



Joint Submission on the Senate Standing
Committee on Legal and Constitutional Affairs
Inquiry into the

**Value of a Justice Reinvestment Approach
to Criminal Justice in Australia**

March 2013

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Introduction

The Alcohol Tobacco and Other Drug Association (ATODA), the ACT Council of Social Service (ACTCOSS) and the Mental Health Community Coalition ACT (MHCC ACT) welcome the opportunity to provide joint submission on the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the “Value of a justice reinvestment approach to criminal justice in Australia” (the Inquiry). Please see attachment 1 for further information about our organisations, which are three ACT peak bodies.

This submission seeks to comment on the areas of the Inquiry that we believe are most important in any discussion about developing and implementing a justice reinvestment approach in Australia, and particularly the ACT.

This submission includes three distinct sections, each of which addresses relevant issues to the development of justice reinvestment in Australia and the ACT. These sections are:

- 1. Conceptualising Justice Reinvestment in Australia**
(Addressing terms of reference e, f & j)
- 2. Justice Reinvestment in the ACT**
(Addressing terms of reference f & j)
- 3. Scope of Australian Government Activities**
(Addressing terms of reference i & j)

Each section includes a number of subsections addressing issues that relate to the Inquiry’s terms of references that we believe are important to consider.

1. Conceptualising Justice Reinvestment in Australia

This section outlines some issues related to the way justice reinvestment can be conceptualised and designed in Australia.

It is important to recognise that the criminal justice context in Australia differs markedly from that in the United States (US) and United Kingdom (UK), where much of the evidence supporting its effectiveness derives. Consequently, it is imperative that what is meant by justice reinvestment be clearly articulated for the Australian context so that all stakeholders are working with the same understanding of what may be, and may not be, part of the Australian justice reinvestment approach.

We believe that justice reinvestment is a methodology that clearly defines a series of data-driven processes. The Bureau of Justice Assistance states:

Justice reinvestment helps policymakers reach their goals through a four-step approach:

1. Analyse criminal justice trends to understand factors driving jail and prison population growth.
2. Develop and implement policy options to generate savings and increase public safety.

3. Quantify savings and reinvest in select, high-risk communities and other prevention-oriented strategies.
4. Measure the impact of policy changes and reinvestment resources and enhance the accountability of criminal justice system actors and policies.¹

The methodology of justice reinvestment differs somewhat depending upon the organisation or stakeholders that are involved. However, they all essentially undertake the same process as described above.

We believe that this methodology is appropriate to be considered justice reinvestment in the Australian context.

1.1 The Australian context

The Australian criminal justice environment differs substantially from that in the US where justice reinvestment was developed, implemented, and has been / is being evaluated. The situation is also very different from that in the UK where justice reinvestment is also being rolled out. Substantial differences that exist in Australia that should be considered when conceptualising justice reinvestment for Australia include:

- Relatively lower rates of incarceration
- Relatively lower expenditure on prisons
- Very high rates of Aboriginal and Torres Strait Islander incarceration
- A lower proportion of detainees in private prisons than in the USA
- Potentially limited ways of reducing prison populations and saving money within the currently structured criminal justice system (i.e. increasing probation and parole)
- Lower rates of non-violent offenders in prison
- Relatively lower population density and substantial rural and regional areas
- Well-established diversionary programs
- Lack of universal political support for justice reinvestment.

Consequently, it is unlikely that the design of justice reinvestment initiatives in the US and UK can be translated directly into the Australian context. Regardless, conceptualising justice reinvestment as a methodology remains appropriate.

1.2 Aims of justice reinvestment

At its very core, the aim of justice reinvestment should be about investment for positive social outcomes, rather than funding to only address criminal justice issues.

We believe that justice reinvestment in Australia could include the following aims:

- Intervene early to address the social determinants of offending behaviours
- Increase public safety
- Reduce imprisonment rates and the growth in prison population (including, and particularly for, the Aboriginal and Torres Strait Islander population)
- Reduce expenditure on prisons
- Reinvestment of savings in measures that help to achieve the preceding aims

These aims are consistent with the justice reinvestment methodology described above and go some of the way to satisfy the expectations of State and Territory Governments considering trials of justice reinvestment initiatives.

