



Social Reinvestment WA: Key Reform and Policy Targets

The following twenty two policy recommendations are the product of extensive collaboration between leading agencies and organisations who are members of the Social Reinvestment WA Coalition. The Coalition has identified its priorities for reform by undertaking extensive research; analysing available data; and by drawing on its members' professional expertise. In devising these recommendations, the Coalition draws on its experience of working within the justice system, in the community sector, and with Aboriginal people.

The Campaign



1.1 Vision:

Western Australia adopts a social reinvestment approach to achieve Healthy Families, Smart Justice, and Safe Communities for all people.

1.2 Purpose:

To end the overrepresentation of Aboriginal and Torres Strait Islander people in custody in Western Australia.



1.3 Principles:

Healthy Families

Western Australia needs to place the wellbeing of individuals and families at the centre of its approach to social issues and support the wellbeing of communities.

Smart Justice

A whole system approach is needed to address the underlying causes of offending. This approach needs to be monitored and informed by a robust data and research system, implementing best practice.

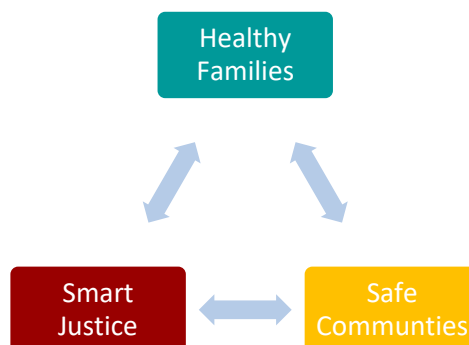
Safe Communities

The current ‘tough on crime’ approach is predicated on false belief that it makes communities safer. Community safety would be far better served by recognising and addressing the underlying causes of offending and adopting an approach of social reinvestment.

1.4 Our Proposed Approach:

We aim to provide early support to families, divert offenders away from further involvement in the justice system and to assist people who have been imprisoned to reintegrate successfully into the community. The best way to achieve this is to identify those communities that are most in need and provide effective and culturally competent programs and services to those communities. It is also imperative to immediately reform ineffective and unfair laws and policies that cement a cycle of socially and economically costly reimprisonment at the expense of community safety.

Fig 1.5





2.1 Western Australia imprisons Aboriginal and Torres Strait Islander people at a disproportionately higher rate than any other jurisdiction in Australia

Nationally, 28% of all adults and more than 50% of all children we imprison in Australia are Aboriginal and Torres Strait Islander people.¹ In Western Australia the situation is worse still. Approximately 40% of the adults and 75% of the children we imprison are Aboriginal or Torres Strait Islander people.² The rate at which we imprison Aboriginal and Torres Strait Islander children in Western Australia is greater than the notoriously high rate of at which African American children are imprisoned in the US.

The 'average day' incarceration rates for Indigenous children in Australia and WA were 37 per 10,000 and 76 per 10,000 respectively in 2013-14. Black children in the United States were detained at a rate of 52 per 10,000 in 2011, the most recent data available - lower than the WA rate.³

2.2 Aboriginal and Torres Strait Islander children are taken into formal care at a greater disproportionate rate than any other jurisdiction in Australia

In Western Australia, Aboriginal children are removed from their families into the custody of the state (nationally, the figure is 31%).⁴ The rate of growth of children removed from their families into the custody of the state is far higher for Aboriginal and Torres Strait Islander children (9% in 2014/2015) compared to non-Aboriginal children (3%).⁵

2.3 Imprisonment is economically, as well as socially costly

In 2013–2014 in Western Australia it cost \$334 per day to imprison an adult and \$814 per day to detain a child (over \$120,000.00 per year for an adult prisoner and almost \$300,000.00 for a juvenile detainee). In comparison, it costs \$46 per day to supervise an adult offender in the community and \$90 per day to supervise a child in the community.⁶ The total net cost of the adult prison system in 2013–2014 was \$608 million.⁷

1 Law Council of Australia, *Addressing Indigenous Imprisonment: National Symposium* (2015) 8.

2 Department of Corrective Services, *Quick Reference Statistics* available at <https://www.correctiveservices.wa.gov.au/about-us/statistics-publications/statistics/default.aspx>.

3 ABC News, "Fact Check: Amnesty International claim on 'shocking' Indigenous child incarceration rates checks out" <"http://www.abc.net.au/news/2015-06-17/fact-check-indigenous-children-incarceration-rates/6511162.> (June 2015)

4 Productivity Commission, *Report on Government Services* (2016) Chapter 15 Child Protection Services.

5 Department for Child Protection and Family Support, *Annual Report 2014–2015* (2015) 28.

6 Department of Corrective Services, *Annual Report 2013–2014* (2014) 13.

7 Economic Regulation Authority, *Inquiry Into the Efficiency and Performance of Western Australian Prisons*, Draft Report (July 2015) 37.



2.4 Imprisonment does not make our communities safer

Approximately 40-45% of people released from prison, return to prison within two years. The rate at which Aboriginal people return to prison is far worse –The recidivism rate for Aboriginal adult males is 70% and for Aboriginal adult females it is 55%.⁸ A review undertaken by the Office of the Inspector of Custodial Services found that ‘the three factors most strongly linked to recidivism are age, prior prison admissions and problematic substance abuse’.⁹ The Economic Regulation Authority estimates that the prison system may be spending \$1 million per day on imprisoning people who have previously completed prison sentences and returned to prison.¹⁰ Of the 86 sentenced children in detention in Western Australia on 31 December 2015, 51 (60%) had previously been sentenced to detention the past five years (36 of these children had been sentenced to detention more than once in the prior five-year period).¹¹

2.5 Social Reinvestment strategies are far more effective and less expensive than imprisonment

Investment in improving the wellbeing of people we currently imprison through early intervention, prevention and rehabilitation strategies is more effective at reducing reoffending and maximising community safety. It is also less expensive than the continuing cycle of re-imprisonment.

An example of this is the Healing Foundation, an independent Aboriginal and Torres Strait Islander organisation which promotes community healing amongst survivors of the Stolen Generation. It has funded and instigated healing program initiatives with an emphasis on taking holistic, preventative and restorative approaches and promoting whole community engagement and leadership.¹² As of 2014 the Healing Foundation supported the formulation of 13 Indigenous Healing Centres.¹³ Deloitte Access Economics (DAE) conducted a prospective cost-benefit analysis of the centres. DAE estimated the average social cost of putting an Aboriginal or Torres Strait Islander person in prison to be approximately \$500,000.¹⁴ DAE predicted the Foundation’s Healing Centres would break even if each centre diverted approximately 1 person from prison each year, an achievable goal given the success of similar projects in keeping Aboriginal and Torres Strait Islander people out of prison.¹⁵ DAE estimated the likely average benefits-cost ratio for the Foundation’s healing centres would be in

8 Western Australia Parliament, Community Development and Justice Standing Committee, *Making our Prisons Work: An inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies*, Report No 6 (2010) 72.

9 Office of the Inspector of Custodial Services, *Recidivism Rates and the Impact of Treatment Programs* (2014) ii.

10 Economic Regulation Authority, *Inquiry Into the Efficiency and Performance of Western Australian Prisons*, Draft Report (July 2015) 41.

11 Department of Corrective Services, *Quick Reference Statistics* available at <https://www.correctiveservices.wa.gov.au/about-us/statistics-publications/statistics/default.aspx>.

