Victorian Equal Opportunity
& Human Rights Commission

15 March 2013

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

Dear Madam/Sir

Submission to the Inquiry into the value of a justice reinvestment approach to criminal justice in Australia

The Victorian Equal Opportunity and Human Rights Commission (Commission) welcomes the opportunity to make a brief submission to the Inquiry into the value of a justice reinvestment approach to criminal justice in Australia.

The Commission is an independent statutory body that has functions under the *Equal Opportunity Act 1995* (Vic), the *Racial and Religious Tolerance Act 2001* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Our functions include dispute resolution, providing education about human rights and equality of opportunity, undertaking projects and activities aimed at eliminating discrimination and promoting human rights, conducting research, and providing legal and policy advice. In addition, the Commission has a role in reporting to the Victorian Attorney-General on the operation of the Charter and, at the request of public authorities, conducting compliance reviews.

The Commission is a member of the Victorian Aboriginal Justice Forum.

The Commission notes that corrective services are the responsibility of the states and territories, however we consider that the Australian Government can support and encourage justice reinvestment approaches through Council of Australian Governments (COAG) mechanisms.

The Australian Government can further support a justice reinvestment approach by driving improvements in the universal and specialist human services platforms that are funded through COAG agreements including schools, family support services, child protection and out-of-home-care, social housing, homelessness, mental health and drug and alchohol services. Aligning these approaches is important as many of the systemic drivers of the over-representation of Aborginal and Torres Strait Islander peoples in Australian prisons and youth justice detention arise from failures in these systems.

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The Commission supports the comments and recommendations contained in the submission of the Australian Human Rights Commission to this Inquiry. In particular we note that:

- ‘Justice reinvestment is an innovative, evidence-based criminal justice strategy that has the capacity to reduce imprisonment and its associated economic and social costs.
- Justice reinvestment is a powerful crime prevention strategy that can help create safer communities by investing in evidence based prevention and treatment programs. Justice reinvestment looks beyond offenders to the needs of victims and communities.
- Justice reinvestment should be targeted at high risk Aboriginal and Torres Strait Islander communities in the first instance due to the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.
- The needs of other vulnerable groups such as young people who offend, and people with cognitive impairment, psychosocial disability and hearing impairment should form part of the analysis of the characteristics of the imprisoned population in the trial communities. This information can help target appropriate programs in a justice reinvestment strategy’.[1]

THIS SUBMISSION

This brief submission focuses on the value of a justice reinvestment approach for tackling the over-representation of Aboriginal and Torres Strait Islander women in prison.

We note the over-representation of people with disabilities, including those with mental health disability, intellectual disability and Acquired Brain Injury in Victorian prisons, and in contact with the criminal justice system generally, however we do not address this directly in this submission.

The Commission also recognises the value of a justice reinvestment approach to youth justice, where Aboriginal and Torres Strait Islander young people, young people with disabilityies and those in contact with child protection and out-of-home care are significantly over-represented.

Aboriginal and Torres Strait Islander children are more likey to come into contact with police at a younger age, and are more likely to be serving a custodial sentence at a younger age than non-Aboriginal children in Victoria.[2] In 2010, 12.6 per cent of those on youth justice orders were Aboriginal or Torres Strait Islander despite being only 1.02 per cent of the Victorian population aged 10-19 years.[3]

In the same year, 78 per cent of those aged 10-12 with youth justice orders or who had experienced remand at this age were known to child protection services. Of these, 60 per cent were known [to child protection] before their seventh birthday’.[4]

Further, locational disadavantage is closely aligned with contact with the Victorian Youth Justice system. In 2010, ‘25 per cent of those on youth justice orders in Victoria came from 2.6 per cent of postcodes - this corresponds with earlier findings relating to the postcodes of adults on remand and prisoners in Victoria’.[5]

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[1] Australian Human Rights Commission, *Value of a Justice Reinvestment Approach Submission to the Legal and Constititional Affairs Committee* (2013) 1.
[2] Jesuit Social Services, Thinking Outside-Alternatives to remand for children summary report (2013) 14.
[3] Ibid 18.
[4] Ibid 14.
[5] Ibid.

