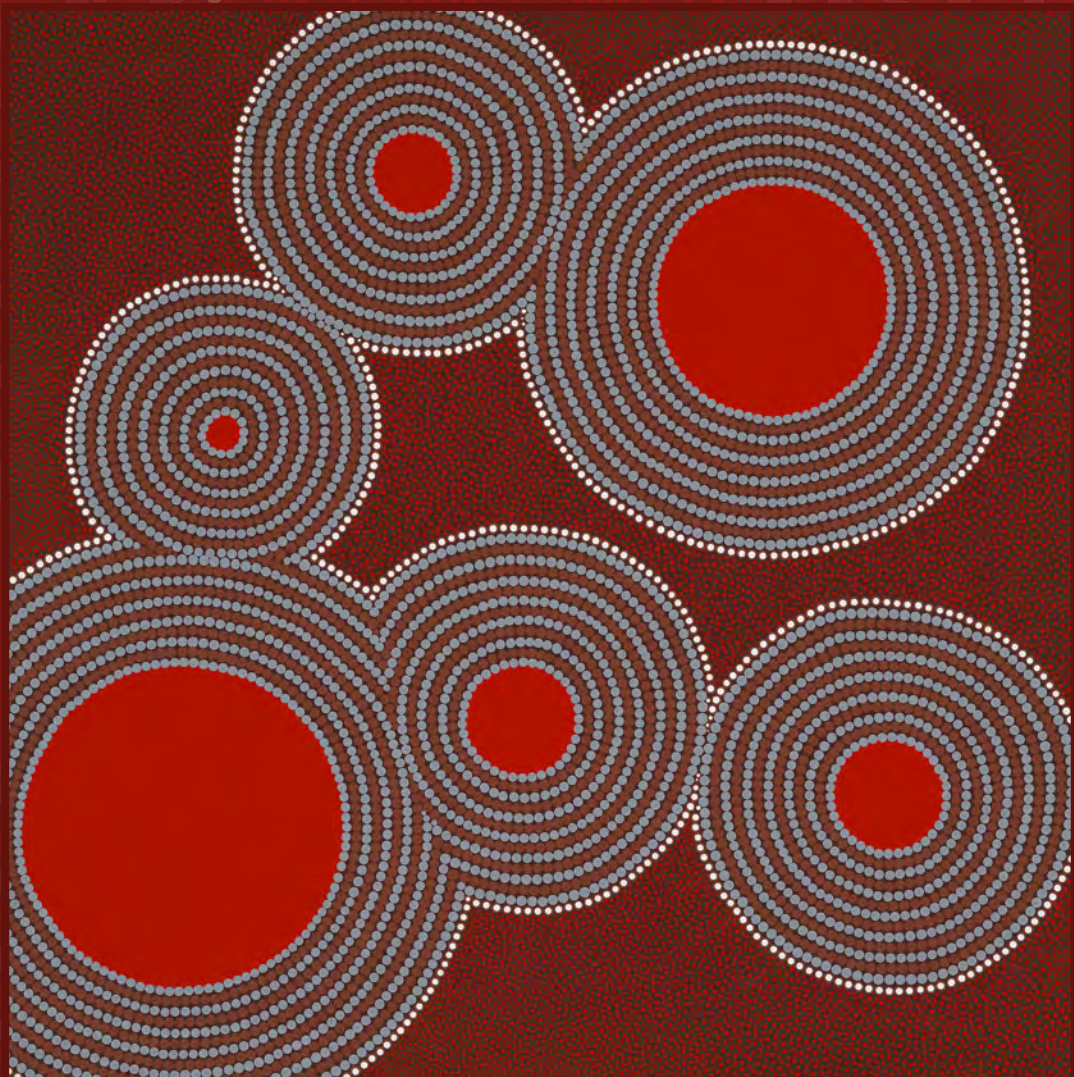


# **Views on Alternatives to Imprisonment: A Citizens Jury Approach**

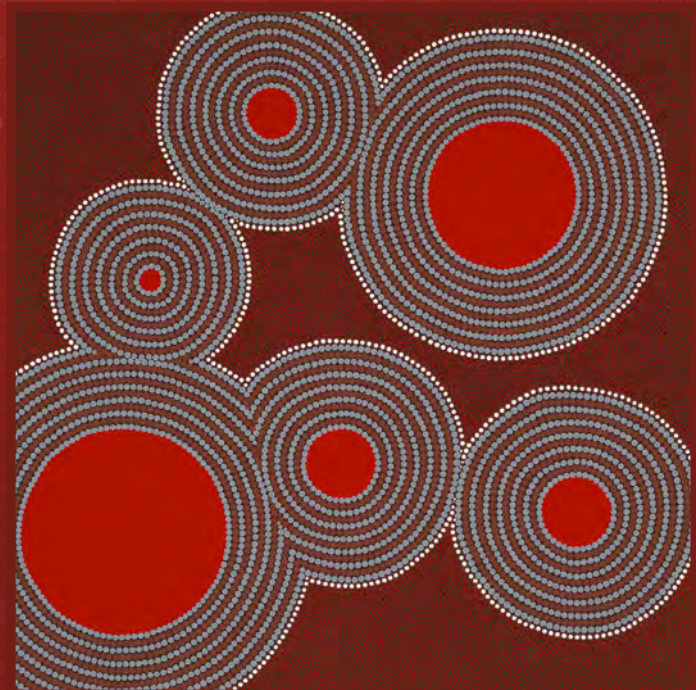
Report prepared for the Lowitja Institute

Paul Simpson, Jill Guthrie, Melissa Lovell, Corinne Walsh, Tony Butler



Nexus  
*Contemporary Circles*  
Oil on canvas  
80cm x 80cm

Boom Gate Gallery  
Long Bay Correctional Centre  
Sydney NSW





# Views on Alternatives to Imprisonment: A Citizens Jury Approach

Report prepared for the Lowitja Institute

Paul Simpson, Jill Guthrie, Melissa Lovell, Corinne Walsh, Tony Butler

*This report is dedicated to the memory of Gavin Mooney, 1943–2012*



Australia's National Institute for Aboriginal and  
Torres Strait Islander Health Research



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# Executive Summary

Prisoner populations endure some of the worst health outcomes in the community in terms of mental illness, chronic disease, excess mortality and exposure to communicable diseases, with engagement in injecting drug use and tobacco smoking also very common. Mental illness and alcohol misuse, in particular, have been shown to relate to imprisonment rates.

Alarming Aboriginal and Torres Strait Islander over-representation in Australian prisons, combined with high recidivism rates and annual government prison expenditure reaching more than \$3 billion, has led many to claim that incarceration is a social policy failure that needs to be redressed.

One important obstacle to a reform agenda in the criminal justice area is public opinion. The orientation of policy is said to be supported by public opinion, or at least the perception of public opinion held by policymakers. There is an impression, informed by opinion polls, of little sympathy for offenders among the general public, a situation often exploited by politicians to perpetuate punitive penal policies. However, alternatives to public opinion polls are needed to assess the public's views and inform justice policy, as survey-based methods typically present shallow, unconsidered public opinion and thwart good policy development and reform.

Citizens Juries offer an alternative method to assess the public's views, views that are critically informed and thus better aid policy development. The effect of critically informed public views on policy decision making, however, is largely unknown.

## Aims and research questions

This study by a team of Indigenous and non-Indigenous researchers aimed to explore,

through Citizens Juries, the opinions and views of a critically informed public towards how we, as a community, should address offenders in terms of incarceration and alternatives to incarceration. The study also aimed to examine the thoughts of policymakers on the opinions and outcomes of Citizens Juries.

The research focused on a range of non-punitive approaches to addressing offenders, including one known as Justice Reinvestment, which has gained recent attention and is touted as a possible solution to Indigenous over-representation in Australia's criminal justice system. The approach aims to divert funds intended to be spent on criminal justice matters back into local communities to fund services (for example, in areas such as mental health, drug and alcohol, employment initiatives, housing) that address the underlying factors associated with crime, thus reducing the likelihood of people entering the criminal justice system.

The research questions were:

- What principles do a critically informed public want to see underpin the treatment of offenders, and how best might these principles be put into practice?
- To what extent are policymakers influenced by the views of a critically informed public on issues of justice and incarceration?

The research also sought to test Citizens Jury methodology in the offender health field.

In attending to these questions, this research provides important information and evidence in the offender health area and contributes to the Justice Reinvestment debate among offender health criminal justice, political and community stakeholders.

## Methodology and methods

The study utilised a qualitative research methodology. The research comprised three Citizens Juries (held in Sydney, Canberra and Perth) and included evaluation of the jury processes in each city and semi-structured interviews with policymakers.

As with legal juries, Citizens Juries bring together a randomly selected group of citizens, usually 12 to 20 people, provide them with information on the relevant issues, and ask them, as community representatives, about their preferences for certain policy options or priorities for resource allocation. In contrast to participants of large-scale surveys, opinion polls or focus groups, jurors have access to, and critically engage with, a range of experts on a subject and are able to ask questions and clarify key points through discussions with experts. They are also involved in extensive discussion with each other as part of the deliberative process. This enables jurors to develop nuanced conclusions about the subject area, as well as more considered preferences for particular policy approaches.

For this study jurors were asked to deliberate on principles for dealing with offenders and on recommendations for enacting these principles in terms of policy approaches.

Our research added a research translation component to the Citizens Jury approach by seeking the views of policymakers to assess the extent to which they were influenced by citizens' critically informed views. Policymakers were asked a series of questions regarding their knowledge and attitudes towards offenders, incarceration and incarceration alternatives. They were then shown a summary of outcomes of the jury deliberations and asked about their thoughts and whether (and in what ways) they were influenced by those critically informed views.

Methodological issues considered in undertaking the project included selection of jury and policymaker participants, provision

of evidence and deliberation procedures in the Citizens Jury events, and achieving research to policy translation through revealing the critically informed views of the jury members to policymakers. A Research Reference Group was established to consider and advise the research team on these issues. The Research Reference Group also helped ensure that any agenda or interests of the Citizens Jury facilitator or research team did not unduly influence processes in such a way that findings were biased and aligned to those interests.

## Citizens Juries findings

On balance, jurors were open to the idea of alternatives to imprisonment, especially approaches that focus on lowering overall crime rates. Overall, three core principles emerged across all Citizens Juries in determining how offenders should be dealt with.

The first principle was equity and fairness. This principle relates to consideration of the social, cultural and economic circumstances of offenders, as well as the crimes committed. Jurors extended this principle to victims of crime.

The second principle was a focus on prevention, including a commitment to addressing the social and economic causes of offending, providing pathways for education among those who might be at risk of offending or re-offending, and developing an increased sense of community belonging.

The third principle, highlighted in the Sydney and Perth events, concerned community involvement and representation in the development of justice policies and programs.

Jurors outlined ways to enact the principles identified. While Canberra and Perth jurors highlighted that retaining deprivation of liberty for very serious offences is preferred, ways of enacting principles primarily included strong support for alternatives to incarceration.