12 healing foundation resource booklet p 12, 15-16; cost benefit analysis booklet p 1

13 cost benefits p i

14 cost benefits p 31

15 Ibid, I, 39



approximately 4.4 to 1, primarily due to diminished rates of Aboriginal people in prison.¹⁶ DAE further noted that a cost-benefit analysis fails to capture further unquantifiable benefits the Foundation's initiatives bring to Aboriginal communities, including strengthened community leadership and general social well-being.¹⁷

A further example, the Fairbridge Bindjareb Project provides Aboriginal and Torres Strait Islander people in custody with mining industry training and 'real guaranteed jobs'.¹⁸ It also includes an 'intensive lifestyle development program' and focuses on reconnection and respect of Aboriginal culture. A preliminary review found that there were many positive outcomes including that only 18% of participants returned to prison within two years of being released. Most of these people (14%) were returned due to breach of parole conditions rather than reoffending. This compares favourably to the general recidivism rate for adults (approximately 40%) and even more favourably to the general recidivism rate for Aboriginal people. Additionally, 73% of participants had successfully gained and retained full time employment at the time of review, (7 months post conclusion of the program).¹⁹ Moreover, an independent analysis suggests that the *cost savings* to government for the first five intakes of the project is approximately \$2.9 million.²⁰

Another useful example is the Kanyirninpa Jukurrpa's (KJ's) On-Country programs. KJ is a Martu organisation that operates On-Country programs in several desert communities in Western Australia. KJ's objectives are to preserve Martu culture; to 'build a viable, sustainable economy in Martu communities; and to 'build realistic pathways for young Martu to a healthy and prosperous future'.²¹ The On-Country programs have three key components: employment of community members as rangers to manage the land and environment; 'return to country trips' for family groups to visit places of cultural significance; and cultural and heritage programs to gather and record Martu culture and heritage knowledge.²² An evaluation of the On-Country programs for the period 2010 to 2014 found that the 'social value associated with the outcomes was estimated to be \$55 million' (or \$11 million per annum).²³ Two-thirds of this value benefited Martu (\$39 million including \$17 million directly to

16 cost benefits p i, 37

17 ibid p i

18 Fairbridge Bindjareb Project: An overview of the preliminary review of program processes and outcomes (2015) 2.

19 Fairbridge Bindjareb Project: An overview of the preliminary review of program processes and outcomes (2015) 2.

20 Deloitte Access Economics, *Cost benefit analysis of the Fairbridge Bindjareb Project; Benefits of offender rehabilitation and training*, (February 2016) 4.

21 Social Ventures Australia Consulting, *Kanyirninpa Jukurrpa: Social Return on Investment Report – Social, economic and cultural impact of Kanyirninpa Jukurrpa's On-Country programs* (2014) 11.

22 Social Ventures Australia Consulting, *Kanyirninpa Jukurrpa: Social Return on Investment Report – Social, economic and cultural impact of Kanyirninpa Jukurrpa's On-Country programs* (2014) 11.

23 Social Ventures Australia Consulting, *Kanyirninpa Jukurrpa: Social Return on Investment Report – Social, economic and cultural impact of Kanyirninpa Jukurrpa's On-Country programs* (2014) 4.



the KJ rangers); approximately one-quarter benefited the Western Australian and Australian governments (with estimated savings of \$3.7 million for a reduction in imprisonment and \$4.2 million from a reduction in alcohol-related crime); and the remainder accrued to other stakeholders (\$5 million). For the five year period, \$20 million was invested in the KJ On-Country programs which provides a social return on investment ratio of 3:1 (for every \$1 spent on the programs approximately \$3 of social value was created).²⁴

24 Social Ventures Australia Consulting, *Kanyirninpa Jukurrpa: Social Return on Investment Report – Social, economic and cultural impact of Kanyirninpa Jukurrpa's On-Country programs* (2014) 4-5.



Reform and Policy Targets



HEALTHY FAMILIES

3.1 Adopt and maintain a whole-of-government commitment to investment in early intervention and prevention programs

Effective early intervention and prevention strategies that work with vulnerable and disadvantaged children and their families to address underlying risk factors can circumvent initial (and ongoing) contact with the justice and child protection systems. In other words, ‘prevention is better than cure!’ It is acknowledged that government departments responsible for the justice and child protection systems may be required to focus spending on their statutory cohorts; however, it is imperative that there is a whole-of-government commitment to investment in early intervention and prevention strategies.

For children at risk and families in crisis, early intervention can reduce the need for children to go into care. Arguably many children could remain in the family home if meaningful and effective services were made available to families to resolve underlying issues and keep children safe prior to escalation of child protection concerns. The number of children in out of home care in Western



Australia continues to grow, with the rate of children in care projected to exceed 8 children per thousand by 2017.²⁵

In the context of increasing numbers of children entering the out of home care system it is concerning that we continue to see increasing expenditure in the tertiary and forensic end of child protection as opposed to early interventions which could be more effectively used in strengthening skills, confidence and family relationships. The provision of effective and meaningful resources and supports to families prior to statutory intervention can have a significant influence on reducing the numbers of children entering the care system, and ultimately produce better outcomes for children. Early intervention programs that have demonstrated good outcomes in other jurisdictions include 'home maker' programs such as 'Family by Family'.²⁶

The cost of placing children in residential care is significantly more than the cost of providing relative or foster care. Current estimates suggest that around 80% of children in out of home care are in some type of foster care, with more than half of these in relative foster care and fewer in the care of the department or a funded service. While only 10% of children are in residential care, the cost per child is much higher (in excess of \$600,000 per annum) while their likely long term outcomes are poor.²⁷

The challenge that we face in securing greater investment in preventative approaches is the ability to demonstrate that early intervention can be targeted to those most at risk and that the benefits and costs can be accurately measured. To complicate matters further, the point of intervention and the type of service delivered can often be the responsibility of a different agency, service system or even level of government.

There has been significant interest at both a state and federal level on the 'investment approach' to social service reform being pursued in New Zealand - which uses an actuarial analysis of projected long-term welfare costs for specific at-risk cohorts (e.g. young people from unemployed households or young single parents) as a basis for investing in well targeted and monitored wrap-around service approaches aimed at transforming their life outcomes. Given Western Australia's strong relationship with the community services sector and success with progressing the *Delivering Community Services in Partnership Policy*, we may be well placed to trial such an approach in areas of predominantly state responsibility, with a view to seeking Commonwealth support. Areas that might be suitable include Aboriginal youth on first contact with the justice system or young people leaving state care.²⁸

25 *Out of Home Care Strategic Directions in Western Australia 2015-2020 Discussion Paper*. Department for Child Protection and Family Support. p10.

26 'Family by Family' is a network of families helping other families make the changes they want in their lives developed in South Australia. See www.familybyfamily.org.au

27 Table 15A.3. *Productivity Commission Report on Government Services* (2015). www.pc.gov.au

28 See *Young People Leaving State Care* on page X of this submission.



3.2 Commit to reducing the disproportionate rate of Aboriginal and Torres Strait children in the child protection system and to uphold the 'Aboriginal and Torres Strait Islander Child Placement Principles'

The disproportionate rate of removal of Aboriginal children in Western Australia is of great concern. Over 53% (or 2,388 out of 4,503) of children in out of home care in 2015 are Aboriginal, an increase of nine per cent since 2014 and 56% in the last five years.²⁹ In developing intensive family support services to improve child safety and reduce removal rates, priority should be given to developing specialist culturally-appropriate services to support Aboriginal families and kinship carers in collaboration with Aboriginal community controlled organisations.³⁰

Previous child removal policies and institutional upbringing denied many Aboriginal people the opportunity to develop parenting skills and learn how healthy children grow and thrive.³¹ Community-based culturally embedded parenting programs are needed to help undo the intergenerational damage done.³² This work includes re connecting with culture, language and families and building hopeful and optimistic futures for Aboriginal children.

The role that extended family plays in supporting vulnerable Aboriginal children is not always fully acknowledged or supported, and Aboriginal grandparent carers often end up in informal care arrangements, which may lack recognition. Inadequate support together with a lack of access to individual advocacy within the child protection and legal systems can result in these arrangements failing and children being removed to out of home care - with poorer outcomes for the children and greater costs to the community. The level of financial and social support provided to family and kinship carers remains inadequate, despite the evidence they are more likely to deliver better and more cost effective outcomes. Many find the assistance they require is not available to them unless their child is the subject of a Care and Protection order. Often foster carers receive the support needed to care for children when it was not afforded to families prior to the removal of their child.³³ Increase support to family and kinship carers and providing access to intensive family support services can keep children safe, connected with family and community, and deliver better life outcomes that reduce the cost of state care.

