



November 2021

## Plan to reduce Aboriginal incarceration

### Background

A key theme of the Royal Commission into Aboriginal Deaths in Custody was that imprisonment should be a sanction of last resort. However, in June 2020 in South Australia, Aboriginal people comprised almost a quarter (24% or 701 prisoners) of the total SA prison population. This represented an increase of 3% since June 2019 (ABS 2020). While Aboriginal and Torres Strait Islander peoples represent almost a quarter of the adult prisoner population, they only comprise approximately 3% of the population. Just over half (54%) of the 10- to 17-year-olds in prison are Aboriginal.<sup>1</sup> The SA incarceration rate for Aboriginal adults in June 2020 was higher than the national average (ABS 2020).

### Policy Response

The July 2020 *National Closing the Gap Agreement*<sup>2</sup> includes two targets relating to the incarceration of Aboriginal adults (target 10) and Aboriginal young people (target 11): By 2031, these targets are aimed at reducing by 15 % and 30%, respectively, the number of adult and young Aboriginal people who are incarcerated.

South Australia's Implementation Plan for the National Agreement on Closing the Gap includes five policy priority areas and includes justice (adult and youth incarceration).

Each target includes associated information such as key indicators; drivers; contextual information; disaggregation by geographic location, socio-economic status, age and gender; and the development of data to measure progress. This information serves as a useful guide for South Australia in developing a strategy and policy response to meeting its obligations under the Agreement.

Ensuring that South Australia meets the targets under the Agreement, will require the development of a detailed and funded plan. In order to reduce the current excessive incarceration rates, solutions must be sought and enacted in the community — not solely in prisons — and need to address the underlying determinants of incarceration and recidivism, and include a recognition that excessive and repetitive incarceration compounds social disadvantage and family dislocation.

Integral to developing a detailed and well-resourced plan that includes community responses, is the inclusion of support being provided to establish justice reinvestment programs across the

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<sup>1</sup> <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2020/contents/data-visualisation/number-of-young-people-in-detention>

<sup>2</sup> For more information on the Agreement and its targets, see: <https://www.closingthegap.gov.au/national-agreement-closing-gap-glance>

state, in partnership with Aboriginal communities. Justice reinvestment aims to divert a portion of funds spent on incarceration to local community initiatives where it is invested in early intervention and prevention services, and to address the underlying issues that lead to involvement in the criminal justice system.<sup>3</sup> The significant value of justice reinvestment is its recognition of underlying contributory factors relating to social disadvantage and primary and early intervention approaches to preventing offending pathways.<sup>4</sup> This approach has had substantial success in Australia, as evidenced by the Maranguka Justice Reinvestment Project in Bourke, NSW, which identified four priority areas for reducing crime in their community: early childhood and parenting; the role of men; children and young people 8-18 years of age; and service delivery reform. Identified 'circuit breakers' included justice initiatives such as addressing bail protocols, a driver licensing/crime prevention program and a domestic violence monitoring and support program. Key to the success of justice reinvestment initiatives and a more community-based approach, is that legal frameworks must be amended to direct offenders and alleged offenders away from imprisonment or remand and into diversionary programs.

Preliminary work by Justice Reinvestment SA has included the development of its five-year action plan, the establishment of baseline data for Port Adelaide, and the establishment of the 'Community Justice Hub' which is aimed at consolidating community connections and providing support for Aboriginal young people and their families.<sup>5</sup>

As part of developing a plan and policies to reduce incarceration rates in SA, the Government is urged to consider allocating funding to Justice Reinvestment SA and reconsider its current approach to criminal justice. A fundamental first step in reducing the number of young prisoners will be to increase the minimum age of criminal responsibility from 10 to 14 years.

While there are strong social arguments to reduce the incarceration rate, there is also an economic one. A recent report by Price Water Cooper<sup>6</sup> indicates that the disproportionate number of Aboriginal people in the justice system costs the Australian economy \$8 billion a year in direct and indirect costs. Annual savings to the economy of nearly \$19 billion could be achieved by 2040 if the gap between Aboriginal and non-Aboriginal rates of incarceration were closed – the economic burden is set to double to almost \$20 billion in the next 20 years if nothing is done. These cost savings would be better invested in preventative measures and improving outcomes for children and young people.

In summary, key considerations towards reducing the incarceration rate and developing alternative programs and dedicated services will necessitate systemic reform, which should include the repeal of punitive bail laws and mandatory sentencing laws, the decriminalisation of public drunkenness, an end to the over-policing of Aboriginal communities, the establishment of regional justice reinvestment programs, and raising the age of criminal responsibility from 10 to at least 14 years. To this end, a detailed and funded plan is to be developed indicating how targets 10 and 11 of the Closing the Gap Agreement are going to be met in SA – this plan is to include identified programs, benchmarks and incremental targets, to be reported on a bi-annual basis.

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<sup>3</sup> Change the Record Coalition, *Blueprint for Change* (Change the Record Coalition Steering Committee, 2015) 6.

<sup>4</sup> Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report No133 (2017). <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>

<sup>5</sup> Justice Reinvestment SA <https://www.justicereinvestmentsa.org/>

<sup>6</sup> PWC Indigenous Incarceration report: *Unlock the Facts 2017. Shock numbers: Cost of Indigenous incarceration* <https://www.pwc.com.au/publications/the-press/shock-numbers-cost-of-indigenous-incarceration.html>

## **SACOSS Proposal**

1. That through the SA Implementation Plan for the National Agreement on Closing the Gap, the Government commits to providing more detail, timelines, identified resource allocations and regular public reports associated with meeting its commitments to reduce by 2031 the incarceration of young and adult Aboriginal people by 30% and 15% respectively.
2. Integral to this plan would be the development and establishment of Justice Reinvestment Programs in conjunction with Aboriginal communities.
3. Increase the minimum age of criminal responsibility from 10 to 14 years.