Submission to the Senate Legal and Constitutional Affairs Committee re
Value of a justice reinvestment approach to criminal justice in Australia

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Please find my submission to the Inquiry into the value of a justice reinvestment approach to criminal justice in Australia.

I am writing this submission as an individual who has been involved with Aboriginal and Torres Strait Islander people, supporting their fight for justice, recognition and reconciliation since 1982.
I came to Australia in 1963, of French and Dutch heritage, and have been an Australian citizen since 1964.

I have been part of consultations with Aboriginal and Torres Strait Islander Elders and members of service organisations since 1997 and particularly since 2008 on the subject of reducing the over-imprisonment of Aboriginal and Torres Strait Islander people.

My submission is informed by the fact that I am a founding member, former President, Vice President and Secretary of ANTaR Qld Association Inc,.
I am also part of the founding group of Project 10% Queensland Ltd, and a former Director.

Terms of Reference – I have done my best to address terms (a) to (g)

(a) the drivers behind the past 30 years of growth in the Australian imprisonment rate;
(b) the economic and social costs of imprisonment;
(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;
(d) the cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures;
(e) the methodology and objectives of justice reinvestment;
(f) the benefits of, and challenges to, implementing a justice reinvestment approach in Australia;
(g) the collection, availability and sharing of data necessary to implement a justice reinvestment approach;
(h) the implementation and effectiveness of justice reinvestment in other countries, including the United States of America;
(i) the scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments; and
(j) any other related matters.

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

*** Internal** - causes of increased imprisonment rates for A & TSI people - Changes in society made mainstream society and material goods more attractive whilst the cross-generational

trauma and loss of social cohesion lead to more unrest and loss of identity, confusion about roles and expectations and more access to alcohol.

*** external** – a general rise in the use of imprisonment across English speaking democracies. In spite of continued statements about the importance of evidence-based approaches to public safety and general law and order, there has been a growing criminalisation of marginalised groups and a reliance on imprisonment as a way to responding to the angst generated by sensationalised media reporting of violence and lawlessness. This led to such high rates of imprisonment in the USA that it was distorting state budgets and a new approach was desperately needed. Hence the rise of Justice Reinvestment.

*** general** – a lack of a coordinated and consistent approach based on a partnership between the people living in the communities most affected by crime, the agencies working to reduce crime and violence and to help communities stabalise and develop a workable social cohesion, and state and commonwealth government policies and funding arrangements.

(b) the economic and social costs of imprisonment;

* **There are many financial costs** resulting from imprisonment of a member of Aboriginal and Torres Strait Islander families.

These include loss of income, of support for childrearing whilst other family members earn money, costs for visiting the imprisoned person which can be crippling for people on basic centre-link payments, a need for car transport due to the isolation of prisons, leading to driving without a license, unregistered cars etc – secondary costs and offences trigged by the needs for maintaining links with the person/people in prison.

*** There are also social costs** – note there can be some benefits from the imprisonment of an out-of-control person for a while, but there are nearly always more effective, and usually cheaper in the long run, possibilities to safeguard the community and help the individual regain control over their life.

These costs include loss of a male role model for boys and girls – given that there are 6 arrests for Public Order Offences for every arrest which involves violence – imprisoned people are normally still viable parents, uncles and aunties for their extended families.

The increasing imprisonment of women, 60% increase between 2000 and 2010, ABS (2010)(*Prisoners in Australia)* Cat No 4517.0 has social consequences for many in the extended families. First, the continuous strip searching imposed in Queensland women's prisons, can re-traumatise the many women who have suffered sexual violence and abuse. Secondly, a woman going to prison does not normally take the children with her when sentenced to the most common, six month sentence. She loses her children who are taken into care, and usually her accommodation as she cannot pay the rent whilst she is in jail. When she finishes her sentence she has no accommodation so she cannot get her children back – in many cases she never manages to get them back. This increases her trauma and grief and greatly increases the likelihood of her re-offending and her children becoming *at risk*.

The increasing rate of detention of A & TSI young people in youth detention, 64% in the rate per 100,000 from 2000 – 2010, Richards,K and Lyneham, M (2010) Monitoring Report 12, *Juveniles in Detention in Australia, Australian Institute of Criminology.*
This is a key area for every person I have heard discussing priorities. Children whose parents have few parenting skills and who are struggling with poverty are at risk of neglect. In West End, Brisbane supplying young people with vouchers for food locally brought an immediate

drop in petty thieving, the kids were hungry! Children and young people living in homes where there are fights, adults who are themselves struggling with life, will choose the streets with all the perils that come with that decision. Sometimes, they will get themselves arrested to have a good feed, a wash and a safe place to sleep. Money is found to keep them in detention, but not to set up well-staffed and well-run centres where they can chill out for a few days.

