UNSW

Faculty of law

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

17 May 2013

Dear Secretary,

Value of a justice reinvestment approach to criminal justice in Australia

The members of the Australian Justice Research Project thank the Committee for the opportunity to give evidence to the inquiry and now enclose the Project's response to the question on notice posed by the Committee Chair, Senator Wright.

Yours sincerely,

Emeritus Professor David Brown
Chief Investigator
University of New South Wales

Professor Chris Cunneen
Chief Investigator
James Cook University

Melanie Schwartz
Chief Investigator
University of New South Wales

Professor Julie Stubbs
Chief Investigator
University of New South Wales

Courtney Young
Research Associate
University of New South Wales

Question on Notice:

"CHAIR: Yes. I do not have the article in front of me now, but I recollect there was an article this week reporting on the most recent Australian Institute of Health and Welfare statistics. I may be wrong on that. But there was an omission—data was not available for Western Australia or the Northern Territory in relation to one particular aspect, which highlighted for me the fact that we still do not even have consistent data across states, so we cannot nationally compare some of these figures. I will not ask you to go into it now, but I do have a question about the particular types of data you would identify as being really important to have. If you would not mind, could you take that on notice and feed that back to the committee: what would ideally be the data that is required for us to be able to have sufficient datasets to be able to look at responses? I will leave it at that. Thank you very much for your attendance today and for your evidence." [1]

Response from the Australian Justice Reinvestment Project:

A. Inadequacy of data collection in Australia.

The AJR Project argued in its submission to the inquiry that "the independent compilation of data is an essential first step to implementing justice reinvestment in Australia".[2] Current gaps in data collection, inconsistencies in data collection across the states and territories, and the limited availability of the data that is collected in the public domain are significant hurdles to the successful development of justice reinvestment strategies. As Professor Brown explained in evidence, the current focus on state and national data tends to hide the "selective and highly localised nature of the process".[3] Consequently, a preliminary list of examples of data for both adults and juveniles not currently available or accessible in Australia but which would be essential as part of a justice reinvestment approach include, but are not limited to, the following:

[1] Evidence to Senate Legal and Constitutional Affairs Committee, Parliament of Australia, Sydney, 1 May 2013, 64 (Chair).
[2] Australian Justice Reinvestment Project, Submission No 114 to Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Value of a justice reinvestment approach to criminal justice in Australia,* 15 March 2013, paragraph 40.
[3] Evidence to Senate Legal and Constitutional Affairs Committee, Parliament of Australia, Sydney, 1 May 2013, 63 (Professor David Brown, Chief Investigator AJR Project).

- Annual police detention figures (currently only provided every 4 years or so, and then only on one day) and reason for detention (intoxication, bail refused etc), broken down by state and territory, gender, age and by Indigenous and Non-Indigenous status.
- Annual total receptions in police custody, including by time in custody, broken down by state and territory, gender, age and by Indigenous and Non-Indigenous status.
- Annual reception figures for prisons/detention centres (ie total over year from all jurisdictions) broken down by state and territory, gender, age, legal status (remand/sentenced), and by Indigenous and Non-Indigenous status.
- All imprisonment rate figures (also juvenile justice detentions) broken down by state and territory, gender, age and by Indigenous and Non-Indigenous status.
- Levels of unemployment, broken down by state and territory, gender, age and by Indigenous and Non-Indigenous status, for imprisonment rates.
- Usual residential address of those imprisoned/detained (by postcode or other identifier).
- Proportion of the prison and detention populations with mental health issues, broken down by state and territory, gender, age and by Indigenous and Non-Indigenous status.
- Proportion of prisoners and juveniles in detention with drug and alcohol issues, broken down by state and territory, gender, age and by Indigenous and Non-Indigenous status.
- Percentage of prison and detention admissions due to probation and/or parole revocations, broken down by state and territory, gender, age and by Indigenous and Non-Indigenous status.
- Transition of young people subject to Care and Protection orders, to juvenile detention to prison, broken down by state and territory, gender and by Indigenous and Non-Indigenous status.