Other suggestions included providing better services and programs to address the social and economic determinants of crime, raising public awareness of non-incarceration options in order to facilitate discussion and prospective public endorsement of such options, and a political commitment to allocating public funds to non-incarceration options.

## **Policymaker findings**

On the whole, policymakers revealed a complex and nuanced picture of current attitudes within the political and policy communities towards incarceration and alternatives, including Justice Reinvestment.

Their views were broadly supportive of current alternatives to imprisonment. For instance, all were aware of a range of programs, including periodic detention, drug cautionary mechanisms, restorative justice, Police-Citizens Youth Club programs, Drug Courts and the Family Court.

Policymakers responded positively to the jury findings, assessing jurors' critically informed views as relevant to decision making in the justice context. Generally, the principles of community involvement, crime prevention, and fairness and justice to victims appeared to be of most interest to them.

Overall, though, policymakers reported that they would not change their views as a result of their engagement with the Citizens Juries findings. In the case of jury findings supporting preventative programs and alternatives to incarceration, policymakers' opinions were already aligned with many of these ideas. In the case of Justice Reinvestment, policymakers had some doubts about the idea and application of Justice Reinvestment. For example, there were doubts about the clarity, representativeness and economics of its approach. They felt that it needed to be better defined in an Australian context and required more evidence that the approach would work before they would be prepared to commit to it as a viable framework.

In essence, policymakers perceived an evidence gap that contributes to practical and political challenges regarding the feasibility of Justice Reinvestment as an alternative to incarceration.

## **Implications of the study**

1. Given the opportunity to deliberate on wider knowledge about offenders and responses to offending (i.e. opportunity to be critically informed), community members are likely to prefer non-incarceration options and be less concerned with punitive 'hard on crime' approaches.
2. Justice and penal policies should be informed by the views of a critically informed community.
3. Deliberative-based research methods are more suitable than opinion surveys to inform justice and penal policies because they assess the views of a critically informed community.
4. Current understandings of Justice Reinvestment present significant challenges to policymakers and politicians in terms of political and economic risk management.
5. Evidence-based research that contributes to consensus building regarding the concept, implementation and effectiveness of Justice Reinvestment in Australia is needed.

# Introduction

Australia's justice sector is growing steadily. Prisons are currently being built or expanded in every state and territory in order to house an increasing population of prisoners (Guthrie, Levy & Fforde 2013). New prisons cost many millions of dollars. For instance, the Northern Territory's new prison is expected to cost \$495 million dollars and house up to one thousand prisoners (Bardon & Gibson 2011). Existing prisons are an expensive ongoing cost. In 2012–13 Australian governments spent \$3.2 billion on incarceration of offenders (Australian Government 2014). An average of 30,082 people were held in prison custody each day—up 3% from the previous year—and an average of 54,616 offenders were serving community corrections orders each day (Australian Government 2014).

The scale and cost of the justice sector (justice *investment*) makes it an appropriate topic for scrutiny and public discussion. Apart from the cost to taxpayers, it is important to consider whether current investment in the justice system is contributing to better social outcomes and higher levels of safety for the Australian public. Evidence increasingly points to the limitations of incarceration as a tool for effective justice (see, for example, Noetic Solutions 2010), as well as a strong link between contact with the justice system and poor health and social outcomes for individuals (Grace et al. 2013; Butler et al. 2006). It may, therefore, be time for a more comprehensive debate on approaches to justice and incarceration in the Australian community, including ways to prevent individuals from initial or ongoing contact with the justice system. This debate will need to take the experience and expertise of all stakeholders, including Australian citizens, into account.

This research makes a contribution to this process by providing an opportunity for citizens to engage with the topic of incarceration and the relative merits of different approaches to justice. It also engages with policymakers due to their influence in decisions about justice policy.

While incorporating discussions about incarceration, the research also focuses on non-punitive approaches to justice, including the approach known as Justice Reinvestment, which has been gaining attention as a possible solution to Aboriginal and Torres Strait Islander over-representation in Australia's criminal justice system (Aboriginal and Torres Strait Islander Social Justice Commissioner 2009; Just Reinvest NSW 2014). The approach aims to divert funds intended for criminal justice matters back to local communities to fund services (e.g. mental health, drug and alcohol, employment initiatives, housing) that address the underlying determinants of crime, thus preventing people from entering the criminal justice system. While prison alternatives like Justice Reinvestment are touted to benefit both Aboriginal and Torres Strait Islander people and non-Indigenous offenders, it is recognised that Indigenous persons and communities have proportionally more to gain due to the over-representation and recidivism rates of Indigenous people compared to other groups. Perhaps reflecting this, Aboriginal and Torres Strait Islander leaders, researchers and organisations have been instrumental in building the Justice Reinvestment landscape in Australia (see Guthrie, Dance & Adcock 2010).

Overall, the study provides important evidence in the offender health area and contributes to the Justice Reinvestment debate among offender health, criminal justice, political and community stakeholders.

# Background

Prisoner populations are characterised by individuals from disadvantaged backgrounds. This includes those with poor educational attainment, the unemployed, people who are socially isolated and the itinerant (Butler & Milner 2003). This population also endures some of the worst health outcomes of any identifiable population group in the community in terms of mental illness (Butler et al. 2006), chronic disease, excess mortality (Kariminia et al. 2007a, 2007b, 2012) and exposure to communicable diseases (Butler, Lim & Callander 2011). Poor health and incarceration arguably stem from the role social determinants play in both.

## The social determinants of incarceration

A large body of research demonstrates a correlation between socio-economic disadvantage and imprisonment (see Aaltonen, Kivivuori & Martikainen 2011). A 'social determinants of incarceration' approach illuminates how the issues of poverty, health, education, housing and imprisonment are highly interdependent (McGuire, Henderson & Mooney 1988).

Building on the concept of social determinants of health, the social determinants of incarceration is an approach that recognises the role of broader patterns of social exclusion and disadvantage. While the social determinants of health draw attention to the 'causes of the causes' of ill health—such as the conditions in which people live, housing, availability of primary health care and so on (Winnunga 2007)—the social determinants of incarceration draw attention to the causes of the causes of incarceration (McGuire, Henderson & Mooney 1988).

Social determinant frameworks move the focus away from the immediate causes of a patient or prisoner's situation—such as a virus or conviction for theft—to the broader social and political context that ultimately led to those events (McGuire, Henderson & Mooney 1988). Intermediary determinants such as living conditions and health-related behaviours connect the social and political context to biological processes behind health outcomes (Marmot 2005). These approaches consider the way that individuals' social positioning, the power structure and institutions of society, access to income or education, or health care and other factors contribute to the situations in which they find themselves. Without denying personal agency, these approaches shift the focus of analysis to the institutional level and away from solely the individual level (Rose & Novas 2004). This shift allows for a better examination of structural issues that need to be addressed by policymakers.

From the perspective of a social determinants approach, increasing incarceration rates in Australia could be considered to be both indicative of, and contributing to, broader social policy and health problems. Many of the intermediary determinants of poor health produced by social determinants are fairly self-evident. Alcohol or drug use, for instance, contributes to both the risk of ill health and to risky behaviour that might bring a person into trouble with the law. Alcohol and drug misuse has been shown to affect imprisonment rates. Engagement in risk behaviours such as injecting drug use, alcohol misuse and tobacco smoking is common in this population (Butler & Milner 2003; Belcher et al. 2005).

## Indigenous Australians and incarceration

The social determinants of poor health and incarceration intersect in complex ways among Aboriginal and Torres Strait Islander Australians. They commenced with colonisation and dispossession, stolen wages and stolen generations. These events led to disempowerment, loss of self-determination, marginalisation, racism, and loss of culture and identity. They create 'human trauma and anger, mental health problems, drug and alcohol misuse, and domestic violence', all of which contribute to the higher likelihood of poor health, incarceration or both (Winnunga 2007: 28).

Aboriginal and Torres Strait Islander Australians are more likely to feel the effects of social and economic disadvantage than non-Indigenous Australians and they have correspondingly high levels of both poor health and high imprisonment rates (Grace et al. 2013). Aboriginal and Torres Strait Islander people have a 20-year shorter life expectancy than their non-Indigenous neighbours and high rates of adult mortality from heart disease, cancers, diabetes, violence, and respiratory and digestive conditions (Marmot 2005). Aboriginal and Torres Strait Islander people make up 26 per cent of the adult Australian prisoner population but only 3 per cent of the Australian population (Grace et al. 2013). They are 14 times more likely than non-Indigenous people to be imprisoned (ABS 2012). Between 2000 and 2010 the number of Indigenous prisoners in Australia increased by 85 per cent compared with 35 per cent for non-Indigenous prisoners (ABS 2012). Western Australia is believed to have the highest Indigenous incarceration rate of any jurisdiction in the Organisation for Economic Co-operation and Development and also has very high incarceration rates for young Indigenous people. In 2009–10 an Indigenous person aged 10–17 years old was almost 15 times as likely to be under supervision on an average day as a non-Indigenous person of the same age (ABS 2012). The extent of Aboriginal incarceration

is highlighted in a New South Wales study by Quilty et al. (2004), who found that 4.3 per cent of all children and 20 per cent of Aboriginal children in New South Wales had experienced parental incarceration at some stage in their lives.

Given the intersection between the social determinants of health and incarceration, policies addressing these issues could simultaneously contribute to better health in the general community, better prisoner health and lower prison rates. The growing prisoner population and the escalating Aboriginal and Torres Strait Islander adult prison population in Australia—as high as 80 per cent in the Northern Territory (ABS 2012)—mean that there is clearly an imperative to address the social determinants of incarceration.

## Approaches to justice policy in Australia

Escalating imprisonment rates result in a large expense to Australian state and territory governments while potentially exacerbating other health and social policy problems (Schwartz 2010; McGuire, Henderson & Mooney 1988). This situation raises questions such as 'What approach to justice policy is most effective for achieving improved health and social outcomes?'

### *Justice investment*

In this study the researchers distinguish between two general approaches to justice policy—investment in the criminal justice sector (i.e. *justice investment*) and Justice Reinvestment. *Justice investment* could be considered the default position of current governments, characterised by a 'tough on crime' slogan and positing imprisonment as an acceptable response to criminal justice and community safety issues. New prisons are built when prisoner numbers or projected prisoner numbers exceed current prison capacity. Guthrie, Levy & Fforde (2013:258) characterise this approach as exuberance for prison building:

*A recurring theme in many of these announcements is the fanfare alluding to fiscal responsibility and claims that prison construction brings benefits to the local economy. The language is characterised by enthusiasm and opportunity, rather than regret about the expanding prison population and attendant social and economic consequences.*

Justice *investment* is a common, but not monolithic, approach to justice policy. There are considerable differences between how it is implemented in different jurisdictions. It is also possible to modify or 'soften' the approach in minor ways by drawing on other justice concepts such as prisoner rehabilitation, diversion or human rights.

