
EPIDEMIC INCARCERATION AND JUSTICE REINVESTMENT

IT'S TIME FOR CHANGE

by Wendy-Rea Young and Tammy Solonec

Australia has epidemic and internationally alarming levels of incarceration of Indigenous peoples. The disturbing statistics outlined in this article show that the problem has not been adequately addressed by state and territory governments, who seem intent on a 'tough on crime' approach to justice, which disproportionately impacts Indigenous peoples.¹ Given that 15 April 2011 marked 20 years since the Report of the Royal Commission into Aboriginal Deaths in Custody ('RCIADIC'),² the time is right for a new approach.

One solution that is gaining traction is 'Justice Reinvestment', which seeks to divert funds from prison construction and operation into relevant initiatives aimed at reducing recidivism by diverting people (particularly youth) from crime, offering proven rehabilitation programs in communities where there is either a high incidence of offending or where high numbers of offenders come from.³

Justice Reinvestment emerged in the United States of America (US) and has enjoyed success in various states including Texas, Kansas and Oregon.⁴ For example, after implementing Justice Reinvestment initiatives, Oregon reduced its juvenile detention rate by 72 per cent, improved community conditions in lower socio-economic neighbourhoods and saved millions of dollars on prison costs.⁵

The economic rationale behind Justice Reinvestment is that diversionary and rehabilitative initiatives cost significantly less than prison construction and operation. The proof of this is in the pudding. Between 2008 and 2009, Texas saved \$210.5 million (US) by reducing incarceration.⁶

THE PROBLEM: EPIDEMIC INCARCERATION

According to 2008 statistics compiled by the Australian Institute of Criminology, Indigenous people in Australia are 14 times more likely to be incarcerated than non-Indigenous people, and represent 26 per cent of the total prison population, despite representing less than three per cent of the national population.⁷ This state

of affairs is even worse for Indigenous juveniles,⁸ who are 28 times more likely to be detained than their non-Indigenous counterparts.⁹ Between 2007 and 2008, Indigenous youth accounted for approximately 40 per cent of juveniles in detention,¹⁰ and were 14 times more likely to be under a community-based supervision order,¹¹ despite representing only five per cent of the total juvenile population.¹² This problem is starkly evident by the recently released report 'Doing Time – Time for Doing'¹³ which describes the epidemic nature of Indigenous youth's interaction with the justice system of Australia as a 'national crisis'.¹⁴

Alarming, the rates of incarceration of Indigenous people increased in every Australian jurisdiction between 2001 and 2008. In the Northern Territory, the figure rose by 63 per cent, in South Australia by 57 per cent, in Tasmania by 53 per cent, in New South Wales by 48 per cent, in Victoria by 45 per cent, in Western Australia by 32 per cent, and in Queensland by 16 per cent.¹⁵

Western Australia ('WA') arguably has the highest rate of Indigenous incarceration in Australia in comparison to the proportion of Indigenous people within the state and so deserves special mention. As at 16 June 2011, 38.2 per cent of the WA adult prison population and 66.1 per cent of juveniles in custody were Indigenous.¹⁶ As noted by WA Chief Justice Wayne Martin in May 2010, although the US incarcerates more people than any other nation, the disproportionate rate at which Indigenous people are incarcerated in WA is significantly higher than that which applies to the rate of African Americans incarcerated in the US.¹⁷

The statistics relating to recidivism are just as concerning. Approximately 40 per cent of adult male non-Indigenous prisoners released between 1998 and 30 June 2008, returned to prison by May 2009. The figure is worse for adult male Indigenous prisoners, with approximately 70 per cent returning to prison.¹⁸ It is clear that whilst incarceration may help some people in the community feel safer, it generally fails to deter Indigenous ex-prisoners from re-offending.¹⁹

UNDERLYING CAUSES

Current factors that contribute to the high incarceration of Indigenous people include over-policing, punitive police practices, mandatory sentencing, absence of crisis accommodation, limited access to legal advice and interpreters, discriminatory bail and parole processes,²⁰ a lack of community-based sentencing options, difficulties in obtaining driver's licences (especially in remote locations), and inadequate rehabilitation programs in prisons and detention centres.²¹

Historic disadvantage further contributes to the epidemic. Indigenous peoples have been disproportionately and detrimentally affected by government policies since colonisation through many acts and omissions including dispossession of land, denial of civil and political rights including citizenship, economic and social marginalisation, limited access to services and protection, segregation and assimilation policies.²² These underlying causes were well considered 20 years ago in the RCIADIC report.²³

