

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000
By email: lacsc@parliament.qld.gov.au

18th July 2014

Dear Colleague,

Re: INQUIRY ON STRATEGIES TO PREVENT AND REDUCE CRIMINAL ACTIVITY IN QUEENSLAND

We welcome and appreciate the opportunity to make a submission in relation to the Legislative Assembly's inquiry on strategies to prevent and reduce criminal activity in Queensland ('the Inquiry').

PRELIMINARY CONSIDERATION: OUR BACKGROUND TO COMMENT

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd ("ATSILS") provides legal services to Aboriginal and Torres Strait Islander peoples throughout mainland Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of: Law and Social Justice Reform; Community Legal Education and Monitoring Indigenous Australian Deaths in Custody. As an organisation which, for over four decades, has practiced at the coalface of the justice arena, we believe we are well placed to provide meaningful comment.

Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences. We trust that our submission is of assistance.

Preliminary Comment

Not surprisingly, as with the vast majority of the populace, our Organisation would be in wholehearted support of any measures which led to a reduction in criminal activity and thus to safer communities. However, we are firmly of the belief that the key to addressing criminal activity and recidivism, is to address the underlying causes of offending behaviour – poverty-related considerations being central to such. Education is undoubtedly the longer-term key, but for a child to be placed in a position to attend school, allied considerations such as domestic violence, housing and health need to be first addressed.

Tough-on-crime law and order stances might be highly palatable to the average person in the street – but unless such actually addresses offending behaviour, the mark is being missed. Indeed, in some circumstances (such as desensitising youth offenders to the fear of detention by virtue of short stints in detention; or mixing relatively inexperienced offenders with hardened criminals), can be entirely counter-productive to the aim of crime reduction.

THE RELATIONSHIP BETWEEN IMPRISONMENT AND CRIMINAL ACTIVITY

Our Organisation certainly accepts that imprisonment as a form of punishment is the only appropriate penalty in certain situations. Indeed, there could be a strong argument that in any particular case, a given individual should never be released. There is however little evidence to support the notion that incarceration improves community safety. Particularly in light of the serious health and socio-economic effects that incarceration has on individuals, families and their communities¹. Some of these affects are:

1. People learn criminal ‘tricks of the trade’ during their incarceration. Such is apparent to us based upon first-hand feedback from clients over the years.
2. The health standards of persons incarcerated, and even upon release, are significantly worse than those who have not been incarcerated. Persons who have

¹ Australian Institute of Health and Welfare, *Closing the Gap Clearing House Diverting Indigenous offenders from the criminal justice system* Resource sheet no. 24 (online) December 2013
<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129545614>

been incarcerated are statistically shown to have worst rates of morbidity and mortality².

3. Exposure to the harsh environment of prison may harden anti-social attitude³, particularly after some of the negative experiences that many prisoners are subjected to such as rape or sexual assault.
4. Repeated over-use of incarceration as a form of punishment has detracted from the perception that it is serious matter to be given a prison sentence. For many young Aboriginal and Torres Strait Islander men, particularly in communities, prison is simply seen as a rite of passage. 26 percent of the inmate population are Indigenous⁴. There is a concern regarding a sense of complacency about imprisonment.
5. Until the underlying issues in communities are addressed, criminals are simply being released from prison into the exact same environment which had caused their criminal behaviour in the first instance.
6. People who have been incarcerated are subjected to increased marginalisation and have substantially fewer employment opportunities⁵. Furthermore, contact with the criminal justice system, whether resulting in incarceration or otherwise, increases social exclusion and results in increased financial costs for the offender⁶. Poverty is a precursor to criminal activity, hence why incarceration is contributing to this cycle of crime.

PENALTIES AS A FORM OF DETERRENCE

ATSILS supports Aboriginal and Torres Strait Islander communities and commends initiatives to reduce criminal activity. It is our view that the key to supporting communities and

² Australian Institute of Health and Welfare, *Closing the Gap Clearing House Diverting Indigenous offenders from the criminal justice system* Resource sheet no. 24 (online) December 2013

<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129545614>

³ Australian Institute of Health and Welfare, *Closing the Gap Clearing House Diverting Indigenous offenders from the criminal justice system* Resource sheet no. 24 (online) December 2013

<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129545614>

⁴ Brown, David (2013) 'Justice reinvestment: the circuit breaker?' *Insight*, Issue 8, pp. 36-38.

⁵ Australian Institute of Health and Welfare, *Closing the Gap Clearing House Diverting Indigenous offenders from the criminal justice system* Resource sheet no. 24 (online) December 2013

<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129545614>

⁶ Australian Institute of Health and Welfare, *Closing the Gap Clearing House Diverting Indigenous offenders from the criminal justice system* Resource sheet no. 24 (online) December 2013

<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129545614>

reducing criminal activity is to address the underlying causes of same, rather than simply increasing the risks of incarceration and penalties for criminal behaviour.

