

18 July 2014

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/ Madam

Please find enclosed a submission from the Anti- Discrimination Commission to the Legal Affairs and Community Safety Committee on the inquiry on strategies to prevent and reduce criminal activity. This submission focuses on the effectiveness (including the cost effectiveness) of crime prevention strategies, including imprisonment, early intervention, and looks in particular at justice reinvestment. The submission also makes comment upon some of the social and economic contributors to crime.

The Anti-Discrimination Commission is also providing a joint submission to this Committee with the Office of the Public Advocate focussing on issues for persons with disability and impaired decision making capacity.

Yours sincerely



KEVIN COCKS AM
Anti-Discrimination Commissioner
Queensland

Submission

to

Legal Affairs and Community Safety Committee Inquiry on Strategies to Prevent and Reduce Criminal Activity

18 July 2014

**ADCQ submission to the Legal Affairs and
Community Safety Committee Inquiry on Strategies to
Prevent and Reduce Criminal Activity**

The Anti-Discrimination Commission Queensland (Commission) is an independent statutory authority established under the Queensland *Anti-Discrimination Act 1991* (AD Act).

The functions of the Commission include promoting an understanding, acceptance and public discussion of human rights in Queensland, as well as inquiring into and where possible effecting conciliation of complaints of contraventions of the AD Act. Complaints that are not resolved through conciliation can be referred to the Queensland Civil and Administrative Tribunal for hearing and determination.

The Commission is pleased to provide this submission in response to the Inquiry on Strategies to Prevent and Reduce Criminal Activity.

The Inquiry is to examine:

- the trends and type of criminal activity in Queensland, having regard to available crime statistics and issues in relation to unreported crime;
- the social and economic contributors to crime;
- the impacts of this criminal activity on the community and individuals, including the social and economic impacts;
- the effectiveness (including the cost effectiveness) of crime prevention strategies, including imprisonment, justice reinvestment, early intervention, alternative dispute resolution, and other models used in national and international jurisdictions; and
- the experiences of Queenslanders with regard to the criminal justice system, including the experiences of victims of sexual violence and/or domestic violence including their interactions with the Queensland Police Service, the courts, prosecuting authorities, legal and support services and compensation processes.
- possible strategies to increase collaboration and co-operation between various participants in the criminal justice system.

This submission focuses on the effectiveness (including the cost effectiveness) of crime prevention strategies, including imprisonment, early intervention, and looks in particular at

justice reinvestment. The submission also makes comment upon some of the social and economic contributors to crime.

Justice Reinvestment

The concept of justice reinvestment was first introduced into Queensland by Tom Calma, then Aboriginal and Torres Strait Islander Social Justice Commissioner, in his 2009 Queensland Anti-Discrimination Commission Mabo Oration address. While Mr Calma's focus relates to Aboriginal and Torres Strait Islander issues, the concept of justice reinvestment has a broader application to all sections of the community.

In his address Mr Calma stated that:

The criminal justice system is failing Indigenous people and making our communities weaker. We need to proactively invest in the front end of the system on crime prevention rather than focus the overwhelming majority of funding on criminalisation¹.

The over-representation of Aboriginal people in Australian prisons led Mr Calma to state, 'Something is very wrong when we see the steady progression of Indigenous kids from the juvenile justice system graduating to the adult criminal justice system.'² He raised the view that, 'When something isn't working we need to be bold and creative in thinking outside of our safe policy parameters for alternative solution.'³ Having recently visited the United States on a fact finding tour, Mr Calma suggested that justice reinvestment may be one alternative solution.

Mr Calma's 2009 *Social Justice Report* considered the issue of justice reinvestment and its application in the Australian environment for Indigenous communities, particularly given the over-representation of Indigenous people coming into contact with the criminal justice system.

The methodology and objectives of justice reinvestment;

The Social Justice Report 2009 recommended the implementation of justice reinvestment policies to address the over-representation of Aboriginal (and Torres Strait Islander) people coming into contact with the justice system.

¹ Tom Calma, "From self-respect comes dignity, and from dignity comes hope": Meeting the challenge of social justice for Aboriginal and Torres Strait Islander People, Mabo Oration 2009, p.22

² Ibid. 24.

³ Ibid.

Justice reinvestment has developed over some years in the United States of America out of the initial necessity of reducing the increasing costs of building more prisons to house more prisoners.