JUSTICE REINVESTMENT AND KOORI WOMEN

As part of its commitments to the Victorian Aboriginal Justice Agreement 3, the Commission is currently researching Koori women's experiences of the justice system, particularly those who have been in prison.

This research is using a human rights and equal opportunity framework to understand the need for culturally appropriate diversionary programs for Koori women and to identify the potential cost savings to the community of such programs. The methodology includes interviews with Koori women in prison and post-release, analysis of sentencing and Corrections Victoria data, and interviews with key informants from community service organisations, legal representatives, the Children's Court and Magistrates' Courts, Victoria Police and Corrections Victoria.

Imprisonment rates

Victoria had the second highest proportional increase in the average daily Aboriginal and Torres Strait Islander imprisonment rate per head of population in the period September 2011-September 2012. Thus while our state still enjoys the lowest per capita incarceration rate, Aboriginal and Torres Strait Islander peoples are still significantly over-represented in our prison population.[6]

Further, the number of Aboriginal and Torres Strait Islander female offenders increased by 73 per cent in the five years between February 2008 and February 2013, compared to relatively steady numbers of non-Indigenous offenders.[7] 'Whereas Indigenous male offenders accounted for only 14 per cent of the total growth in male offender numbers, Indigenous female offenders accounted for all of the growth in female offender numbers.'[8]

Figure 1. Prisoner numbers Victorian prisons September 2012

Indigenous status	Number sentenced	Number unsentenced	Proportion unsentenced
Male Indigenous	269	62	18.7%
Male non-Indigenous	3464	838	19.5%
Female Indigenous	20	9	32.1%
Female non-Indigenous	224	84	27.4%
Total Indigenous	289	70	19.5%
Total non-Indigenous	3687	922	20%

Source: Corrections Victoria, 'Indigenous Female Prisoners: Overview of numbers and trends' Presentation to Aborginal Justice Forum 8 November 2012.

In Victoria, the total number of Aboriginal and Torres Strait Islander women in prison is low compared to other states, however it is increasing, and at a much higher rate than that for

[6] 1,564 per 100,000 adult Aborginal and Torres Strait Islander (male and female) adults. An increase of 17 per cent on the previous year. Australian Bureau of Statistics, *Corrective Services Cat 4512.1 September Quarter 2012* (2012) 7.

[7] The number of Indigenous female offenders increased from 79 to 137 in this period. Corrections Victoria, *Indigenous Offenders and Prisoners: Data Report to the March 2013 AJF* (Presentation to Aboriginal Justice Forum 14-15 March 2013).

[8] Ibid.

non Indigenous women.[9] Nationally, the rate of Aboriginal and Torres Strait Islander female imprisonment has grown by 58.6 per cent between 2000 and 2010.[10]

In February 2013, Aboriginal and Torres Strait Islander female prisoners represented nine per cent of all female prisoners in Victoria.[11] Further, the number of Aboriginal and Torres Strait Islander female prisoners on remand appears to be increasing at a rate higher than that for non-Indigenous women, and significantly faster rate than that of Aborginal and Torres Strait Islander male prisoners.

While at any one time around 30 Aboriginal and Torres Strait Islander women will be in prison in Victoria, information provided by prisoners in our research suggests that many women will cycle through the system multiple times, often on short sentences for low level offences, or on remand and then not sentenced.

Whilst at a fixed point in time around a quarter would be on remand, based on stories told to us by prisoners, we estimate that around three-quarters of Koori women that entered Victorian prisons last year would have been unsentenced upon reception (on remand). This suggests that these women are coming in and out of prison frequently, and that a proportion are likely to be discharged unsentenced having spent time on remand.