The young people are those considered most at risk, and also who can benefit most from appropriate support. Many of them have parents or extended family members in prison or coping with a whole variety of fines, often mental health problems and poor literacy.

Elders want an urgent focus on maternal health, early childhood development, child safety and support for families and young people. They want support redirected to helping families who were having difficulties, to work out how to cope better instead of taking the kids away and paying foster parents to look after them. They also want resources to support '*at risk'* individuals, increase their resilience, support culture and strengthen families and communities to improve community wellbeing.

(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;

There was a long list of causes identified by Elders and service organisation workers for the over-representation of Aboriginal and Torres Strait Islander imprisonment. Many of them were not increased criminal behaviour by Aboriginal and Torres Strait Islanders but rather their increasing criminalisation by the impact of government policies and the way some police implemented the laws and regulations. I came to Australia in 1963, of French and Dutch heritage, and have been an Australian citizen since 1964. Consultations in 2009 02010 and ongoing.

There was, and is, great concern at the seemingly unstoppable growth in the imprisonment rates of Aboriginal and Torres Strait Islander men, women, young people and even children. These imprisonment rates are also increased because Aboriginal and Torres Strait Islander people are often also plagued disproportionally by very high levels of mental ill-health – often from transgenerational trauma, cognitive disabilities from foetal alcohol syndrome and significant hearing loss caused by untreated ear and other infections.

*** Continuing and expanding criminalisation of Indigenous people through the impositions of fines** for non-criminal behaviour: fines which people cannot afford to pay, which eventually ends up with them being jailed for non-payment of fines and emerging with a criminal record. There are many non-intended consequences of the increasing use of fines. *These hardships included financial stress, loss of mobility due to driver's license suspension or car registration cancellation, imprisonment for both fine default and secondary offending (such as unlicensed driving) emotional distress and social exclusion. Reducing the unintended impact of fines, Current initiatives paper 2, January 2011 Indigenous Justice Clearing House*.

*** The use of the Move-On powers seem to weigh most heavily** on groups such as Aboriginal and Torres Strait Islanders. In my own suburb of West End, non-Aboriginal people drinking alcohol in a park are unlikely to attract police attention, yet Aboriginal people are very likely too. Such interactions can also quickly lead to anger and a charge of obscene language and assault, being taken to a police station or watch house, and in the case of Mulrunji Doomadgee in 2004, a very sudden, and unexplained, painful death.

In Queensland Arrests for Public Order Offense in 08-09 were around 6500, for Breach of Domestic Violence Order 1000+, for Drug offenses just under 1000 and the same for Traffic and Related Offences: Sources QPS Data 2009-10.
Comments at our meetings noted that the implementation of Move-On powers, Breach of DV orders and Traffic Related orders again seemed to act against Indigenous people. Breaches are prosecuted even when there are good reasons not to, traffic offences occur when people cannot possibly find the money to get a licence and do the necessary supervised driving.

*** The number of women prisoners has been rising rapidly** with the consequent effect of more Indigenous children being put into care – which also highly increases their likelihood of going to detention and then prison themselves. Since 2000 – 2010 there has been a 64% increase in the rate per 100,000 of Aboriginal and Torres Strait Islander young people going to juvenile detention. Richards,K and Lyneham, M (2010) Monitoring Report 12, *Juveniles in Detention in Australia, Australian Institute of Criminology,*

The Inquiry Members will have all these facts in front of them – the major question is what to do about them.

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

When we visited communities in 2009 – 2010 we asked them: *Are you concerned about current imprisonment rates?* We always received a very strong *YES.*

Then we asked them: *What works to reduce imprisonment rates?*
What would work if it were properly resourced on a long term basis? and *What is missing?*
The answers to these questions lead to the concept of ***five areas of influence*** where there are real opportunities to make a difference.

