**District and County Courts of Australia and**

**New Zealand Conference**

**Justice Reinvestment: accountability in action**

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**Acknowledgements**

It is with respect and gratitude that I acknowledge that we sit today on the lands of the Turrbal, Jagera, Yuggera and Ugarapul Peoples.

My people are the Gangulu from the Dawson Valley in Central Queensland. On behalf of my Elders I also pay tribute to your Elders, both past and present, for their continued struggle for their country and their culture.

Thank you to Judge Martin for the invitation to speak with you today. It is not every day that I speak to a room of 125 judges! It is a privilege to speak with you. Your astute legal knowledge and commitment to justice is crucial in helping us realise the human rights of Aboriginal and Torres Strait Islander peoples.

I want to start by giving you a brief outline of this position that I currently occupy, the Aboriginal and Torres Strait Social Justice Commissioner.

2013 marks the 20th year since this position came into being as a result of the Native Title Act, the Royal Commission into Aboriginal Deaths in Custody and a HREOC Inquiry into racial hatred.

Professor Mick Dodson was the first followed by Dr Bill Jonas, Dr Tom Calma and Ms Zita Antonios. When I first started in this position I was asked if any of these previous Commissioners had left any words of advice. I tell them ‘no’ but they all left really big shoes to fill. So it is with some trepidation and a big dose of humility that I began my work knowing that the bar has been set fairly high. What was going to be my agenda, my plan for these five years?

To begin with I have some statutory duties. I’m required to provide to the Australian Parliament an annual Social Justice Report and I also provide a report on Native Title. I’m also required to:

* review the impact of laws and policies with regard to Aboriginal and Torres Strait Islander peoples
* promote an Indigenous perspective on issues and
* monitor the enjoyment and exercise of human rights of Aboriginal and Torres Strait Islander Australians

But in a real sense, I’m handed these general directions and it’s up to me to sort out my priorities in terms of how I do what the legislation requires of me.

As Social Justice Commissioner I have only six staff, so I quickly realised that it would be unrealistic to pick even one of the myriad of challenges facing Aboriginal and Torres Strait Islander peoples - housing, health, education to name a few and expect to fix it by January 2015.

I believe that fixing these issues will require the intergenerational commitment of the whole nation.

So I travelled extensively and spoke with and listened to many individuals and communities across Australia: in urban, regional and remote settings.

I heard many stories and witnessed many things in Aboriginal and Torres Strait Islander communities that are heartbreaking and disturbing – particularly given that we live in one of the richest, most successful democracies in the world. It is simply unacceptable that Australia’s first peoples are the most vulnerable of our healthy, prosperous nation.

But I was also humbled by the many stories of resilience and hope. I witnessed Aboriginal and Torres Strait Islander communities working hard to raise the bar and not accept the status quo. I also met with many non-Indigenous people and organisations that are behind us all the way – people who want to walk and work with us to improve the life chances for Aboriginal and Torres Strait Islander peoples across Australia.

After listening and accepting the reality of the limitations of this position compared to the enormity of the task confronting us at the centre of my priorities is the belief that we need to firstly develop stronger and deeper relationships between Aboriginal and Torres Strait Islander peoples and the rest of the Australia.

Secondly, we need to develop stronger and deeper relationships between Aboriginal and Torres Strait Islander peoples and all levels of government.

And, perhaps even more importantly, we need to develop stronger and deeper relationships between ourselves as Aboriginal and Torres Strait Islander peoples

Relationships are built on understanding, dialogue, tolerance, acceptance, respect, trust and reciprocated affection.

Relationships are destroyed by misunderstanding, intolerance, and a lack of acceptance, a lack of dialogue, mistrust and a lack of respect.

Today I will introduce you to an idea that I believe has enormous potential in addressing one of the most urgent human rights issues facing Australia: the unacceptable overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system.

The idea is justice reinvestment.

But firstly, I think it is worthwhile to acknowledge that Aboriginal and Torres Strait Islander imprisonment rates are unacceptably high. Rather than go over the statistics again, let’s take a moment to think about the human impact of these numbers.