Costs

Preliminary findings from our research confirm previous studies that have noted the corrosive effects of imprisonment upon individuals and communities, as well as the fiscal impact of a growing population of Aboriginal and Torres Strait Islander women in contact with the criminal justice system and in prison.

Adult imprisonment is an expensive intervention, costing $338 per day, per prisoner in Victoria.[12] The lifetime/whole of government costs of long term contact with the criminal justice system are even more significant. Recent modelling by the University of NSW found that the institutional costs of a female Aboriginal offender in NSW with a history of homelessness, drug and alchohol misuse, family violence and mental illness to be in the order of $1,118,126.[13]

This does not include the cost of out-of-home care or kinship care (formal or informal) that often occurs when a mother serves a term of imprisonment. Many of the prisoners we interviewed for our research had a long history of contact with child protection, often as children and then as mothers. A number had children living with relatives in informal arrangements (a hidden cost). Other women were subject to child protection orders and their children were in out-of-home care (kinship care or residential care).

Out-of-home-care represents an additional financial impost to the Victoria Government in the order of $286 per day, per person (annually $104,443 per child). Overall, Victorian government expenditure on out-of-home-care services in 2011-12 was over $350 million

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[9] Between 2007 and 2012 the number of Koori women prisoners increased by 107 per cent from 14 to 28 prisoners, compared to a 27 per cent increase for non-Indigenous female prisoners. Corrections Victoria, *Indigenous Female Prisoners: Overview of numbers and trends* (Presentation to Aboriginal Justice Forum 8 November 2012).

10 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011* (2011) Productivity Commission, 4.133

11 Corrections Victoria, above n 7.

12 Total net operating expenditure and capital costs 2011-12. See Productivity Commission, *Report on Government Services 2013* (2013) Corrective Services 8.24.

13 See the case study of Hannah, in Eileen Baldry et al, *Lifecourse institutional costs of homelessness for vulnerable groups* (2012) Department of Families, Housing, Community Services and Indigenous Affairs 49-53.

with Aboriginal and Torres Strait Islander children significantly over represented in the out-of-home-care cohort.[14]

Entering the out-of-home-care system also comes at a significant personal cost to the families and children involved given the impact on the child of separation, poor outcomes for children in care and the intergenerational trauma caused by family breakdown and contact with the child protection system.

Youth justice costs are also considerable, particularly if children enter the system at a very early age. Recent research by Jesuit Social Services found that for their sample of 27 children who first experienced remand at 10 to 12 years, the total cost of custody in Victorian Youth Justice was over $3 million.[15] This does not include collateral costs including policing, court time, legal aid, or social services.

Addressing systemic drivers

It is our view that there is a need for a more comprehensive and effective approach to crime prevention and community safety that addresses the systemic drivers of increasing incarceration rates of Aboriginal and Torres Strait Islander women. These are well understood and include poverty, poor education outcomes, unstable housing, family violence and trauma.

For example the Victorian Family Violence Taskforce estimates that 'one in three Indigenous people are the victim, have a relative who is a victim or witness an act of violence on a daily basis in our communities'.[16] Further, a 2010 study found that 24 per cent of Victorian Aboriginal and Torres Strait Islander people over 25 years, living in households with children were a victim of threatened physical violence.[17]

Family violence and other stressors manifest across the life cycle, and across generations. This cycle is typified by periods in prison, which entrenches trauma, family breakdown, contact with child protection and out-of-home-care systems, homelessness, family violence, substance misuse and mental health episodes. These inform further contact with the criminal justice system, re-imprisonment, post-release breakdown, re-offending and re-imprisonment.

One of the clearest messages from the Koori prisoners we have interviewed is that systemic failures in the justice system, such as lack of viable Community Corrections Order options, refusal of bail, and absence of culturally appropriate diversionary and post-release options is driving re-offending. The other strong message is that failures in universal platforms (education and health, including mental health and drug and alchohol services) and limitations of specialist platforms (most notably family services, child protection and out-of home care, homelessness and housing) are driving increasing numbers of Koori women into prison.