The Urban Institute Justice Policy Center has published a guide titled, *Justice Reinvestment at the Local Level Planning and Implementation Guide*⁴ which describes the steps involved in the justice reinvestment process, the challenges that may be encountered, and examples of how those challenges can be overcome. They identify four methodological steps:

- (i) Analysing and mapping to ascertain which geographical areas have the highest levels of crime;
- (ii) Development of options to generate savings and improve local communities;
- (iii) Quantifying and re-investing savings in high needs communities, and
- (iv) Evaluation of the impact of that reinvestment

The National Centre for Indigenous Studies, Australian National University hosted a Justice Reinvestment Forum in August 2012, to explore the feasibility of justice reinvestment in the Australian environment.

A number of international speakers involved in justice reinvestment programs in the UK and USA, who while recognising the need for an Australian specific model(s), suggested that justice reinvestment does have potential as a tool to reduce imprisonment, impacts of recidivism and costs. International speakers were also emphatic that developing a justice reinvestment policy process is a long term strategy that requires bi-partisan agreement and sustained support from all levels of government and community partners.

The benefits of, and challenges to, implementing a justice reinvestment approach in Queensland.

Justice reinvestment presents an opportunity to interrupt the cycle of migration of communities to prison and back again, and to arrest the ripple effects of imprisonments that are felt throughout a community. The process of decarceration through community capacity building 'becomes mutually reinforcing; crime prevention decreases imprisonment; and

⁴ Nancy La Vinge, S. Rebecca Neusteter, Pamela Lachman, Allison Dwyer, Carey Anne Nadeau, Justice Reinvestment at the Local Level Planning and Implementation Guides, Urban Institute Justice Policy Center. 2008.

community engagement strengthens the community so the preconditions for crime are reduced.’⁵

It is encouraging to see that the Queensland Government is recognising the benefits of a justice reinvestment approach. Queensland Corrective Services in their recent report, *Pathways to Reducing Crime*, has developed a plan to ‘reduce re-offending by strengthening the focus on tackling the causes of crime and correcting offending behaviour.’⁶

The Report suggests a justice reinvestment policy approach in stating:

There is growing evidence to show that broad, multi-modal approaches to preventing re-offending over the course of an offender’s sentence, and beyond, are often more effective than point-in-time interventions such as a standalone program. Such approaches align a range of services, supports and interventions as whole of sentence paths embedded in offender management systems, process and practices.⁷

The report further states that this is best achieved through ‘opportunities to work, access, education and training, address substance abusing behaviour, participate in safely returning to the community on release.’⁸

The Report prioritises for individually tailored pathways including a focus on:

- Those who pose a high risk of harm to the community including those who are dangerous as well as those who are persistent or prolific offenders.
- Offenders with disability including intellectual or cognitive impairment as well as those suffering significant functional impairment due to mental illness.
- Youthful offenders under 25 years of age at the early stages of offending.
- Aboriginal and Torres Strait Islander offenders.
- Women offenders.
- Regionally identified offending groups requiring localised knowledge and intervention.⁹

⁵ Aboriginal and Torres Strait Islander Social Justice Commissioner , Social Justice Report 2009(2010)10

⁶ Pathways to Reduced Crime, Queensland Corrective Services, Department of Community Safety, p2.

⁷ Ibid, p6

⁸ Ibid, p6

⁹ Ibid, p6

The Report, proposes to put effort and resources into maximising crime prevention outcomes for offenders, their families and the community. By ensuring offenders are properly prepared for release and properly supervised. Build strong and responsive partnerships with families, non-government service providers and local communities through:

- Employment a structured lifestyle
- Stable and positive social support
- Stable family relationships
- Community and cultural integration
- Moral belief system
- Pro-social goals and a desire for a better life.

The Report indicated an Action Plan to develop a number of internal strategies for effective rehabilitation based on new and revised training packages, tools and resources for staff that work with offenders and “Development of partnerships with the community that support rehabilitation and allow development of local solutions and responses to regional priority group needs”¹⁰ and a three part measureable evaluation process, that is very reflective of a justice reinvestment model.

The Pathways to Reduced Crime model is commendable; however there is a need for long-term monitoring process to support this model in Queensland. Some difficulties and challenges in implementing a justice reinvestment approach in some parts of Queensland are likely due to the remoteness of some communities that are experiencing high levels of disadvantage, and the need for interventions to be crafted to suit the specific circumstances and aspirations of the people living in those communities.