Data sources for juveniles are particularly lacking, leaving many basic questions about the juvenile detention population unanswerable. The fact that the AIHW Youth justice report focuses on characteristics of young people in custody or under community supervision 'on an average day' limits the capacity to fully appreciate the involvement of young people in the criminal justice system. Furthermore, over the last few years neither Western Australia nor the Northern Territory have complied with the National Juvenile Justice Minimum Data Set requirements meaning significant data gaps exist in the AIHW national reports. As a minimum, compliance with National Juvenile Justice Minimum Data Set requirements set by the AIHW should be ensured.

More generally, and as emphasised in the list above, it is important that data is collected to facilitate analysis of race and sex together, as presently, data is available from ABS for women or by race, but not both. This inhibits the identification of issues for Indigenous women (or men) separately.

Furthermore, work needs to be done on the Report on Government Services, Corrective Services KPIs. For example, for many years the "Access –Equity" categories have been noted as "To be developed". Questions need to be raised as to whether work is being done on this or whether it has been resigned to the 'too hard basket'.[4]

B. Reflections on experiences with data collection in the US

In the United States, the Bureau of Justice Assistance has provided significant technical assistance to states during 'Phase 1' of the implementation of justice reinvestment to collect and analyse criminal justice system data. Areas of focus for data collection include:

- crime rate statistics,
- arrest rates,
- conviction rates,
- prison populations, and
- community supervision data.

BJA provide:

> "Phase I: Analyze data, develop policy options, and adopt new polices.
> Sites receive intensive, onsite technical assistance from nationally recognized criminal justice policy experts and researchers to analyze crime, arrest, conviction, jail, prison, and probation or parole supervision data from the last five to ten years provided by state and/or local agencies; and analyze the cost-effectiveness of the correctional system's policies, practices, and programs designed to reduce recidivism and increase public safety."[5]

It is a pre condition of being selected as a Justice Reinvestment Initiative site that the state's criminal justice agencies be willing to provide individual-level data for analysis. As part of the state's site selection phase the availability and accessibility of individual-level data from each part of the criminal justice system (reported crime, arrests, court convictions, probation, prison, and parole) is

[4] See for example, Figure 8.7, Report on Government Services, Corrective Services KPIs.
[5] BJA, 'Justice Reinvestment Initiative (JRI)' *Bureau of Justice Assistance US Department of Justice* <https://www.bja.gov/ProgramDetails.aspx?Program_ID=92>.

assessed.[6] In the AJR Project's submission to the inquiry 11 specific areas of data, routinely required prior to the development of justice reinvestment in a state in the US, were identified. They included:

1. "Annual and monthly jail/prison admissions and releases for the last 5-10 years.
2. Average daily jail/prison population for the last 5-10 years.
3. Average length of jail/prison stay by offense type.
4. Composition of jail/prison population (e.g., breakdown by conviction offense, age, race, gender, etc.).
5. Recidivism rates.
6. % of population with mental health issues.
7. % of individuals cycling in and out of jail or prison more than twice a year.
8. % of pre-trial detainees.
9. % of admissions due to probation and/or parole revocation.
10. % of individuals released to post-release community supervision.
11. distribution of inmates by offense type."[7]

One difficulty Professor Cunneen identified in evidence concerns the fact that generally the "fine-grained information" available in the United States regarding rates of persons incarcerated from individual neighbourhoods is not available in Australia.[8] To this end, the AJR Project refers the Committee to the following source:

> Nancy La Vigne; S. Rebecca Neusteter; Pamela Lachman; Allison Dwyer; Carey Anne Nadeau (2012) 'Justice Reinvestment at the Local Level Planning and Implementation Guide' *Urban Institute BJA-Sponsored,* <http://www.urban.org/UploadedPDF/412233-Justice-Reinvestment.pdf>