Mainstream programs and services have mixed success in reaching out to engage Aboriginal service users. While there are some genuine efforts and excellent examples, ultimately an organisation with strong community links, culturally appropriate services and an Aboriginal face behind the counter is more likely to have impact. If we wish to support Aboriginal families to achieve better life outcomes we need to increase the number and capacity of Aboriginal community controlled organisations

²⁹ Department for Child Protection and Family Support, *Annual Report 2014-15* (2015), p28.

³⁰ Noting the current Out of Home Care Strategic Directions 2015-2020 identifies this as a priority www.dcp.wa.gov.au/OOHCReform and the Community Sector Roundtable has been consulted on the discussion paper *Building Capacity with Aboriginal Organisations and Businesses to deliver Child Protection and Family Support Funded Services*, Department for Child Protection and Family Support, (2015).

³¹ *Bringing them home*. National Inquiry in the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Commonwealth of Australia, (1997).

³² *Honouring the Truth, Reconciling the Future, Final Report of Truth and Reconciliation Commission of Canada*. www.trc.ca (Inquiry into the Canadian Indian residential schools program).

³³ Submission to WACOSS by FinWA and Kinship Connections. September 2015.

delivering community services and to improve the cultural sensitivity and appropriateness of mainstream services if we are to make greater inroads in areas of entrenched disadvantage.

We are keen to see government Departments and mainstream community service providers embrace a principled approach to partnering with and supporting Aboriginal community controlled organisations in the delivery of services based on nationally agreed best-practice principles.³⁴ Guidelines developed by ACOSS and national Aboriginal peak organisations encourage not for profit community service providers to commit to partner fairly rather than compete, to empower Aboriginal organisations, recognise their existing capacity and unique community role, and share knowledge both ways on a journey that will increase their resilience and effectiveness with a view to stepping back and handing over control. Many of the same issues and principles equally apply to how larger organisations might partner with smaller, specialist, regional ones.³⁵

Government agencies with a commitment to delivering more effective programs and better outcomes for Aboriginal Western Australians need to consider these principles as part of the way that they design programs and procure services, so that service contracts do not prevent collaborative service delivery or the transfer of ownership and control over time.

As highlighted at the outset, over 50% of children removed from their families and placed in the custody of the Department for Child Protection and Family Support are Aboriginal and Torres Strait Islander children. The rate of growth of Aboriginal and Torres Strait Islander children placed into care is significantly higher than for non-Aboriginal children. Involvement in out-of-home care (in particular, residential care) may increase the likelihood of involvement in the criminal justice system.³⁶

Aboriginal and Torres Strait Islander families need to be supported as early as possible to prevent child removal. However, if it is necessary to remove a child from his or her family, all efforts must be made to identify a suitable alternative family member to care for the child and to simultaneously work towards reunification with the child's parents

If kinship care is not feasible, placement arrangements must ensure that Aboriginal and Torres Strait Islander children maintain their connection to culture, family and community. The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) was adhered to in 66% of cases in 2014–2015.³⁷ This means that 34% of the 2252 Aboriginal and Torres Strait Islander children in care in that

³⁴ *Principles for a partnership-centred approach for NGOs working with Aboriginal organisations and Communities in the Northern Territory* ('APONT Principles'), Aboriginal Peak Organisations Northern Territory (2013). nationalcongress.com.au/ngoprinciples

³⁵ See also *Developing Better Youth Services*, page X of this submission

³⁶ VCOSS, *The Role of Out-of-Home-Care in Criminal Justice Outcomes*, <http://insight.vcoss.org.au/the-role-of-out-of-home-care-in-criminal-justice-outcomes/>.

³⁷ Department for Child Protection and Family Support, *Annual Report 2014-2015* (2015) 51.



period³⁸ (766 children) were placed with a non-Aboriginal carer or non-Aboriginal agency. To maximise compliance with the ATSI CPP it is essential that the Department be required to demonstrate in each case precisely what steps have been taken to comply with the principle.³⁹

Child protection legislation requires consultation with Aboriginal community members and Aboriginal agencies in regard to the provision of services for and placement of Aboriginal and Torres Strait Islander children. To date the extent of consultation in practice has been insufficient, frequently taking the form of advice from the Aboriginal Practice Leader or another Aboriginal staff member. The Department of Child Protection and Family Support has acknowledged the important Aboriginal community controlled organisations could play in improving engagement with Aboriginal families and facilitating the effective implementation of the Aboriginal child placement principle. More resources need to be dedicated to supporting Aboriginal community controlled organisations to provide intensive family support, child placement and out of home care services to reduce the number of children taken into state care and deliver better long-term outcomes for children at risk.

It is vital that there is a commitment from government to reduce the overrepresentation of Aboriginal and Torres Strait Islander children into the custody of the state by providing sufficient resources for investment in culturally competent early intervention and prevention strategies, and to involve Aboriginal community controlled organisations in the provision of those strategies; the provision of out-of-home care services; and for expert advice in regard to the identification of suitable kinship carers and the cultural suitability of proposed placements. In this regard, Social Reinvestment

WA welcomes the recent report from the Department for Child Protection and Family Support (*Building a Better Future: Out-of-Home Care Reform in Western Australia*, 2016) in particular, the statement that:

To facilitate this increased service provision to Aboriginal children and families, and recognising that service provision by Aboriginal people for Aboriginal people is appropriate and effective, the Department will strategically support the growth of Aboriginal community controlled organisations (ACCOs). The long-term goal is for Aboriginal children and families to be supported by Aboriginal carers and workers, supported by Aboriginal organisations.⁴⁰

38 Ibid 28. In 2014-2015 there were 4503 children in care and over 50% of these children were Aboriginal or Torres Strait Islander children.

39 It is noted that the Department for Child Protection and Family Support has indicated that it will progress legislative amendments to require the Department to demonstrate to the court how it has or will apply the ATSI CPP and that reports to the court will need to include a plan for maintaining the child's culture and identity: Department for Child Protection and Family Support, *Building a Better Future: Out-of-Home Care Reform in Western Australia* (2016) 64.

40 Department for Child Protection and Family Support, *Building a Better Future: Out-of-Home Care Reform in Western Australia* (2016) 34.

3.3 Ensure adequate accommodation for vulnerable and disadvantaged children and adults

For a number of years, the proportion of unsentenced children in detention in Western Australia has been between 40–50%. As at 31 December 2015, this figure had dropped to 28%. The vast majority of these unsentenced detainees are Aboriginal children. Many are in custody on remand because of a lack of accommodation. Investment in suitable accommodation options such as Aboriginal community controlled bail hostels is a cheaper option than ‘warehousing’ vulnerable and disadvantaged children in detention. Appropriate accommodation for adults is also imperative because homelessness may lead to anti-social and criminal behaviour. In particular, Social Reinvestment WA asks that the Western Australian government review the Department of Housing Disruptive Behaviour Management Strategy to ensure that vulnerable and disadvantaged social housing tenants are not being evicted as a consequence of unaddressed complex underlying problems, especially for victims of family violence. In this regard, it has been observed that some women will not contact police for assistance due to a fear that they will receive a ‘strike’ and may be evicted.⁴¹ Children with complex needs in the care of the Department for Child Protection and Family Support also need appropriate accommodation. According to the Department, residential group homes and family homes for children with challenging behaviours were operating at near full capacity.⁴²

3.4 Increase investment in early childhood development and care for Aboriginal children to close the gap on developmental vulnerability

There is strong evidence that the foundation for good health and wellbeing starts from pre-birth, and that the early years are critical for life-long development.⁴³ A focus on children promotes strong families and encourages positive community engagement. While improvement in the availability of early childhood services has enabled some disadvantaged and developmentally vulnerable children and young people to prosper, we are still failing to improve the wellbeing and quality of life of many vulnerable children and their families. Aboriginal children are at higher risk of developmental vulnerability [insert AEDC link] and often start school without many of the fundamental building blocks of literacy and numeracy our education system takes for granted. Investment in early childhood education and care can make a critical difference to life outcomes.