1.3 Necessary components of justice reinvestment initiatives

We believe the following to be necessary components of justice reinvestment initiatives in Australia, and these components could fit into the justice reinvestment methodology outlined above:

- Preparatory research to ensure best use of available evidence in design of justice reinvestment trials
- Evidence-based and data-driven interventions
- Rigorous, independent evaluation
- Genuine, meaningful and sustained consultation with individuals and communities
- Community engagement during implementation and evaluation
- Long-term strategies
- Targeting specific problems, crimes, populations, or locations
- Openness and transparency
- Interventions be linked to specific outcomes

1.4 Local solutions to local problems

It is important to recognise that justice reinvestment aims to help address issues predominately under the jurisdiction of States and Territories and in specific communities affected by crime.

It is fundamental that policy makers recognise justice reinvestment represents an opportunity to generate local solution to local problems. Consequently, it must be accepted that justice reinvestment initiatives will be varied in terms of their breadth, design, and focus, and may look very different across the various jurisdictions.

2. Justice reinvestment in the ACT

We believe that it is important that the ACT be involved in any initial activities aimed at designing, implementing and evaluating justice reinvestment in Australia.

We strongly recommend the ACT be included in any justice reinvestment preparatory research and scoping exercises and any subsequent pilot programs.

The ACT is a small jurisdiction, with a single level of government fulfilling both municipal and state responsibilities. There is one adult prison and one youth detention centre, and a prison “throughcare” program being implemented. The ACT was the first jurisdiction to have a Human Rights Act, and a human rights compliant prison. The ACT has a relatively progressive and open-minded Government and community – a vital tool in the implementation of a justice reinvestment approach.

It is critical that resources for justice reinvestment come from diverse portfolios, to ensure no disinvestment in the critical services provided to support people currently in the criminal justice system.

Substantial work has already been undertaken in the ACT to progress the development of justice reinvestment in Australia. This work includes:

- *Exploring the feasibility of Justice Reinvestment in the ACT* workshop and associated report (November 2011) ²
- *Justice Reinvestment Forum - Is Justice Reinvestment needed in Australia?* and associated report (August 2012) ³
- Inclusion of justice reinvestment in a number of youth justice policy documents, including:
 - 2011 Discussion Paper: *Toward a diversionary framework in the ACT* ⁴
 - *Blueprint for Youth Justice in the ACT 2012 – 2022* ⁵

2.1 Need for novel criminal justice responses

The ACT is in a situation whereby the Territory's only adult prison is at capacity, and decisions need to be made to either reduce the prison population or to invest in the building of new facilities to cater for an increase in the prison population.

Consequently, the ACT is in a prime position to benefit from initiatives that help to reduce prison populations. Justice reinvestment may provide an opportunity to reduce future growth in prison expenditure by removing the need to build new facilities.

However, challenges exist for a small jurisdiction like the ACT to employ justice reinvestment strategies. A small population makes the transplanting of initiatives from the US or UK inappropriate, so the design of a trial needs to be context specific. The community sector as well as the justice system will need to be engaged in identifying appropriate and targeted measures that will be most effective.

ATODA, ACTCOSS and MHCC ACT strongly recommend prompt investment in research that will help us better understand the science of justice reinvestment – what level of resources are needed to deploy in what portfolios over what period of time to deliver the social outcomes we aim to achieve? An initial scoping exercise should be undertaken to develop an understanding of what justice reinvestment would look like in the ACT, as part of implementation of a pilot trial.

2.2 Key focus areas

We believe five key focus areas could be initially targeted as part of a justice reinvestment approach in the ACT:

- Aboriginal and Torres Strait Islander peoples
- Mental health
- Alcohol and other drugs
- Offenders in the Youth Justice system
- Intergenerational disadvantage and deprivation

Justice reinvestment in the ACT may also need to create a reduction in the prison population by targeting both first time entrants to the prison system and recidivist offenders.

2.2.1 Aboriginal and Torres Strait Islander peoples

Nationally, Aboriginal and Torres Strait Islander people make up 26% of the adult prison population⁶ and only 2.5% of the general population.⁷ Aboriginal and Torres Strait Islander adults are therefore nearly 15 times more likely to be imprisoned than the rest of the population.⁸ In addition, proportionally more Aboriginal and Torres Strait Islander detainees have prior imprisonment experience (at 74%) than other detainees (at 48%). The Aboriginal and Torres Strait Islander incarceration rate at the Alexander Maconochie Centre (the ACT's adult prison) is unfortunately consistent with this.

The National Indigenous Drug and Alcohol Committee (NIDAC), is the leading voice in Indigenous alcohol and other drug policy, whose role is to assist the Australian National Council on Drugs (ANCD) in providing advice to the Australian Government on a range of issues that impact on Aboriginal and Torres Strait Islander communities and ways of addressing the serious drug and alcohol issues that exist for Aboriginal and Torres Strait Islander people and communities.