### *Justice Reinvestment*

Justice Reinvestment offers an alternative to building and expanding prisons. Justice Reinvestment starts with the assumption that high rates of incarceration should be considered a significant policy failure, since, in most cases, imprisonment makes poor financial sense and does not prevent re-offending (Guthrie, Levy & Fforde 2013; Schwartz 2010). The concept of Justice Reinvestment was initially introduced in the United States of America in 2003 by the Open Society Institute and has now been adopted in 11 states (Justice Center 2010).

Justice Reinvestment is based on evidence that a large proportion of offenders come from a relatively small number of disadvantaged communities. Demographic mapping and cost analysis in the United States has identified 'million dollar blocks' where literally millions of dollars are spent on imprisoning people from certain neighbourhoods (Justice Center 2010). The central tenet of Justice Reinvestment is that this high concentration of offenders in a small geographic area should be reflected in a concentration of restorative health, social welfare services and programs to prevent offending. However, this is rarely the case in practice. At a fiscal level it aims to divert funds intended to be spent on criminal justice matters—primarily incarceration—back into local communities to fund services that address the social determinants of crime.

Supporters of Justice Reinvestment stress that detention should be seen as a last resort for only the most dangerous and serious offenders and the emphasis should be shifted away from imprisonment and to restoration within the community (Justice Center 2010). Its effectiveness was demonstrated at the First National Summit on Justice Reinvestment in Washington in 2010 where lawmakers from several American states discussed how they had enacted policies to avert projected prison growth, saving several hundred million dollars while decreasing prisoner numbers and recidivism rates (Justice Center 2010). In the United States, Justice Reinvestment has been driven by economic rather than social justice concerns; a remarkable 25 per cent of the world's prisoners are located in the United States.

As stated previously, Australia also has good reasons to address rising incarceration rates. An early advocate of Justice Reinvestment in Australia is the former Aboriginal and Torres Strait Islander Social Justice Commissioner Dr Tom Calma. In his 2009 Social Justice Report, he commended it as a possible solution to Indigenous over-representation in Australia's criminal justice system. Dr Calma noted at the time that there was no published offender mapping research in Australia, further pointing out that emerging demographic research mapping of disadvantage suggests that offender and disadvantage concentration are similar to 'million dollar block' patterns in the United States (Aboriginal and Torres Strait Islander Social Justice Commissioner 2009). In submissions to a Senate Enquiry, several commentators discussed its potential, together with its limitations, in the Australian context (Senate Standing Committee on Legal and Constitutional Affairs References Committee 2013).

More recently, a campaign has been launched in New South Wales to promote Justice Reinvestment as a solution to juvenile incarceration in Australia (Just Reinvest NSW 2014). Arguably, what is missing from these campaigns and advocacy in Australia is evidence to show

broader public support for the general idea of Justice Reinvestment, as well as a clear vision of how it could be implemented in the Australian context.

Some of the modifications to the justice *investment* model, such as diversion programs for offenders with mental health conditions, may provide insight into the viability of Justice Reinvestment in an Australian context. The prevalence of mental illness, including serious mental illness, among prisoners and offenders is disproportionately high compared with the general population (Butler et al. 2006; Greenberg & Neilson 2002; Schneider 2010) and is often referred to as the 'criminalisation of the mentally ill' (Teplin 1985). An Australian study found that the 12-month prevalence of any psychiatric illness was 80 per cent in prisoners and 31 per cent in the community (Butler et al. 2006). To remedy this, western countries have adopted Court Diversion/Court Liaison schemes to link those with serious mental illness to mental health services, allowing the judicial system to continue and finalise outstanding legal matters (Greenberg & Neilson 2002; Schneider 2010). In Australia, Court Diversion/Court Liaison schemes have been adopted in all jurisdictions; however, uptake varies considerably between states (Richardson & McSherry 2010).

## Community views and justice policymaking

Democratic convention suggests that, as part of policy development or reform, policymakers should take into account public attitudes alongside 'expert' and stakeholder knowledge. However, the process of incorporating public views into policy is not always straightforward. Discussions of crime and justice policy can be emotive, tapping into uninformed or misinformed community concerns about violence, security, and law and order. Discussions in the public sphere can sometimes become overly simplistic and reductionist: for example, media representations often reduce this complex policy field to the question of whether criminal sentences are too lenient (Berry et

al. 2012; Mackenzie et al. 2012). It is possible that such sensationalist approaches to this topic fuel prejudice towards prisoners and prevent citizens from developing more nuanced understandings of the issues involved in this field.

Citizens nonetheless have a variety of views on justice issues and these are not fully captured by current research on public opinion. Following the priorities of media outlets, many public opinion surveys focus on the binary question of whether sentencing is too lenient or too harsh. For example, when asked the question, 'Do you think that sentences handed down by the courts are too lenient, about right or too harsh?', between two-thirds and three-quarters of people respond that sentences are too lenient (Jones & Weatherburn 2011). Indeed, in a study across five countries, including Australia, there was remarkable convergence in the finding that 'most people respond to polls about sentencing trends with the same answer—sentencing is too lenient' (Roberts et al. 2003: 21).

Prima facie, such public opinion polls suggest that people are very punitive and that there is little sympathy for offenders among the general public. However, traditional methods of studying the public's views, such as interviews, surveys and opinion polls, provide little insight into the public's understanding of other justice topics such as diversion strategies, preventative social and health policies, or restorative justice, to name a few. Given the prevalence of stories about violent crime in the media, it is likely that participants are also primed to respond to questions about sentencing from the perspective of their views about people who commit serious crimes (Berry et al. 2012). These polls may not capture public views about sentencing of less serious crimes or attitudes towards first-time, disadvantaged or young offenders.

Additionally, Green (2006) argues that alternative methodologies to those that rely on 'top-of-the-head' opinion surveys are needed to inform justice policy; the author states that such surveys present shallow,

unconsidered public opinion that thwarts good policy development and reform. Australian scholars similarly recognise the merit in using alternative methods to inform policy development (Indermaur et al. 2012; Mackenzie et al. 2012). Citizens Juries offer one such alternative approach.

### *What are Citizens Juries?*

Citizens Juries are an innovative approach to gaining public input into complex issues and policy decisions. Citizens Juries as a research method derive from Participatory Action Research (Wakeford et al. 2008:3) and have developed from various (sub) disciplines such as, social theory, critical psychology, feminist studies and political philosophy (Burchardt 2013:2).

The broad objective of a Citizens Jury is to elicit the public's views on a particular subject and then present the findings or recommendations to a wider audience, including policymakers, researchers and other stakeholders (Burchardt 2013:4). Initially conceived in Germany and the United States in the late 1970s and 1980s, Citizens Juries have been conducted in many countries (Carson 2006; Font & Blanco 2007; Gooberman-Hill, Horwood & Calnan 2008; Kashefi & Mort 2004; Robinson, Clouston & Suh 2002; Wakeford 2002; French & Laver 2009) on matters such as environmental management (Simon & Blamey 2003), waste incineration (French & Laver 2009), water quality (Robinson, Clouston & Suh 2002), planning and infrastructure (Gregory, Hartz-Karp & Watson 2008), child poverty (Fabian Society 2005) and health care (Kashefi & Mort 2004; Mooney & Blackwell 2004).

As with legal juries, Citizens Juries bring together a group of citizens ('jurors') and provide them with knowledge and the opportunity to scrutinise that knowledge through quizzing 'expert witnesses' and discussing and reflecting on the issue or questions (Mooney 2010). They comprise between 12 and 20 randomly selected people who 'represent' the community (Mooney 2010) and serve as a 'microcosm

of the public' (Wakeford 2002:2) or 'minipublic' (Huitema, Cornelisse & Ottow 2007:288).

Although Citizens Jury studies tend to emphasise the need for jurors to move towards consensus, a lack of consensus may also be considered productive in terms of not obscuring alternative views (Mouffe 2004). Ward et al. (2003) believe Citizens Jury practitioners should be cautious about over-investing in consensus outcomes as this may impede certain and insightful perspectives and issues coming to light. A lack of consensus can also mitigate against 'groupthink'.

Unlike deliberative approaches such as Citizens Juries, opinion polls provide limited opportunity for considered responses that may serve policymaking well. Respondents can lack opportunities to critically reflect on their own position or that of others through social interaction, thus respondents are likely to express views lacking a considered perspective, particularly if the subject matter is complex, potentially controversial and unfamiliar (Burchardt 2013). Indermaur et al. (2012: 148-9) state that broad survey questions 'posed in a simplistic way bring to mind stereotypes and tap into assumptions that may be neither relevant nor accurate'. None of this makes one approach better than the other, since research objectives will ultimately instruct which characteristics are considered strengths or weaknesses. A key distinction is whether one's research objective is to understand what participants would think under conditions that encourage critical thinking on the subject at hand (Fishkin 2010) or what participants do think (Burchardt 2013) from the 'top of their head' (Indermaur et al. 2012).

Nonetheless, some studies are beginning to indicate that the public may not be as punitive in their attitudes as commonly supposed. One study demonstrated that participants in New South Wales were evenly divided between a commitment to reducing crime by rehabilitating offenders and a commitment to deterring crime by imprisoning offenders for longer (Jones & Weatherburn 2011). Roberts et al. (2003)

showed that members of the public actively subvert punitive policies if those policies are perceived as unfair or excessively harsh. Since non-punitive approaches to justice are often less expensive than building new prisons, studies such as these suggest that pursuing rehabilitative and other alternative justice approaches may be fiscally responsible, politically feasible and acceptable to the public.

### *Influencing policymakers*

The extent to which policymakers are influenced by their perceptions of community attitudes towards crime and punishment is unclear. Roberts et al. (2003) suggest that political responses usually privilege the perceived popularity of 'tough on crime' approaches over other policy considerations. Indirectly, public commitment to a 'tough on crime' agenda (or the perception that this is the public position) probably contributes to the perpetuation of punitive penal policies and may be used to justify the construction of new prison facilities. The extent to which policymakers are influenced by community attitudes as assessed through deliberative research methods such as Citizens Juries is not clear. One of the few studies touching on this area investigated policy learning offered by Citizens Juries among policymakers (Huiteima, Cornelisse & Ottow 2010). Policy learning here is conceived as a change in thought in a policy community or policymaker due to being exposed to new information or experience (Huiteima, Cornelisse & Ottow 2010).

The study discusses three types of policy learning:

- cognitive learning—factual learning without changing underlying norms, values or belief systems
- normative learning—where learning encompasses a change in norms, values and belief systems
- relational learning—denoting enhanced trust and improved understanding of the mindsets of others.

The authors found only a 'moderate level of relational learning among policymakers, and hardly any cognitive or normative learning' (Huiteima, Cornelisse & Ottow 2010).

In summary, given the scale and cost of the justice sector, it is important to consider whether current investment in the justice system is contributing to better social outcomes for offenders and community members. Evidence and claims indicate imprisonment does not help in this regard and thus the development of new policy options is required. While justice and penal policy development and decisions should be informed by critically informed public views, our current knowledge of the public's views and preferences towards justice and penal issues appears too narrow and is too uninformed or misinformed to draw concrete conclusions about the level of support for incarceration and non-incarceration alternatives.