Often Aboriginal children and families find themselves engaged with numerous services. The more complex the needs of an individual or family, the more numerous the web of services and

41 See WACOSS, *Leaving No-One Behind: A brighter future for our children, families and community*, Pre budget submission for the Western Australia State Budget 2016–2017, 32.

42 Department of Child Protection and Family Support, *Annual Report 2014-2015 (2015)* 34.

43 *Early Childhood and Long Term development: The importance of the Early Years*. Australian Research Alliance for Children and Youth. Dr Tim Moore, Centre for Community Child Health, MCRC. Australia. June 2006.



organisations they are engaged with becomes. Families sometimes describe a “merry-go round” of efforts to resolve issues and negotiate support that results from gaps and overlaps in services, restrictive criteria and siloed approaches that create barriers to access, long waits, or time-limited supports. Engagement with a complex array of services can lead to feelings of being disempowered or overwhelmed, without resolving underlying issues or delivering meaningful outcomes. This is why we need a more integrated system of early childhood services that has the child and the family at their centre.

3.4 Establish and maintain effective education programs to retain Aboriginal children and young people in school

Retention in school is critical to preventing involvement in the criminal justice system. A 2008 study of female prisoners in Western Australia found that almost half (48%) of the women had not completed Year 10 at school.⁴⁴ Sixty-five percent of the Aboriginal women in prison failed to complete Year 10 in comparison to 33% of the non-Aboriginal women.⁴⁵ More recently, the Victorian Ombudsman observed that only 6% of male prisoners and 14% of female prisoners had completed secondary school.⁴⁶

Measures to support the engagement and retention of Aboriginal children in education must be culturally competent, flexible, sufficiently resourced and appropriate for the individual circumstances.⁴⁷ For example, provision of bi-lingual education for Aboriginal and Torres Strait Islander students who speak English as a second language (in particular during the formative years), needs to be part of this strategy to engage and retain Aboriginal children in education.⁴⁸

3.5 Ensure sufficient community drug and alcohol education and rehabilitation programs

Amnesty International researchers were told throughout a number of regions in Western Australia that ‘alcohol and drug use is starting at an earlier age among Aboriginal young people than in the previous generation’ and in some locations this includes the increasing use of drugs such as methamphetamines (‘ice’).⁴⁹ The Federal Standing Committee on Indigenous Affairs reported in 2015

44 At this time, Year 10 was the last year of compulsory schooling.

45 Department of Corrective Services, *Profile of Women in Prison 2008* (2009) 63.

46 Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (September 2015) 150.

47 See Follow the Dream, <http://www.det.wa.edu.au/aboriginaleducation/detcms/navigation/teaching-and-learning/follow-the-dream/>; AIME, <https://aimementoring.com/about/aime/>; Stronger Smarter, <http://strongersmarter.com.au/about/partnerships/>.

48 Global Citizen, Linda Goncalves, ‘They don’t call it mother tongue for nothing, can bilingual education help fight Poverty?’ <https://www.globalcitizen.org/es/content/they-dont-call-it-mother-tongue-for-nothingcan-bil/>

49 Amnesty International, *There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia* (2015) 14.



that for ‘geographic, cultural or other reasons, many do not have access to the range of best practice alcohol treatment and support options that are available to some other Australians in metropolitan settings’.⁵⁰ It was also highlighted that there are not enough residential rehabilitation places for people voluntarily seeking help.⁵¹ The Committee recommended that Aboriginal and Torres Strait Islander people be ‘provided with better access to a full suite of evidence-based alcohol treatment and support options, bearing in mind that reducing the social and economic drivers of harmful drinking will ultimately make treatment and rehabilitation less necessary’.⁵² Although Mission Australia’s Drug and Alcohol Youth Service (‘DAYS’) operates a drug and alcohol residential rehabilitation program for young people in the metropolitan area,⁵³ it has been acknowledged by government that there are insufficient alcohol and other drug community beds for young people in regional Western Australia. Further, the only Aboriginal-specific residential rehabilitation services are in the Kimberley and these cannot be accessed by children. The Western Australian government plans to develop an alcohol and other drug treatment and rehabilitation service for Aboriginal and Torres Strait Islander people in the south of the state at the end of 2017.⁵⁴ While Social Reinvestment WA supports this plan, it asks the government to provide greater investment in culturally appropriate residential rehabilitation programs for Aboriginal and Torres Strait Islander people as a matter of urgency, especially children and young people in regional and remote areas.

3.6 Invest in improved education and treatment programs for family and domestic violence

It is well known that Aboriginal communities experience high levels of family violence. Aboriginal women are ‘35 times more likely to be hospitalised as a result of spouse or partner violence’ than non-Aboriginal women.⁵⁵ Indigenous victimisation rates ‘must be addressed in conjunction with offending rates’ because both are symptoms of the disadvantage that affects many Indigenous communities.⁵⁶ Social Reinvestment WA emphasises that family violence significantly contributes to both high levels of involvement in the criminal justice system and statutory child protection interventions. The recent symposium convened by the Law Council of Australia called for the Council for Australian

50 House of Representatives, Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander Communities* (2015) [4.111].

51 House of Representatives, Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander Communities* (2015) [4.112].

52 House of Representatives, Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander Communities* (2015) [4.115].

53 <http://www.dao.health.wa.gov.au/Home/Professionals/DrugandAlcoholYouthService.aspx>.

54 Western Australian Mental Health, *Alcohol and Other Drug Services Plan 2015–2025* (2015) 59.

55 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) [2.18].

56 *Ibid* [2.19].



Governments ('COAG') to develop immediate strategies to address violent offending, particularly violence against Indigenous women and children.⁵⁷ Effective measures to reduce the incidence of family violence will result in healthier families and safer communities. Additionally, it will reduce the cost burden on the justice and child protection systems. Social Reinvestment WA welcomes the *Safer Families, Safer Communities Kimberley Family Violence Regional Plan 2015–2020*. This plan refers to the high incidence of family violence in the Kimberley and notes that 'services targeted at perpetrators of family violence are not available in the Kimberley' and the 'lack of available responses contributes to high rates of recidivism and undermines overall efforts to respond to family violence'. The plan acknowledges that family violence prevention and intervention must be grounded in Aboriginal law and culture and that community based responses must be developed with Elders, community leaders and community organisations. Healing from past trauma is also a vital component of family violence prevention. Social Reinvestment WA urges the Western Australian government to commit to similar approaches to address family violence in Aboriginal communities across the state.

3.7 Establish effective programs and services for people with disability, mental illness, cognitive impairment (including FASD) and other health conditions

People who have been imprisoned or are otherwise involved in the criminal justice system generally experience disability, mental illness and cognitive impairment at much higher levels than the general population. According to the First People's Disability Network, Aboriginal and Torres Strait Islander people are also significantly overrepresented among homeless people and in the care and protection system (both as parents and children)⁵⁸

In Western Australia, it is estimated that 59% of the adults in prison and 65% of the children have a mental illness (and this is almost three times the prevalence in the general population).⁵⁹ There is generally less data available in regard to cognitive impairment, particularly for Aboriginal and Torres Strait Islander people because cognitive impairments often remain undiagnosed.⁶⁰ The Australian Medical Association has recently highlighted the disproportionate rate of hospitalisation for mental health issues and psychological stress levels among Aboriginal and Torres Strait Islander peoples.⁶¹ It

57 Law Council of Australia, *Indigenous Imprisonment Symposium: Communique* (3 December 2015).

58 National Aboriginal and Torres Strait Islander Legal Services (2013), *Submission to the Australian Human Rights Commission: Access to justice in the criminal justice system for people with disability*. Submission 61 to Australian Human Rights Commission: Access to justice in the criminal justice system for people with disability. Retrieved from <https://www.humanrights.gov.au/our-work/disability-rights/access-justice-submissions>.