The factors, summarised by NIDAC, which are major contributors to Aboriginal and Torres Strait Islander over-representation in prisons that may be relevant in the ACT are:

- Overcrowded housing
- Family members from the Stolen Generations
- Alcohol and other drug misuse.⁹

Given the complexity of the social issues sometimes underlying the over representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system, any response needs to be done in conjunction with meaningful consultation with the individuals and communities involved including front-line Aboriginal and Torres Strait Islander services, families, individuals and elders. Any programs coming under the banner of justice reinvestment which focus on Aboriginal and Torres Strait Islander communities need to include leaders in these communities in development, implementation and governance, with adequate support, as they are the experts in what their communities need.

2.2.2 Mental Health

Research suggests that individuals with a mental illness and are over-represented at all stages in the criminal justice system¹⁰. In the 2010 ACT Inmate Health Survey it was reported that 70% of participants had a formal psychiatric assessment at some time¹¹ and the best current estimate is that 80+% of detainees in the AMC have mental health issues.

In considering harms and risks associated with mental illness the evidence is that the presence of co-occurring mental health and problematic drug and alcohol use, drastically increases a person's risk of negative interactions and outcomes, in particular as relates to involvement in the criminal justice or forensic mental health system¹².

Traditional criminal justice responses are not as effective with this offender group and alternative criminal justice processes including specialist mental health courts and

diversion programs have attracted the attention of policymakers. These seek to address the underlying causes of criminal behaviour exhibited by offenders with a mental illness and reduce recidivism.

Evidence also shows that provision of appropriate and adequate support (in maintaining housing, social connectedness, engagement in education and work) is effective in enabling people with mental illness to maintain meaningful, engaged independent lives and consequently reduce hospitalisation. These approaches by extension also reduce involvement with the criminal justice system. Provision of adequate support is cost-effective by minimising future expenses associated with significant psycho-social disability, including hospitalisation and incarceration¹³.

2.2.3 Alcohol and other drugs

Drug and alcohol use is one major contributor to reoffending among prisoners. Australian research indicates that a history of drug use is associated with an increased likelihood of being re-incarcerated within months of leaving prison.¹⁴ In the ACT, approximately two-thirds (67%) of prisoners in the Alexander Maconochie Centre have a history of injecting drug use and 79% reported being under the influence of drugs at the time of committing their most recent offence.¹⁵

A recent report by the National Drug and Alcohol Research Centre undertaken for the Australian National Council on Drugs has emphasised Australia's correction systems overemphasis on supply reduction measures at the expense of demand and harm reduction measures.¹⁶ This means that many prisoners are not receiving evidence-based treatments for the alcohol and other drug problems.

Treatment can be effective at addressing problematic alcohol and other drug use, reducing offending behaviour, and diverting offenders from prison. It has also been shown to be less expensive than incarceration for some populations.¹⁷

2.2.4 Offenders in the Youth Justice System

The number of young people in detention continues to grow.¹⁸ Additionally, the ACT's youth Aboriginal and Torres Strait Islander incarceration rate is the third highest in Australia.¹⁹

Adolescence is a time where offending behaviour and associated risk factors develop. Criminal activity, family breakdown, alcohol and other drug use, and mental health problems, difficulties at school all commonly occur in adolescence. Consequently, adolescence is a prime opportunity to break the nexus between risk factors and offending behaviour as well as addressing those specific risk factors. The result can be to prevent the entrenchment of criminal activity in the lives of young people, potentially prevent a life of offending, involvement with the criminal justice system, and imprisonment.

The ACT Youth Justice system is currently undergoing a process of reform following a number of substantial reviews of the system including by the Human Rights Commission. Some of these reforms include amendments to the *Children and Young People Act 2008* (ACT),²⁰ the establishment of a Youth Drug and Alcohol Court, and the establishment of an After Hours Bail Support Service. Further reforms are underway. These reforms are being paralleled by reforms to the Care and Protection system.

2.2.5 Intergenerational disadvantage and deprivation

Addressing intergenerational deprivation is a crucial step in breaking the cycle of disadvantage which can often see children and young people following their parents down the road of disengagement with education, alcohol and other drug misuse, and/or unemployment – often the precursors to engagement in the criminal justice system. In addition, research indicates young people who have a parent incarcerated are up to six times more likely to be involved in the youth justice system compared to other young people. A justice reinvestment approach could see this cycle broken; for example funding could be allocated to reduce the prevalence of material deprivation, the lack of opportunity for pro-social engagement in their community and to overcome barriers to student and parent engagement in education and training.

