

National Family Violence Prevention Forum AIATSIS and CDFVR, Justice Reinvestment: a new strategy to address family violence

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I would like to begin by paying my respects to the Traditional Owner groups in the Mackay region, the Gia, Koinjmal, Ngaro and Yuibera peoples. I pay my respects to your elders past and present; to the ancestors and to those who have come before us.

I am a Gangulu man from Central Queensland. Gangulu country takes in what is known as the Dawson Valley area and extends to just east of the Carnarvon Gorge. Like many Aboriginal groups we have a matriarchal lineage and I am one of the lucky ones who only have to go back to my mother's mother, my grandmother to find out where our country is. My mother was raised in the Woorabinda mission and my father was born at Barabala, a little town about 30 kilometers from Woorabinda.

As is our practice, can I pass on from the Gangulu our greetings to the traditional owners of this region and acknowledge the fight you fight in keeping your culture alive.

I would also like to acknowledge Auntie Delma Barton.

In this acknowledgement I would like to pay tribute to the front-line family violence prevention workers here and acknowledge the important and complex work that you do. You are part of a very important workforce with high responsibilities in what can sometimes be extremely stressful and distressing work. I thank you for the work that you do and for your courage in working in this very important area of service delivery. You make an important contribution to human rights in this country.

The focus of my presentation today is on a prevention approach that - in my view - can have a beneficial impact on reducing family violence. Today I am going to talk about **Justice Reinvestment** – and argue its application in family violence prevention. In this presentation I am going to focus on Indigenous family violence; though the strategy of Justice Reinvestment can work in any community context or setting.

It is my view that faced with increasing rates of violence in Indigenous communities and escalating imprisonment rates - now is the perfect time for Governments to look for new ways to address an increasing problem.

Now is the time for governments to address family violence in Indigenous communities. This problem is not going away – in fact the data tells us that the violence rates are increasing.

Those of you who were at the family violence prevention conference in Perth would have heard the statistics I am about to cite. I will repeat them now - briefly. We need to come to terms with the nature and the extent of the family violence problem in order to know how Justice Reinvestment can be used to address the problems.

The 2009 *Productivity Commission Report* tells us that Indigenous people were hospitalised as a result of spouse or partner violence at **34 times** the rate of non-Indigenous people.¹ It also tells us that family violence escalates to homicide in Indigenous situations at rates that are **double** that of the non-Indigenous population.²

The data tells us that Indigenous women are **45 times** more likely than non-Indigenous women to be victims of domestic violence.³ And the homicide rates of Indigenous women are between **9 and 23 times** higher at different times in the life cycle than they are for non-Indigenous women.⁴

The statistics tell us that alcohol is a significant factor in Indigenous family violence.⁵ Hospitalisation rates for **all** alcohol related conditions were higher for Indigenous people than non-Indigenous people.⁶ And the homicide rates amongst Indigenous people who were drinking were much higher than the rates in the non-Indigenous population.⁷ The data tells us that there is more likelihood of significant harm when drinking occurs.

¹ Australia's Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Chapter 4.11 Family and community violence At:

<http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009/> (Viewed 23 April 2010)

² Australia's Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, p 98, table 3.10.1

³ Cunneen C., 'Preventing violence against indigenous women through programs which target men', (2002) 25(1) University of New South Wales Law Journal 242, p 242

⁴ Australian Bureau of Statistics, *4704.0 - The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, 2008. at:

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/39433889d406eeb9ca2570610019e9a5/8F08EF0297F11CC6CA2574390014C588?opendocument> accessed 5 September 2008

⁵ Australia's Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Chapter 10.3 Safe and Supportive Communities, Alcohol consumption and harm. At:

<http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009/> (Viewed 23 April 2010)

⁶ Australia's Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Chapter 10.3 Safe and Supportive Communities, Alcohol consumption and harm. At:

<http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009/> (Viewed 23 April 2010)

⁷ Australia's Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Chapter 10.3 Safe and Supportive Communities, Alcohol consumption and harm. At:

<http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009/> (Viewed 23 April 2010)

We also know that there are geographical patterns to Indigenous violence. From 1999 to 2005, the rate of Indigenous homicides in remote, outer regional and very remote areas was approximately **three times** the rate in major cities and inner regional areas.⁸

And finally, data from the Australian Bureau of Statistics tells us that violence in Indigenous situations has **escalated** in past decades. In 2002 nearly one-quarter of Indigenous people aged 15 years or over reported being a victim of physical or threatened violence in the previous 12 months; nearly **double** the rate reported in 1994.⁹

These data do not paint a very good picture but they do give us some indication of where to target our efforts.