Social and Economic Contributors to Crime

A number of social and economic drivers relating to the growth of the Australian and Queensland imprisonment rates have been identified over the years in numerous reports and academic journals. These drivers include:

- socio-economic conditions such as poverty;

¹⁰ Ibid, p16

- low or under education;
- lack of employment opportunities;
- mental health issues;
- lack of appropriate housing;
- the increasing availability and use of alcohol and drugs;
- the increase and diversity of the population and the challenges this presents;
- social exclusion;
- systemic discrimination and
- reintroduction and enforcement of policing policies such as ‘public nuisance’ and ‘move on powers’.

In the past thirty years no other report has examined the drivers of imprisonment rates in Australia, as has the *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC). RCIADIC’s examination of the deaths of ninety-nine Aboriginal men, women and juveniles (and to a lesser extent Torres Strait Islander men) in prisons, police watch houses and lock ups and juvenile detention institutions, between 1 January 1980 and 31 May 1989 in Australia highlighted the drivers that brought these individuals into the justice system at that time.

RCIADIC found that underlying issues behind the over-representation of the Aboriginal men, women and juveniles in the justice system included unemployment, poverty, the inability to pay fines, poor health (particularly mental health), lack of education, alcoholism and drug addiction, race discrimination, homelessness, as well as police practices, prison procedures and judicial processes.¹¹

RCIADIC, established in 1987 and finalised in 1991, made three hundred and thirty-nine recommendations, highlighting the need for procedures for persons in custody, liaison with Aboriginal groups, police education, diversion from custody and sentencing options. RCIADIC recognised that only through addressing the underlying causes for the high representation, would there be any long term reduction in the levels of over-representation.

¹¹ Professor Mick Dodson, ‘The Royal Commission into Aboriginal deaths in custody, 20 years on’ (Speech delivered at Justice Reinvestment Forum, National Centre for Indigenous Studies, Canberra 2 August 2012) 2, 5, 6.

Twenty-two years after the RCIADIC, its recommendations remain relevant to the ongoing situation of Aboriginal and Torres Strait Islander persons coming into contact with the justice system today.

Law and order concerns often driven by political debate during election campaigns that have resulted in changes to policing policies and sentencing legislation (mandatory sentencing and mandatory non-parole periods) can also be considered a driver in the growth of imprisonment rates over the past thirty years at state and territory government levels.

More recently justice reinvestment proponents in the United States of America and United Kingdom have identified similar driver patterns through the continuous collection and analysis of data relevant to the criminal justice system.

The economic and social costs of imprisonment

The Australian Bureau of Statistics (ABS), the Australian Institute of Criminology (AIC) and other independent non-government organisations have monitored imprisonment rates and other social data of persons coming into contact with the criminal justice system for some years. More recently with the interest in justice reinvestment, the economic costs of imprisonment in Australia have been monitored.

In their September 2012 paper, the AIC identified areas in Queensland that generated chronic and costly offenders, according to their postcodes. Thirty-three of the most costly Queensland communities relating to crime, were identified based on collection of data relating to offenders born in 1990, who committed offences in Queensland when the individual was between ten and twenty years of age.

Data collected involved 14,171 offenders who committed 71,413 offences and were issued with 33,455 cautions, youth justice conferences and finalised court appearances.

Costs associated with chronic offenders in Queensland have been estimated at ranging from \$14,041,855.00 as the highest cost from postal area 4350 (Toowoomba and surrounding areas extending to western Queensland); to \$2,421,583.00 being the lowest cost at postal area 4812 (Currajong, Hermit Park, Townsville and surrounding areas extending to central and northern parts of Queensland).¹²

¹² Troy Allard, April Chrzanowski and Anna Stewart, 'Targeting crime prevention to reduce offending: Identifying communities that generate chronic and costly offenders', (2012) *Trends & issues in crime and criminal justice* no. 445, 2.

Prior to the AIC research, Professor Tony Vinson analysed indicators of disadvantage, including imprisonment, to map the most disadvantaged areas in Australia in his 2007 study, *Dropping off the edge: the distribution of disadvantage in Australia*.¹³

Professor Vinson found that 3% of Australia's postcodes account for a disproportionate amount of disadvantage. These areas had at least twice the rate of unemployment, criminal convictions, imprisonment, child maltreatment, disability support recipients, and psychiatric admissions. Some of those most disadvantaged communities in Queensland are areas with high Aboriginal populations.

