2013).

²⁵ Just Reinvest, Late Nov 2013 E Newsletter, available from <http://justicereinvestmentnow.net.au/> (accessed 27 November 2013).

The Situation in Western Australia

Finally, I would like to finish with a discussion of Justice Reinvestment here in WA, where it is most needed. Unfortunately, we don't have a coordinated campaign like NSW. In June 2010 Paul Papalia MLA, the then Shadow Minister for Corrective Services advocated for the reform.²⁶ Around that time a coalition of organisations formed a Justice Reinvestment WA Committee, and I was part of the Committee, but the Committee too lost traction and has since disbanded.

However, we do have some high level support within the judiciary including WA's first female judge, Antoinette Kennedy and Chief Justice Wayne Martin. We have also seen some promising comments from the Minister for Corrective Services, Joe Francis recently. In May last year, Minister Francis said, "Call it justice reinvestment or prevention programs or whatever it might be, the principles of spending money to get people on the right track to stop them breaking the law and ending in jail makes sense."²⁷ He went further and said that of the \$700 million spent on corrective services each year, surely more than \$2 million should go to prevention. Of interest also is a blog by the WA Police Commissioner, Karl O'Callaghan's in support of justice reinvestment. He wrote, "Unless we adopt a 'vaccination' approach to crime prevention we are always going to be treating the symptoms rather than the causes. Current thinking around justice re-investment is part of this approach."²⁸

It would be good to see a coordinated campaign here in WA like the one occurring in NSW and I encourage any of you who are interested to consider the approach taken in NSW and how it might be adapted here in WA. In particular, I would like to see a trial in a remote Aboriginal community of WA, in keeping with one of the recommendations from the Senate Inquiry. However, we need to observe from of the suggestions from the US experience articulated by Melanie Shwartz. Of critical importance is balancing of stakeholders. Our initial WA Committee did not have the buy in of Government, and I believe that had a lot to do with why we were not able to make inroads.

CONCLUSION

So, in summary, I have today outlined the experiences of Aboriginal and Torres Strait Islander People in the justice system and touched on the underlying causes for overrepresentation. I noted that the trajectories for incarceration is expected to increase significantly over the next 20 years and that there is an urgent need for reform now.

²⁶ Papalia, Paul, WA Labor Discussion Paper, "Justice Reinvestment, an option for Western Australia", June 2010, available for download from http://www.paulpapalia.walabor.org.au/files/26/Justice_Reinvestment_-_an_option_for_Western_Australia.pdf (accessed 27 November 2013).

²⁷ 'Lift for crime prevention spending', *The West Australia*, 6 May 2013.

²⁸ "What Really Matters" by WA Commissioner Karl O'Callaghan, "Justice Reinvestment", downloaded from <http://www.police.wa.gov.au/Aboutus/CommissionerofPolice/Whatreallymatters/Justicereinvestment/tabid/2003/Default.aspx>, accessed 27 November 2013.

I then explained the concept of Justice Reinvestment as a framework for the reform of the justice system. The framework, which was developed in the US, is aimed at diverting people from crime in high-risk communities, especially repeat offenders and serves to actually reduce crime as well as the number of people incarcerated.

I then noted some of the challenges to implementing it in Australia, including lessons to be learned from the American experience. It should be noted that many of the challenges could be overcome by a state / territory as opposed to a Federal implementation of Justice Reinvestment.

I would like to end the lecture with a call to action to the Western Australian Government to take the lead in implementing Justice Reinvestment on a State level, especially by starting with a trial in a remote community.

Thank you again for the opportunity for me to deliver this prestigious lecture.

REFERENCES

Report of Senate Inquiry: The value of a justice reinvestment approach to criminal justice in Australia, 20 June 2013, available at:

http://www.aph.gov.au/parliamentary_business/committees/senate_committees?url=legcon_ctte/completed_inquiries/2010-13/justice_reinvestment/index.htm

House of Representatives Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system, 'Doing Time, Time for Doing', 20 June 2011, available at

http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=atsia/sentencing/report.htm.

Susan Tucker and Eric Cadora, '*Justice Reinvestment: Ideas for an Open Society*', *Open Society Institute*, 3(5) 2003, 4, available at

<http://www.opensocietyfoundations.org/publications/ideas-open-society-justice-reinvestment>.

'*Ending Mass Incarceration: Charting a New Justice Reinvestment*', 17 April 2013, available at

<http://sentencingproject.org/doc/Charting%20a%20New%20Justice%20Reinvestment%20FINAL.pdf>.

Productivity Commission 2011: *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission, Canberra

http://www.pc.gov.au/_data/assets/pdf_file/0018/111609/key-indicators-2011-report.pdf
(accessed 01 March 2013)

Australian Institute of Health and Welfare 2011, Fact Sheet: "*Child protection and Aboriginal and Torres Strait Islander Children*" viewed 01 March 2013

<<http://www.aifs.gov.au/cfca/pubs/factsheets/a142117/index.html>>

Australian Bureau of Statistics (2013) "*A POPULATION OVERVIEW: POPULATION SIZE AND AGE STRUCTURE*", viewed 01 March 2013

<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4725.0Chapter110Apr%202011>>

Human Rights and Equal Opportunity Commission, 1997, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, viewed 01 March 2013

<http://www.humanrights.gov.au/social_justice/bth_report/index.html>

Australian Government Royal Commission into Aboriginal Deaths in Custody
Viewed 01 March 2013, <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>

United Nations, (2010) Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people: Situation of indigenous peoples in Australia* on of indigenous peoples in Australia, viewed 01 March 2013

<http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/CountryReports.aspx>