So let's consider what we know from the data so far:

- Alcohol is significant.
- Remoteness is a factor.
- Violence escalates to homicide at high levels.
- Indigenous violence is much more likely to be directed to close family than to strangers.

This information tells us that there are some key areas where we should be targeting our efforts. And this is where Justice Reinvestment comes in.

In the *Social Justice Report 2009* my predecessor, Tom Calma, proposed 'Justice Reinvestment' as a possible solution to the over representation of Indigenous people in the criminal justice system.

I have continued Tom's work on Justice Reinvestment – advocating its implementation with the federal Attorney-General and with State Government Ministers. I will continue to advocate for this strategy and I am interested to know your views on whether you think the Justice Reinvestment approach could have a positive impact on preventing family violence.

So what is it?

Justice Reinvestment operates like this. A portion of public funds that would have been spent on covering the costs of imprisonment are instead diverted to local communities with high concentration of offenders. The money is then invested in community programs, services and activities that are aimed at addressing the underlying causes of crime in those communities.

⁸ Australia's Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Chapter 3, Headline Indicators. At: http://www.pc.gov.au/oid/headline_indicators/deaths_from_homicide_and_hospitalisations_for_assault (Viewed 5 September 2008)

⁹ Australian Bureau of Statistics, *4704.0 - The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, 2008. At: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/39433889d406eeb9ca2570610019e9a5/0264C2E6153BD0E6CA2574390014BF08?opendocument> (Viewed 23 April 2010)

For example, if crime in particular communities can be connected to problems with drugs and alcohol, then services are established to address these problems. If the drug and alcohol problems are symptoms of other issues like poor parenting, or family violence, then services are established to address these problems.

Justice Reinvestment is based on evidence that a large number of offenders come from a relatively small number of disadvantaged communities.¹⁰ The concentration of offenders logically suggests that there should also be commensurate concentration of services and programs to prevent offending in these communities.

Justice Reinvestment first emerged in the United States. It has been taken up by ten States in the US to reduce crime in identified high risk communities in these States. And it is interesting to note that it is not the democratic, liberal northern states who are taking up this approach. It is the southern republican States that see the social and economic benefits of Justice Reinvestment. Arizona, Oregon, Connecticut, Kansas, Michigan, Nevada, Pennsylvania, Rhode Island, Texas, Vermont and Wisconsin are now all implementing Justice Reinvestment.

Justice Reinvestment asks the question: is imprisonment good value for money? In the United States they have found that the answer is no. Imprisonment is not stopping recidivism and is having negligible impact on crime rates.¹¹

Demographic mapping in the US has identified 'million dollar' blocks where literally millions of dollars are being spent imprisoning people from certain neighborhoods. For example, for one neighborhood, *The Hill* in Connecticut, \$20 million dollars was spent in one year imprisoning just 387 people. *The Hill* is disproportionately made up of low income, African Americans.

So how is Justice Reinvestment relevant in the context of family violence? A Justice Reinvestment approach would target resources to rehabilitating offenders in communities where there is a high incidence of family violence. Resources would also flow across to victims and families because Justice Reinvestment is about resourcing whole communities. But I need to be up front here – Justice Reinvestment is about diverting money that would be spent on prisons and prison places so this approach would focus a degree of the resources on perpetrators. The rationale is to stop the causes of crime at their root.

I also want to say that obviously Justice Reinvestment options should only apply where there is possibility of rehabilitation. In many instances prison is the most appropriate place for violent offenders. However in instance were

¹⁰ S Tucker and E Cadora, *Ideas for an Open Society: Justice Reinvestment*, Open Society Institute (2003), p 2. At http://www.soros.org/resources/articles_publications/publications/ideas_20040106/ideas_reinvestment.pdf (viewed 12 October 2009).