Increasing penalties has repeatedly been proved to not deter crime⁷. As stated by former Western Australia Supreme Court Judge Christine Wheeler QC:

"We assume it (prison) deters people from crimes - that is, that people think, 'I better not commit this crime because I might get three years...'

*Deterrence works for people like you and me, who think about consequences and would not commit the offences anyway. It doesn't work for drug addicts, it doesn't work for alcoholics, it doesn't work for people who are mentally ill."*⁸

Our experience is that an inordinate amount of crime is committed on the spur of the moment – often accompanied by excessive alcohol (or drug) consumption. Little thought is given to consequences at the point in time of the commission of the offence.

One of the most reliable and comprehensive studies into the effects of increased prison sentences is the study conducted by the NSW Bureau of Crime Statistics in February 2012. This study considered the extent to which the probability of arrest; the probability of imprisonment; and the duration of imprisonment; impacted on crime rates in New South Wales during 1996 to 2008; and arrived at three main conclusions:-

1. A higher risk of arrest, and a higher risk of incarceration, are greater deterrents to crime than a longer incarceration sentence;
2. An increased incarceration sentence does not lead to a reduction in crime; and
3. The effects of income on criminal activity were far greater than the effects of the criminal justice system.⁹

In relation the third point, the report found that a 10 per cent increase in household income resulted in an estimated 19 per cent reduction in property crime and 15 per cent reduction

⁷ Andrew Trotter and Harry Hobbs "The Great leap Backward: Criminal Law Reform with the Hon Jarrod Bleijie" Sydney Law Review, Volume 36:1 2014

⁸ Quoted from article "Former Judge backs Prisoner's View on Overcrowding" by Sean Rubinsztein-Dunlop updated 3 July 2014 (online): <http://www.abc.net.au/news/2014-07-02/austrian-prison-overcrowding-female-populations-growing/5567610>

⁹ NSW Bureau of Crime Statistics, "The effect of arrest and imprisonment on crime" February 2012

in violent crime. Further, the report stated that the long-term elasticity of property crime with respect to income, was more than 14 times larger than the effect a one per cent increase in the probability of being arrested¹⁰. Clearly, income and economic well-being have a much stronger effect on criminal activity than increasing penalties or the risk or severity of incarceration.

JUSTICE REINVESTMENT

Our view is that to achieve long-term sustainably safer communities, government reform needs to address the underlying causes of criminal behaviour through justice reinvestment measures. Justice reinvestment is about investing in education, housing, healthcare and jobs, rather than correctional facilities¹¹. Justice reinvestment has the potential to attract wide bipartisan support if implemented properly. The majority of people are either frustrated that government is not investing enough into education, housing, healthcare and jobs in communities, or frustrated that the 33,000 odd inmates in Australia¹² cost Government around \$3 billion per annum¹³ yet recidivist rates remain high. Justice reinvestment addresses both of these concerns by investing in community based programs to address the underlying causes of criminal activity, whilst saving tax payers the cost of incarcerating offenders, and also increasing community safety.

Certain states in Australia, particularly Victoria, have seen success in types of justice reinvestment. The Melbourne's Neighborhood Justice Centre facilitates housing, mental health, financial counselling and drug and alcohol programs for offenders¹⁴. An evaluation of the program revealed that offenders were 14 per cent less likely to go on and offend after

¹⁰ NSW Bureau of Crime Statistics, "The effect of arrest and imprisonment on crime" February 2012

¹¹ David Brown, Melanie Schwartz and Laura Boseley "The Promise of Justice Reinvestment" (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

¹² Sean Rubinsztein-Dunlop "Australia's prison system overcrowded to bursting point with more than 33,000 people in jail" Yahoo Mail (online) July 3, 2014 <<https://au.news.yahoo.com/a/24372917/australias-prison-system-overcrowded-to-bursting-point-with-more-than-33-000-people-in-jail/>>

¹³ Brown, David (2013) '[Justice reinvestment: the circuit breaker?](#)' *Insight*, Issue 8, pp. 36-38.

¹⁴ Hugh de Kretser *How to break the cruel cycle of indigenous imprisonment* The Australian (online) 27 September 2013 at: <http://www.theaustralian.com.au/national-affairs/opinion/how-to-break-the-cruel-cycle-of-indigenous-imprisonment/story-e6frgd0x-1226727879531?nk=b3132263a353fb1864e9fdc08ce2e4f3>

completing a program, than if they had been sent to prison¹⁵. Offenders who completed similar programs at three other Victorian courts were 20 per cent less likely to reoffend¹⁶. Offenders who were processed through the NSW Drug Court were 37 percent less likely to reoffend¹⁷. ATSILS had several clients who were successfully able to obtain treatment for a mental illness through the Special Circumstances Court, rather than be processed through the criminal justice system. Sadly, a number of therapeutic-based courts have been defunded in recent years in Queensland – such was disappointing, both from the personal perspective of offenders, in assisting them to turn their lives around, but also from the wider community perspective, of safer communities. The Murri Court for example was said to “only” have a recidivism rate on a par with those processed through the standard courts. However, given that the cohort of offenders referred to this court were on average in the higher recidivism category to begin with – recidivism rates comparable to the overall cohort was actually a success. A fact which we suspect got lost in translation.