2.3 Specific challenges for designing, implementing and evaluating justice reinvestment in the ACT

We also recognise the challenges that exist for a small jurisdiction like the ACT to employ justice reinvestment strategies, including:

- A small population makes the transplanting of initiatives from the US or UK inappropriate, and novel and targeted measures will need to be employed.
- The ACT already has high rates of probation and parole meaning that reducing the prison population may require complex initiatives.
- The Alexander Maconochie Centre already provides relatively good therapeutic and rehabilitative programs.
- A prison throughcare model has begun.
- The ACT has strong and effective diversion programs, especially for alcohol and other drugs.
- A high proportion of the ACT's prisoners are incarcerated for violent offences.
- Much of the costs associated with incarceration relate to capital and fixed costs of the current (and / or building a new facility) and therefore substantial cost savings within the justice portfolio may be more difficult to obtain.
- Evaluating the effectiveness of justice reinvestment strategies in the ACT may prove more difficult than in other jurisdictions because of a small population, relatively low rates of crime, and poorer data collection and reporting systems than some jurisdictions. Consequently, many quantitative evaluation methods may not be appropriate and novel evaluation methodologies may need to be employed.

2.4 Stigma and discrimination

In a small jurisdiction, such as the ACT, targeting criminal justice or crime prevention initiatives runs the risk of (further) creating stigma and discrimination against particular populations. This is particularly problematic amongst Aboriginal and Torres Strait Islander people and communities, people with mental health problems, people with alcohol and other drug problems, and offenders generally. Consequently, it is important, when designing and implementing justice reinvestment initiatives in the ACT to make sure that efforts do not exacerbate these problems.

2.5 Systems approach: possible interventions to form part of and / or complement justice reinvestment

Because the ACT already has a broad range of programs and initiatives aimed at preventing crime, diverting offenders from prison into treatment and reintegrating prisoners into the community following release, it is necessary for any justice reinvestment initiatives to function alongside and complement existing policy and program structures, governance, and systems. To achieve this, it is likely that extensive consultation and planning would need to take place to ensure that ACT justice reinvestment initiatives can be integrated into existing multi-sector initiatives.

Some current measures that need to be built on when designing a justice reinvestment approach include:

- Analysis of the strengths and weaknesses of current criminal justice systems (though noting full reviews are not required prior to beginning a justice reinvestment initiative)
- Police, Court and Corrections training and support
- Comprehensive community and work order programs
- Effective and comprehensive diversion programs
- Targeted courts (eg. Aboriginal and Torres Strait Islander, mental health and drug and alcohol; families)
- Effective community based and short (e.g weekend) detention
- Diversion of first time offenders from the criminal justice system
- Strengthened parole systems
- Comprehensive infringement scheme reforms
- Effective and accessible treatment systems
- Comprehensive and ongoing throughcare systems and programs
- Access to targeted legal services (e.g. alcohol and other drug, prison)
- Appropriate screening and assessment for cognitive and other disabilities that cause offending behaviour

We wish to emphasise that addressing the social determinants of offending behaviour (eg inadequate income to meet the costs of living, exclusion from education and work, poor housing, lack of opportunity to control life circumstances), treatment for alcohol and other drug problems, mental health, and other problems can be effective at reducing offending behaviour, and should be considered a strong feature of justice reinvestment initiatives in the ACT.

3. Scope for Australian Government Action

Given the lack of direct influence and control the Federal Government has over corrective services and prisons (as they come under the jurisdiction of the States and Territories), it is vital the Australian Government develop incentives to encourage State and Territory Governments to consider developing and implementing a justice reinvestment model.

We believe that the following could be potential areas for Australian Government action to progress a justice reinvestment approach in Australia:

- Allocating resources to thoroughly research the science of justice reinvestment (what resources need to be deployed in what portfolios over what period of time to achieve positive social outcomes?), what a justice reinvestment approach would look like in an Australian context and to conduct evaluation of pilots.
- National co-ordination of justice reinvestment programs, including a clearinghouse of the evidence and/or supporting a centre of excellence.
- Prioritising the ACT as a pilot site for any justice reinvestment initiatives.
- Developing partnerships between jurisdictions across a range of portfolios (possibly through COAG National Partnership Agreements) - such as courts, police, juvenile justice or corrections, community services, family support, child protection, health – involving both Government and non-government sectors.
- Providing incentives which could include seed funding to ‘kick start’ projects.
- Provision of funding to support jurisdictions to overcome specific jurisdictional challenges to designing, implementing and evaluating justice reinvestment.
- Funding by the Federal Government for diversion programs to be tied to the provision of diversion services not rolled into other funding or allowed for discretionary use.
- Strengthen and maintaining evidence based treatment and support (e.g. contributing factors such as alcohol and other drugs).
- Promoting cross party support for justice reinvestment.