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[14] As at 30 June 2011, in Victoria, Indigenous children were 14.9 times more likely to be in out-of-home care than non-Indigenous children. Australian Institute of Family Studies, *Child Protection Statistics for Aborginal and Torres Strait Islander Children* (2012). < http://www.aifs.gov.au/cfca/pubs/factsheets/a142117/index.html> at 15 March 2013.

[15] $3,046,560. Cost is from first ever youth justice custodial order to May 2012. Jesuit Social Services, *Thinking Outside-Alternatives to remand for children summary report* (2013) 14.

[16] Victorian Indigenous Family Violence Taskforce (2003) cited in State of Victoria, Department of Premier and Cabinet, *Report of the Protecting Victroria's Vulnerable Children Inquiry* (2012) Vol 2, 281.

[17] Of these, 87 per cent knew the perpetrator. State of Victoria, Department of Education and Early Childhood Development, *The state of Victoria's children 2009: Aboriginal children and young people in Victoria* (2010) cited in State of Victoria, Department of Premier and Cabinet, *Report of the Protecting Victroria's Vulnerable Children Inquiry* (2012) Vol 2, 281.

Compared to imprisonment and associated lifecourse institutional costs, programs to address the underlying causes of offending such as drug and alcohol abuse, mental health disability, family violence and intergenerational trauma cost significantly less.

For example, a cost-benefit analysis by the National Indigenous Drug and Alcohol Committee indicates that the long term savings for diversion to community based rehabilitation compared to prison are as high as $111, 458 per offender.[18]

Community benefits of justice reinvestment

The Commission notes and supports the comments of the Australian Human Rights Commission in their submission to this Inquiry. In particular we note:

- Justice reinvestment has a very strong community focus. It recognises that imprisoning or otherwise detaining a large proportion of the population weakens the community, creating the conditions for further crime.Research indicates that a 'tipping point'[19] may occur in communities once crime and incarceration reaches a certain point so that:
- High rates of imprisonment break down the social and family bonds that guide individuals away from crime, remove adults who would otherwise nurture children, deprive communities of income, reduce future income potential, and engender a deep resentment toward the legal system. As a result, as communities become less capable of managing social order through family or social groups, crime rates go up.[20]
- This is what we are seeing in many Aboriginal and Torres Strait Islander communities. For instance, research has shown that 20 per cent of Aboriginal and Torres Strait Islander children have a parent or carer in prison.[21] This can have intergenerational effects. Aboriginal and Torres Strait Islander prisoners are three times as likely as non-Aboriginal and Torres Strait Islander prisoners to have had a parent in prison as a child.[22]
- The negative impact of imprisonment of Aboriginal and Torres Strait Islander women on their children has also been noted as a concern by the United Nations Committee on the Rights of the Child in its Concluding Remarks on Australia's progress in implementing the Convention on the Rights of the Child.[23]

Justice reinvestment may be localised but it must be complemented by changes to the universal and specialist service platform to be effective

The relatively low numbers of Koori women in Victorian prisons is sometimes suggested as a reason for not investing in prevention, early intervention, pre-sentence diversion, and

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[18] National Indigenous Drug and Alcohol Committee, An economic analysis for Aboriginal and Torres Strait Islander offenders: prison vs residential treatment, Australian National Council on Drugs (2013) p xi. <http://www.nidac.org.au/images/PDFs/NIDACIpublications/prison_vs_residential_treatment.pdf > at 14 February 2013).

[19] D Rose and T Clear, 'Incarceration, Social Capital and Crime: Implications for Social Disorganization Theory' (1998) 36 (3) *Criminology* 441-80.