The degree to which policymakers are influenced by their perceptions of community attitudes is similarly unclear, particularly as determined by deliberative research approaches such as Citizens Juries. Given the scale of investment in the justice sector, a better understanding of both issues is necessary and timely.





# Project Aims and Research Questions

This study aimed to explore through Citizens Juries the opinions and views of a critically informed public towards how we as a community should address offenders in terms of incarceration and alternatives to incarceration. The study also aimed to examine the thoughts of policymakers on the outcomes of the Citizens Juries.

To achieve these aims, the overall research questions were:

- What principles do a critically informed public want to see underpin the treatment of offenders, and how best might these principles be put into practice?
- To what extent are policymakers influenced by the views of a critically informed public on issues of justice and incarceration?

The research also sought to test Citizens Jury methodology in the offender health field.

# Methodology

The study methodology consisted of two components: Citizens Juries and semi-structured interviews with policymakers. A Research Reference Group was formed to provide input on each component and the feedback on study outcomes.

## Research Reference Group

Independent oversight of research processes and consultation with the community is an important component of the research. This comprised forming and consulting with the Research Reference Group.

It is important to ensure independence between the funder, the researcher/s and the facilitator (Carson 2003; Huitema, Cornelisse & Ottow 2010). Such independence between co-inquirers helps reduce bias, ensuring that any agenda or interests of one co-inquirer do not influence processes in such a way that findings align to those interests. As Wakeford et al. (2008: 12) state:

*A safeguard against any Citizens Jury process becoming biased by any single interest group or perspective is the control of key elements of a jury by a panel that contains representatives of 'a broad base of stakeholders'.*

Further, it is important to have a reference group that oversees and is responsible for key methodological decisions that address bias. These methodological decisions include the selection of experts for the Citizens Juries and the selection of policymakers to interview and research questions put to policymakers, among others.

Individuals and organisations invited to be members of research reference groups should ideally reflect a diversity of key issues that underpin the research topic. For this study, the research team invited members of peak Indigenous and non-Indigenous bodies and service providers who had expert and experiential knowledge of the health and/

or justice issues underscoring Indigenous and offender health to be members of the Research Reference Group. Representatives from the National Congress of Australia's First Peoples, Council of Social Services, and Aboriginal Legal Services in New South Wales, Western Australia and the Australian Capital Territory were invited to form the Research Reference Group. In addition to providing advice in relation to the selection of experts and policymakers, the group also provided critical review of other methodological issues such as deliberation procedures and representativeness of the study, questions asked during the Citizens Juries and the policymaker interview questions, and outcomes and significance of the policymaker interviews.

## Rationale for a Citizens Jury approach

In recent years there has been increasing interest in using various forms of deliberative democracy to involve communities in decision making about policy development and program delivery. Citizens Juries are one such approach, having been used in various policy fields internationally, including in Australia.

Citizens Juries have a number of advantages over more traditional techniques for gathering information about public policy preferences, chiefly that they provide the opportunity to better understand the views of an informed public on a particular issue. In contrast to participants of large-scale surveys, opinion polls or focus groups, jurors have access to a range of experts on a subject and are able to ask questions and clarify key points through discussions with experts. They are also involved in deliberation and extensive discussion with each other as part of the deliberative process. This enables jurors to

develop nuanced conclusions about the subject area, as well as more considered preferences for particular policy approaches or principles. This is particularly important if the subject matter is complex, potentially controversial and unfamiliar to respondents (Burchardt 2013).

Citizens Juries complement official consultation processes. Responses to government enquiries into particular topics tend to attract submissions from organisations or stakeholders who have the resources and capacity to develop written submissions within a short timeframe. By contrast, Citizens Juries provide the opportunity to hear from citizens who may not ordinarily be direct stakeholders in a policy process. This less direct involvement is an advantage of Citizens Juries, as jurors often seek to balance the complexities of a subject and to take different stakeholder interests into account when developing a summary of their own preferences (Carson 2003).

The small number of jurors typically involved in Citizens Juries is both a strength and limitation. While the random selection attempts to eliminate the potential bias of participants (Carson & Martin 2002), the small sample size means that jurors' conclusions may not be representative of broader community views. This can be overcome by having repeated Citizens Juries. Nonetheless, jurors' conclusions can be considered as broadly indicative of views of the general public if all had access to expert knowledge and the opportunity to deliberate with fellow citizens on an issue.

We are unaware of any previous published studies in Australia that have used the Citizens Jury method to reflect on the public's views on imprisonment, alternatives to imprisonment and offender health. However, the method has been successfully employed in the Australian context in other areas, including public health, childhood obesity and environmental planning (Mooney 2009; Moretto et al. 2014; Straton et al. 2011). The researchers were also motivated to adopt the method because they had access to an experienced facilitator of Citizens Juries. Professor Gavin Mooney was

a health economist with a strong interest in social justice, particularly in the Aboriginal community. He was involved in this research project during its early stages and facilitated the first of the three juries that comprise this project before his untimely death in 2013 (Simpson, Guthrie & Butler 2014).

## **Rationale for including policymakers**

Our research added an additional component to the Citizens Jury approach by seeking the views of policymakers to assess the extent to which they can be influenced by the critically informed views of citizens.

It is apparent that, to date, there have been no formal channels to communicate the deliberations of Citizens Juries directly to the policymakers concerned. For this reason, we wanted the three Citizens Jury events to go beyond simple diagnosis of the issues involved to create the political space to inform policymakers on what ordinary citizens favour in relation to incarceration and alternatives to incarceration in Australia and to seek to discover whether policymakers' views would be influenced if they were informed of citizens' critically informed views.

This research project therefore extends the classic Citizens Jury model to directly include relevant policymakers. In this regard, semi-structured interviews of policymakers offered a number of advantages over other research methods. Survey methods were considered to be unsuitable because the number of influential policymakers in this field was too small for valid statistical analyses to be performed. Alternatively, surveying the full population of policymakers in this field would have been an unwieldy and unrealistic research technique. Qualitative techniques, on the other hand, provided researchers with the opportunity to gain detailed information about policymaker views and attitudes. Because of the small sample size, the information collected during interviews should be considered illustrative of broader views among policymakers rather than representative.

# Methods

This section outlines the methods and procedures used in conducting the Citizens Juries and policymaker interviews.

## The three jury events

Citizens Juries were held in New South Wales, the Australian Capital Territory and Western Australia. These jurisdictions were selected for various reasons: New South Wales because it is the site of an active campaign for the inclusion of Justice Reinvestment approaches (Justice Reinvestment for Aboriginal Young People Working Group 2014); the Australian Capital Territory because pilot work on the concept of Justice Reinvestment had already been undertaken in that jurisdiction (Guthrie, Dance & Adcock 2010); and Western Australia because of high Indigenous incarceration rates in that state (ABS 2012).

Citizens Juries were held in Sydney, Canberra and Perth (from approximately 9.30 am to 5.00 pm) on 8 December 2012, 28 September 2013 and 5 October 2013 respectively. During these events the following questions were posed for jurors to consider:

1. What principles do you want to see underpin the treatment of criminal offenders?
2. How best might these principles be put into practice?

These questions were made clear during introductory sessions and the facilitators used them to guide interactions between jurors during deliberative sessions.

## Selection of jurors

A sample of three hundred potential jurors was randomly selected using the Australia on Disc telephone directory for each city in which a Citizens Jury was held. An invitation was sent to each potential juror explaining the research objectives and asking the potential juror to submit an expression of interest (EOI). Potential jurors were informed they would be paid expenses if they were selected, as well as a sitting fee. Prior research has indicated that a sitting fee is an important incentive for juror retention and helps ensure a successful outcome (Mooney 2010). Demographic details such as age, gender, ethnic and cultural background, and income were collected from potential jurors as part of the EOI process.

Following the EOI process, researchers selected 15 jurors and two reserve jurors for each jury. The selection process was not random but this was necessary to ensure that each jury was not dominated by a single demographic group (Table 1). Researchers sought to ensure a range of age groups, education levels, genders and cultural backgrounds in each jury. Random selection means that some minority groups, including Aboriginal and Torres Strait Islander people, are not well represented. Despite additional purposive sampling efforts to recruit Aboriginal and Torres Strait Islander people jurors, only one juror identified as Indigenous.

As seen in Table 1, jurors also tended to come from older age groups and there was a slight majority of male participants. This is consistent with previous studies, suggesting that older men are more likely to express interest in participating in Citizens Juries (Mooney 1998).

Table 1: Demographics of jurors

		n	%
Gender	Female	20	47
	Male	23	53
Age	18–30 years	4	9
	31–45 years	5	12
	46–60 years	19	44
	61+ years	15	35
Employment	Unemployed	1	2
	Retired	9	21
	Student	4	9
	Home work	1	2
	Part-time work	3	7
	Full-time work	20	47
	Self-employed & other	5	12
Parents' place of birth	Australia	19	44
	Asia	4	9
	Europe/United Kingdom	12	28
	Africa	2	5
	Middle East	2	5
	Unknown	3	7
Income level	< \$30,000	6	14
	\$30,001 – \$70,000	9	21
	\$70,001 – \$100,000	8	19
	> \$100,000	17	40
	Unknown	3	7
Indigenous status	Indigenous	1	2
	Non-Indigenous	42	98

## Selection of experts

An important principle underlying Citizens Jury methodology is that jurors are given sufficient information to reach informed conclusions. Selection of experts is therefore paramount. Cognisant of key issues identified in the offender health and criminology literature, the research team identified prospective experts in consultation with the Research Reference Group.

Experts were selected from across offender health-related fields, including government, research and community sectors. This ensured that the process was grounded in both academic and experiential forms of knowledge. Given that events were held in three different cities, it was not possible to use the same experts at all events.

A list of experts, together with a description of their areas of expertise, is provided in Table 2.

## Jury structure

Each jury was structured around opportunities for jurors to interact with each other, to have access to various perspectives and expert knowledge about offenders and the justice system, and to reach their deliberations without interference by the researchers, facilitator and funder. Gavin Mooney facilitated the Sydney jury and Stephen Mugford facilitated the Canberra and Perth juries. Each outlined key objectives and introduced experts.

The structure in each city varied slightly based on facilitator preferences, availability

of experts, availability of venues and adjustments made to incrementally improve the process. Each consisted of expert presentations followed by jury scrutiny and questioning during the morning session and jury deliberation in the afternoon (Table 3).

It should be noted that the structure of the Perth jury differed somewhat from the Sydney and Canberra juries. In contrast to the Sydney and Canberra juries, in the Perth jury the facilitator took a less direct role in deliberations; he also placed the more vocal jurors together on one table during the latter part of the session to enable more participation by quieter jurors. Discussions with the facilitator during the Perth jury revealed that he took this decision in response to some group dynamics that made him feel that some jurors were not being enabled to express their views and other voices were tending to dominate discussion.