59 Mental Health Commission of Western Australia, *Western Australia Mental Health, Alcohol and Other Drug Services Plan 2015–2025* (2015) 16.

60 Gooda M, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Mental Illness and Cognitive Disability in Aboriginal and Torres Strait Islander Prisoners – A human rights approach* (speech delivered at the National Mental Health Services Conference 2012: Recovering Citizenship, Cairns 23 August 2012). Retrieved from <<https://www.humanrights.gov.au/news/speeches/mental-illness-and-cognitive-disability-aboriginal-and-torres-strait-islander>>.

61 AMA, *2015 Report Card on Indigenous Health* (2015) 18.



recommended the development of service models to support the expansion of Aboriginal Community Controlled Health Organisations (ACCHOs) and other services to provide an integrated approach to improving the mental health of Aboriginal and Torres Strait Islander people and as a preventative measure to reduce imprisonment rates.⁶² The AMA emphasised that ACCHOs provide a ‘more culturally safe and competent community-based holistic approach to health’.

Foetal Alcohol Spectrum Disorder (FASD) is also a major issue for the criminal justice system and the wider community. Social Reinvestment WA believes that targeted and specialist support for FASD is required at the earliest possible stage and long before a child or young person becomes involved in the criminal justice system. Social Reinvestment WA also highlights that reforms to the *Criminal Law (Mentally Impaired Accused) Act 1996* (‘CLMIA Act’) are well overdue. It is essential that the legislation enables mentally impaired accused found unfit to stand trial to be released on a community based order and that the indefinite nature of custody orders for mentally impaired accused persons be replaced with a fairer system. Social Reinvestment WA notes that the Department of Attorney General published its report of the review of the CLMIA Act on 7 April 2016.⁶³ Social Reinvestment strongly supports the recommendations for the inclusion of community based options for mentally impaired accused found unfit to stand trial and the removal of mandatory custody orders for children and young people. However the report does not go far enough in recommending changes to address the flawed CLMIA Act.⁶⁴

Social Reinvestment WA supports the recommendation from the Law Council’s symposium that COAG develop strategies to ensure ‘a continuum of support for Indigenous Australians with cognitive impairments and mental health disorders, including culturally relevant early intervention and support, diversion from detention and pathways out of prison into supported accommodation programs and appropriate services’.⁶⁵ Social Reinvestment WA welcomes the announcement on 24 April 2016 that the Western Australian government has committed \$13.1 million to enable the Mental Health Court Diversion Program to operate for a further three years. Approximately 80% of adults who completed the program had ceased offending or committed less serious offences/ Further, 92% of adult participations and 86% of children experienced significant improvements in their mental health.⁶⁶

62 Ibid 21.

63 See [http://parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3914071ad16451df7e0990bf48257f8e000e532a/\\$file/4071.pdf](http://parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3914071ad16451df7e0990bf48257f8e000e532a/$file/4071.pdf).

64 For example, the Report recommends the continuation of mandatory custody orders for adults acquitted on account of unsoundness of mind for offences listed in Schedule 1 of the Act; the continuation of indefinite custody orders; the continuation of the role of the Executive in decision making about the release of mentally impaired accused and the continuation of prison as a place of custody for mentally impaired accused. In addition, the Report failed to recommend the introduction of a special hearing process so that the evidence against a mentally impaired accused found unfit to stand trial can be tested.

65 Law Council of Australia, *Indigenous Imprisonment Symposium: Communique* (3 December 2015).

66 Western Australia Minister for Mental Health and the Attorney General, joint media statement, *\$13.1 million for mental health court diversion*, 24 April 2016.



Given the apparent success of this program, consideration should be given to expanding or adapting the program for regional areas.

3.8 Increase resources to ALSWA and Aboriginal Family Law Services to address and resolve civil and family law issues before these issues escalate into offending behaviour

There is a clear connection between unaddressed civil and family law needs and future interaction with criminal justice system.⁶⁷ Numerous parliamentary inquiries and a recent Productivity Commission report have found that Aboriginal legal services are significantly underfunded.⁶⁸ Under-resourcing of Aboriginal-specific legal services creates gaps in effective service delivery for civil and family law problems in Aboriginal communities. As one example, tenancy evictions and resulting homelessness and/or overcrowding may lead to anti-social behaviour and/or criminal offending. In addition, lack of representation and assistance in relation to family violence and child protection matters may have dire consequences for families and children such as homelessness, increased substance abuse and loss of connection to community, family and culture. It is well known that these factors contribute to offending behaviour. The Law Council of Australia recently recommended that funding for Family Violence Prevention Legal Services and ATSILS should be increased.⁶⁹ Social Reinvestment WA submits that the Western Australian government should contribute to funding these services in order to enable more effective and early resolution of legal problems and prevent resulting disadvantage and criminal behaviour. This approach is consistent with the recommendation of the Productivity Commission⁷⁰ and will save money in the long term by reducing expenditure in the criminal justice and child protection systems.

⁶⁷ See Productivity Commission, *Access to Justice Arrangements*, Inquiry Report Overview (September 2014). Allison F, Schwartz M & Cunneen C, *The Civil and Family Law Needs of Indigenous People in WA* (A report of the Australian Indigenous Legal Needs Project (2014).

⁶⁸ Productivity Commission, *Access to Justice Arrangements*, Inquiry report, Volume 2, p 700. See 2013 Senate Standing Committee on Legal and Constitutional Affairs inquiry into the value of a Justice Reinvestment approach to criminal justice in Australia.

www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index (accessed 12 January 2015), House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time For Doing: Indigenous youth in the criminal justice system*, www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=atsia/sentencing/report.htm, Senate Legal and Constitutional References Committee, Parliament

of Australia, Inquiry into Legal Aid and Access to Justice (2004); Senate Legal and Constitutional Affairs Committee, Parliament of Australia, Inquiry into Access to Justice (2009).

⁶⁹ Law Council of Australia, *Indigenous Imprisonment Symposium: Communique* (3 December 2015).

⁷⁰ See Productivity Commission, *Access to Justice Arrangements*, Inquiry Report Overview (September 2014), Recommendation 21.4.



SMART JUSTICE

4.1 Improve data accuracy and accessibility and linkages between different data

In order to best target investment to improve wellbeing and ensure the effective use of public funds, it is essential that proper and reliable data is maintained during all stages of the justice process and by all government agencies. Data must be easily comparable between agencies and must be publicly accessible. Western Australian justice agencies do not have a good track record in this regard. For example, after a six-month gap, in December 2014 the Department of Corrective Services recommenced its regular publication of monthly statistics for adults and juveniles under community supervision and in custody. However, as at March 2016, no statistics had been publicised on its website since May 2015. Recently, statistics up until December 2015 have been placed on the website. Social Reinvestment WA considers that this data should be uploaded consistently and regularly.

As another example, there is no publicly available data in Western Australia to demonstrate the proportion of Aboriginal children under the care of the Department for Child Protection and Family Support who are simultaneously involved in the criminal justice system. Anecdotally, there are a high number of cross-over cases where children are involved in both the justice and child protection systems. Knowledge about 'the extent of multiple-sector involvement and the types of children and young people who are involved would allow government and non-government agencies to provide more targeted services'.⁷¹ A recent national linkage project to improve understanding of how many

⁷¹ Australian Institute of Health and Welfare, *Children and Young People at risk of social exclusion: links between homelessness, child protection and juvenile justice* (2012) 1.



children are involved in both system was unable to make any finding about Western Australia due to our government's failure to provide standard data required for the *Juvenile Justice National Minimum Data Set (see below)*.⁷²

In its recent report, the Economic Regulation Authority referred to deficiencies in regard to data collection and publication by the Department of Corrective Services and made a number of recommendations for improvement. As recently recommended by Amnesty International, the Department of Corrective Services should collect and provide data in the format required for the Australian Institute of Health and Wellbeing's *Juvenile Justice National Minimum Data Set* and the Western Australia Police should ensure its data is of sufficient consistency and quality to be included in the Australian Bureau of Statistics publications.⁷³

The Western Australian Whole-of-Government Open Data Policy (2015) is aimed at improving the 'management and use of the public sector's data assets in order to deliver value and benefits for all Western Australians. This includes greater release of appropriate and high-value data to the public in ways that are easily *discoverable* and *usable*.' Consistent with this recent policy, Social Reinvestment WA urges the Western Australian government to review the data collection practices of all government agencies to ensure that accurate and relevant linked data can be disseminated between government agencies, researchers, non-government agencies and the public.