For Indigenous people, the adverse consequences of incarceration are numerous, particularly because it so often removes them from their families, cultures and communities. It destroys positive social networks and bonds, including with respect to employment, education and housing, and replaces those networks with peer associates who themselves have a history of offending and who are often experiencing drug, alcohol and mental health problems.²⁴

FINANCIAL COST

On average it costs \$207 per day to incarcerate a person in Australia.²⁵ This corresponds to a burden of 165 dollars per year for every Australian adult to support the current prisoner population.²⁶ Despite this, more spending on prisons is planned. For example, the Northern Territory Government plans to build a prison that will house 1,000 new prisoners at a construction cost of \$320 million. This is the biggest ever infrastructure investment in the Northern Territory.²⁷ Similarly, the WA Government is building a prison in the West Kimberley near Derby at a cost of \$150 million²⁸ and has currently allocated \$232 million dollars in funding to build a new prison in the Eastern Goldfields.²⁹

A POSSIBLE SOLUTION: JUSTICE REINVESTMENT

As the statistics in this article show, the rates of incarceration of Indigenous people in Australia today (particularly *young* Indigenous people) are, indeed, truly horrific. Broadly speaking, the over-representation of Indigenous people in the prison population suggests that

the relationship between the Australian state and the First Peoples remains profoundly dysfunctional. It also suggests that custodial sentences do not have the same deterrent effect as they might have in non-Indigenous communities, and that Indigenous offenders are less likely to be 'shamed' by contact with the mainstream criminal justice system.³⁰ The social circumstances of Indigenous offenders are so dire that the capacity to understand and respond, as expected, to the deterrent component of a sentence of imprisonment is severely compromised. In this context, Justice Reinvestment has enormous significance as a practical, evidence-based approach to halting and reversing these trends.

Justice Reinvestment presents an opportunity to prevent offending, rehabilitate offenders and improve community safety. Key to the concept is the prevention and diversion of offending rather than incarceration. It is about building and nurturing communities, rather than building prisons.³¹

Justice Reinvestment diverts a portion of the funds spent on imprisonment to local communities where there is a high concentration of offenders or offending.³² The money is invested in community programs, services and activities that are aimed at addressing the underlying causes of crime in those communities by engaging the community to be part of the solution.

In 2009 the then Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, released his Social Justice Report,³³ recommending that Australia adopt Justice Reinvestment as a policy approach for addressing issues of criminal justice in Indigenous communities.

He wrote:

Justice reinvestment has as much in common with economics as social policy. Is imprisonment good value for money? The simple answer is: No, it is not. We are spending increasing amounts on imprisonment while at the same time, prisoners are not being rehabilitated. It is about time we got smart with our money and reinvested in community-wide early intervention and support our Indigenous communities, rather than throwing it away on imprisonment... Justice reinvestment still retains prison as a measure for dangerous and serious offenders but actively shifts the culture away from imprisonment and starts providing community wide services that prevent offending.³⁴

Since Tom Calma's Report, Justice Reinvestment has been receiving growing academic, political and community support.³⁵ For example, recommendation two in the Third Report from the Senate Select Committee on Regional and Remote Indigenous Communities in November 2009 called for 'the Australian Social Inclusion Board,

supported by the Social Inclusion Unit, to add justice reinvestment as a key strategy in the social inclusion agenda'.³⁶ The Senate Legal and Constitutional Affairs Committee's 2009 Access to Justice Report recommended that 'federal, state and territory governments recognise the potential benefits of justice reinvestment, and develop and fund a justice reinvestment pilot program for the criminal justice system'.³⁷ Justice Reinvestment was recommended in the 'Making Our Prisons Work' inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies,³⁸ Justice Reinvestment was also a recommendation of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs recently released report, 'Doing Time - Time for Doing, Indigenous youth in the criminal justice system',³⁹ as part of Australian's for Reconciliation and Native Title (ANTaR's) recently released campaign aimed at reducing Indigenous incarceration,⁴⁰ and continues to be a platform supported by the Deaths in Custody Watch Committee of WA.⁴¹