The *Dropping off the edge* report found that just 1.7 per cent of postcodes and communities across Australia account for more than seven times their share of top rank positions on the major factors that cause intergenerational poverty,¹⁴ and further stated that:

Our findings demand recognition of a common pattern associated with inadequate education and training – unemployment, low income, poor health and 'making ends meet' by criminal means, resulting in high rates of convictions and imprisonment.¹⁵

In 2011 the then Queensland Attorney-General reported that the cost of someone going to gaol was then about \$200 per day approximately.¹⁶

The National Indigenous Drug and Alcohol Committee (NIDAC) recently released their report; *an economic analysis for Aboriginal and Torres Strait Islander offenders: Prison vs Residential Treatment*¹⁷.

NIDAC commissioned a cost analysis of imprisoning Aboriginal and Torres Strait Islander offenders by accounting firm Deloitte Access Economics, who estimate a cost savings of \$111,000.00 per year per person by diverting non-violent Indigenous offenders with substance use problems into community residential drug and alcohol rehabilitation services instead of prison and that a further \$92,000.00 per offender will be saved in the long term due to lower mortality and better health related quality of life outcomes.

NIDAC states that sixty-eight per cent of Indigenous prison entrants self-report having used illicit drugs during the preceding twelve months and that Indigenous prisoners are

¹³ Tony Vinson, *Dropping off the Edge: the distribution of disadvantage in Australia* (Jesuit Social Services and Catholic Social Services Australia, 2007.)

¹⁴ Catholic Social Services Australia website < <http://catholicsocialservices.org.au/node/976> >

¹⁵ Ibid.

¹⁶ Hansard, Estimates 19 July 2011

¹⁷ *An economic analysis for Aboriginal and Torres Strait Islander offenders: prison vs residential treatment*. A report prepared for the National Indigenous Drug and Alcohol Committee, Australian National Council of Drugs, August 2012.

significantly more likely to be dependent on alcohol than non-Indigenous prisoners. Therefore diversion of these offenders can be financially beneficial in cost, in reducing recidivism as well as improving the health and mortality of Indigenous offenders.

Since health and wellbeing issues are closely linked to Indigenous and non-Indigenous violence, offending and incarceration, interventions that address harmful substance use - such as diversionary programs - have the potential to significantly reduce the over-representation of Indigenous and non-Indigenous Australians in our correctional system.

In recent years the social costs of imprisonment are more understood in broader social terms to include personal, family and community loss. There is credible research that sending people to prison weakens the entire community, making it less safe. "Every time an Indigenous person goes to prison and leaves their community, there are children that are losing parents, sisters, brothers and uncles and aunties. We need to act to disrupt this cycle of crime to prevent the harm for victims and offenders alike."¹⁸

The over-representation of disadvantaged groups within Australian prisons.

Numerous research has identified 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. Often a person in prison will have a number of these attributes in combination, compounding their disadvantage. Early intervention programs to assist these disadvantaged groups, including intervention through justice reinvestment has the potential to reduce crime, imprisonment, impacts of recidivism and costs.

Aboriginal and Torres Strait Islander peoples

In 2011 ABS reported that Indigenous Australians make up just over one-quarter (26 per cent) of Australia's prison population, despite comprising 2.5 per cent of the Australian population.

Statistically Indigenous male adults are over fourteen times more likely to be imprisoned than other Australians and Indigenous women now comprise 30.7 per cent of female prisoners; while Indigenous juveniles comprise 49 per cent of juvenile corrective institutions in 2010-11.

¹⁸ Tom Calma, Mabo Oration 2009, 26.

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The *Doing Time - Time for Doing Report*, released in June 2011, identified as a national crisis “the disturbing over-representation of Aboriginal and Torres Strait Islander youth in the criminal justice system”¹⁹ who present with multiple health issues ranging from Foetal Alcohol Spectrum Disorder, alcohol and substance misuse, hearing loss, mental health and impaired thought processes.

Aboriginal health services have long recognised the impact of mental health issues on Aboriginal people and continue to reinforce a holistic perspective which they define as:

“Any delineation of mental health problems and disorders must encompass recognition of the historical and socio-political context of Aboriginal mental health including the impact of colonisation; trauma; loss and grief; separation of families and children; the taking away of land; and the loss of culture and identity; plus the impact of social inequity, stigma racism and ongoing losses.”²⁰

Among those over represented Aboriginal and Torres Strait Islander prisoners will be a significant group with hearing loss. Aboriginal and Torres Strait Islander peoples experience disproportionately higher levels of hearing impairment and deafness in comparison to non-Indigenous peoples.