4.2 Ensure independent and publicly available evaluations of programs and services

The effectiveness of programs and services that are designed to address offending behaviour and reduce recidivism must be independently evaluated. As the Office of the Inspector of Custodial Services has observed the 'Department of Corrective Services does not have any robust evaluations which can explain what works for whom, and why, by way of programs in the Western Australian context'.⁷⁴ Consistent with this observation, the Commissioner for Corrective Services, James McMahon has stated:

72 Australian Institute of Health and Welfare 2016. Young people receiving child protection services and under youth justice supervision 2013–14. Data linkage series no. 21. Cat. no. CSI 22. Canberra: AIHW, p 3.: [The data in this report](#) relate only to selected states and territories. Because ... the youth justice supervision data collection did not contain data for Western Australia and Northern Territory.

73 Amnesty International, *There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia* (2015) Recommendation 1.

74 Office of the Inspector of Custodial Services, *Recidivism Rates and the Impact of Treatment Programs* (2014) [6.2].



There is no doubt that some of what we are doing is highly effective, but without reliable evidence to the contrary, I must assume that some of the measures we currently undertake in an effort to reduce recidivism do not work. To find out for certain will require a robust framework of reliable data collection and monitoring, along with independent evaluation.⁷⁵

Independent and ongoing evaluations are crucial for all stages of the justice system but, also significantly, for preventative front-end programs and services. For example, a program aimed at retaining Aboriginal children in school or a program to prevent women from consuming alcohol during pregnancy must be assessed and the results made available to both government and non-government agencies and the public generally. Social Reinvestment WA believes that all programs funded by government must be evaluated on an ongoing basis in order to inform policy developers and decision-makers of 'what works' – this will enable public funds to be being utilised in the most effective manner. We note that the recent Youth Justice Services Program Delivery Strategy appears promising in this regard.

4.3 Undertake ongoing mapping analysis to identify communities most in need

Closely related to the above strategies, is the need to undertake a targeted mapping analysis of specific locations and communities in Western Australia with a high level of social and economic disadvantage and associated offending behaviour. The recent Victorian Ombudsman's report stated that 50% of Victorian prisoners came from 6% of State's postcodes.⁷⁶ Those living in the most disadvantaged areas of Western Australia are eight times more likely to have spent time in prison.⁷⁷ Investment in prevention, diversionary and rehabilitation programs must be directed to the specific communities and areas where they are most needed.

As part of this mapping analysis, Social Reinvestment WA suggests that the Western Australian government should work with a local community to develop a social investment 'pilot', whereby resources are provided for effective community-owned and community-based strategies to address local problems with the objective of supporting families, reducing offending and reducing involvement of Aboriginal and Torres Strait Islander people in the justice system.⁷⁸

⁷⁵ Department of Corrective Services, *Recidivism Trends in Western Australia with Comparisons to National Trends* (2014) 2.

⁷⁶ Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (September 2015) 32.

⁷⁷ Vinson T et al, 'Dropping Off the Edge 2015: Persistent Communal Disadvantage in Australia' (Jesuit Social Services and Catholic Social Services, 2015) 121.

⁷⁸ The first justice reinvestment trial is being undertaken in Bourke, New South Wales. As part of this project data 'has been collected to tell a very big story about a young person's passage through the criminal justice system in Bourke and how the community is fairing in terms of offending, diversion, bail, sentencing and punishment, and re-offending rates. Data has also been collected on the community's outcomes in early life, education, employment, housing, healthcare, child safety, and health outcomes including mental health and drugs and alcohol. The data collected has been fed back to community members through community conversations held by local facilitators, and community feedback recorded has been fed back into the Just Reinvest NSW / Maranguka team'. See further <http://www.justreinvest.org.au/justice-reinvestment-in-bourke/>.



4.4 Incorporate justice targets in *Closing the Gap*

The Western Australian government must advocate for and support the inclusion of justice targets in the *Closing the Gap* framework. There are no specific direct targets related to the *Safe Communities* building block and it is imperative that federal, state and territory governments be required to report against specific justice-related targets. This will encourage more accurate data collection and recording and a greater focus on implementing effective strategies to reduce the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system. Justice targets should include, among other things, reducing the rate of imprisonment of Aboriginal and Torres Strait Islander people to a level that is commensurate with their population level and likewise to reducing the disproportionate rate of child protection removals and rates of family and domestic violence in communities. Social Reinvestment WA strongly supports the inclusion of specific justice targets in *Closing the Gap*.

In particular, Social Reinvestment WA supports the Law Council of Australia's resolution to place 'reducing Indigenous imprisonment' as a key item on COAG's 'Closing the Gap' agenda and establish specific targets, including:

1. Reducing rates and length of imprisonment for men, women and youths by 50 percent, within five years; and
2. Implementing trials in all jurisdictions aimed at reducing imprisonment by effective diversionary programs within 12 months with:
 - a. Commitment to fund programs for five-year cycles, subject to performance targets
 - b. National review of programs within three years.⁷⁹

4.5 Implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody

Many of the Royal Commission Into Aboriginal Deaths In Custody ('RCIADIC') recommendations remain relevant today and provide a useful blueprint for effective reforms to the Western Australian justice system. Social Reinvestment WA urges the Western Australian government to review the recommendations and implement all relevant outstanding recommendations immediately. Clayton Utz has examined that extent of implementation of the RCIADIC recommendations as at May 2015 for

79 Law Council of Australia, *Indigenous Imprisonment Symposium: Communique* (3 December 2015).

Amnesty International and published its findings.⁸⁰ The recommendations of the RCIADIC have underpinned Social Reinvestment WA's approach (see, for example, policy 5.2).



SAFE COMMUNITIES

80 Change the Record *Review of the Implementation of RCIADIC* (May 2015) <<https://changetherecord.org.au/review-of-the-implementation-of-rciadic-may-2015>>



5.1 Repeal mandatory sentencing laws

Social Reinvestment WA calls on the Western Australian government to repeal all mandatory sentencing laws,⁸¹ especially those that apply to children. There is no evidence that mandatory sentencing contributes to ongoing community safety. Mandatory sentencing adds to the overall high cost of imprisonment without any long term discernible benefits to community safety. Mandatory sentences of imprisonment are highly unlikely to deter people suffering from mental impairment, alcohol and/or drug dependency and/or people who are socially and economically disadvantaged.⁸² It is well accepted that a large proportion of prisoners and detainees are suffering these problems. As the President of the Children’s Court, Judge Dennis Reynolds, has stated in relation to the potential impact of expanded mandatory sentencing for children:

‘if a large number of more hardened, angry and disconnected young offenders are returned to the community....then they will have a wide sphere of influence on other disconnected children, including children even younger than them. That will create an ongoing multiplier effect, which over time, will sustain and increase serious offending and its human and financial cost to the community’.⁸³

Measures that are designed to address the underlying causes of offending behaviour are more likely to reduce the true incidence of offences subject to mandatory sentencing. Mandatory sentencing is expensive and ineffective. The recent changes to mandatory sentencing are likely to cost Western Australian taxpayers \$43 million (to accommodate an estimated additional 60 juvenile detention places and 206 adult prisoners). The government has also acknowledged that there will be a further \$93 million spent to build a new prison as a direct consequence of the legislation.⁸⁴ Social Reinvestment WA strongly believes that a significant proportion of this money would be more wisely spent on prevention, diversion, and rehabilitation than on detaining children and young people.