## Selection of policymakers

Eleven policymakers were selected in consultation with the Research Reference Group. Invitations were sent to each, asking if they would be available for interview. The anonymity of the interview allowed policymakers the opportunity to talk 'off the record'. Participants were assured their comments would not be linked to their names or professional roles in final reports. They were also assured that any identifying details or contexts would be removed from the final analysis, arguably allowing them to be more forthcoming and open in their responses than perhaps they might have been if they were involved in focus groups or research in other public contexts. If the invited policymaker was unable to participate, an appointed delegate was sought.

Table 2: Experts' affiliations and areas of expertise

	Expert	Professional affiliation	Area of expertise
Sydney	Professor David Greenberg	Professor of Psychiatry, Justice Health & Forensic Mental Health Network NSW, and University of New South Wales	Forensic psychiatry, criminalisation of the mentally ill, psychiatric morbidity in prisons, court diversion
	Ms Melanie Schwartz	Lecturer, University of New South Wales	Justice Reinvestment
	Mr Matthew Willis	Senior Research Analyst, Australian Institute of Criminology	Reintegration of Indigenous offenders and ex-prisoners
	Mr Luke Freudenstein	Police Superintendent Redfern Local Area Command	Clean Slate without Prejudice Program,* Diversion program for Indigenous youth
	Mr Shane Phillips	Chief Executive Officer Tribal Warrior Association	Clean Slate without Prejudice Program, Diversion program for Indigenous youth
Canberra	Professor Mick Dodson	Director, National Centre for Indigenous Studies Australian National University	Royal Commission on Aboriginal Deaths in Custody: 20 years on
	Dr Maria Borzycki	Research Analyst Australian Institute of Criminology	Australian prisoner profile and statistics
	Dr Jill Guthrie	Research Fellow, National Centre for Indigenous Studies Australian National University	Justice Reinvestment
	Professor Michael Levy	Clinical Director Justice Health Services, ACT Health	Prisoner Health and ACT Corrections
	Ms Robyn Holder	ACT Victims of Crime	Victims of crime perspective

Table 2 continued...

	Expert	Professional affiliation	Area of expertise
Perth	Professor Mick Dodson	Director, National Centre for Indigenous Studies Australian National University	Royal Commission on Aboriginal Deaths in Custody: 20 years on
	Dr Jill Guthrie	Research Fellow, National Centre for Indigenous Studies Australian National University	Justice Reinvestment
	Professor Tony Butler	Program Head, Justice Health Research, Kirby Institute, University of New South Wales	Prisoner health
	Dr Jacqueline Joudo-Larsen	Research Analyst, Australian Institute of Criminology	Australian prisoner profile and statistics
	Dr Sophie Davison	Consultant Research Psychiatrist, WA Health	Forensic psychology
	Mr Ken Marslew	'Enough is Enough' Program	Victims of crime perspective

\* This program, located in Redfern, New South Wales, works with Aboriginal youth at risk of contact with the criminal justice system and encompasses a range of strategies including early intervention, developmental crime prevention, positive relationships, support networking and behavioural workshops. See Australian Indigenous HealthInfoNet 2014.

Table 3: Structure of the three Citizens Jury events

	Expert	Professional affiliation	Area of expertise
Sydney	Researchers, facilitator and jurors meet for dinner (night before jury).	Four experts present during morning; each given 20 minutes to make key points on their area of expertise; experts had access to audio-visual technologies.	Juror deliberations during afternoon. Jurors asked to provide overarching principles regarding treatment of offenders as well as list of sub-principles regarding how decisions about offenders should be made.
		Jurors given 10 minutes after each presentation to question experts to clarify understandings.	Consensus among jurors not required. Research team stayed as observers only. Facilitator assisted the deliberation process.
		Experts depart after morning session.	
Canberra	Researchers, facilitator and jurors meet for breakfast (morning of jury).	Jurors seated at several tables; experts move between tables.	Juror deliberations during afternoon. Jurors asked to provide principles regarding how decisions about offenders should be made.
		Jurors able to ask questions of experts and to direct conversation.	Consensus among jurors not required. Research team stayed as observers only. Facilitator assisted the deliberation process.
		Experts depart after lunch.	
Perth	Researchers, facilitator and jurors meet for breakfast (morning of jury).	Jurors seated at several tables; experts move between tables.	Juror deliberations during afternoon. Jurors asked to provide principles regarding how decisions about offenders should be made.
		Experts depart after lunch.	Consensus among jurors not required. Research team stayed as observers only. Facilitator took less of a direct role in deliberations.
			Facilitator placed the more vocal jurors together on one table during latter part of session to enable more participation by quieter jurors.

# Findings

## Citizens Juries

Table 4 summarises the themes identified by jurors in each of the three events. The jury findings are presented in a shorter and more focused format than the findings from the interviews with policymakers. This reflects the fact that the jury outcomes sought were consensus summary points that reflected principles and policy recommendations and thus detailed deliberations between jurors were not recorded.

### *Principles for the treatment of offenders*

Three themes were identified among the principles generated by juries.

### **Equity and fairness**

Jurors recommended the principle of equity and fairness be applied to offenders and also victims of crime. They recognised that it can be difficult to balance the rights of both parties in a fair and equitable manner. Jurors endorsed the notion that poor social and economic conditions, considered as 'determinants of crime', heightened the risk of people, including Aboriginal and Torres Strait Islander people, being drawn into crime. Consequently, all juries emphasised the importance of taking the social, cultural and economic circumstances of offenders into account in responses to crime and during sentencing.

### **Prevention focus**

Preventing offenders from coming into contact with the criminal justice system in the first place was a strong theme across all three juries. The jurors noted that such a principle is attached to addressing the social and economic determinants of (re) offending.

### **Community involvement**

Sydney and Perth jurors thought the community should be more involved in determining how offenders should be treated. Sydney jurors argued that the community must be better informed about the issues involved in justice policy development. Jurors saw the use of Citizens Juries to inform the public of, and make decisions surrounding, offender health issues as desirable. Similarly, some jurors made the case for community representation on offender assessment panels.



**Table 4: Principles evolving from jury deliberations**

Sydney Citizens Jury	Canberra Citizens Jury	Perth Citizens Jury
<p><b>Principles underlying prevention</b></p> <ul style="list-style-type: none"> <li>• Jurors were committed to the principle of fostering a person of worth by nurturing offender’s human spirit and giving them a sense of social belonging and inclusion.</li> <li>• Jurors acknowledged the crucial importance of the social and economic environment to offender behaviour. They argued it should be possible to alter social environments to better meet individual needs. Families and members of the community should be involved in helping individuals rediscover their culture (where appropriate). Mentors could be used to support individuals in the development of new skills.</li> <li>• Jurors were committed to broader education on justice issues, including dissemination of information regarding penalties. Information about penalties should be expressed in broad terms since judges have considerable autonomy in determining sentences.</li> <li>• Jurors were committed to the principle of early intervention to prevent criminal activity. Current programs that use peer involvement or peer pressure to reduce drug use in schools are examples of the type of program which could be used.</li> </ul> <p><b>Principles underlying punishment and deterrence</b></p> <ul style="list-style-type: none"> <li>• Penalties need to remain commensurate with offenders’ crimes and take offenders’ individual circumstances into account.</li> <li>• Fairness with respect to fines, which should be higher for rich offenders.</li> <li>• Fairness with respect to society, including recognition that it is society that pays for the punishment.</li> <li>• Deterrence—where the focus is society at large.</li> <li>• Keeping a balance between retribution and rehabilitation. Rehabilitation should focus on individuals gaining workforce and social skills that might help them reintegrate into society. Retribution should focus on the feeling of the victim and the victim’s family that justice has been done.</li> <li>• Offenders should not be ‘made an example of’.</li> </ul> <p>The principle of fairness involves not just ‘payback’ to victims but also to society.</p>	<p><b>Broad principles for whole system</b></p> <ul style="list-style-type: none"> <li>• Jurors placed strong emphasis on human rights, victim rights and offender rights throughout their discussions.</li> <li>• Jurors asserted that deprivation of liberty is potentially an appropriate response to some criminal acts.</li> <li>• Jurors were committed to a justice process that is timely, equitable, fair and transparent at all stages.</li> </ul> <p><b>Principles that operate at stages through a typical crime sequence</b></p> <ul style="list-style-type: none"> <li>• Investment in early interventions (education etc.) that help to prevent criminality.</li> <li>• Well-informed decisions govern pathways before an offender gets to court.</li> <li>• Wherever possible and warranted, offenders should be ‘diverted’ to non-court, non-incarceration options.</li> <li>• When in court and convicted, sentencing of the offender should be linked to the context of the person and crime, be proportional and be realistic with respect to available options.</li> <li>• Sentencing options should be purposively linked to risks (e.g. of re-offending and to community).</li> </ul> <p>Rehabilitation should be central and should be linked to release and ‘half way’ options.</p>	<p><b>Principle of treatment differentiation</b></p> <ul style="list-style-type: none"> <li>• Jurors made a distinction between major and minor crime. Prison was seen as appropriate for serious offences, especially offences against the person. Incarceration should be a last resort for minor offences, especially where there is no real risk to community members.</li> <li>• Jurors proposed that legislation should be changed so that first-time offenders have a right to dispensation.</li> <li>• Jurors argued that there should be an offender assessment panel with a rehabilitation focus. This should include community leaders, Indigenous community representation, medical practitioners and social workers.</li> <li>• Jurors argued there should be an Offenders Review Panel.</li> </ul> <p><b>Principle of evidence-based policy</b></p> <ul style="list-style-type: none"> <li>• Policies should be based on research and evidence.</li> <li>• Programs should be subject to ongoing evaluation.</li> </ul>

### *Policy recommendations*

Four policy recommendations were identified across all, or most, juries (Table 5).

#### **Holistic early intervention strategies**

All juries recommended further investment in programs that target the social and economic determinants of crime, including the more proximate level determinants such as interpersonal, social-psychological factors.

Services and programs recommended included:

- mental and physical health services
- education and treatments for alcohol and other drugs
- community connections/involvement programs
- vocation and drug education options and treatment
- culturally specific programs (e.g. for Indigenous offenders)
- offender family support services
- mentor programs
- anger management and coping strategy programs.

#### **Non-incarceration options**

All juries believed that the escalating expenditure on prisons is problematic, a huge burden on the public purse and not effective in terms of individual restoration. Non-incarceration options were deemed a fair response in many circumstances, especially where offenders were disadvantaged by social and economic conditions. Canberra and Perth jurors stated that the deprivation of liberty is potentially an appropriate response for some who commit serious offences (articulation on what constitutes a serious offence was not discussed or recorded). However, even in these circumstances, incarceration should focus on rehabilitation and restoration of offenders to their communities.

#### **New funding models**

Each jury recognised that the growth of preventative and non-incarceration programs would require changes to the current funding model.

Canberra jurors acknowledged that services, programs and knowledge of this type already exist. They argued that greater funding is required to make these programs more effective.

Jurors in Sydney and Perth supported a shift in the funding model in their states, and proposed that Justice Reinvestment could provide a model for funding these non-incarceration options. These jurors argued that there needed to be a public awareness campaign around the social determinants of crime and that non-incarceration options including Justice Reinvestment should play a greater part in public discussions.