In 2004-2005, a higher proportion of Aboriginal and Torres Strait Islander peoples than non-Indigenous people reported ear and hearing problems for all age groups under 55. Statistics of hearing loss among the general prison population are not readily available, and the extent of hearing loss among Indigenous Australians in custody is unknown, though informed estimates suggest that the incidence may be very high indeed. The implications for Indigenous Australians who may have been convicted and incarcerated with an undiagnosed hearing loss could be most profound. The lack of diagnosis will impact on a prisoner’s ability to cope with the demands of the prison system, and their ability to participate in rehabilitation programs may be compromised.

One group of over represented prisoners in the justice system that rarely receives attention are Aboriginal and Torres Strait Islander women prisoners. The Queensland Anti-Discrimination Commission’s *Women in Prison Report* ²¹ revealed not only that Indigenous women are over represented in the prison population, but the statistics on

¹⁹ *Doing Time -Time for Doing: Indigenous youth in the criminal justice system* Report (2011) House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs.

²⁰ Swan, P. & Raphael, B. (1995) *Ways Forward – A National Consultancy Report on Aboriginal and Torres Strait Islander Mental Health*, National Mental Health Strategy, AGPS, Canberra, p.13. Quoted in, *Indigenous young people with cognitive disabilities & Australian juvenile justice systems*. A report by Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, 2005, 6.

²¹ *Women in Prison Report*, Anti – Discrimination Commission Queensland, March 2006

Indigenous women prisoners in Queensland within the justice and correctional systems are clear and paint a disturbing picture of systemic discrimination perpetuating high levels of inequality. The report found:

- Indigenous women have an unacceptably high risk of being imprisoned. At 30 June 2005, 26.5% of all female prisoners in Queensland were Indigenous, yet Indigenous people represent only 3% of the population.
- In Queensland the growth of Indigenous female offenders in custody over the five year period from 1994-1999 was 204% compared to 173% for all female offenders.
- Indigenous women have a higher rate of recidivism (62.93%) than non-Indigenous women (53.3%).
- Indigenous female prisoners are over-represented as secure custody prisoners. At 30 June 2004, 36% of high security, 30% of medium security, 12% of low security and 21% of the open security female prisoners were Indigenous. At the time, they represented 27.85% of the total female prisoner population.
- Indigenous women are significantly less likely to be granted conditional release or post prison community-based release (release-to-work, home detention or parole) than non-Indigenous women prisoners.
- Indigenous women are much more likely to be placed in a Crisis Support Unit or a Detention Unit than a non-Indigenous woman.
- Indigenous women are more likely than non-Indigenous women, to be the victim of a violent crime.
- In 2002, Indigenous women represented 52.3% of women in prison in North Queensland (Townsville) and 15.3% in prison in South East Queensland.
- 70% of violent offences, the most serious offence category, are attributed to Indigenous female offenders sentenced in North Queensland.

People with disabilities in prison

In the 2007 QAI report *Disabled Justice: The barriers to justice for persons with disability in Queensland*²² found that there is a growing body of international and Australian research that suggests that persons with disability are significantly over-represented as suspects, defendants, and offenders in the criminal justice system. The report noted that this evidence base has its problems, as most law enforcement and criminal justice agencies collect little primary data on the incidence or characteristics of persons with disability with whom they have contact. Even those that do don't do so consistently. Incidence studies often use different assessment methods, and consequently findings can vary considerably, and lack comparability both on a population group basis and over time.²³

Research has focused on persons with intellectual and psychosocial impairments and has tended to overlook the prevalence of contact of members of other impairment groups with the criminal justice system. This potentially creates a false consciousness and complacency in relation to other impairment groups. The qualitative evidence drawn on in the QAI report suggests that there is also significant over-representation of persons with acquired brain injury in the criminal justice system.

There also appear to be very specific problems, if not also over-representation, in relation to persons who are Deaf. Currently the prevalence of hearing loss in Australia is estimated to be one in six, making hearing health a significant issue for many individuals and also the wider Australian community. The potential impact of undiagnosed hearing impairments for Indigenous prisoners has been mentioned earlier in this submission.

On 13 May 2010 the Senate Community Affairs References Committee tabled its report titled *Hear Us: Inquiry into Hearing Health in Australia*.²⁴ The report focused on the prevalence of hearing loss in Australia and the issues faced by those who are hearing impaired. These issues include access and services, educational opportunities and lack of support in the criminal justice system. The Committee made two recommendations that are relevant to persons with hearing impairments within the prison population. They were:

²² *Disabled Justice: The barriers to justice for persons with disability in Queensland*, Report Queensland Advocacy Incorporated 2007

²³ QAI Report, 25.

