Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

14 March 2013

Dear Sir / Madam

I submit this written submission as an independent expert on the subject of prisons in contemporary Australian society.

I will state the basis for my authority, and then address the terms of reference that I feel competent to contribute to.

1. **Summary *Curriculum Vitae***

I am the Director of Justice Health Services in the Australian Capital Territory (ACT). I have responsibility for the provision of clinical services to adults and young persons in detention, in the ACT.

I am a Public Health Physician with national and international experience in prisoner health. I have worked with the World Health Organization (WHO) and the European Committee for the Prevention of Torture - "CPT"; missions to Hungary and the United Kingdom). Most recently, I have help discussions with the Western Pacific Regional Office of the WHO on "Prisoner Health is Public Health" (March 2013). I am an international leader in the field of application of harm minimisation to the prison environment.

I have visited health services at prisons in over 20 countries, and have a distinguished publication record with over 100 peer-reviewed publications since 1987, and a number of book chapters. I am a founding member of the Editorial Board of the International Journal of Prisoner Health.

I have an appointment with the School of Medical, Australian National University (Professor, Level E), and maintain an active teaching commitment through co-ordinating the post-graduate Custodial Medicine unit for the Master of Forensic Medicine at Monash University.

I resumed active clinical practice in 2007, developing the primary care model for adult and juvenile persons in detention in the Australian Capital Territory. Among the initiatives that have been initiated at regular medication audits (focussing on proper prescribing of analgesic and sedating medication), and commencement of treatment for hepatitis B and hepatitis C infected persons.

I am an advocate for the full implementation of all harm minimisation modalities for prisoners, at the threshold of a decision by the ACT Government to allow a regulated injecting equipment exchange in the ACT prison.

I believe that the strongest point that I bring to the following submission is 16 years of continuous service to prisoner health, as an independent health practitioner, but with an appreciation of the strengths and weaknesses of what I refer to as the "Correctional Enterprise". It is a learned experience based firmly in human rights principles.

The Committee's Terms of Reference

The value of a justice reinvestment approach to criminal justice in Australia, with particular reference to:

(a) the drivers behind the past 30 years of growth in the Australian imprisonment rate

Australia has not been able to redress the long standing disproportion of Aboriginal citizens in custody. In fact this point made stridently by the Royal Commission into Aboriginal Deaths in Custody, is exacerbated year upon year. Despite prolonged periods of prosperity, and evidence of reduction in most classes of crime, the incarceration rates in most jurisdictions increases, and increases disproportionately for Aboriginal Australians, and women. There is now a demographic pressure that Australia is about to confront – incarceration is skewed toward younger population groups, and Aboriginal Australia has a very young 'demographic'. Unless the growing number of young Aboriginal Australians can be engaged in education and prepared for useful employment, and provided the circumstances for safe relationships, healthy sexuality and reliable housing – the real possibility of an Aboriginal 'criminal' explosion is upon us.

(b) the economic and social costs of imprisonment

The Productivity Commission provides data on the direct costs of Australia's enchantment with the custodial enterprise. Yet these costs must be massive underestimate. Health costs (except for Western Australia (WA)) would not be factored in – as the data are provided by the Departments of Corrective Services, and only in WA is the health service funded directly by Corrective Services. (This is a separate issue, somewhat connected to the broader issue of Australia's response to incarceration). The inter-generational costs are not factored in – the children of prisoners, too often become the prisoners of the future – data from New South Wales Inmate Health Surveys, 41% of young offenders had had a parent in custody; data from Quilty *et al* 4% of Australian children have a parent in custody; 20% of Aboriginal children have had a parent in custody.

(c) 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

I have already referred to the issue of disproportionate incarceration, and importantly that the disproportion is growing disproportionately. The Australian Bureau of Statistics reports this dispassionately every quarter. The most comprehensive report on mental illness in Australian prisoners is Allnut, Butler *et al* (Centre for Health Research in Criminal Justice, Justice Health (NSW)). Professor Susan Hayes (University of Sydney) is the pre-eminent international expert on the interactions of the criminal justice systems and intellectual disability. I am not aware of any systemic study of hearing impairment and criminality, but that is probably the important point – it could be a "silent epidemic" in more ways than we appreciate.

(d) the cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures

Incarceration should be the institution of last resort, but as mental asylums were reduced, poor houses closed, convents no longer appealing, the military no longer press-ganging (preferring a double Masters or a PhD to fire missiles) .... My point is that prison developed in the 18th and 19th centuries along-side a number of alternate institutions, some coercive, some therapeutic, some compassionate. Today, society has diminished responses to disorder, illness and behavioural deviation – prison is asked to fulfil roles it was never

evolved to do. When relationships within families lead to physical and sexual abuse, which leads to destruction of trust relationships, which then leads to behaviours that lead to school exclusion ..... drug mis-use ..... police interventions ..... prison. This is an all too frequent trajectory. The starting point varies, the journey varies, the extreme outcome is the same.

(e) the methodology and objectives of justice reinvestment

Departments of Corrective Services' budgets have ballooned in recent years. Partly because the technology of prisons has improved and is more technically sophisticated, partly because of a regressive industrial environment maintained by correctional officers (with over-staffing and leave rorts being institutionalised), and partly because of a regressive reward system where failure (measured as re-incarceration within a brief period from release to freedom) bolsters the number of prisoners and prison budgets are directly linked to the bed-state. Justice Reinvestment starts from a position that the economic model, simplified above, is 'flawed', and that the simplest approach to regain sensible proportions to the custodial enterprise, is to (arbitrarily, but initially modestly) reduce the budget of correctional services, and direct these funds to the social welfare determinants of contact with the criminal justice system. How this is best achieved in a realistic time-frame is the subject of work that Dr Jill Guthrie (ANU) and Mick Gooda (The Social Justice Commissioner) are chaperoning (separately).

(f) the benefits of, and challenges to, implementing a justice reinvestment approach in Australia

There are as yet no demonstrated benefits of Justice Reinvestment in Australia. There are clues to the potential benefits from the United Kingdom and United States of America studies. When laid against the certainty that the current custodial enterprise projects, the challenges faced to the creation of an Australian body of evidence supporting (or otherwise) Justice Reinvestment, is stark.

(g) the collection, availability and sharing of data necessary to implement a justice reinvestment approach

The Australian National University is well positioned to lead in these domains. I defer to Dr Jill Guthrie to provide support for this premise, through the submission that she is co-ordinating.

(h) the implementation and effectiveness of justice reinvestment in other countries, including the United States of America

ditto (as per (g))

(i) the scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments

The Federal Government has an ongoing interest in the criminal justice system, through the Attorney-General. The Corrective Services and Juvenile Justice departments are essentially jurisdictionally based, with inconsistencies typifying the Australian experience, rather than adoption of 'best practice' where it is recognised. The Constitution is silent on the conduct of the 16 detention systems operated by the jurisdictions (Each with its own adult and juvenile systems); not to mention immigration detention. Section 120 of the constitution merely sets out the administrative arrangements for Federal prisons – sparing the Commonwealth from establishing a Federal Prison system (as exists in most other countries with federal governance, with the notable exceptions of Brazil and Germany). If the Commonwealth does not get actively involved in Justice Reinvestment at the very outset of the movement's development, history teaches that their will be jurisdictional approaches (with New South Wales and the Australian Capital Territory leading), and exceptionalism being loudly stated by jurisdictions that will not make any commitment to Justice Reinvestment.

I would be pleased to make a verbal submission to the Committee, if invited.

Yours sincerely

Professor Michael Levy