The concept is also being noticed in the United Kingdom where the new Government has committed to 'introduce a 'rehabilitation revolution' that will pay independent providers to reduce re-offending, paid for by the savings this new approach will generate within the criminal justice system'.⁴² Its Justice Green Paper flagged the need for initial reinvestment grants, with anticipated corrections savings over time.⁴³ The Commission on English Prisons Today landmark report 'Do Better Do Less' advocates for collaborative approaches, penal moderation and localism to build a more effective justice system, and argues for Justice Reinvestment as a fiscally and socially sound response to spiralling crime statistics.⁴⁴

THE MODEL AND ITS APPLICATION TO AUSTRALIA

The model for Justice Reinvestment follows a four-step process which involves (1) identifying high risk communities; (2) developing options to generate savings; (3) reinvesting in high risk communities; and (4) measuring and evaluating the results, as outlined in greater detail below.⁴⁵

1 IDENTIFY COMMUNITIES

The first step involves a geographic analysis of the prison and juvenile detainee populations to identify which communities contribute most offenders to the prison and juvenile detention populations, where the offending is committed and the underlying causes of the offending.⁴⁶ The identified communities are termed 'high stakes communities'. The Australian Human Rights Commission has identified a number of high

stakes Indigenous communities,⁴⁷ however more detailed analysis and mapping with cooperation of state and territory governments is required. We recommend that this step be undertaken by independent third parties capable of providing non-partisan expertise in cooperation with state and territory governments and particular departments who are responsible for prisons, detention centres and financial costings associated with the prison industry.

2 GENERATE SAVINGS

The second step involves the development of options to generate savings, including government and community initiatives. Often the savings may be generated simply by not building more new prisons. However, in the US they have also looked to other areas relevant to the risks identified in the relevant communities. For example, an initiative aimed at addressing alcohol-related crime in Kansas was funded by a liquor tax.⁴⁸ Changes in how technical matters like parole violations or bail matters are dealt with and providing community-based alternatives to non-violent offences are other options.⁴⁹ Savings can also be generated by improving efficiency in a number of key areas including priorities in corrective services budgets, legal and policy changes to avoid incarceration for minor offences and reducing recidivism by improving throughcare and re-entry services. We recommend that this step be conducted independently with cooperation of Treasury specialists and then provided to State and Territory Expenditure Evaluation and Review Committees for consideration before finally providing advice to Cabinet.

3 REINVEST IN IDENTIFIED COMMUNITIES

The third crucial step involves investing in initiatives in high risk communities which address the underlying reasons people from those areas are incarcerated. For example, an initiative established in Kansas addressed substance abuse related crime by diverting a portion of the city's liquor tax revenue to support substance treatment programs in targeted suburbs. The initiative provided for the creation of a local job placement agency, a support program for children of incarcerated parents, expanded the healthy babies program and employed young people from target areas to carry out landscaping work to revitalise their own suburbs.⁵⁰ We recommend this step be undertaken by an Inter-Agency Steering Committee comprised of representatives of relevant Government departments, non-Government organisations (including Aboriginal and Torres Strait Islander Legal Services), academics and most importantly, members of the relevant community. Throughout this step, as well as developing

new programs, it will also be essential to build on current initiatives that are enjoying success.

4 MEASURE AND EVALUATE

The final step is to measure and evaluate the impact of the programs on the chosen communities. For example, the US Council of State Governments Justice Centre commissioned several studies and tasked the Joint Corrections Oversight Committee with reviewing these reports and presenting each before the legislature.⁵¹ We recommend that any evaluation be conducted by an impartial third party in consultation with affected communities.

Rather than Justice Reinvestment being a 'once off' project, the four steps should keep repeating so that high stakes communities are continually identified, improved, measured and evaluated. We argue that Justice Reinvestment can and should be transposed into Australia; however, it requires a whole of Government approach, at state and Commonwealth levels, including at the Council of Australian Governments. We also emphasise the need to ensure that the approach adopted in Australia is suited to the specific needs of Indigenous communities and done in partnership with those communities.

PROGRAMS THAT WORK

We recommend that a database of successful diversionary and rehabilitative programs be developed which can be considered for high risk communities once they are identified as high risk. For example, we recommend that programs which are having success in Western Australia and which incorporate cultural diversionary methods, such as the Kimberley Aboriginal Law and Culture Centre's Yiriman Bail Intervention Pre-Sentence Project in Fitzroy Crossing⁵² and the Halo Leadership Program⁵³ in Perth, be considered.

