

# Making justice work: introducing justice reinvestment

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In 2000, it took the horrific death in custody of a 15-year-old Aboriginal boy locked up for stealing pens, liquid paper and paint worth less than \$90 for the then CLP Government to roll back its mandatory sentencing for property offences regime. The boy's death became the marker of the arbitrariness and dangerousness of mandatory sentencing in the Northern Territory.

In an ominous demonstration of its forgetfulness, the Northern Territory government introduced a new mandatory sentencing regime for 'violent crime' on 1 May 2013.<sup>1</sup> It features alongside a swarming 'tough on crime' package, including mandatory alcohol rehabilitation,<sup>2</sup> alcohol protection orders which will re-criminalise public drunkenness,<sup>3</sup> and indefinite detention for sex offenders.<sup>4</sup>

The new mandatory sentencing for violent offending is distinct from its 1990's counterpart. It also won't apply to young people in the same way it will to adults. Nevertheless, it adds to an existing suite of mandatory sentencing provisions already in operation and will only see more people going to jail, and more people going to jail for longer.

In this article we overview why these measures will fail to stop crime – even though they come with a multi-million dollar price-tag. Instead, we advocate a Justice Reinvestment approach, and explain how it could be implemented in the Northern Territory.

## Mandatory sentencing: it didn't work then and it won't work now

Over the last 30 years Australia's prison population has tripled, growing four times the rate of the national population.<sup>5</sup> And the rates of imprisonment in the Northern Territory are the highest of all: the Territory has 826 prisoners per 100 000 adults, which is five times the national average<sup>6</sup> and nearly seven times the proportion in Victoria.<sup>7</sup>

The new mandatory sentencing comes at a time when our prisons are bursting at the seams. In the ten years from 2002 to 2012, our imprisonment rate rose a staggering 72%.<sup>8</sup> We have well over 1500 people in prison. With a new 1000 bed prison to open in 2014 at a cost of \$495 million, we will have to keep bulldozer-worthy Berrimah prison open just to cope at significant additional cost. On current trends, the Territory will need another 1000 bed prison by 2016. How many more prisons can we afford, and more importantly, what other services will we not be able to afford to pay for our obsession with locking people up?

Research has unequivocally demonstrated that imprisonment fails to deter, rehabilitate, meet public concerns or make communities safer.<sup>9</sup> Instead, incarceration actually increases the likelihood of reoffending through harmful criminalisation, damage

to mental health, a loss of social connectedness and diminishment of employment prospects.

Despite this, the 'tough on crime' mantra continues to dominate political discourse and legislative reform. The reintroduction of mandatory sentencing in the Northern Territory is a good example of this. Mandatory sentencing laws are arbitrary and disproportionate because the courts have far less scope to take into account serious social or personal disadvantage.

Mandatory sentencing also removes a key incentive to plead guilty. A defendant charged with a crime that attracts a mandatory penalty, and receiving no sentencing discount for their plea of guilty, cannot be blamed for taking their matter to trial. This will only clog our already over-stretched courts.

We also know from past experience that Aboriginal people bear the brunt of 'tough on crime' policies. In the Territory, 83% of adults in prison are Aboriginal, despite being only 30% of the population.<sup>10</sup> If more people will be going to prison, we can expect more Aboriginal people to be going to prison.

Yet we also know that Aboriginal Territorians are more likely to experience high levels of poverty, inadequate housing, health and education, unemployment, drug and alcohol abuse, overrepresentation in child protection, family abuse and a loss

of connection to community and culture. With an evidence base showing mandatory sentencing is costly and doesn't deter or make our communities safer, it is high time we asked if there is another way.

## Something worth investing in: justice reinvestment

Justice Reinvestment is a new approach to tackling the social and economic cost of crime. It derives from the US and captures the

deep disillusionment with nearly three decades of popular punitive approaches to law and order ... and gives expression for more social and cost effective strategies to rebuild local communities blighted by crime and social dysfunction.<sup>11</sup>

Against the back-drop of soaring prison rates and the global financial crisis, Justice Reinvestment is gaining worldwide prominence. Since the policy was first coined in 2003,<sup>12</sup> 16 US states have signed up with the Council of State Governments Justice Center to implement the Justice Reinvestment model, with others also pursuing Justice Reinvestment through other means.<sup>13</sup>

Justice Reinvestment is an evidence-based, fiscally-rational, locally-responsive approach. At its core, it is about reinvesting money usually poured into corrections and prison budgets into education, housing, healthcare, jobs, rehabilitation and non-custodial sentencing programs instead.

Importantly, it is a local, bottom-up and place-based approach. It is not a one-size fits all model. From NAAJA's point of view, this methodology is especially important in the context of meeting Aboriginal needs.<sup>14</sup> Justice approaches must

be locally adapted and empower Elders and community leaders. Justice Reinvestment provides a framework to do this.