1. At risk groups, including young people

∗ Leadership from Aboriginal and Torres Strait Islander communities in working out solutions for their unique situations

∗ An urgent focus on maternal health, early childhood development, child safety, and support for families and young people

∗ Resources to support 'at risk' individuals, increase their resilience, support culture and strengthen families and communities to improve community well being

Reducing time in remand would reduce imprisonment at a stroke, would cost less than paying for people in prison, and with effective services would also help general community life.
Townsville community meeting, 2010

2. Contact with police

∗ Will and action to change the culture of policing to develop positive policing that builds trust and mutual respect as an investment towards a strong, healthy community

∗ Increased accountability in policing, justice and correctional services, supported by ongoing cultural education across the public sector

∗ Support Elders and other Aboriginal and Torres Strait Islander leaders in teaching culture and traditional law

3. Remand and sentencing

∗ Change bail conditions and/or provide housing for homeless and transient men, women and young people.

∗ Reform charging and court procedures to radically shorten remand times.

∗ Appropriate treatment for people with mental health problems who come into contact with the justice system

Mental Health is a major factor in increasing imprisonment, since de-institutionalisation. Prisons may detox inmates but not rehabilitate them-
Rockhampton Community meeting. 2010

4. In-prison programs

∗ Support for culturally relevant programs that are shown to be successful

∗ Individual programs based on enabling each prisoner to reintegrate into society on release

5. Post-release support

∗ Sufficient supported accommodation for people to readjust to life outside and become functioning members of society

∗ Increased support for Elders, Justice Groups and community organisations to help people reintegrate into society and reduce the risk of re-offending

∗ Increase cultural and healing programs for post-release prisoners to benefit from alcohol and drug rehabilitation for prisoners post-release

*** People also wanted to know what other people are doing which they think is having some positive impact – with the details of how to contact these people and discuss whether their ideas could perhaps be useful in a different context and in other communities.**

As a result the book, funded by a $5,000 donation by the Queensland Society of Friends ***Wundirra,*** *Standing in the Light of Aboriginal and Torres Strait Islander People* was put together as a collection of positive stories based round the ***five areas of influence.***

Edited by Megan Williams, and with the support of Murri Watch, ATSIWLAS and ANTaR Qld, published in 2011 by Project 10% Queensland Ltd, the colourful 96 page booklet shows that there are solutions and that changes can happen as Mick Gooda, Aboriginal and Torres Strait Islander Commissioner wrote on the back cover:

The stories of community solutions are examples of how Aboriginal and Torres Strait Islander people in Queensland are self-determining, governing and participating in reducing over-incarceration of Aboriginal and Torres Strait Islander people.

- In attachment 3, Overview of Organisations in Wundirra-3mb.xls.pdf we have made a table of the organisations covered by the book and the main areas they work in. This gives an overview of some of the programs that already exist in the *Five areas of influence which make* a difference.
  A copy of Wundirra is also being sent by mail to the Secretariat for the members of the Inquiry.

*** Re the cost and availability of alternatives to imprisonment there are several systemic problems which make it hard to use the known effective programs and to develop the ones which are missing:**

*** The insistence of Commonwealth and State governments on a Top-Down but uncoordinated approach to planning and implementation.**

This results in a Snakes and Ladder jungle for Aboriginal and Torres Strait Islander organisations whose worthwhile program has to find short-term funding amongst the plethora of grants available none of which can quite fit the actual, effective activities being carried out.

Another problem with this method of funding is that there is rarely money available for proper evaluation – establishment of base line date and then ongoing monitoring throughout the activity/program on a regular basis.

*** The continued refusal of funding agencies to accept that the people who are affected by a problem, eg overimprisonment of their members and lack of community safety, are the ones who can work out the most effective ways to reduce and eventually solve the problems.**

They may need support and help; they may need extra skills and some new concepts offered from successful interventions elsewhere, but still they are the ones who should be at the centre of the initial planning.

*** The tendency of governments at all levels to pander to the so-called *Law and Order* lobby.**

When I asked the then Shadow Attorney General, Jarrod Bleijie, how he measured the strength of the lobby and how he compared them to the people who preferred a more preventative approach, he seemed annoyed and unable or unwilling to answer my question. There rarely seems enough money to pay for consistent, effective support for young families at risk, or teenagers at risk, yet money can be found to build and staff more prisons and detention centres and house 'criminals' there at a cost of over $269 a day (2010 figure)

*** Distorted allocation of funds caused by the difference between long-term infrastructure funding, eg for prisons, and socalled short-term funding for programs.**

Funding for programs to help the people *at risk of contact with the criminal justice system* is on an annual, or if you are very lucky, a three year basis, funding for prisons.

Funding contracts with private prisons, agreements with Prison Officer unions are all on a much longer term and therefore soak up money which could be more effectively spent on reducing imprisonment rates and improve community safety and well-being.