KIMBERLEY ABORIGINAL LAW AND CULTURE CENTRE: YIRIMAN PROGRAM

The Kimberley Aboriginal and Torres Strait Islander Law and Cultural Centre ('KALACC') has previously received funding to run a one-off bail intervention program in respect of approximately ten young Indigenous males who were before the Fitzroy Crossing Children's Court. They were charged with a spate of group burglary offences allegedly committed around the Fitzroy Crossing town site over Christmas 2008. The boys were released to bail with a condition that they comply with the directions of KALACC. KALACC then placed the boys in groups for a number of weeks on Aboriginal and Torres Strait Islander

run cattle stations in the vicinity of Fitzroy Crossing to live, work and learn about station life and Aboriginal and Torres Strait Islander culture. The results were outstanding. Most of the boys enthusiastically participated in the program, showed real improvement in their behaviour and attitude and have subsequently either re-engaged in school or accepted transition into the workforce, without re-offending. The success of the Yiriman Program shows that investment in early intervention and rehabilitation programs has a greater potential to decrease offending than does adversarial law enforcement. KALACC reports that in the ten years of its operation the Yiriman Program, a broader program that works with Indigenous at risk youth, has assisted over 3,500 Indigenous youth and their families to become more engaged in their communities, their own health and vocational opportunities.⁵⁴ KALACC is currently seeking ongoing funding to continue its work through the 'Kimberley At-Risk Indigenous Youth Pathways Program'. Despite widespread support from the community, funding remains an ongoing issue.

NOONGAR YOUTH DIVERSION: NOWANUP FARM

An independent program has been created in the South West region of WA to assist in diverting Noongar youth from the criminal justice system. In 2009, a local Magistrate placed a small group of Indigenous boys (who were repeat property offenders) with the program for six weeks as a bail condition. The program is run by a respected Noongar leader to teach Aboriginal and Torres Strait Islander youth how to learn more about cultural values and move forward by reconnecting with place and the family structure. The program receives no funding support and currently relies on the voluntary commitment of funds from parents and donations from the community.

After the six week period, the boys were sentenced at the farm as part of a community ceremony to celebrate their healing journey. The Magistrate considered the program successful in that it generated mutual trust and respect between the judiciary and the community.

Sadly, the boys' gains were short-lived as they returned to the strains of an unchanged social environment, strains made all the more painful after their positive experiences. The unfortunate lesson learned here is the critical importance of complementing individual diversion programs with community-based support programs to foster positive change in the family and community. This underscores the Justice Reinvestment principle of the importance of directing resources to re-invigorate the community rather than an exclusive focus extensively on individual offender management.

HALO YOUTH LEADERSHIP PROGRAM⁵⁵

Halo is a non-profit incorporated career and personal leadership development agency advancing hopes, aspirations and leadership opportunities for young people. Using a unique peer mentoring model, the agency listens to the needs of Indigenous youth and their families, and provides advocacy, programs and networking opportunities that enable individuals to discover who they are, design their own futures and make a difference in their communities. Halo is supported by the President and Magistrates of the Children's Court of WA and Indigenous organisations for its approach to working with Indigenous youth in contact with the justice system.

CONCLUSION

The incarceration of Indigenous peoples in Australia is at epidemic rates and is continuing to rise. Given that 2011 marks 20 years since RCIADIC, now is the time to consider alternatives to incarceration. Justice Reinvestment presents a model to reduce incarceration that is gaining political, academic and community support. We recommend that state and territory governments immediately commit to investigating stage one, so that high risk communities can be identified and then develop Justice Reinvestment pilots in several high risk communities building on existing programs and creating new ones where necessary, always in consultation and partnership with affected communities.

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- 1 See, eg, the tough on crime approaches in Western Australia, including the *Prohibited Behaviour Orders Act 2010 (WA)*, *Criminal Code Amendment Act 2009 (WA)* s 318 (Assault public officer – originally a misdemeanour, now a crime); and see Christiana Jones, 'Criminologist Warns on Tough Approach', *The West Australian*. (19 March 2011) <<http://au.news.yahoo.com/thewest/a/-/wa/9039697/criminologist-warns-on-tough-approach/>>.
- 2 NSW Bureau of Crime Statistics and Research, Issue Paper No 41, (August 2009); ABC, 'Twenty years on from Aboriginal Deaths in Custody Report', *The Law Report* (19 April 2011) <<http://www.abc.net.au/rn/lawreport/stories/2011/3194772.htm>>.
- 3 Mick Gooda, 'Justice Reinvestment: A New Solution to the Problem of Indigenous Over-representation in the Criminal Justice System' (Speech delivered at ANTaR NSW Seminar - Juvenile Justice Strategy: A Better Way, Sydney Mechanics School of Arts NSW, 10 March 2010) <http://www.hreoc.gov.au/about/media/speeches/social_justice/2010/20100320_justice_reinvestment.html>.