Justice Reinvestment involves four components:<sup>15</sup>

- 1) **Analysis and mapping:** using a data-driven methodology to discern the causes of high crime rates in particular communities. It also involves mapping 'community assets' that are a source of social cohesion and strength;
- 2) **Generating savings without compromising public safety:** by increasing bail and sentencing flexibility, removing mandatory sentencing, and decriminalizing 'victimless' crimes;
- 3) **Taking these savings and reinvesting it:** creating localised justice reinvestment plans based on specific community needs, with strong consultation and ownership of local communities; and
- 4) **Monitoring and evaluation:** through data-analysis and local oversight to ensure projected results are being achieved.

To look at one US example, the implementation of Justice Reinvestment in Texas has seen a marked decrease in juvenile crime, serious property, violent and sex crimes, murder and billions of dollars of savings.<sup>16</sup> And it is now starting to gain traction here. The Senate Legal and Constitutional Affairs Committee is currently conducting an inquiry into the 'value of a justice reinvestment approach to criminal justice in Australia'. It is noteworthy that various Northern Territory individuals and organisations have made submissions and given evidence calling for Justice Reinvestment to be implemented here.

## Implementing justice reinvestment in the Northern Territory

There are some indicators of what Justice Reinvestment could look like in the Territory.

NAAJA's Indigenous *Throughcare* Project is an example of a successful JR approach.<sup>17</sup> *Throughcare* provides intensive pre and post release rehabilitation and reintegration services for Aboriginal prisoners and juvenile detainees. This involves providing intensive case management to support prisoners meet transitional needs such as linking back with employment, education, health, life skills, and helping them to reconnect with family and community. In its three years of operation the project is making a real difference. As well as helping clients get their life back on track, only 13% of our clients have returned to prison whilst they have been part of our program. This is far below the almost 50% recidivism rate in the Territory. The project is also well and truly paying for itself. If we keep just four people out of jail for 12 months, we are paying for the annual cost of the project. With only four *Throughcare* caseworkers for the entire Top End, additional staff would mean we could assist a lot more clients.

Here are six ways that the Northern Territory government can implement JR policies:

First, a boost in 'preventative financing' is required in the provision of education, health, employment and housing services to address the root causes of systemic disadvantage in high-crime communities. Moreover, localised and community-based initiatives such as law and justice groups require funding and support from the Territory government.

Second, local programs that address local problems need to be

developed from the ground up. Take the problem of family and domestic violence. A justice reinvestment strategy might redirect funds from incarceration towards culturally-appropriate community education and awareness raising programs, boosting early intervention and prevention services for those at risk of offending (especially children who have witnessed or been victims of family violence), creating community rehabilitation programs (such as for drug and alcohol dependency), creating family counseling and mental health services, and running men's cooling off shelters.<sup>18</sup>

Third, money usually spent on incarcerating people should be redirected to improve community-based culturally relevant rehabilitative programs. We urgently need to invest in developing and resourcing culturally relevant counseling programs for Aboriginal people. Two examples of this are: how we still use psychological and psychiatric assessment tools that are not appropriate for Aboriginal people; and how prison-based treatment programs do not provide

interpreters, excluding many Aboriginal people from being able to participate. Community based and rehabilitative programs are not only cheaper, but also serve the community's interests by addressing the causes of offending.

Fourth, we need to change anti-therapeutic, compliance-focused policies and practices that lead to excessive and pointless incarceration. Mandatory sentencing is one example, as is mandatory rehabilitation and the proposed alcohol protection orders. As we await a new Bill to introduce alcohol protection orders, it is worth pre-empting the human and economic implications of police arresting and detaining alcoholics who haven't committed offences other than breaching a police order not to drink. The strict compliance approach to the supervision and monitoring of parole is yet another example of punitive practices leading to unnecessary incarceration. Too often, technical breaches of parole, such as failing to report or consuming alcohol, lead to revocation of parole. In

2011, of the revocations that resulted in reincarceration, only five revocations followed from reoffending while 41, or 89%, were as a result of conditional breaches of parole. This practice, coupled with legislation that requires 'street time' to be served upon revocation, impacts on the number of people returning to custody and the number of people remaining in custody, choosing to serve their full time.

## Conclusion

How do we make justice work? The answer to this question is not found in spending millions of dollars locking up the very people we have failed as a community, only to eventually release them back into the same poverty, social dislocation and lack of opportunity that they came from. Let's not wait for more tragedies to teach us this lesson, again. We need to look to the evidence, and look to approaches such as justice reinvestment that provide the framework for addressing the underlying causes of crime. ●