²⁴ *Hear Us: Inquiry into Hearing Health in Australia*, Report of Senate Community Affairs References Committee 2010

Recommendation 27 (chapter eight)

The committee recommends that the Department of Health and Ageing work closely with state and territory jurisdictions to develop and implement a national plan which:

- (a) provides resources to conduct hearing assessments for all Australians serving custodial sentences who have never received such an assessment, including youths in juvenile detention; and
- (b) facilitates prisoner access to those hearing assessment; and
- (c) encourages a high level of participation in those hearing assessments; and
- (d) makes the findings of the hearing assessments available to the public (within privacy considerations).

Recommendation 34 (chapter eight)

The committee recommends that correctional facilities in which greater than 10 per cent of the population is Indigenous review their facilities and practices, and improve them so that the needs of hearing impaired prisoners are met.

Young people in Queensland prisons

Young people who come into contact with the youth justice system are more likely to come from impoverished communities where levels of interpersonal and community violence and neglect are high and often have a history of vulnerability, such as familial dysfunction and poor health and education.

Research indicates that children who have progressed further into the youth justice system are particularly likely to have had a child protection history²⁵. Education and employment, peer relations, substance abuse, access to leisure and recreation activities, personality and behaviour, and attitudes/orientation are other significant contributing factors²⁶.

Aboriginal and Torres Strait Islander young people are 4.5 times more likely to have contact with the criminal justice system compared to non-Indigenous young people.²⁷ Aboriginal and

²⁵ Cashmore, C. (2011) 'The Link Between Child Maltreatment and Adolescent Offending: Systems Neglect of Adolescents' *Family Matters*, 89, 31-41. Quoted in, 'Child Guardian Report', *Youth Justice System 2010-11*, 7.

²⁶ Thompson, AP & Pope, Z (2005) 'Assessing Juvenile Offenders: Preliminary Data for the Australian Adaptation of the Youth Level of Services/Case Management Inventory' (Hog & Andrews, 1995) *Australian Psychologist*, 40(3), 204-12. Quoted in, 'Child Guardian Report', *Youth Justice System 2010-11*, 9.

²⁷ Richards, K. (2011) *What makes juvenile offenders different from adult offenders?* Canberra: Australian Institute of Criminology. Quoted in, 'Child Guardian Report', *Youth Justice System 2010-11*.

Torres Strait Islander young people experience arrest as an outcome of police action at approximately twice the rate of non-Indigenous young people (43.4% of outcomes compared to 21.5% outcomes) and they receive cautions half as often as non-Indigenous young people (23.4% of outcome compared to 44.9% of outcomes)²⁸. Aboriginal and Torres Strait Islander youth have been found less likely to be offered diversions (including cautioning and youth justice conferencing), even after controlling for the effects of age, sex, offence type and prior history²⁹. Explanations put forward for the disparity include potential racial bias, Aboriginal and Torres Strait Islander youths' unwillingness to engage in a police interview and plead guilty thereby making them ineligible for diversion, and the lack of trained officers in remote regions³⁰.

Queensland is the only remaining Australian state or territory where seventeen year olds are dealt with under the (adult) criminal justice system and incarcerated in adult jails. This means Queensland is the only state or territory where seventeen year olds are denied the emphasis placed on diversion, rehabilitation and promotion of health, continuing education and employment provided in the youth justice system. Since 2001 the Queensland Commission for Children Young People and Child Guardian has consistently advocated that seventeen year olds should be in youth detention as opposed to adult prisons and that the scope of the *Queensland Youth Justice Act 1992* should be extended to seventeen year olds³¹.

The cost effectiveness of crime prevention strategies including imprisonment, prevention and early intervention, and other models.

Imprisoning a person is costly to the taxpayer, as is the costs of building more prisons to house more prisoners. As discussed earlier in this submission, there is evidence that significant costs may be saved by diverting non-violent offenders with substance use problems into community residential drug and alcohol rehabilitation services instead of prison.

William Blackstone, one of the founders of our modern day criminal law made this observation about imprisonment as a prevention strategy.

²⁸ Child Guardian Report, *Youth Justice System 2010-11*, 26

²⁹ Allard, T., Stewart, A., Chrzanowski, A., Ogilvie, J., Brinks, D., & Little, 2 (2010). *Police diversion of young offenders and Indigenous over-representation*. Canberra: Australian Institute of Criminology. Quoted in *Child Guardian Report, Youth Justice System 2010-11*, 27.