- 4 Australian Human Rights Commission, *Social Justice Report 2009* (2009) 17 <http://www.hreoc.gov.au/social_justice/sj_report/sjreport09/index.html>.
- 5 Ibid.
- 6 Paul Papalia, 'Justice Reinvestment: An option for Western Australia?' (2010) 37 *Brief* 18.
- 7 Australian Institute of Criminology, *Deaths in custody in Australia: National Deaths in Custody Program 2008*, (Monitoring Report 10, AIC 2010) <<http://www.aic.gov.au/documents/B/2/5/%7BB25DD4D6-E0CF-4688-99CD-7A4EE3D149B2%7Dmr10.pdf>>.
- 8 For the purposes of these statistics, 'juvenile' refers to people aged between 10 and 18 years.
- 9 Productivity Commission, *Overcoming Indigenous Disadvantage Key Indicators 2009*, (2009) 4 <<http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009>>.
- 10 This is in stark contrast to the overall detention rate for Australian juveniles, which fell by 37 per cent for the same period: Australian Institute of Criminology, *Australian Crime: Facts and Figures 2009*, (2009) 112 <<http://www.aic.gov.au/publications/current%20series/facts/1-20/2009.aspx>>.
- 11 Australian Government, Australian Institute of Health and Welfare, *Juvenile Justice in Australia 2008-2009* (2011) 65 <<http://www.aihw.gov.au/publication-detail/?id=10737418606&tab=2>>.
- 12 Ibid 66.
- 13 Australian Government, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time for Doing, Indigenous Youth in the Criminal Justice System* (2011).
- 14 Sabra Lane, ABC, 'Indigenous youth, crime rates a national crisis', *ABC News* (21 June 2011) <<http://www.abc.net.au/news/stories/2011/06/21/3249189.htm>>.
- 15 Jacqueline Fitzgerald, 'Why are Indigenous Prison Rates Rising?' (Bureau Brief Issue Paper No 41, NSW Bureau of Crime Statistics and Research, August 2009) 2. (Note – the NSW statistic includes a minute amount of data from the ACT).
- 16 Government of WA, Department of Corrective Services, *Weekly Offender Statistics (WOS) Report* (16 June 2011) 3.
- 17 The Hon Wayne Martin, 'Indigenous Disadvantage and the Justice System' (Paper presented at CLC Association (WA) State Conference, Northbridge WA, 27 May 2010) 4.
- 18 Paul Papalia, 'Justice Reinvestment: An Option for Western Australia?' (2010) 37 *Brief* 18.
- 19 Matthew Willis, John-Patrick Moore, 'Reintegration of Indigenous Prisoners' (Research & Public Policy Series No 90, AIC, 2008) <<http://www.aic.gov.au/documents/4/1/E/%7B41EFB68A-8B0A-43F8-A747-E71315F88751%7Drrp90.pdf>>; Mick Gooda, 'Justice Reinvestment: A New Solution to the Problem of Indigenous Over-representation in the Criminal Justice System' (Speech delivered at ANTaR NSW Seminar - Juvenile Justice Strategy: A Better Way, Sydney Mechanics School of Arts NSW, 10 March 2010) <http://www.hreoc.gov.au/about/media/speeches/social_justice/2010/20100320_justice_reinvestment.html>.
- 20 It is arguable that parole applications in WA at least indirectly discriminate against Aboriginal people because they are required to be in writing despite the fact that a substantial proportion of Aboriginal people who are incarcerated have low literacy and numeracy levels. It is also arguable that bail processes indirectly discriminate against Aboriginal adults because of the intergenerational poverty faced by Aboriginal peoples, and on Aboriginal juveniles because of a lack of bail accommodation and responsible adults for them to be bailed to. See Aboriginal Legal Service of Western Australia, 'Submission to the Department of the Attorney General of Western Australia', *Review of the Bail Act 1982 (WA)* (October 2010) <http://www.als.org.au/index.php?option=com_con