First and foremost, there is the impact on the victim. Let me be clear, the needs of victims, healing them, making them safe is always going to be a priority for me. But somewhere and at some time we have to look at the offending and often it is hard to get past the horrific damage that offenders perpetrate. However, we need to look at the causes of offending, what makes people do these things and what can be done to prevent offending the first place and then to prevent the repeat offending. Because if we do nothing at this end of the equation we will be condemned to forever repeating these cycles.

I do not make excuses for offending, especially violent crime but I do think there is more we can do to prevent crime and create accountability.

Part of preventing crime is acknowledging the impact of offending and imprisonment on the broader Aboriginal and Torres Strait Islander community. Offenders like victims in many cases are parents, aunties and uncles. They have important social and cultural roles in their communities. Removing these people from their communities can weaken struggling Indigenous communities further. This is even more destructive if they are returning from a stint of in prison without the necessary rehabilitation and community reintegration as is so often the case.

Research indicates that a ‘tipping point’ may occur in communities once crime and incarceration reaches a certain point. This means that such damage is done to the community that they are less able to manage ‘social order through family or social groups [and] crime rates go up’.[[1]](#footnote-1)

This is what we are seeing in many Aboriginal and Torres Strait Islander communities. For instance, research has shown that 20% of Aboriginal and Torres Strait Islander children have a parent or carer in prison. 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.

When I talk about justice reinvestment I like to set out two caveats. The first is that I’m not talking about not locking people up. There are some people, including some Aboriginal and Torres Strait Islander people, who need to be separated from society for a while. But let’s use prison as a real option of last resort.

Secondly, I prefer to talk about justice reinvestment as an opportunity to create safer communities, rather than just concentrating on reducing incarceration rates. I’m a fairly simple bloke so I figure if we can create safer communities it means less offending which in turn will mean less people going to jail.

To give you a perspective on the situation in our communities, a 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.

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.

It is tragic also that family violence escalates to homicide in Indigenous situations at rates that are double that of the non-Indigenous population.

The data tells us that *family violence* is overwhelmingly present as a factor in Indigenous homicides. In comparison with the rest of the Australian population, Indigenous homicides are most likely to occur between intimate partners.

An Australian Institute of Criminology report of Indigenous homicides from 1990 to 2000 found that 38 percent of Indigenous homicides were between intimate partners, 19 percent involved other family, 27 percent involved friends and acquaintances and only 3 percent involved strangers.

We know too that there is a gender element to the statistical picture. Indigenous women are 45 times more likely than non-Indigenous women to be victims of domestic violence. 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.

With these figure you can see why we need to create safer communities.

Justice reinvestment is a criminal justice approach that diverts a portion of the money for imprisonment to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested into services that address the underlying causes of crime in these communities.

So how does it work?

Justice reinvestment is essentially about investing our resources at front end, to prevent crime, rather than the back end, in prisons.

This focus on early intervention is not new. However, justice reinvestment is different because it invests early intervention services in specific communities where there is the greatest number of offenders and community need. Most importantly it is done with the communities contributing to how these funds are spent to prevent crime.

Justice reinvestment is a data driven, evidence based and fiscally sound policy.

It was developed in the United States. Since 2006 it has been implemented in 17 states. It is interesting that it is predominantly conservative Republican States that have seen the social and economic benefits of justice reinvestment.

There have been some terrific successes. For example, in Kansas they have reduced imprisonment from a record high and avoided building a new prison. This is expected to save $80 million over five years.

Texas reinvested $241 million that would otherwise have been spent on the construction of prisons on treatment programs. The prison population stopped growing for the first time in decades.

These results are great but what really interests me is how we can make it work for our Aboriginal and Torres Strait Islander communities.

There are persuasive arguments for trialling this approach with Aboriginal and Torres Strait Islander communities given the high levels of over representation. The principles of a justice reinvestment approach including:

* localism
* community control and
* better cooperation between local services

Also align with what we know about human rights based practice in Aboriginal and Torres Strait Islander service delivery.