Sydney jurors elaborated on their preferences for the implementation of a Justice Reinvestment approach. They proposed that the Clean Slate without Prejudice program could be scaled up to the state or national level, and could become a high profile example of a Justice Reinvestment approach. Jurors argued that any savings accrued by not building new prisons should, in the main, be reinvested in the community where the offender resides. These funds could be used to improve mental health and education services. Sydney jurors also proposed that some funds should also go to communities where the offences took place.

#### **Deliberative participation mechanisms**

Sydney and Perth jurors argued that community involvement in justice policy development was important. They suggested largely deliberative participation methods could be used to deliver on this principle. Various methods were proposed and discussed.

Sydney jurors thought that the media was the best platform for raising awareness and public support of Justice Reinvestment

approaches. They also proposed that Citizens Juries provide an opportunity for citizens to develop informed opinions on appropriate principles for the treatment of offenders. Perth jurors recommended community representation on offender assessment panels—panels that help determine

sentencing options and allocation. They also proposed a national referendum on justice issues that would allow the wider community to become aware of relevant issues and to engage critically with proposals for non-incarceration options like Justice Reinvestment.

**Table 5: Citizens Jury recommendations**

Sydney Citizens Jury	Canberra Citizens Jury	Perth Citizens Jury
<p>A form of Justice Reinvestment was seen to best allow most of the principles to be enacted.</p> <ul style="list-style-type: none"> <li>Jurors suggested that the Clean Slate without Prejudice program might form the basis of a state and national pilot program based explicitly on Justice Reinvestment.</li> <li>Jurors specified that money from future prison savings should, in the main, be reinvested in the community where the offender/s reside. For example, the money could be used to boost mental health and education services.</li> <li>In addition they believed that some money should also go to creating a platform that allows the wider community and media to become aware of, scrutinise, and ultimately endorse or sanction Justice Reinvestment. Jurors suggested that the wider community needs to be educated on Justice Reinvestment.</li> </ul>	<p>Non-custodial options were preferred. For example:</p> <ul style="list-style-type: none"> <li>rehabilitation linked to release</li> <li>adult education</li> <li>health services</li> <li>community connections and involvement</li> <li>drug education and treatment</li> <li>family planning</li> <li>anger management</li> <li>vocation and education options</li> <li>culturally specific programs</li> <li>offender family support</li> <li>mentor programs.</li> </ul> <p>More money for services gathering information and appropriate expertise.</p>	<p>For serious offences:</p> <ul style="list-style-type: none"> <li>prison</li> <li>programs should focus on restitution and be restorative in character</li> <li>rehabilitation should be a priority</li> <li>focus on increasing skills, self-discipline and self-respect of offenders.</li> </ul> <p>Non-incarceration options were preferred for more minor offences. For example:</p> <ul style="list-style-type: none"> <li>education</li> <li>mental health and alcohol/drug use treatment</li> <li>programs designed to improve self-respect and respect for their communities, which might include mentor role models, good supervision etc.</li> <li>building social and personal skills so people can cope better with the pressures of life</li> <li>referendum as a platform for raising awareness of issues and sanctioning non-custodial options.</li> </ul> <p>Justice Reinvestment to fund services.</p>

**Policymaker interviews**

Of the 11 policymakers invited to participate in this study, five agreed to be interviewed—a response rate of 45 per cent. Semi-structured, in-depth interviews were conducted with senior policymakers and public office bearers in New South Wales, the Australian Capital Territory and Western Australia. This enabled the researchers to determine policymakers’ views on incarceration, as well as the potential for policymakers to be influenced by the

outcomes of Citizens Juries. Interviews were recorded and transcribed for analysis. As one Research Reference Group member suggested, it is possible a self-selection effect was present among policymakers, who may have been most likely to agree to being interviewed if they were already open to alternative approaches to justice. Policymaker interviews had two phases. The first was designed to elicit information about attitudes towards incarceration and alternatives to incarceration. This included

questions about whether they were aware of any programs based on non-imprisonment or diversion from prison, their opinions and endorsement of the effectiveness of such programs, their views on Justice Reinvestment if they had not already provided this, and whether they would endorse Justice Reinvestment. The second phase was designed to evaluate the influence of the jurors' deliberations on their views. Policymakers were shown a summary of jury outcomes, including a list of key principles for dealing with offenders and recommendations for enacting those principles.

The structure and objectives of the juries were briefly discussed with policymakers and any questions they had about the purpose or validity of the process were answered by the researchers. They were then asked a series of questions about their initial impressions after reading the summary of jury outcomes. Policymakers were also asked whether any of the outcomes stood out or whether the findings changed their tendency to endorse non-imprisonment policy approaches, including in regards to the Justice Reinvestment paradigm.

A full schedule of interview questions for policymakers is provided in Appendix 1 and the summary of jury findings, which was used to supplement the interview questions, is provided in Appendix 2.

Twelve common themes were identified from policymaker interviews and fit into four broad categories:

- existing knowledge and endorsement levels for alternatives to incarceration
- responses to jury findings
- degree of change of views after jury findings revealed
- policymakers' explanation of (lack of) change of view.

These categories reflect the structure of the interviews with policymakers and are outlined below (see Figure 1, page 31).

### *Existing knowledge and endorsement levels for alternatives to incarceration*

Policymakers were asked to list the current prison alternatives they were aware of, and to comment on the level of endorsement of such programs. If they did not identify Justice Reinvestment as a prison alternative option, they were prompted to give their thoughts on this approach.

#### **Theme 1: Strong endorsement of existing prison alternatives**

Policymakers identified a number of existing prison alternatives, including periodic detention, drug diversion, drug cautionary mechanisms, the Australian Capital Territory Bush Healing farm, restorative justice programs, Police-Citizens Youth Club programs, sport programs, the Front-Up program, Drug Courts and the Family Court.

The level of endorsement given to these prison alternatives was high, with most rating them nine out of ten (ten being the highest level of endorsement). There was common acknowledgment that there was room for improvement.

*ACT informant A: I think there is preparatory work that needs to be done in ensuring the integrity of those systems.*

*WA key informant: I think they're fairly successful approaches. I would endorse them quite strongly. I guess what I'm not clear on in this state is the amount of effort that's been put into research into the success of these programs.*

*NSW key informant: I strongly endorse them. So I guess if you said a one to ten scale, you'd have to say eight or nine, so that there's room to go a little bit more, so you'd leave a bit of headroom.*

#### **Theme 2: Justice Reinvestment—viewed positively but issues around definition and meaning**

Justice Reinvestment was considered separately from other existing prison alternatives and, overall, received positive endorsements. However, understandings of Justice Reinvestment were mostly confined to it as simply a diversion program and as community-based prevention/intervention strategies.

WA key informant: *50 per cent of everything the police do is trying to solve what I would call social issues... [the police] are not the people to solve that and neither are the prisons really. There needs to be some sort of diversion, much wider diversionary programs in place to deal with these things, so earlier intervention, earlier diversion, and reinvestment.*

ACT key informant B: *I've changed views quite a lot since I've come out here and been directly more involved with the community... [T]here's certainly an argument for putting more investment into prevention activities... and it's not just police that you put that money into. It's obviously lots of programs and all these in the community sector.*

The centrality of the political and economic aspects of Justice Reinvestment—that is, the political resolution to divert funds earmarked for future expansion of the prison system into community-based restoration—was stated by just one policymaker.

ACT key informant A: *I would put in the Justice Reinvestment bag... things that are not gaol but are about using justice money to try and potentially avoid future reoffending. But obviously when I think about Justice Reinvestment I think more broadly about probably spending before people are put into gaol ... the first time, that sort of social intervention.*

One policymaker was reluctant to give a rating. This policymaker saw Justice Reinvestment as being conceived of differently by different people and stated that this lack of a consensus on the meaning of Justice Reinvestment was problematic:

NSW key informant: *I mean the problem we found in this space is 'same vocabulary, different dictionary'. That reinvestment strategy you talked about is different in the minds of different people, so it would be very difficult to... say I think that this is fantastic, because I don't know what it is. That's the difficulty I have.*

### **Theme 3: Justice Reinvestment—gap between theory and practice**

In discussing Justice Reinvestment in greater detail, some policymakers indicated that there was a high level of interest in the concept of Justice Reinvestment within relevant public agencies, but that a clear model for the practice of Justice Reinvestment had yet to be developed. In effect, policymakers perceived a gap between the theory and practice of Justice Reinvestment.

NSW key informant: *I've had discussions about [Justice Reinvestment] with senior policymakers right across Australia and particularly police commissioners and their ministers as recently as last year. So we're all watching that with a great deal of interest... But again I haven't seen a definitive model that would be proposed for even trial, let alone implementation here in New South Wales, that we're able to critically run our eye over.*

ACT key informant A: *I do feel that gaps in Justice Reinvestment [lie] in the practical side of it. You know, I feel there's a very good, strong academic case to be made, but... in [my] position... I have to be able to convince the community.*

ACT key informant C: *The challenge, as I said before, is around the resource allocation and how effectively it can be deployed, and deployed at a scale that you can demonstrate a difference.*

### **Responses to jury findings**

Policymakers were asked to give their impressions and to comment on any standout findings from the Citizens Juries.

### **Theme 4: Positive and less punitive than expected**

Overall, jury findings were received positively by policymakers. Some policymakers expressed a degree of surprise in the findings. For example, one stated that the results were more positive than expected, possibly meaning that the community's views were not as punitive as imagined.

ACT key informant A: *In a way it is more positive than I expected, although in a way [it] is... what one might expect out of a Citizens Jury, where people who*

*perhaps didn't have the knowledge before, and who were led through it by experts, were able to embrace something that they perhaps didn't know so much about before, or... make a more informed view. So I'm pleasantly surprised.*

It was also noted that while findings were relevant and important, discussions on the ideas jurors recommended were not new.

*NSW key informant: Some really important things in there—none of these discussions are new. We've had these for many, many years now.*

### **Theme 5: Importance of community involvement**

Most policymakers were interested in the notion that jurors wanted greater community involvement in justice processes.

*WA key informant: I think I like the idea of community involvement in the justice system, a lot more than it actually has. I mean one of the things I talk about a lot over here is this abdication of responsibility to the centre, whether that's police, or the courts, or something else, and I think that the idea of the community having more say about justice and crime is a very important principle.*

Some policymakers were uncertain about what greater community involvement would look like in practice. They referred to other countries in reflecting on possible models.