5.2 Provide alternative options for fine defaulters to reduce imprisonment for unpaid fines

81 Social Reinvestment WA highlights that the Law Council of Australia recommended that mandatory sentences be abolished in its December symposium on Indigenous imprisonment: Law Council of Australia, *Indigenous Imprisonment Symposium: Communique* (3 December 2015).

82 New South Wales Law Reform Commission, *Sentencing*, Report No. 139 (2013) 31-32.

83 Judge Dennis Reynolds, *Youth Justice in Western Australia – Contemporary Issues and its future direction*, (University of Notre Dame, 13 May 2014) 5-6.

84 See Joint Statement to the Western Australian Government on the *Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014*.



Currently, in Western Australia, people who do not pay their court-imposed fines may be imprisoned at a cut-out rate of \$250 per day. What this means is that for every day spent in prison, \$250 worth of unpaid fines is written off. The amount of the fine is never recouped. Alarming, this option costs taxpayers \$345 per day. It has been estimated that the total cost of imprisoning fine defaulters in 2013 would have been approximately \$4 million.⁸⁵

The option of fine default is one of a number of alternatives intended to encourage fine defaulters to pay their outstanding fines. These include drivers licence and vehicle licence suspensions; seizure of property and goods; and community work. However, for vulnerable and disadvantaged people the failure to pay outstanding fines is rarely a choice. Instead, it is typically the result of poverty, mental and/or physical illness, disadvantage and other complex life circumstances such as family violence and substance abuse. Imprisonment is highly likely to cause further disadvantage and trauma such as risks to physical and mental health including death (either directly from imprisonment or from being transported long distances in custody); negative associations within the prison environment; disruption to family and children; and the possibility of children being removed by child protection authorities. The option of imprisonment does nothing to address the underlying problems or prevent offending.

It is incongruous that Western Australia imprisons vulnerable and disadvantaged people who cannot pay fines at such an enormous expense without any tangible benefits in terms of community safety. Furthermore, the number of Aboriginal people in Western Australia imprisoned for fine default has increased by 480% between 2008 and 2013.⁸⁶ Alternative schemes exist in other jurisdictions that enable vulnerable and disadvantaged fine defaulters to cut-out their fines by undertaking rehabilitation, treatment and/or education and training. The Law Council of Australia symposium on Indigenous imprisonment recommended that imprisonment for fine default should cease.⁸⁷ Social Reinvestment WA believes that the Western Australian government must immediately investigate alternative schemes for fine default to ensure that taxpayer funds are not being wasted on unnecessary imprisonment and to encourage fine defaulters to address their complex underlying problems in order to provide greater community safety. As recently stated by the Inspector of Custodial Services:

When a court fines someone, it has decided that the person doesn't deserve to go to prison, and doesn't even deserve a sentence of community work or a suspended prison sentence. So

85 Western Australia, Parliamentary Debates, Legislative Assembly, 23 June 2015, 4756-4779 (Mr P Papalia).

86 WA Labor Party, *Locking in Poverty: How Western Australia drives the poor, women and Aboriginal people to prison* (November 2014) 2.

87 Law Council of Australia, *Indigenous Imprisonment Symposium: Communique* (3 December 2015).

we should all be concerned that so many people end up in prison for default...the human, social and financial costs of people 'churning' in and out of custody for fine default are enormous.⁸⁸

5.3 Invest in and support Aboriginal-controlled programs and services

Bearing in mind that approximately 40% of adults and 75% of children who we lock up in Western Australia are Aboriginal, there should be a far larger proportion of programs and services within the justice system that are specifically designed by and for Aboriginal people.. The Office of Inspector of Custodial Services has observed that 'improvements in program availability [within prisons] have not been equitably distributed. In 2013 the gap between treatment needs and program delivery was markedly different between metropolitan and regional 'Aboriginal' prisons (those where the proportion of Aboriginal people in prison is 75 per cent or more). Prisoners released from 'Aboriginal' prisons were far more likely to have treatment needs unaddressed due to programs being unavailable'.⁸⁹ In 2014 the President of the Children's Court stated that there 'has been an almost complete absence of rehabilitation programs for Aboriginal children for many years despite the ongoing urgent need for them'.⁹⁰ Recently, the Australian Medical Association has recommended the employment of Aboriginal health workers and Indigenous health professionals in prison health services to support the delivery of a culturally competent health service.⁹¹

The Healing Foundation's initiatives are an example of a successful holistic, community-based approach which emphasises the self-determination of Aboriginal and Torres Strait Islander people. The Foundation encourages Aboriginal and Torres Strait Islander communities to be the leading force behind collective healing,⁹² supporting the embodiment of Aboriginal cultural themes into the healing process, through healing camps, field trips to culturally significant sites and reconnecting people to lost family members,⁹³ The current approach in relation to children and young people in the justice system is welcomed. The Department of Corrective Services has established a Youth Justice Innovation Fund and funding for innovative programs designed by and for Aboriginal young people and run by community-based Aboriginal organisations is being provided. A Youth Justice Framework and new Program Delivery Strategy has also been developed for the first time which are promising signs. However, it remains the case that less than 10 per cent of the Youth Justices Services budget is

88 Office of the Inspector of Custodial Services, *Media Release*, 20 May 2016.

89 Office of the Inspector of Custodial Services, *Recidivism Rates and the Impact of Treatment Programs* (September 2014) 27.

90 Judge Dennis Reynolds, *Youth Justice in Western Australia – Contemporary Issues and its future direction*, (University of Notre Dame, 13 May 2014) 17.

91 Australian Medical Association, *2015 Report Card on Indigenous Health* (2015) 6.

⁹² *Ibid* p 22

⁹³ healing foundation resource p 18, 19 and 50



notionally available to non-government organisations for the delivery of prevention, diversion and rehabilitation services and it remains to be seen how many contracts will go to Aboriginal community controlled organisations. Social Reinvestment WA contends that there must be a long term commitment by government to provide sustainable funding and ongoing support for Aboriginal designed and led strategies both in the adult and youth justice contexts as well as in other areas such as housing; sport and recreation; disability services; education, employment and training; and physical and mental health.

5.4 Ensure ongoing cultural competency throughout the justice system

Bearing in mind the overrepresentation of Aboriginal people in the Western Australian criminal justice system, it is imperative that everyone involved in the justice system (eg, police, lawyers, community corrections officers, judiciary and other justice staff) have effective and ongoing cultural competency training. Despite past recommendations in relation to cultural competency training, deficiencies remain. A failure to understand cultural issues may have dire consequences for the way in which an Aboriginal person is dealt with. As one example, if a community corrections officer who is writing a pre-sentence report is not sensitive to cultural issues, the report may be negative as a consequence of a failure to communicate effectively with the Aboriginal person and properly understand their circumstances. This will, in turn, impact on the sentencing outcome. Amnesty International heard concerns, in particular in Geraldton, about the absence of a community policing ethos and a lack of Aboriginal community engagement by police.⁹⁴ This is a barrier to crime prevention initiatives. Amnesty International heard that cultural competency training is provided at the Police Academy when recruits first join the police force but that there is little follow up by way of cultural training in the local context once the police have taken up their posts. Familiarisation with the local cultural context through discussions with local Aboriginal organisations or Elders is done only in an ad hoc way.⁹⁵

Social Reinvestment WA recommends that local cultural competency training, delivered by Aboriginal community controlled organisations, should be funded and rolled out throughout Western Australia to improve community policing and relationships between police and Aboriginal communities. Furthermore, Aboriginal community controlled organisations should be funded to provide local

⁹⁴ Amnesty International, *There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia* (2015) 23.

⁹⁵ Amnesty International, *There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia* (2015) 23.



cultural competency training to lawyers, community corrections officers⁹⁶, members of the judiciary and others working in the justice system (such as victim support workers, mediators, counsellors etc).