³⁰ Allard, T. *ibid*.

³¹ Child Guardian Report, *Youth Justice System 2010-11*, pg. 4

Preventative justice is, upon every principle of reason, of humanity, and of sound policy, preferable in all respects to punishing justice.

W Blackstone, Commentaries on the Laws of England (1753)

The effectiveness of alternatives to imprisonment, including prevention, early intervention, and other models including diversionary and rehabilitation measures, has not been well researched in Australia.

The lack of an evidence base to justify spending on some of these initiatives can lead to well-regarded programs and initiatives losing funding and support.

The Queensland government recently disbanded four established diversionary courts - the Queensland Murri Court, Drug Court and Special Circumstances Court and the Indigenous Alcohol Diversion Program. Significant costs may be saved by diverting non-violent offenders with substance use problems into community residential drug and alcohol rehabilitation services instead of prison.³²

The justification for the disbanding of the diversionary courts was the lack evidence that they were having an impact on reducing recidivism.³³ It is therefore very important that a cost benefit analysis of these initiatives occurs.

The Magistrates Court of Queensland 2010-11 annual report revealed Queensland saved 588 years of prison time in 2010-11 by diverting 115 people from prison. The then Queensland Law Society president, John de Groot pointed out the savings of the Drug Court:

In dollar terms, based on a conservative estimate of the cost of imprisonment of \$200 per day per person, the money saved for taxpayers and the government by the Drug Court is in excess of \$41 million.

The 2010-11 Magistrates Court of Queensland annual report findings on the alternative courts included:

- Drug Court : 588 years of 'actual imprisonment time' saved by diverting 155 people;

³² *An economic analysis for Aboriginal and Torres Strait Islander offenders: prison vs residential treatment.* A report prepared for the National Indigenous Drug and Alcohol Committee, Australian National Council of Drugs, August 2012.

³³ *Brisbane Times* article, quoting Qld Attorney General and Justice Minister Jarrod Bleijie , 13 September 2012.

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- Murri Court: A detailed study by the Australian Institute of Criminology (2008) found that the number of basic offences (property offences) dropped by 94 per cent. It also found 'repeat offending' decreased by 17 per cent.
- Special Circumstances Court: Of the 1,668 people referred to the diversion program, 944 were assessed as 'eligible' i.e. 56 per cent were diverted from prison or traditional court sentences.

The disbanding of these courts has meant that the most vulnerable of our community may no longer have their particular cultural, disability, health, addiction and social circumstances considered when coming into contact with the justice system. Individuals, who may have come before these diversionary courts in the past, are now again reliant on the discretion of individual magistrates to consider any mitigating circumstances when sentencing.

The Government is encouraged to reconsider the costs benefit analysis of these diversionary courts.

In response to the disbanding of the established diversionary courts the Queensland government introduced the *Youth Justice (Boot Camp Orders) Amendment Bill 2012*, which took effect on 31 January 2013. One boot camp is being trialled to a prescribed area surrounding Cairns and covering Innisfail, Mareeba, Cairns, Yarrabah and Atherton; which is an area with a significant Aboriginal population. Young offenders eligible for boot camp must be at least thirteen years of age at the time of sentencing and live in the prescribed area.

The young offenders sentenced to boot camp are to be engaged in structured activities for their entire order. Activities include intensive physical activities, engagement in family and offence focussed programs, engagement in education and/or employment, substance misuse education and community reparation. Activities are to reflect the identified needs of the young person and aim to address the factors connected with the young person's involvement in crime³⁴. It is too early to know if these programs are working and if they are preventing young offenders from further contact with the justice system. It is important that an evidence base of the costs and benefits of the program be established, and the program be monitored and reviewed.

A number of other government and non-government programs in Queensland have offered assistance of a diversionary nature. The ADCQ has not investigated and is not aware of any costs/benefit analysis of the programs, but anecdotal evidence indicates many have broad

³⁴ Introduction of boot camp orders – information for legal community. Youth Justice, Department of Justice and Attorney- General, Fact Sheet. 2012.

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community support and are considered to be effective early intervention and diversionary programs. Such Programs include assessment and early intervention programs for people with drug and alcohol problems, support for families including women coming into contact with the justice system, youth programs, and early intervention education programs.