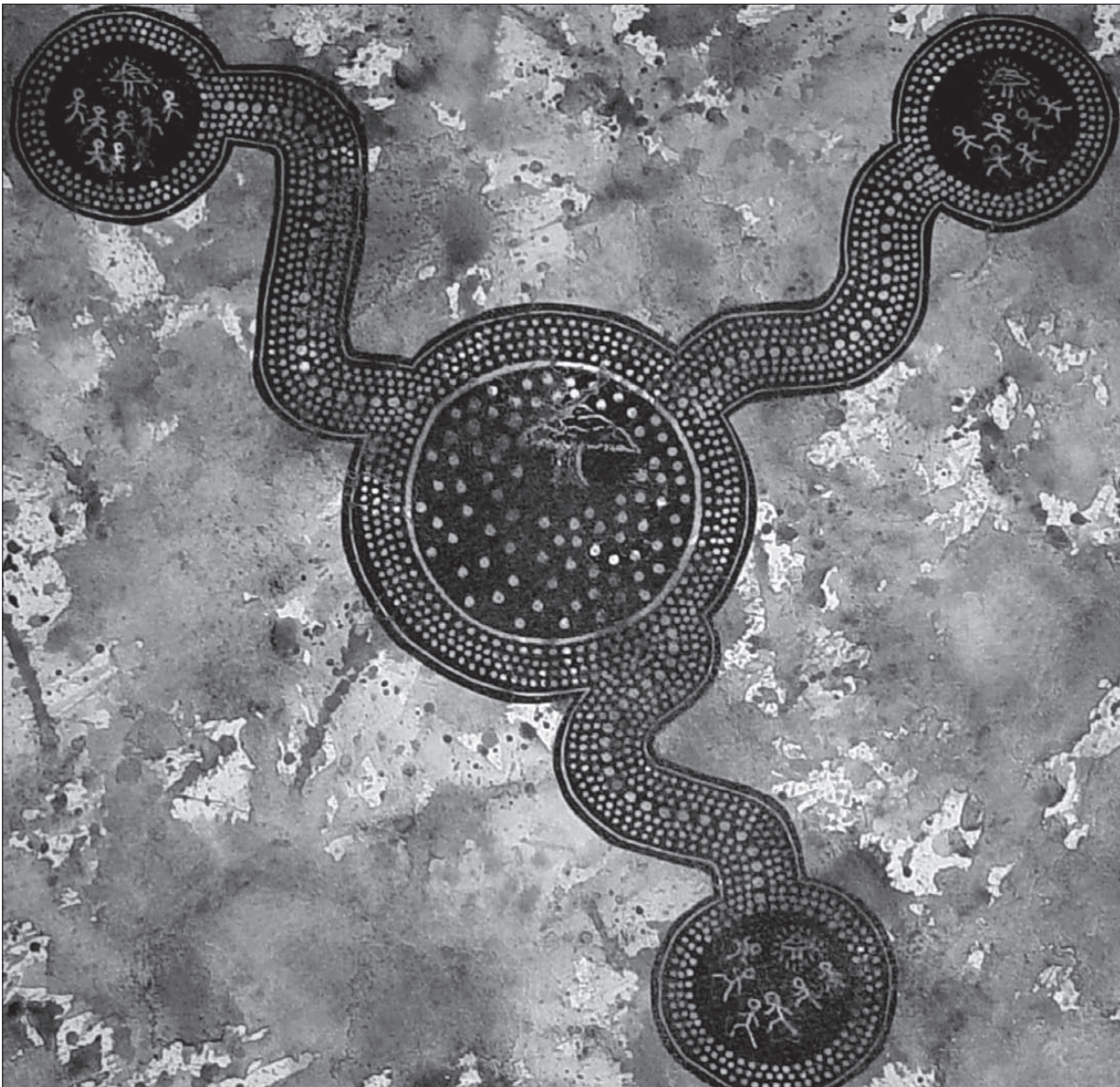
- tent&view=article&id=133%3Areview-of-the-bail-act-1982-wa&catid=14&Itemid=50>; Aboriginal Legal Service of Western Australia, Submission to the Parliament of Australia House of Representatives House Standing Committee on Aboriginal and Torres Strait Islander Affairs 'Inquiry into the High Level of Involvement of Indigenous Juveniles and Young Adults in the Criminal Justice System' (December 2009) <<http://www.aph.gov.au/House/committee/atsia/sentencing/subs/Sub019.pdf>>.
- 21 Ibid.
- 22 See, eg, Australian Government, Department of Families, Housing, Communities and Indigenous Affairs *Closing the Gap on Indigenous Disadvantage: the Challenge for Australia* (2008) <http://www.fahcsia.gov.au/sa/indigenous/pubs/general/documents/closing_the_gap/default.htm>; Law Reform Commission of WA, *Aboriginal Customary Laws: the Interaction of Western Australian Law with Aboriginal Law and Culture*, Final Report Project No 94 (2006); Australia. Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators*, (2009).
- 23 *Royal Commission into Aboriginal Deaths In Custody, Summary. Part C The Underlying Issues which explain the Disproportionate Number of Aboriginal People in Custody* (1991); Fiona Allison and Chris Cunneen, 'The Role of Indigenous Justice Agreements in Improving Legal and Social Outcomes for Indigenous People' (2010) 32 *Sydney Law Review* 645.
- 24 Australia, Attorney-General's Department, Office of Crime Prevention, *Violence in Indigenous communities*, Full Report (2001).
- 25 Productivity Commission, *Report on Government Services 2009* (2009) 8.24.
- 26 Australian Institute of Criminology, *Australian Crime: Facts and Figures 2008* (2009) 110.
- 27 Australian Human Rights Commission, *Social Justice Report 2009* (2009) 32 <http://www.hreoc.gov.au/social_justice/sj_report/sjreport09/index.html>.
- 28 Ibid 43.
- 29 Interview with Brian Lawrence, Director, Public Private Partnership Directorate, Department of Corrective Services, (Perth, April 2011).
- 30 See generally Judicial Commission of New South Wales and NSW Aboriginal Justice Advisory Council, *Circle Sentencing in New South Wales: A Review and Evaluation* (2003) <<http://www.austlii.edu.au/au/journals/AILR/2004/16.html>>.
- 31 See generally, Melanie Schwartz, 'Building Communities, Not Prisons: Justice Reinvestment and Indigenous Over-imprisonment' (2010) 14 *Australian Indigenous Law Review*; Commission On English Prisons, *Do Better Do Less: The Report of the Commission on English Prisons Today* (2009) <http://www.howardleague.org/fileadmin/howard_league/user/online_publications/Do_Better_Do_Less_low_res.pdf>.
- 32 Mick Gooda, 'Juvenile Justice Strategy: A Better Way' (Speech delivered at Sydney Mechanics School of Arts NSW, (20 March 2010) <http://www.hreoc.gov.au/about/media/speeches/social_justice/2010/20100320_justice_reinvestment.html>.
- 33 Recommendations on Justice Reinvestment to reduce Indigenous representation in the criminal justice system: Recommendation 1: That the Australian government, through COAG, set criminal justice targets that are integrated into the Closing the Gap agenda; Recommendation 2: That the Standing Committee of Attorneys General Working Party identify justice reinvestment as a priority issue under the National Indigenous Law and Justice Framework, with the aim of conducting pilot projects in targeted communities in the short term; Recommendation 3: That the Australian Social Inclusion Board, supported by the Social Inclusion Unit, add justice reinvestment as a key strategy in the social inclusion agenda; Recommendation 4: That all state and territory governments consider justice reinvestment in tandem with their plans to build new prisons. That a percentage of funding that is targeted to prison beds be diverted to trial communities where there are high rates of Indigenous offenders.