5.5 Repeal the mandatory reporting of breaches of community-based orders

Previously, community corrections officers (CCOs) were able to use their discretion when people had minor lapses in adherence to the requirements of community-based orders (such as sentencing orders and parole). The CCOs, who have knowledge of and background to the client's circumstances, could decide not to report a minor breach because the reporting of a minor breach may lead to a return of a person to prison. The current policy of mandatory reporting of breaches means that CCOs cannot use their discretion and provide the person with a further opportunity (which may be the best option for their rehabilitation and the interests of the community). Social Reinvestment WA believes that because CCOs have direct knowledge of a person's circumstances, they should be provided with the authority to consider all of those circumstances and decide not to action a particular minor lapse/breach.

5.6 Ensure education and rehabilitation programs in prisons are maintained

Although Social Reinvestment WA believes that, in the long-term, resources should be redirected away from prison and into preventative and early intervention strategies, it is also essential that effective education and rehabilitation programs are maintained in prison and youth detention centres. Otherwise, children and adults who are deprived of their liberty are more likely to reoffend upon release and return to prison, at a huge expense to the community. As stated by the Office of the Inspector of Custodial Services (OICS) 'the benefits of prisoner rehabilitation are obvious – a better life for the individual, a safer community, and reduced costs to government'.⁹⁷ According to the OICS's recent report on Wooroloo Prison Farm, in 2014 there was a greater proportion of people in minimum-security prison who did not have their treatment needs met due to a lack of available programs than was the case in 2013. For Wooroloo, almost 20% of people in prison did not get access to programs and for Pardelup Prison Farm the figure was 26.9% (an increase of over 8% from 2013).⁹⁸ It was also reported that there was less access to and participation in education and training programs by people

⁹⁶ It is noted that on 1 December 2015 the Department of Corrective Services launched its Reconciliation Action Plan 2015–2018. As part of its RAP, it is planned to ensure that 'Department employees engage in cultural competency programs to increase understanding and appreciation of different cultural backgrounds', see <http://www.correctiveservices.wa.gov.au/news/default.aspx?id=1190&page=2>.

⁹⁷ Office of the Inspector of Custodial Services, *Report of an Announced Inspection of Wooroloo Prison Farm*, (October 2015) 11.

⁹⁸ Office of the Inspector of Custodial Services, *Report of an Announced Inspection of Wooroloo Prison Farm*, (October 2015) 16.



in prisons partly due to budgets cuts and also to delays in external assessments.⁹⁹ The education centre at Wooroloo was operating at capacity; approximately 22% of people in prison at Wooroloo were engaged in education. However, only 15% of Aboriginal and Torres Strait Islander people were engaged in education (a decrease from 46% in 2012).¹⁰⁰ It has also been reported that the Young Adult Development Program (designed for detainees approaching adulthood) has been pulled back significantly due to funding cuts and that this is having a negative impact on detainees.¹⁰¹

5.7 Improve and increase access to rehabilitation services in custody for all men, women and children in prisons including those on remand

More effective rehabilitation services for people in prison will reduce recidivism and future prison costs and, significantly, improve community safety and wellbeing. Deficiencies in prison rehabilitation services have been highlighted in numerous reports. For example, in its recent Annual Report, the Office of the Inspector of Custodial Services (OICS) noted that the Wandoo Reintegration Facility:

represented an opportunity to provide improved rehabilitation and reintegration opportunities for a complex cohort of prisoners. It is an initiative which this Office welcomed, and this year's inaugural inspection of Wandoo was very positive. However, it was regrettable that the opening of Wandoo was not accompanied by intelligently targeted initiatives in other prisons. This meant there was no system-wide approach¹⁰²

The Economic Regulation Authority observed that the Department of Corrective Services does not have an effective process for allocating people to rehabilitation programs. Moreover, rehabilitation programs are not available to people who are completing short-term sentences or those people who are refused bail and held in prison on remand. In order to develop an Individual Management Plan and receive rehabilitation programs, the Department requires a person to have a minimum six months' sentence to spend in custody.¹⁰³ The OICS has also recommended increased investment in work camps because they have a 'positive contribution to successful transition from custody to freedom'.¹⁰⁴ The OICS also noted in its most recent Annual Report that given that two-thirds of its recommendations 'have not been progressed, there is a serious risk the Department will not meet its goals of rehabilitation and reducing recidivism'.¹⁰⁵ Social Reinvestment WA contends that the

99 Office of the Inspector of Custodial Services, *Report of an Announced Inspection of Wooroloo Prison Farm*, (October 2015) 19.

100 Office of the Inspector of Custodial Services, *Report of an Announced Inspection of Wooroloo Prison Farm*, (October 2015) 20-21.

101 CPSU CSA "Funding Cuts lead to Violent Behaviour" <<http://www.cpsucsa.org/news/union-news/item/funding-cuts-lead-to-violent-behaviour>> (9 March 2016)

102 The Inspector of Custodial Services, *Annual Report 2014–2015* (2015) 12.

103 Economic Regulation Authority, *Inquiry into the Efficiency and Performance of Western Australian Prisons* (2015) 126.

104 The Inspector of Custodial Services, *Annual Report 2014–2015* (2015) 17.

105 The Inspector of Custodial Services, *Annual Report 2014–2015* (2015) 20.



recommendations of the OICS (and other bodies) relating to rehabilitation and reducing recidivism of people who have been imprisoned must be properly reviewed and implemented.

5.8 Ensure adequate post release services for people who are returning to their families and communities

In the Northern Territory, the North Australian Aboriginal Justice Agency (NAAJA) operates a prison ‘throughcare’ program that is helping to cut reoffending by providing support before and after release of people from prison for issues such as housing, mental health and alcohol abuse. Throughcare is aimed at preparing people in prison for their reintegration into the community and supporting them in their transition to the ‘outside’. NAAJA explain that:

In the second half of 2011, only three Throughcare clients (out of more than 75 clients) breached court orders or reoffended. Given recidivism rates, this is a remarkable contribution to both improving community safety and reducing the over-incarceration of Aboriginal people.¹⁰⁶

The Healing foundation’s initiatives embrace a healing process which brings people into a safe place through connection to culture and country.¹⁰⁷ The programs it supports are a further example of the benefit of a community-based and led approach to healing which adopts local Aboriginal knowledge and practice, focusses on Aboriginal culture and history and appreciates the diversity of differing community and individual needs.¹⁰⁸

The recent Law Council symposium recommended that there should be increased funding for ‘tailored prisoner through-care programs for Indigenous custodial offenders on release’.¹⁰⁹ It is also noted that the OICS is due to report in early 2016 on the effectiveness of existing prison transition services. Social Reinvestment WA contends that the Western Australian Government should provide resources and support for the development of culturally competent through-care programs for Aboriginal people who are ending a prison sentence.

5.9 Establish a state-wide Aboriginal interpreter service to ensure that Aboriginal people are not disadvantaged in justice system and can effectively participate in rehabilitation strategies

106 Jonathon Hunyor¹ Principal Legal Officer, North Australian Aboriginal Justice Agency, ‘Aboriginal and Torres Strait Islander Legal Services and Access to Justice’ <http://www.austlii.edu.au/au/journals/BaJINTLawSoc/2012/31.pdf>

107 healing foundation report p 23

108 healing foundation report p 15, 20

109 Law Council of Australia, *Indigenous Imprisonment Symposium: Communique* (3 December 2015).



There is no state-wide Aboriginal language interpreter service in Western Australia, and the only Aboriginal interpreter service in Western Australia (the Kimberley Interpreting Service) is under resourced. While access to Aboriginal interpreters during all stages of the criminal justice system is crucial for protecting rights and ensuring that Aboriginal people are not unnecessarily or unjustly imprisoned, it is also essential for maximising successful engagement in programs and services. If an Aboriginal person who is unable to adequately speak or understand English participates in a rehabilitation or training program without access to an interpreter, he or she is unlikely to participate effectively or make any significant therapeutic or rehabilitative gains.