Though the analysis is focused on city and county governments in the US, the emphasis on how to develop approaches for collecting local level data has direct application to the Australian context. Additionally, it provides some guidance with respect to the identification of relevant data sources and potential hurdles in data collection. In particular, the AJR Project refers the Committee to the report's identification of "Potential Data and Sources to Collect for a Local Justice Reinvestment

[6] BJA, 'Justice Reinvestment Initiative (JRI)' *Bureau of Justice Assistance US Department of Justice* <https://www.bja.gov/ProgramDetails.aspx?Program_ID=92>.
[7] Australian Justice Reinvestment Project, Submission No 114 to Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Value of a justice reinvestment approach to criminal justice in Australia,* 15 March 2013, paragraph 41.
[8] Evidence to Senate Legal and Constitutional Affairs Committee, Parliament of Australia, Sydney, 1 May 2013, 64 (Professor Chris Cunneen, Chief Investigator AJR Project).

Initiative" in Figure F on page 24, as a starting point for ascertaining pertinent data to collect and analyse.[9] (See Attachment A)

However, identification of relevant data is only a first step. Consistent collection procedures need to be used, and the data needs to be collated and made accessible in appropriate forms to the entities tasked with developing justice reinvestment strategies. For example, in San Francisco the Justice Reinvestment Initiative executed data use agreements with the Crime and Justice Institute (CJI), Adult Probation Department, Sheriff's Department (which included police department data), Superior Court, Pretrial Diversion Program and the Court Management System (CMS) Committee. The Department of Public Health provided aggregated summary data. The process then involved consultations "with each department individually to clearly understand and interpret the information received" following which "JRI consultants cleaned and organized the data received" and subsequently prepared multiple reports. [10] This ultimately facilitated the development of "a description of how individuals are involved in the San Francisco criminal justice system in order to support the Reentry Council in shaping policy options".[11]

C. Conclusion.

As noted in the submission to the inquiry, the AJR Project believes "the federal inquiry has the potential to make significant contributions to the advancement of data collection in Australia through:

a. the identification of the type of data that is currently collected by state and federal agencies,

b. the identification of any gaps in the collection of relevant data and statistics,

[9] Nancy La Vigne; S. Rebecca Neusteter; Pamela Lachman; Allison Dwyer; Carey Anne Nadeau (2012) 'Justice Reinvestment at the Local Level Planning and Implementation guide' *Urban Institute BJA-Sponsored,* 24 <http://www.urban.org/UploadedPDF/412233-Justice-Reinvestment.pdf>

[10] Reentry Council, 'Draft Strategies to Reduce Costs and Increase Public Safety in San Francisco' *Justice Reinvestment Initiative Reentry Council,* 4 December 2012, 2 <http://sfreentry.com/wp-content/uploads/2012/12/Agenda-7-Overview-of-Justice-Reinvestment-Initiative-and-policy-options-Dec-4-2012-discussion.pdf>.

[11] Reentry Council, 'Draft Strategies to Reduce Costs and Increase Public Safety in San Francisco' *Justice Reinvestment Initiative Reentry Council,* 4 December 2012, 2 <http://sfreentry.com/wp-content/uploads/2012/12/Agenda-7-Overview-of-Justice-Reinvestment-Initiative-and-policy-options-Dec-4-2012-discussion.pdf>.

c. the direction for the appropriate agencies to begin collecting the required data and statistics, and

d. the determination of an appropriate mechanism for collating and making the data and statistics available."[12]

It is clear that the collection of criminal justice system data across Australia needs to be reviewed, commencing with an assessment of what is currently available and not available nationally in ABS and AIHW reports. Subsequently, the development of new data collection mechanisms will be important to incorporate the more detailed and expansive data categories identified above into existing data sets. Ultimately, the collection, review and analysis of accurate, comprehensive and consistently comparable data is essential to the successful development of justice reinvestment in Australia.

[12] Australian Justice Reinvestment Project, Submission No 114 to Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Value of a justice reinvestment approach to criminal justice in Australia,* 15 March 2013, paragraph 43.