The National Indigenous Drug and Alcohol Committee, Australian National Council on Drugs, released a report prepared by Deloitte Access Economics in 2012 which is relevant to justice reinvestment. This report made the following findings in relation to diverting nonviolent Indigenous offenders from prison to community residential rehabilitation services:

1. It is \$111,458.00 cheaper to therapeutically treat an offender in a community residential rehabilitation service rather than incarcerate the offender.
2. The offender’s health and mortality improves from receiving therapeutic treatment in a community residential rehabilitation service rather than incarceration.
3. If 1600 non-violent Indigenous offenders were treated in community residential rehabilitation service rather than incarcerated, the states and territory’s would save a total of \$340 million per year.

¹⁵ Hugh de Kretser *How to break the cruel cycle of indigenous imprisonment* The Australian (online) 27 September 2013 at: <http://www.theaustralian.com.au/national-affairs/opinion/how-to-break-the-cruel-cycle-of-indigenous-imprisonment/story-e6frgd0x-1226727879531?nk=b3132263a353fb1864e9fdc08ce2e4f3>

¹⁶ Hugh de Kretser *How to break the cruel cycle of indigenous imprisonment* The Australian (online) 27 September 2013 at: <http://www.theaustralian.com.au/national-affairs/opinion/how-to-break-the-cruel-cycle-of-indigenous-imprisonment/story-e6frgd0x-1226727879531?nk=b3132263a353fb1864e9fdc08ce2e4f3>

¹⁷ Hugh de Kretser *How to break the cruel cycle of indigenous imprisonment* The Australian (online) 27 September 2013 at: <http://www.theaustralian.com.au/national-affairs/opinion/how-to-break-the-cruel-cycle-of-indigenous-imprisonment/story-e6frgd0x-1226727879531?nk=b3132263a353fb1864e9fdc08ce2e4f3>

4. If just 100 non-violent Indigenous offenders were treated in community residential rehabilitation service rather than incarcerated, the savings would be enough to run 20 rehabilitation centres.

In 2008, 73 per cent of Indigenous prisoners were recidivist offenders. If this rate were to be dropped by 10 per cent, it has been estimated that this would save Government more than \$10 million per year just in terms of incarcerating¹⁸. This figure does not take into consideration the savings that would flow from real investment in education, housing, healthcare and jobs in communities for all people. Nor does this figure take into consideration the indirect benefits that would flow to Aboriginal and Torres Strait Islander people and communities, from having fewer people incarcerated. Just as one example, 20% of Aboriginal children have either a parent or carer currently incarcerated, or who has been incarcerated¹⁹.

INTERNATIONAL APPROACH

The USA corrections budget is more than \$60 billion per year²⁰. In the last 20 years, spending on prisons in the USA has increased more than 300 per cent, compared to a 125 per cent increase on education²¹. What is perhaps most concerning is that notwithstanding the US government's enormous investment into the corrections system, the USA has an extremely high recidivist rate with two thirds of prisoners having spent previous time in prison²².

Various USA states have responded to these statistics by calling for more justice reinvestment approaches. The justice reinvestment approach of other countries including the USA, UK and New Zealand, has received wide-spread bipartisan support²³. In New Zealand, the Deputy Prime Minister and Finance Minister under a National Party

¹⁸ David Brown, Melanie Schwartz and Laura Boseley "The Promise of Justice Reinvestment" (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

¹⁹ Brown, David (2013) '[Justice reinvestment: the circuit breaker?](#)' *Insight*, Issue 8, pp. 36-38.