Justice reinvestment is also in line with the United Nations Declaration on the Rights of Indigenous Peoples- the foundational document in human rights for all Indigenous peoples. The Declaration states that Aboriginal and Torres Strait Islander peoples have the right to self-determination. We also have the right to participate in decision-making that affects us and the right to the improvement of our economic and social conditions.

Justice Reinvestment is a policy which is built on effective participation and self-determination to improve our lives and the well-being of our communities by diverting our people away from jails and from the criminal justice system to community-led development programs.

Advocates like me have been arguing for justice reinvestment since 2009.

Justice reinvestment is also gaining a lot of support in the legal fraternity. Among some of the Just Reinvest NSW campaign champions are:

* former Director of Public Prosecutions, Nicholas Cowdery
* former NSW Attorney General Bob Debus
* The Honourable Michael Kirby.

WA’s first female judge, Antoinette Kennedy, Chief Justice Wayne Martin and

Former Victorian Attorney General Rob Hulls also lend support to justice reinvestment.

I think the legal profession is seeing the value in justice reinvestment because it can empower better judicial decision making by providing a broader range of sentencing options.

For example, we know that Magistrates and Judges often face a severe shortage of diversion and alternative sentencing options in rural and remote areas- therefore limiting the available sentences. Justice reinvestment, in partnership with the community, would look at increasing these options, especially in the form of culturally secure treatment programs.

Increasing the range of community based diversion and treatment programs- especially if they are owned and operated by the local Indigenous community- is also a mechanism for increasing offender accountability.

If done properly, justice reinvestment 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.

We are seeing some good signs on justice reinvestment at the government level. Just a couple of weeks ago a Senate Inquiry report was tabled on the value of justice reinvestment in Australia and there have been recommendations in a number of Commonwealth and state reports.

At the community level, we are seeing some really exciting work about what justice reinvestment could look like in Australia.

I have been invited by the Bourke community to work with them around justice reinvestment. I’ve visited twice in past few months and had some fantastic discussions about some of the challenges they are facing in terms of crime and imprisonment. There seems to be a real appetite for the idea of justice reinvestment in the community.

Many of you may remember the dubious headline in media back in February this year that Bourke per capita is more dangerous than any other country in the world. While I don’t agree with that, we do need to face up to the fact that there are some big problems that need to be addressed to create a safer community in Bourke.

Let me paint a picture: Bourke is a pretty isolated town with a population of nearly 3000 people, 30% Aboriginal and Torres Strait Islander. There are over 50 community organisations servicing the area and 40 Police. The problems of service integration have been well documented by the NSW Ombudsman.

Our research has shown that the cost of incarcerating the 47 Aboriginal and Torres Strait Islander young people last year was $2.2 million. If you can reduce this by 20% you could have half a million dollars to reinvest in the community.

One of Bourke’s strengths is the established local governance structure. But despite this, what I’ve been hearing is that the community is not getting enough of a say into how money is spent and the way programs are run. I see justice reinvestment as a mechanism to bring the community into these conversations and decisions.

While funding is important, I believe that community participation and government accountability will ultimately be the drivers for success. We are yet to do service mapping but it would seem on the face of it that there is a good amount of money being spent in Bourke- but not in adequate partnership and consultation with the community.

It is still early days but I’m really heartened by the courage of the people of Bourke to step up and face these issues in an inclusive way. Last visit, Megan Mitchell, our new national Children’s Commissioner also came along and it was fantastic to see the young people have a voice in this process.

There was a really touching moment at the end of our big community meeting when one of the Elders said that this was the first time she had seen the young people take part in a meeting like this and how proud she was of them. You could see those kids sitting up straighter and feeling really valued and heard.

Giving our young people pride is not just about feeling warm and fuzzy. A sense of connection and value are some of the individual building blocks of a safe community. Justice reinvestment has a role to play in building stronger communities where all members are safe, accountable and valued.

Thank you.

1. 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). [↑](#footnote-ref-1)