¹¹ Justice Centre, *Justice Reinvestment: A project of the Council of State Governments Justice Centre* <http://justicereinvestment.org/states> (viewed 12 October 2009).

prison is not recommended, intensive rehabilitation may prove to be a more sustainable option for the long-term resolution of family violence.

What I like about Justice Reinvestment is that it provides opportunities for communities to take back local control. Justice Reinvestment is about developing measures and strategies that will prevent offending behaviour in the first place. The community has to be involved and committed to not only take some ownership of the problem but also to own the solutions. This is a human rights approach.

If done properly, a Justice Reinvestment approach provides offenders with a form of accountability to their community. When offenders are sent to prison, they are accountable to society in general. The offender is removed from the community and the family, only to return after a stint inside. This isn't the same as being accountable to the community in which the offending behavior occurs. Accountability to community is about making communities safer.

Let me give you an example of what Justice Reinvestment can look like in action. The case I am about to talk relates to work I have done with Canadian First Nation People on addressing men's violent behaviour. The Native Counselling Service of Alberta runs their own prison and within that prison they run a program called *Finding Your Warrior*. The program is based on the premise that a warrior is a protector and provider, not a perpetrator or abuser. Programs such as this one can be run outside of prisons too.

A key part of being accepted into the Warrior program is to accept one's guilt and admit to the crime. If offenders maintain their innocence they cannot participate. A core part of participating in the *Finding Your Warrior* program is to accept responsibility for one's behaviour and become accountable for one's actions. The program is all about behaviour change. It is a tough program – in fact one drop-out from the program wanted to be sent to prison instead of doing the program because he said prison was easier. It is a program that challenges behaviours and requires enormous commitment from participants. This kind of program would be a good fit for Justice Reinvestment.

The *Finding Your Warrior* program was recently evaluated by the Canadian Government which found that up to 80 percent of participants did not reoffend.

To some extent, Justice Reinvestment is about changing the narrative of crime prevention from one of punishment to one of focusing on what makes a safe community. Funding people to go to prison might make people feel safer; at least in the short term, but a far better way would be to stop the offending in the first place. I reckon it makes common sense to prevent offending rather than just build more and bigger prisons.

As I said earlier, Justice Reinvestment still retains prison as a measure for dangerous and serious offenders but it also recognises that incarcerating or otherwise detaining a large proportion of a population weakens the community, and creates the conditions for further crime.

There is an old adage in corrections policy – if you build it, they will come. That is, it won't be long before our new prisons are full too, because the government missed the opportunity to spend money at the front end or preventative end of the problem, rather than after the fact when offending has already taken place.

I also want to clarify a misconception that Justice Reinvestment will take money away from other services such as those for women and children – or from the victims of family violence.

This is not the case.

The beauty of justice reinvestment is that it shifts money away from imprisonment and into services for disadvantaged communities instead. The funding for Justice Reinvestment is not about shifting funds from other community resources and services – it is about shifting money from prison services. Justice Reinvestment services should **add** to existing resources and **enhance** resources that are available to victims as well as perpetrators of violence.

And we are talking about considerable sums of money. For example, in NSW it is estimated that if the current growth in prisoners continues, the government will need to build another new jail every two years. This will come at a cost of \$170 million dollars extra each year from 2015 onwards, just to run the prisons. This does not include the costs of building new prisons. So if Justice Reinvestment was to siphon just a portion of these funds, it would still make a significant contribution to redressing family violence problems at their root causes.

So does Justice Reinvestment work? Evidence from the United States tells us that it has been successful.

Imprisonment rates are dropping in the United States where Justice Reinvestment is being implemented. For example, there was a 72 percent drop in juvenile incarceration in Oregon after money was reinvested in well-resourced restorative justice and community service programs for juvenile offenders.

Texas reinvested \$241 million dollars in treatment programs and improved probation and parole services, instead of in prisons. There was a saving of \$210.5 million dollars in the 2008–2009 financial year and the Texan prison population stopped growing for the first time in decades.

So perhaps the next question we need to ask is can we do it in Australia?

Firstly we need to know where to address our efforts if we are to implement Justice Reinvestment.