Other programs that can be considered early intervention programs that aim to divert people away from contact with the justice system and prison include;

- **The Indigenous Driver Licensing Program**, has since 2003 provided mobile licensing units to offer licensing services such as learner driver license testing, practical driver testing for cars and trucks, driver license replacement and renewals and 18+ cards to remote communities in Queensland to reduce incarceration rates for licensing offences, reduce road trauma and improve access to employment, shops, services and social activities.
- **The Cape York Welfare Program Trial**, a four year pilot program which commenced in July 2008 under a tripartite agreement between the Australian and Queensland governments and the Cape York Institute for Policy and Leadership (CYI). The Trial involves the Cape York Aboriginal communities of Hopevale, Mossman Gorge, Cohen and Aurukun.
 - The trial was a response to the concerns expressed by CYI in the review of the Cape York Justice Agreement about long term unemployment and “welfare dependency”. CYI proposed development of a suite of programs that would deal with a range of social issues in those communities that aimed to restore social norms, re-establish local Indigenous authority, enable children to achieve their full potential, support engagement in the real economy, and move individual and families from welfare housing to home ownership³⁵.
 - The trial was assisted with the establishment of statutory body the Family Responsibilities Commission (FRC) under the *Family Responsibilities Act 2008*. The FRC and Local Indigenous Commissioners appointed from the four trial communities, hold conference with local people from the trial communities who are ‘notified’ to the FRC for failing to enrol and send children to school, come to the attention of the Department of Communities for child safety matters, being

³⁵ Cape York Welfare Reform Consultation Report to the Honourable Curtis Pitt MP Minister for Disability Services, Mental Health and Aboriginal and Torres Strait Islander Partnerships and the Honourable Jenny Macklin MP Minister for Families, Housing, Community Services and Indigenous Affairs

convicted of an offence in the Magistrates Court and failing to remedy a breach of a tenancy agreement.

- A range of community services were proposed relating to educational, economic development, employment and housing initiatives, wellbeing centres, parenting programs, anti-violence, drug and alcohol services and school Attendance, Case Managers.

A review of the costs and benefits of the program would be useful in determining if this is an effective justice reinvestment strategy.

Another initiative that has a flavour of a justice reinvestment strategy are those arising out of the 2013 Logan Summit held in Woodridge to address unrest in sections of the local community leading to the “Woodridge riot”. The Summit raised public awareness of the associated social, economic and cultural differences that impact in suburbs presenting significant levels of diversity, high unemployment, social dysfunction and crime.

The Logan City of Choice Summit was an outcome of discussions between local Aboriginal people, Pacific Islander groups, the Logan Council and Premier Newman following the “Woodridge riot”. The summit consisted of a 3 day workshop of local community members and organisations, Logan City Council, Queensland and federal government ministers and public servants and a former CEO from a Council in London who had dealt with similar unrest between different groups. Discussions focused on five common areas of concern - housing, employment, safety, education and social infrastructure. It is hoped that a range of early intervention initiatives of a justice reinvestment nature will flow as a result of this summit.

Nationally it is apparent that community campaigns and interest for justice reinvestment are gathering momentum at the state and territory level. Campaigns such as the *Making Justice Work Campaign*³⁶ in the Northern Territory; the *Smart Justice Project*³⁷ in Victoria and the recent introduction in New South Wales of the *Justice Reinvestment Campaign for Aboriginal young people*³⁸ and the early intervention program *Youth on Track*³⁹, are examples of States implementing justice reinvestment strategies. The ACT has also considered creating a pilot project around a justice reinvestment model.

³⁶ http://www.clant.or.au/images/images/Making_Justice_Work_Principles.pdf

³⁷ <http://www.smartjustice.org.au/resources/SMART%20intro.pdf>

³⁸ <http://justicereinvestmentnow.net.au/>

³⁹ Attorney-General and Justice, New South Wales

The Queensland Government is encouraged to identify and implement strategic Justice Reinvestment strategies, along with a cost benefit analysis criteria to evaluate the long term impact and the effectiveness of such strategies.

Conclusion

Justice reinvestment is not just about reforming the criminal justice system but trying to prevent people from getting there in the first place. Justice reinvestment asks the question: is imprisonment good value for money? The simple answer is that it is not.

Early intervention initiatives and investing in programmes to prevent crime in communities that have high rates of criminal convictions, imprisonment and recidivism may be a better use of valuable taxpayer funds than the spending of funds on the criminal justice system including the courts and prisons.

The Anti-Discrimination Commission thanks the Legal Affairs and Community Safety Committee for the opportunity to make this submission.