## Endnotes

1. *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013*. See also, Department of the Attorney-General and Justice, *Factsheet: Sentencing Amendment (Mandatory Minimum Sentences) Act 2013* (22 March 2013) <[http://www.nt.gov.au/justice/policycoord/documents/lawmake/2013/Fact\\_sheet\\_Sentencing\\_Amendment\\_\(Mandatory\\_minimum\\_sentences\)\\_Act\\_2013.pdf](http://www.nt.gov.au/justice/policycoord/documents/lawmake/2013/Fact_sheet_Sentencing_Amendment_(Mandatory_minimum_sentences)_Act_2013.pdf)>.
2. Alcohol Mandatory Treatment Bill 2013. A copy of the Draft Bill can be found here: <[http://www.health.nt.gov.au/library/scripts/objectifyMedia.aspx?file=pdf/83/98.pdf&siteID=1&str\\_title=Alcohol%20Mandatory%20Treatment%20Bill%202013.pdf](http://www.health.nt.gov.au/library/scripts/objectifyMedia.aspx?file=pdf/83/98.pdf&siteID=1&str_title=Alcohol%20Mandatory%20Treatment%20Bill%202013.pdf)>. A copy of the Explanatory Statement can be found here: <[http://www.health.nt.gov.au/library/scripts/objectifyMedia.aspx?file=other/84/00.docx&siteID=1&str\\_title=Explanatory%20Statement%20-%20Alcohol%20Mandatory%20Treatment%20Bill%202013.docx](http://www.health.nt.gov.au/library/scripts/objectifyMedia.aspx?file=other/84/00.docx&siteID=1&str_title=Explanatory%20Statement%20-%20Alcohol%20Mandatory%20Treatment%20Bill%202013.docx)>.
3. David Tollner MLA, 'New Powers For Police to Crack Down on Booze Crimes' (Media Release, 130510, 10 May 2013) <<http://newsroom.nt.gov.au/index.cfm?fuseaction=printRelease&ID=10748>>.
4. *Serious Sex Offenders Act 2013* (NT).
5. National Aboriginal & Torres Strait Islander Legal Services (NATSILS), Submission No 72 to the Senate Legal and Constitutional Affairs Committee, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia*, March 2013, 4 <<https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=e9cd9483-e275-467f-b0c9-2ba1cb3b2d1b>>.
6. Australia's national incarceration rate is 169 per 100,000 adult population. The NT rate is currently 843 per 100,000. See: Australian Bureau of Statistics, *Corrective Services Australia, December Quarter 2012*: <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4512.0Main%20Features2December%20Quarter%202012?opendocument&tabname=Summary&prodno=4512.0&issue=December%20Quarter%202012&num=&view=>
7. Steering Committee for the Review of Government Service Provision, Productivity Commission, Report on Government Services (Commonwealth of Australia, 31 January 2013) Ch 8 Corrective services, Tables 8A.1 <[http://www.pc.gov.au/\\_data/assets/pdf\\_file/0008/121769/11-government-services-2013-chapter8.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0008/121769/11-government-services-2013-chapter8.pdf)>.

# Making Justice Work in the Northern Territory

'*Making Justice Work*' brings together a wide range of groups from the community, social services and legal sectors with a common interest in effective responses to crime in our community. Groups taking part in the campaign have agreed to work together to promote evidence-based approaches to 'law and order' and community safety.

The campaign has no political affiliations. Its members are prepared to work with the Northern Territory Government, Opposition and Independents to develop sound policy and proposals for law reform.

We are committed to making the justice system work to protect the community.

To join *Making Justice Work*, or for more information, contact Priscilla Collins on (08) 8982 5100 or at [priscilla.collins@naaja.org.au](mailto:priscilla.collins@naaja.org.au).

## Members:

North Australian Aboriginal Justice Agency	Criminal Lawyers Association of the NT
Northern Territory Legal Aid Commission	Central Australian Aboriginal Legal Aid Service
Top End Women's Legal Service	ANTaR
Northern Territory Council of Social Services	Darwin Community Legal Service
Central Australian Aboriginal Alcohol Programmes Unit	Katherine Women's Information and Legal Service
Larrakia Nation	Association of Alcohol and Other Drug Agencies NT Inc
Mission Australia	Domestic Violence Legal Service
NT Shelter	Aboriginal Medical Services Alliance NT
North Australian Family Violence Legal Service	Northern Territory Council of Churches
Central Australian Youth Justice	

8. Australian Bureau of Statistics, *Prisoners in Australia – 2012*. See: <http://www.abs.gov.au/ausstats/abs@.nsf/Products/138443A6EDB15748CA257B3C000DCA24?opendocument>
9. See eg Mirko Bagaric and Theo Alexander, '(Marginal) General Deterrence Doesn't Work: And What It Means for Sentencing' (2011) 35 *Criminal Law Journal* 269, 283.
10. Productivity Commission, above n 6.
11. David Brown, Melanie Schwartz and Laura Boseley, 'The Promise and Pitfalls of Justice Reinvestment' (2012) 37(2) *Alternative Law Journal* 96.
12. Susan Tucker and Eric Cadora, 'Ideas for an Open Society: Justice Reinvestment' (2003, Open Society Institute), cited in Brown et al, above n 5, 96.
13. Brown et al, above n 10.
14. See eg conclusions of NSW Ombudsman, *Addressing Aboriginal Disadvantage: The Need to Do Things Differently* (October 2011), 2.2 cited in Brown et al, above n 10.
15. NATSILS, above n 5, 22-4.
16. See: NATSILS, above n 5, 25-6.
17. Ibid 3-4.
18. See further, North Australian Aboriginal Family Violence Legal Service, Submission No 55 to the Senate Legal and Constitutional Affairs Committee, *Value of a Justice Reinvestment Approach Criminal Justice in Australia* March 2013, 6 < <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=8cfbd2d5-c3e6-400d-b54f-c5f79522e53e>>.