Thorough demographic mapping of offending hasn't been done in Australia yet, but researchers such as Professor Tony Vinson have already identified

the most disadvantaged post codes in Australia¹² - many of these have higher than average Indigenous populations.¹³

For Justice Reinvestment to be successful it requires bipartisan support. It requires an agreement from both sides of politics on the urgency of reducing imprisonment, based on both their fiscal and social responsibility. Justice Reinvestment will have to be embraced at the state government levels where most of these services are managed and funded.

For Justice Reinvestment to be successful it also requires that government departments work together. For example, a pilot program would probably need the cooperation of the Courts, Police, Justice or Corrections systems, Community Services, Health, as well as NGOs and of course the community.

Justice Reinvestment also requires community involvement. As I said before Justice Reinvestment is about returning more control of justice to the local area. It will be imperative that Indigenous communities feel they have real engagement and that it is not just another policy imposition from government.

I am of the view that this is an area in which governments of all levels will have to improve their game. Currently there seems to be a mindset where the only engagement is government telling Indigenous people its views with precious little opportunity for communities to provide their views to government. This must be a cooperative effort.

Justice Reinvestment also requires the right support services and programs directed to the needs of local areas. In the context of family violence this might include drug and alcohol support, education and employment opportunities, anger and grief management, healing programs, support for families, healing for children, and opportunities to engage with culture. Such programs must also be adequately funded, with secure, long term funding.

Family violence is a social justice issue which requires a substantial response. Justice Reinvestment is such a response and it is something that I will continue to support in my term as Aboriginal and Torres Strait Islander Social Justice Commissioner.

Finally, I would like to relate another story from Canada. In Manitoba Canada, four First Nation groups make up a community called *Hollow Water*. This community devised a healing program to address sexual abuse. It is a 13-step healing process is based on the seven Midewin teachings of the Anishnabe people. The process holistically involves victims, victimizers, and their families and creates spiritual, physical, emotional, and intellectual benefits throughout the community.

Hollow Water has strong governance and the community, particularly the women, approached the Provincial Government with a proposal that – if

¹² T Vinson, *Dropping off the edge: the distribution of disadvantage in Australia* (2007). See also <http://www.australiandisadvantage.org.au/>.

¹³ T Vinson, *Dropping off the edge: the distribution of disadvantage in Australia* (2007).

perpetrators completed the program – they should be permitted to come back to the community, **if all of the community agreed**. This option was only available to perpetrators who pleaded guilty.

An independent evaluation found that the recidivism rate for offenders who had completed the *Hollow Water* healing program was 2 percent, compared to the national average of 13 percent for sex offenders. Value-added benefits include improved child health, more people completing their education, improved parenting skills, empowerment of individuals, broadening of community resources, increased community responsibility, return to traditional ceremony, a decrease in overall violence, and indications of overall healing of intergenerational pain resulting from colonization.¹⁴

Now, this program and this concept presented some challenges to me personally. I am a person who has always wanted to send all perpetrators to prison - or to do things that were worse! This notion of rehabilitation and sending perpetrators back to communities was so far out of the left field for me that one of the evaluators and I had ongoing robust discussions that lasted nearly four months.

In frustration, one of program evaluators finally said to me this:

First, she pointed out that robust evidence showed that sexual abuse in the community was significantly reduced, and I had to make a decision whether I was going to believe the evidence or not.

Secondly, she said that I had to come to terms with what I really wanted and she gave me the following options.

Do you want victims to be healed and to be safe?
Do you want communities to be healed and to be safe?
Do you want perpetrators to be accountable and rehabilitated?
Or do you just want to punish people?

If you just want to punish people you will continue to just send people to prison, but you probably won't achieve many of the other things.

I will leave you with these thoughts ladies and gentlemen. Thank you.

¹⁴ Couture J., Parker, T., Couture R., Laboucane P., *A Cost-Benefit Analysis of Hollow Water's Community Holistic Circle Healing Process*, Aboriginal Corrections Policy Unit, Solicitor General of Canada, 2001. At: http://www.eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_nfpb=true&_&ERICEExtSearch_SearchValue_0=ED459018&ERICEExtSearch_SearchType_0=no&accno=ED459018 (Viewed 13 May 2010)