*ACT key informant C: The idea that citizens should be engaged in determining what orders should be placed on offenders, or what programs they should be required to participate in, or whatever it may be, is a very interesting suggestion, one that could potentially be quite powerful. It's not one I've looked at in any real detail, so I don't really understand how that may work beyond the impression I get from the summary report, which is perhaps you have laypersons sitting with judges to determine appropriate sentences and so on, which is not an uncommon process in other overseas judicial systems. I think particularly in Europe, it exists in some northern European countries, I think. So, you know, that's a very interesting idea.*

*NSW key informant: And then in terms of the community involvement, that's really interesting, do you go to the extent that they do in some parts of the U.S., and now they're starting to do in other parts of the world, whereby if communities want true representation, and they want citizens to have some responsibility in terms of, you know, offender assessment, right through potentially to that final determination, do you look at a model whereby communities, to be truly represented, get a chance to elect their judges, so that we then go to a poll?*

### **Theme 6: Prevention and cultural change in policing**

All policymakers reflected on the importance given by jurors towards prevention. Some highlighted the institutional and cultural challenges in instilling a prevention focus in policing.

*NSW key informant: What that [reducing crime rates] has led to though in New South Wales is the largest prison population we've ever had, you know twice as many people in prison in New South Wales as there are in Victoria, approaching 11,000, prisons bursting, so it's probably not sustainable. I think the next big thing in law enforcement is going to be more of an emphasis on prevention. It doesn't mean you stop doing what you're doing, but we've got to actually understand that we're much better served if we can prevent it.*

*ACT key informant B: I think it's [prevention] probably where policing is going, but it's a complete cultural change to what we do, because we are taught to be response motivated. You know we're generally [there] once the crisis has happened, that's when police are called and involved, we've actually reached that crisis point... our training is about being response motivated, so it's a complete flip to have police think about prevention, to have a prevention focus. Absolutely complete change. And we haven't really fully grasped it.*

### **Theme 7: Importance and challenges of considering victims**

Policymakers discussed victims of crime upon reflecting on the equity and fairness principle provided by jurors. Specifically, it was noted that there are challenges

to balancing the provision of non-incarceration options for offenders against the rights and safety of victims of crime.

NSW key informant: *Every coin has two sides... you need to be fair in all of your dealings with people that are going before the criminal justice system, just the same you do need to have that same view when it comes to dealing with victims and their rights, and their needs and requirements.*

ACT key informant C: *There's a lot of domestic violence offences, there's a lot of disquiet about the use of those alternative sentencing mechanisms, all those alternative justice mechanisms in those types of cases because of concerns about re-victimisation, re-traumatisation of victims and so on because of the power and balance that exists in that type of offending behaviour... I think there's some practicalities that we have to get to grips with, but that doesn't mean diminish[ing] my support in principle for it [prison alternatives]... but it just highlights that there will be some things that are more challenging and more difficult to get both broader community acceptance for, and perhaps the right policy settings for, compared to other areas.*

One policymaker discussed recent restorative justice programs that bring offenders and victims face to face, stating that while the greater focus on the victim is a positive development, some offenders are too self-entitled to take the victim's perspective into account:

ACT key informant B: *I think that it's good to see the victim focus... you can have all the programs and processes there, the general feeling in the community is they don't want to be involved, some of them just don't want to face the victims, and don't want to sit down with the victims, some of them just go, 'Well I've got a sense of entitlement, I've come from a bad background, I've been disadvantaged, I've been this, so that's the excuse for why I'm behaving the way I am.'*

### **Degree of change of views after jury findings revealed**

Policymakers were asked to indicate if any of their views had changed as a result of considering jury findings.

### **Theme 8: No change—support for non-incarceration and Justice Reinvestment remains high**

For the most part, policymakers' views had not changed regarding alternative prison programs, including Justice Reinvestment. Support for these approaches remained high, with some reiterating that their jurisdictions already had non-incarceration options.

ACT key informant B: *No, no, no... we already do things that are very cutting edge in regards to some of these programs, drug education and treatment, I mean they're all... like we refer, we have a special referral portal...*

WA key informant: *Not so much in a sense that in some ways ... [the Citizens Juries findings reinforce] what you already have. Well again my position would be absolutely... endorse in principle, but it comes down to the practicalities of implementation...*

### **Theme 9: Some change—better understanding of community attitudes**

ACT policymakers stated that the jury findings did change their perspectives in regards to what they thought the community thinks about justice policy in terms of their preference for a non-punitive approach to offenders.

ACT key informant A: *The view of the juries would appear to be perhaps more liberal in their views of sentencing than I would have anticipated, albeit—albeit I note that the Canberra jury and the Perth jury both still talked about the importance of deprivation of liberty for serious offenders. I guess it would be interesting to test what serious offenders meant.*

ACT key informant B: *I think where it has changed my perspective is probably in the sense of my understanding of community acceptance of these kinds of approaches. I would be wary of the community's willingness to accept some of these options, seeing them as the soft option, and so in a way I'm encouraged by the openness or willingness of the community to embrace some of these ideas. So in that sense it probably changes my comfort level, rather than... my view on whether it's the right thing to do or not, if that makes sense... [I'm] feeling more optimistic about the scope and bringing people on board with it [Justice Reinvestment].*

### *Policymakers' explanation of (lack of) change of view*

Policymakers were asked to explain why they had or had not changed their views after considering the Citizens Jury findings. Policymakers used this stage of the interview to explain some of the challenges they saw in implementing Justice Reinvestment.

### **Theme 10: Selling Justice Reinvestment to community and Cabinet**

One theme identified among Australian Capital Territory policymakers is the challenge in selling or laying out a case for Justice Reinvestment to community and Cabinet members.

One policymaker spoke of the leadership challenge in leading the community towards accepting Justice Reinvestment ideas.

*ACT key informant B: I need to be able to take the community on that journey, there is a level of community acceptance that it's a possible, that it is money well spent, that I'm not just being soft on crime, etcetera... And I think that would be fatal, or potentially fatal, you know, and have significant consequences for whether it's Justice Reinvestment or alternatives to incarceration, if we were to get too far ahead of the community. It's that fine line in leadership.*

Another spoke of diverting resources from dealing with the consequences of crime to prevention as a challenge in making a case for Justice Reinvestment.

*ACT key informant C: It's one of those dilemmas similar to health, you know you're spending a lot of money upfront on dealing with the causes... in the case of justice you're dealing with the consequences of crime, and that's the most pressing and immediate need, and it's difficult to make the case to divert resources from that area to prevention, or dealing with the causes of crime, because you're still having to spend upfront, so you're almost having to spend twice to get a long term benefit, and then hopefully ultimately reduce your expenditure in that bottom of the cliff service delivery area. So I think that's the great challenge with Justice Reinvestment.*

Making a case for Justice Reinvestment to Cabinet members was seen as a challenge, particularly the practical complexities behind conceptualising and measuring its success.

*ACT key informant B: If I was to put a submission to Cabinet or a Budget submission, I don't quite know what I'd write in it at the moment... how do we measure the success of this kind of investment, and what does it mean to succeed? ... when one has to be scrutinised by an opposition... they're the very real questions that we face. That don't necessarily change one's view on whether it's [Justice Reinvestment] the right thing to do or not, but certainly you might change...*

### **Theme 11: Risk-taking in current political economy**

Two policymakers viewed Justice Reinvestment approaches as more of an economic and political risk than justice investment approaches. One policymaker, for example, stated that Justice Reinvestment approaches were seen as a potentially costly social experiment.

*NSW key informant: These days governments across the world are feeling the pinch economically. The notion of investing very heavily from a government perspective in a lot of these programs is something that if the economy was better they'd probably be more likely to do, but at a time when things are tight do they run the risk and say, 'Well, look, we can shut three prisons, take the money that we put in there into these sorts of programs, we'll take the risk'? It's a social experiment. If it goes wrong it'll cost them everything, they won't be in government.*

Such risk perception is arguably informed by the current political and economic climate, marked by prioritising government Budget surplus and austerity measures (Elson 2012). Prevention efforts were seen as a likely target of prospective cost- and service-cutting measures within this context.

*ACT key informant B: I think... look, policing, like every type of service industry, is pressured by resources, and particularly now we're going into a*



*period probably over the next few years, and probably longer, where like a lot of government departments and services are getting pressured in a sense of what... you need to provide, and really cut away that excess type work. Prevention is probably seen as excess type work, because really the prime focus for police is to be that first responder to an issue and investigate and work.*

The privatisation of components of the justice sector, including aspects of policing and Justice Reinvestment, was flagged by two participants as providing one possible way of getting around the political risks and economic challenges outlined above. One policymaker stated that such an approach would operate outside the three-year election and government funding cycle, a cycle that was seen as a barrier to Justice Reinvestment. Risk and accountability under this idea are shifted from the state to the private sector.

*NSW key informant: The way to step around that [electoral cycle 'short term-ism'] is perhaps look at some means by which you can step outside the government's funding cycle and go to a private enterprise model, see if there's some way that you can make it good economic sense to go into a Justice Reinvestment program with the private enterprise, as has been the case, and you're aware of these in the U.S., where you know private enterprise will take on the risk, invest the capital in managing a reoffending program where they're looking to drive down recidivism.*

## **Theme 12: Governments (mis) understanding communities**

Policymakers spoke of government perceptions about community attitudes as a significant issue to further development of non-incarceration and Justice Reinvestment options. Two policymakers spoke of a mismatch between government policy and community views. For instance, one suggested that many citizens recognise the link between social circumstances and criminal behaviour and consequently that many people would prefer not to punish young people whose social circumstances

have brought them into contact with the criminal justice system:

*WA key informant: The government think that the public want—I'll use the term 'revenge'—that they want tougher penalties for people who break and enter, they want tougher penalties for just about everything, and in fact they're about to embark on threatening the three-strikes legislation here for burglars. But when you talk to communities at community forums, and you argue that a lot of, for argument's sake, the kids who are breaking into houses actually come from homes where parents are substance abusers or sex abusers, or something like that, they [the community] understand that a better option is to work at the other end of the spectrum, rather than at the Corrective Services end. So I think the public... the government often misreads the community on this. I mean the community, when they get the opportunity to express their opinion, actually like the idea of [justice] reinvestment.*

Another policymaker, however, noted that it is the electoral process that facilitates government understandings on what the community wants, in this instance the need for stronger sentencing. This perspective in a sense discounts or problematises the Citizens Juries findings presented to the policymaker regarding jurors' preference of non-punitive approaches.

*NSW key informant: But the fact is communities are telling governments directly through the electoral process that this is what we expect from our governments, and that flows right through in terms of what community standards would say in terms of sentencing and the like. So I would suggest that if you spoke to a lot of people in certain parts of this state, at least, they're going to say they need to get tougher, they need to get stronger, they need to give them more sentences.*

# Discussion

This research project sought to identify the views of a critically informed public on issues of incarceration and alternatives to incarceration, including Justice Reinvestment. It also included a research translation component by determining, through semi-structured interviews, the extent to which policymakers are influenced by the views of a critically informed public in respect to these issues. The study also tested the utility of a Citizens Jury approach to the field of offender health.

## Citizens Jury findings

Overall, findings from the Citizens Juries indicate that when given the opportunity to deliberate with others on the wider knowledge and perspectives about offenders and responses to offending, jurors were less concerned with punitive 'hard on crime' approaches. Jurors strongly believed that the escalating expenditure on prisons is a problem, a huge burden on the public purse, and not effective in terms of individual restoration. They recommended a more holistic non-punitive approach towards offenders informed by equity and fairness, prevention and community involvement principles.