Attachment: About ATODA, ACTCOSS and MHCC ACT

ACTCOSS, ATODA and MHCC ACT acknowledge the traditional owners of the lands of the ACT. We pay respects to their Elders and recognise the strength and resilience of Aboriginal and Torres Strait Islander peoples. We celebrate Aboriginal and Torres Strait Islander cultures and ongoing contribution to the ACT community.

About ATODA

The Alcohol Tobacco and Other Drug Association ACT Inc (ATODA) is the peak body representing the non-government and government alcohol, tobacco and other drug (ATOD) sector in the Australian Capital Territory (ACT). ATODA seeks to promote health through the prevention and reduction of the harms associated with ATOD.

ATODA works collaboratively to provide expertise and leadership in the areas of social policy, sector and workforce development, research, coordination, partnerships, communication, information and resources. ATODA is an evidence informed organisation that is committed to the principles of public health, human rights and social justice.

ATODA is a not-for-profit, non-government organisation that is funded through its membership, the ACT Government, the Australian Government and other sources.

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About ACTCOSS

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage and low-income citizens of the Territory.

ACTCOSS is a member of the nationwide COSS network, made up of each of the state and territory Councils and the national body, the Australian Council of Social Service (ACOSS). ACTCOSS' vision is to live in a fair and equitable community that respects and values diversity and actively encourages collaborations that promote justice, equity and social inclusion.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals. ACTCOSS receives funding from the ACT Government - Community Services Directorate.

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About the Mental Health Community Coalition ACT

The Mental Health Community Coalition of the ACT (MHCC ACT), established in 2004 as a peak agency, provides vital advocacy, representational and capacity building roles for the community managed mental health sector in the ACT. This sector covers the range of non-government organisations that offer recovery, early intervention, prevention, health promotion and community support services for people with a mental illness.

MHCC ACT vision statement:

Our vision is for an ACT community where good quality mental health and wellbeing is available to all.

MHCC ACT works with people who have lived experience of mental illness, carers and the community managed mental health services of the ACT, to achieve this by:

- Providing leadership for the community managed mental health sector in the ACT
- Promoting recovery oriented practice and quality service delivery
- Undertaking sector development that includes capacity building, workforce development and quality improvement
- Raising awareness of mental health issues through advocacy, community education and mental health promotion

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³ Guthrie, J. A. (ed.) 2012: 'Is Justice Reinvestment Needed in Australia?' Unpublished report and edited transcript of a one - day forum held on the 2nd of August, 2012. http://ncis.anu.edu.au/lib/doc/jrf_proceedings.pdf. Further information available from http://ncis.anu.edu.au/events/past/jr_forum.php

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⁹ National Indigenous Drug and Alcohol Committee, *Bridges and barriers: Addressing Indigenous incarceration and health*, Australian National Council on Drugs (2009), p 6. At <http://www.nidac.org.au/>

10 Butler T & Allnut S 2003. *Mental illness among New South Wales prisoners*. Matraville, NSW: NSW Corrections Health Services

11 ACT Health (2011) 2010 ACT Inmate Health Survey Summary Results. Canberra: ACT Government.

12 Smith and Trimboli show that the rate of re-offending was significantly greater in prisoners who had comorbid substance and mental health disorders (66.8%) compared with prisoners with only a substance disorder (55.2%); a (non-substance) mental health disorder (48.6%); and no mental health disorders (51.2%). Smith, N & Trimboli, L 2010, Comorbid substance and non-substance mental health disorders and re-offending among NSW prisoners, Crime and Justice Bulletin no. 140, NSW Bureau of Crime Statistics and Research, Sydney.

[http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB140.pdf/\\$file/CJB140.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB140.pdf/$file/CJB140.pdf)

13 The evaluation of stage 1 of the HASI program in NSW found a 81% reduction in time spent

in hospital for psychiatric and/or emergency admissions per person per year, a 77.6% reduction in the number of days spent in hospital per person per admission, and a 77.6% decrease in imprisonment. Stage 1 Evaluation Report: Housing and Accommodation Support Initiative (HASI). Social Policy Research Centre and NSW Department of Health 2007.

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