- 34 Mick Gooda, 'Juvenile Justice Strategy: A Better Way' (Speech delivered at Sydney Mechanics School of Arts NSW, 20 March 2010) <http://www.hreoc.gov.au/about/media/speeches/social_justice/2010/20100320_justice_reinvestment.html>.
- 35 See especially Melanie Schwartz, 'Building Communities, Not Prisons: Justice Reinvestment and Indigenous Over-imprisonment' (2010) 14 *Australian Indigenous Law Review*; and Australia, Noetic Solutions, *A Strategic Review of the New South Wales Juvenile Justice System Report for the Minister for Juvenile Justice*, (2010) <http://www.djj.nsw.gov.au/strategic_review.htm>.
- 36 Senate Select Committee on Regional and Remote Indigenous Communities, *Third Report 2009* (2009) <http://www.aph.gov.au/senate/committee/indig_ctte/reports/2009/report3/report.pdf>.
- 37 Senate Legal and Constitutional Affairs Reference Committee, *Access to Justice* (2009) <http://www.aph.gov.au/senate/committee/legcon_ctte/access_to_justice/report/report.pdf>.
- 38 Community Development and Justice Standing Committee, Parliament of Western Australia, 'Making our Prisons Work' *An inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies* (2010) <<http://www.parliament.wa.gov.au/web/newwebparl.nsf/iframewebpages/Committees+-+Reports>>.
- 39 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, House of Representatives, *Doing Time - Time for Doing, Indigenous Youth in the Criminal Justice System* (2011) <<http://www.aph.gov.au/house/committee/atsia/sentencing/report/front.pdf>>.
- 40 For more information on ANTaR's campaign aimed at reducing Indigenous Incarceration and its references to *Justice Reinvestment* see <http://antar.org.au/issues_and_campaigns/reducing_indigenous_incarceration>.
- 41 See their campaign, *Build Communities, Not Prisons* and their reference to Justice Reinvestment <<http://www.deathsincustody.org.au/prisonovercrowding>>.
- 42 HM Government, *The Coalition: Our Program for Government* (2010) 23 <http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf>.
- 43 UK Government Ministry of Justice, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders* (2010) 38.
- 44 Commission On English Prisons, *Do Better Do Less: The Report of the Commission on English Prisons Today* (2009) 50 <<http://www.howardleague.org/index.php?id=835>>.
- 45 Note that in some literature only three steps are included, see, eg, The Council of State Governments Justice Centre, *Justice Reinvestment* (2009) 3 <http://justicereinvestment.org/files/JR_overview_2010_rev.pdf>; in others five steps are referred to, see, eg, Urban Institute Justice Policy Centre, *Justice Reinvestment at the Local Level* (2011) 1 <<http://www.urban.org/center/jpc/justice-reinvestment/>>. The four steps we have identified have stemmed from the Australian Human Rights Commission, *Social Justice Report 2009* (2009) 2.2(c) <http://www.hreoc.gov.au/social_justice/sj_report/sjreport09/pdf/sjr_ch2.pdf>.
- 46 As noted in the Social Justice Commissioner's Report, 'This sort of data and analysis has often been lacking in jurisdictions before justice reinvestment was considered. According to Michael Thompson, Director of the Council of State Governments Justice Center in the United States: 'Few, if any states have access to such data when making important budget or policy decisions. What information policy makers do receive pertains to a particular agency and is fairly narrow in scope. Equipped with information focused on one part of the criminal