[20] D Stemen, *Reconsidering Incarceration: New Directions for Reducing Crime*, Vera Institute of Juvenile Justice, 2007. At http://www.vera.org/sites/default/files/resources/downloads/veraincarc_vFW2.pdf (viewed 14 February 2013).

[21] M Levy, *Children of Prisoners: an issue of courts to consider in sentencing* (Presentation to Federal Criminal Justice Forum, Canberra, 29 September 2008).

[22] Ibid.

[23] Committee on the Rights of Child, *Consideration of reports submitted by States parties under article 44 of the Convention- Concluding observations: Australia*, UN Doc CRC/C/Aus/Co/4 (2012) 17. <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf >at 14 February 2013.

post-release options for this cohort. In the context of this Inquiry it may also be used as an argument not to adopt a justice reinvestment approach for this group as on the face of it the economies of scale are not high enough to fund the actions in communities that would make a difference.

However, we consider that the low numbers in Victoria are a good reason to invest in communities to prevent initial contact with the criminal justice system and to urgently invest in programs that work for those already in the system.

Such investment would keep the outlay relatively modest for a significant community gain. In particular, targetted interventions to break the cycle of offending, including housing and casework support post-release are much cheaper than prison . For example, the Restart Program in Victoria has a daily unit cost of $25.70 per participant compared to $338 per day in prison.[24]

Further we submit that the number of Koori women at risk of entering the corrections system in Victoria is likely to grow due to demographic pressures. In Victoria, the Aboriginal and Torres Strait Islander population is growing rapidly, and has a very high proportion of children and young people. Children make up almost half of Victoria's Aboriginal and Torres Strait Islander population (43.5 per cent), almost double the proportion of children in the total population (23.6 per cent).[25]

This means that we have a valuable opportunity to "turn off the tap"' to prison by investing in improved educational outcomes, and so employment opportunities for young Koori people.[26] We can further break the cycle of disadvantage by supporting families to stay healthy and strong through early intervention and prevention. In the absence of a significant improvement on these systemic issues the pipeline of young Koori women in contact with the criminal justice system will continue to grow.

RECOMMENDATIONS

The Commission supports the Australian Human Rights Commission recommendations that:

1. The Australian Government in partnership with state and territory governments, funds justice reinvestment trials in selected Aboriginal and Torres Strait Islander communities where there is a high level of imprisonment. Pilots should be accompanied by a robust research and evaluation strategy.
2. The Australian Government and State and Territory governments commit to justice targets as part of the Closing the Gap Strategy.

However, given the geograhic profile of Aborginal Torres Strait Islander disadvantage, and the much higher engagement of Koori males compared to females with the criminal justice system generally, there is a risk that the particular needs of Koori women may not be met by such geographical targeting.

We therefore urge the Australian Government to complement such pilots with a stronger focus and investment in universal and specialist services, funded under National

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[24] Under the Restart program support commences three months prior to release. With a total case load of 50 women, the program offers long-term, safe and stable housing, with the option of permanent tenancy, guaranteed job and training pathway, a post-release package of wrap around support, and daily interaction in the initial three to four weeks following release. Funding for this program is due to expire on 30 June 2013.

[25] State of Victoria, Department of Premier and Cabinet, *Report of the Protecting Victoria's Vulnerable Children Inquiry* (2012) Vol 2, 288.

[26] Aboriginal students in Victoria generally have lower rates of literacy and numeracy, school attendance and school retention that non-Aborginal students. Victorian Auditor General's Office (2011) cited in Ibid 291.

Agreements to drive better outcomes for Koori women and children so as to minimise the harm that prison causes and to ‘turn off the tap’ of Koori women in contact with the criminal justice system by addressing the systemic drivers within and outside the criminal justice system that lead to the over-representation of Koori women in Australian prisons.

MORE INFORMATION

Thank you for the opportunity to make a submission to this Inquiry. For further enquiries please contact Manager Strategic Projects and Policy Unit on

Yours sincerely

Karen Toohey

Acting Commissioner