(e) the methodology and objectives of justice reinvestment;

As I understand it the key objective of Justice Reinvestment is to reduce high imprisonment rates **whilst** at the same time improving community safety and well-being.

*** Some discussion as to what that actually means in practice, and establishment of specific timelines and objectives is essential. The holding of these discussions should be consistent with the methodology of JR from the very beginning.**

The methodology of Justice Reinvestment, JR, is:

A decision of the three levels of government, Commonwealth, State and Local **to work together with key stakeholders** – the people most affected by the crime in their community **- to agree on an objective and to work together to achieve this objective.**

A key principle is that the people most affected by the issue, should be accepted as key stakeholders, the grassroots approach, and that their ideas about what needs to be done should be priorities – with the governments and other major agencies acting as supporters, and/or suppliers of resources – such as skill , personnel, funding rather than in their more usual role of decision makers.

Because of the key principle of the grassroots approach any planning and implementation must be focussed on specific areas – a principle which fits very well into Aboriginal and Torres Strait Islander cultures.

An agreement and to establish key data, to be used as base-line information, for consistent and effective evaluation of the project.

*** Are the methodology and objectives of Justice Reinvestment congruent with Aboriginal and Torres Strait Islander cultures and current living conditions?**

In October 2012, Project 10% Queensland hosted a Forum ***Aboriginal and Torres Strait Islander People and Justice Reinvestment.*** Twenty-five people attended .Many were Aboriginal and Torres Strait Islander community members from greater-Brisbane, as well from a range of Aboriginal and Torres Strait Islander organisations, mainstream services and private enterprises. A small number of people also travelled from the Wide Bay area to join the forum. To our knowledge, it was the first discussion focussed on the views of Aboriginal and Torres Strait Islander stakeholders about the possible relevance and usefulness of Justice Reinvestment to their people.

Facilitator Megan Williams, then put together a Discussion Paper:

Aboriginal and Torres Strait Islander People and Justice Reinvestment.

"The 'reinvestment' needs to be into Aboriginal and Torres Strait Islander culture."

Contents

Background
Justice Reinvestment - what is it?
Aims of Project 10%'s forum
Process of the forum
Group discussion findings:
1. Opinions about Justice Reinvestment
2. Concerns
3. Questions
4. Aboriginal and Torres Strait Islander cultural leadership
5. Processes
6. Next steps.

Conclusion
Acknowledgements

Conclusion

Project 10%'s Justice Reinvestment forum was valuable for sharing information, concerns and ideas. This discussion paper is designed to be distributed widely, to inform debate about Justice Reinvestment.

Forum participants advocated the important role of Aboriginal and Torres Strait Islander people in development and implementation of Justice Reinvestment in Australia. Leadership by and involvement of Aboriginal and Torres Strait Islander Elders and community-identified leaders should occur at all stages and levels of Justice Reinvestment.

Chances of success in Justice Reinvestment will be greater if existing strategies supported by Aboriginal and Torres Strait Islander people at local levels are invested in, with respect for what Aboriginal and Torres Strait Islander people see as 'what works'. None of this is new news!

However, the ongoing high rates of Aboriginal and Torres Strait Islander incarceration pose extreme risks to the health and survival of individuals, families and communities. It is without doubt that any opportunities to reduce Aboriginal and Torres Strait Islander prison numbers, such as Justice Reinvestment, should be urgently considered.

However, to do so without active Aboriginal and Torres Strait Islander leadership and community involvement could result in a worsening situation.

See attachment 3.

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

I hope that the benefits of a properly functioning JR approach in Australia are clear as are the challenges of achieving this. I have not gone into the challenges as most of them are obvious.

However, I will highlight one challenge which may not be so clear. The implementation of the Northern Territory Intervention and the passing of the Strong Futures Bills highlight a continued perception amongst Australian lawmakers that Aboriginal and Torres Strait Islander people are unable to contribute meaningfully to planning about about their own affairs.

However many times politicians talk about *evidence based* programs and Indigenous leadership, policies and implementation most seem to remain obstinately *top-down* in their approach. Many politicians appear unable to see this serious contradiction and inconsistency between their words and their actions.
Justice Reinvestment cannot be successful if such serious inconsistencies continue to be perpetuated.

Attachments:

- 1. 10 November 15 Project 10% Submission to Govt
- 2. 12 Feb 13 Justice Reinvestment Discussion Paper