justice system, state officials are for all practical purposes blindfolded, touching just one part of the elephant or fumbling with thousands of jigsaw puzzle pieces. We can no longer afford for policy makers to appropriate billions of taxpayer dollars with no understanding of what impact such spending will have on community safety." Australian Human Rights Commission, *Social Justice Report 2009* (2009) 16 <http://www.humanrights.gov.au/social_justice/sj_report/sjreport09/index.html>.

- 47 Australian Human Rights Commission, *Social Justice Report 2009* (2009) 39-40.
- 48 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Kansas* (2007) 3. <<http://justicereinvestment.org/states/kansas/pubmaps-ks>>.
- 49 Australian Human Rights Commission, *Social Justice Report 2009* (2009) 16.
- 50 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Kansas* (2007), 3 <<http://justicereinvestment.org/states/kansas/pubmaps-ks>>.
- 51 The Council of State Governments Justice Center, *Justice Reinvestments* (2010) <<http://justicereinvestment.org/states/vermont/how-vt/measure-vt>>.
- 52 Living is for Everyone, Australian Government Department of Health and Ageing, *The Yiriman Project* (2010) <<http://www.livingisforeveryone.com.au/The-Yiriman-Project.html>>;

Magistrate Robert Young, 'A Cultural Approach to Justice' (In Session Newsletter, Department of Attorney General (WA), May 2009 Edition) 1; For further information on the Kimberley Aboriginal Law and Culture Centre see <<http://www.kalacc.org.au/yirman.htm>>.

- 53 See <<http://haloleadership.com/>>. Halo advise that eight out of ten participants of their Halo Leadership program do not return to detention.
- 54 Kimberley Aboriginal Law and Culture Centre, *Yiriman: Kimberley 'At-Risk' Indigenous Youth Pathways Program 2011-2014*, Parliament of Western Australia, 3 <[http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Evidence+Look+up+by+Com+ID\)/18BADD07003862AC48257893002239D1/\\$file/68739109.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Evidence+Look+up+by+Com+ID)/18BADD07003862AC48257893002239D1/$file/68739109.pdf)>.
- 55 For further information about Halo Youth Leadership program, see <<http://haloleadership.com/>>.



Brown Tree – Tree of Life Part 1 2004
Dorsey Smith
Hand-coloured lino print, 300mm x 300mm