²⁰ David Brown, Melanie Schwartz and Laura Boseley "The Promise of Justice Reinvestment" (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

²¹ David Brown, Melanie Schwartz and Laura Boseley "The Promise of Justice Reinvestment" (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

²² David Brown, Melanie Schwartz and Laura Boseley "The Promise of Justice Reinvestment" (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

²³ David Brown, Melanie Schwartz and Laura Boseley "The Promise of Justice Reinvestment" (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

(Conservative) Coalition, Bill English, recently described prisons as a ‘fiscal and moral failure’ and flagged that no further prisons would be constructed²⁴. The attraction of more conservation right-wing politicians and government parties are the ideas of fiscal responsibility and increasing public safety²⁵. Republican Kansas State Senator John Vratil has said:

“If we do not address the problem today, we are effectively deciding to spend hundreds of millions of dollars on future constructions and operation of more prisons”

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Justice reinvestment in the USA has so far seen excellent results. For example, in 2004 Connecticut cancelled the construction of a new prison, saving \$30 million in the process²⁷. Of this saving, \$13 million has so far been invested in community and neighbourhood-based programs which are spearheaded by members of the community and are aimed at reducing crime²⁸. There has also been an investment in post release assistance and reduced parole and probation caseloads, which resulted in fewer probation violations and therefore lower recidivist rates²⁹. Obviously a proper analysis of the effect of justice reinvestment on recidivist rates takes time before conclusions can be drawn, however the fiscal savings are immediate³⁰.

In the UK, several justice reinvestment initiatives are being implemented to address their over-populated prisons³¹. In June 2011, the Institute for Public Policy Research released a report titled ‘Redesigning Justice’ which conducted a case study of the London Borough of

²⁴ David Brown, Melanie Schwartz and Laura Boseley “The Promise of Justice Reinvestment” (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

²⁵ David Brown, Melanie Schwartz and Laura Boseley “The Promise of Justice Reinvestment” (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

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³¹ David Brown, Melanie Schwartz and Laura Boseley “The Promise of Justice Reinvestment” (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

Lewisham to analyse how justice reinvestment may operate³². The report noted that 518 adult offenders were released into Lewisham during 2009/10 at a cost of 2.8 million pounds³³. All of these offenders had served sentences of less than 12 months, the majority of which were committed for non-violent crimes³⁴. The local social services of Lewisham had capacity to offer reparative and rehabilitative services to all of these offenders, at a much lower cost than imprisonment³⁵. Based on these findings, the report recommended that sentences of less than six months should be replaced with community based sentences, and that the local custody budgets for these offenders be devolved to local councils³⁶. Further, local authorities should assume the responsibility for reducing offending, and that local crime reduction work should assume probation services³⁷.

One of the key factors in the approach of the USA and the UK is that justice reinvestment measures typically involve budgetary devolution³⁸. The UK devolution is from central to local government and the US is from federal or state to country administrations³⁹. This devolution process acknowledges the essential part that local community organisations, NGOs, church and welfare agencies, and the private sector, play in addressing the causes of criminal activity⁴⁰.

NATIONAL ABORIGINAL & TORRES STRAIT ISLANDER LEGAL SERVICES SUBMISSION

The National Aboriginal and Torres Strait Islander Legal Service (“NATSILS”) is the national peak body for state Aboriginal and Torres Strait Islander Legal Services, such as ATSILS.

³² David Brown, Melanie Schwartz and Laura Boseley “The Promise of Justice Reinvestment” (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

³³ David Brown, Melanie Schwartz and Laura Boseley “The Promise of Justice Reinvestment” (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

³⁴ David Brown, Melanie Schwartz and Laura Boseley “The Promise of Justice Reinvestment” (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

³⁵ David Brown, Melanie Schwartz and Laura Boseley “The Promise of Justice Reinvestment” (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

³⁶ David Brown, Melanie Schwartz and Laura Boseley “The Promise of Justice Reinvestment” (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

³⁷ David Brown, Melanie Schwartz and Laura Boseley “The Promise of Justice Reinvestment” (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

³⁸ David Brown, Melanie Schwartz and Laura Boseley “The Promise of Justice Reinvestment” (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

³⁹ David Brown, Melanie Schwartz and Laura Boseley “The Promise of Justice Reinvestment” (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

⁴⁰ David Brown, Melanie Schwartz and Laura Boseley “The Promise of Justice Reinvestment” (2012) *The Alternative Law Journal*, 37(2), pp. 96-102.

Indeed, in my capacity as our Organisation's Chief Executive Officer, I am the current Chairperson of that Organisation. In March 2013, NATSILS provided a detailed and thoroughly researched submission to the Senate Legal and Constitutional Affairs Committee, which highlighted the value of justice reinvestment in addressing the rising imprisonment rate in Australia, and the over-representation of Aboriginal and Torres Strait Islander peoples in custody. For your convenience, please find a copy of this submission attached.

We support the views of NATSILS and endorse their submission in response to the Legislative Assembly's aspects of the inquiry, in particular:-

1. Key social and economic contributors to crime;
2. The effectiveness of crime prevention strategies and
3. National and international models in addressing criminal activity.

I close by once again thanking the Committee for this opportunity to have input into this very important area. I also take this opportunity to thank Ms Julia Anderson, our Law and Justice Advocacy Development Officer, for her assistance with the original draft of this submission. If required, we would be only too pleased to provide additional information to the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Shane Duffy', written in a cursive style.

Shane Duffy

Chief Executive Officer