By way of enacting principles, policy recommendations favoured by jurors included holistic early intervention strategies to prevent people coming into contact with the criminal justice system in the first place, and non-incarceration options for those who do. However, jurors recognised that public support and involvement, new funding models and 'fairness' to victims of crime were also important issues to address alongside any move towards non-incarceration options.

Two juries cited the idea of Justice Reinvestment to cover funding allocation issues and holistic early intervention and

prevention strategies. Two juries also recommended deliberative participation mechanisms to raise awareness and dialogue, and public involvement in decision-making for non-incarceration options.

Jury recommendations regarding non-punitive measures contrast with quantitative survey-based polling suggesting that most Australians hold punitive attitudes towards offenders. This contrast can be explained by the fact that different methodologies are likely to elicit different public views on offenders. The present study supports findings regarding deliberative-based methods eliciting less punitive or non-punitive views from the public than top-of-the-head surveys and raises the question of which approach is more suitable to informing policies directed at offenders. Consistent with other scholars, we believe deliberative-based research approaches are more suitable.

British scholar Green (2006) argues that alternative methodologies that don't rely on top-of-the-head surveys are needed to inform justice policy, since such surveys present shallow, unconsidered public opinion that has no place in policy development and reform. Australian scholars similarly recognise the merit in using deliberative-based methods to assess public attitudes to punishment over quantitative opinion polls to inform policy (cited in Indermaur et al. 2012; Mackenzie et al. 2012). Chief Justice Murray Gleeson of the High Court of Australia also has questioned the outcomes of quantitative methodologies in this area, asking whether top-of-the-head opinions should be valued as much as informed opinions (Gleeson 2004).

Deliberative-based research approaches are arguably best suited to addressing what Allen (2003: 6) terms a 'comedy of errors', referring to how 'policy and practice is not based on proper understanding of public opinion,

and that the same opinion is not based on a proper understanding of policy and practice’.

Within the growing support to assess public opinion through deliberative-based methods remains the task of determining the deliberative-based method that is most suitable and ensuring its methodology is robust, given the likely resource constraints that accompany most research projects. Future research would do well to address these issues.

### **Policymaker interviews findings**

Policy scholar Dave Huitema and colleagues (Huitema, Cornelisse & Ottow 2010) present a typology of policymaker learning that helped them examine whether Citizens Jury findings influenced policymaker thinking on water management. The typology consists of three types of learning:

- cognitive learning—factual learning without changing underlying norms, values and belief systems
- normative learning—learning encompassing a change in norms, values and belief systems
- relational learning—enhanced trust and improved understanding of the mindsets of others.

Drawing from this framework, it may be argued that policymakers in this current study presented no indication of cognitive or normative learning. However, some expressed relational learning by way of learning something about the mindset of the community, a community that surprised or taught them something.

Huitema, Cornelisse and Ottow (2010) similarly found a lack of cognitive and normative learning but some degree of relational learning among policymakers. We suggest a number of reasons that could explain the lack of cognitive and normative learning among policymakers. Such reasons can be seen to fall under two broad issues: limitations of study methods and political concerns. These two issues are considered in relation to the present study.

### **Limitations of study methods**

Although policymakers appeared to accept the value of the Citizens Jury process, limitations in the process should be noted in order to consider methodological improvements and to interpret and qualify study findings.

The *representativeness or inclusivity* of the juries was less than ideal. It was difficult to recruit a diverse range of people. Despite the use of stratification in selecting jurors and efforts to purposively recruit Indigenous jurors, Indigenous Australians and younger adults were very much under-represented. Only one juror identified as Indigenous, and only one young person attended the Canberra jury. The ‘self-selection effect’ also may have been at play. That is, those who are more favourable to considering prison alternatives may be more likely to volunteer their time to participate in the study.

The study was a small grants-funded project that limited our ability to conduct more than three juries, and the small number of jurors may be seen by some, including policymakers, as a limitation. The small sample size and inclusivity limitations mean that the conclusions of Citizens Juries should not be considered to be strictly representative of broader community views. Rather, they should be considered as broadly indicative of the views that the general public most likely would hold if they had access to various and wide knowledge and the opportunity to deliberate with others on such knowledge.

Provision of information to jurors by way of expert-witness presentations and deliberation procedures may also represent a study limitation. Given resource and time restraints, it is not possible to include all types of knowledge on the issue. Although the types of perspectives and experts were selected by the research team with guidance from the Research Reference Group, other offender-related perspectives were not presented (for example, the experiential knowledge of ex-prisoners).

Also, it was difficult to standardise expert presentations across all juries due to some experts being unavailable for all juries.

Regarding deliberation processes, compared with Citizens Juries conducted elsewhere, the time devoted for deliberation was short (Carson 2006; Kashefi & Mort 2004; Niemeyer & Blamey 2005). While more time may be preferred, the social realities of jury members, as well as funding limitations, may prevent this. Striking a balance between appropriate duration of jury deliberation and having enough time to produce recommendations can be a challenge (Gooberman-Hill, Horwood & Calnan 2008). Future Citizens Jury research would do well to consider and address these limitations. Additionally, the change in facilitator (one for the Sydney session and one for the Canberra and Perth sessions) meant that inconsistent facilitation and deliberation processes were introduced. This presents a limitation in terms of making comparisons across the three sites.

Regarding the policymaker interview component of the study, the response rates of policymakers was 45 per cent. This response rate may reflect a self-selection effect in terms of those who were happy to talk about and/or already endorsed prison alternatives. Further, policymakers were only presented with a summarised version of the Citizens Juries findings. They were not provided, as one policymaker desired, with in-depth details or analysis due largely to time restraints. If more details were provided, different or stronger conclusions

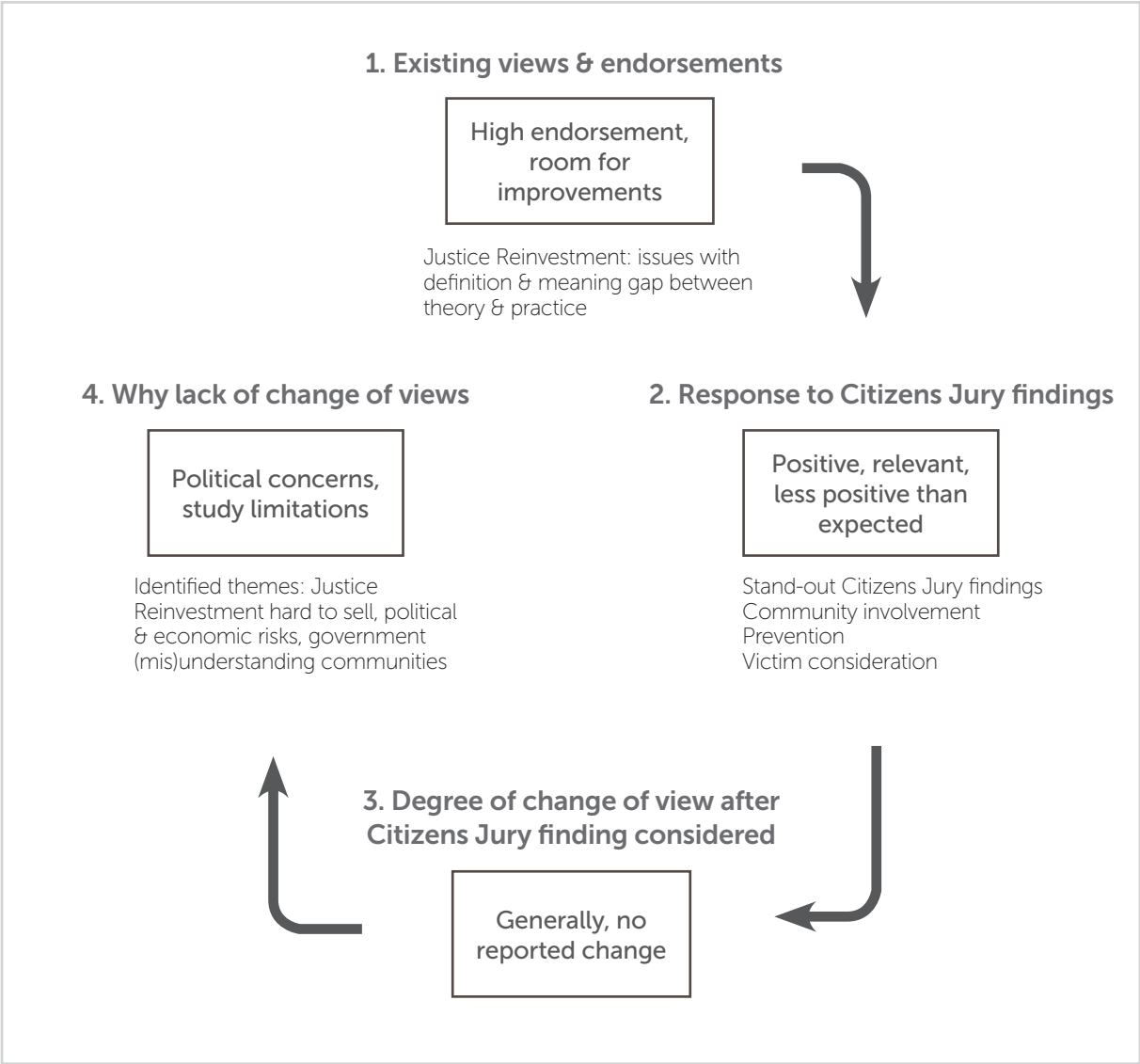
may have been reached. However, as the policymakers we interviewed were senior-level public officials, we were mindful not to take too much of their time by providing a detailed report to them.

In terms of how the above study limitations may have impacted on the lack of cognitive and normative learning among policymakers, small jury sample sizes and the absence of detailed Citizens Juries findings presented to policymakers may have impacted on their acceptance of the Citizens Jury process and thus their capacity for change in thinking. Future effort should be made to formally assess policymakers' acceptance of study processes.

#### *Political concerns*

In explaining more specifically why their views on Justice Reinvestment had not changed, policymakers spoke of overlapping challenges in engaging with and understanding the community, as well as political and economic risk taking. On one level, these challenges relate to the complexity that a preventative approach like Justice Reinvestment presents and a lack of consensus regarding a Justice Reinvestment model and its application within the Australian context. On another level, it speaks to political concerns. Huitema, Cornelisse & Ottow (2010) spoke of such concerns in terms of public officials being careful about making statements about the policies devised by others and how it is 'hard to get their honest opinion about certain policy ideas as their statements may upset the status quo'.

Figure 1: Research translation overview—policymaker interview findings and interpretation



Another interpretation of lack of cognitive and normative learning among policymakers relates to what Beckett (1997) refers to as the privileging of ‘political initiative’ over ‘democracy at work’, the latter referring to the idea that penal policy directly reflects what the people want. Although justice policy reforms are commonly presented as the will of the people, Beckett (1997) suggests that such reform is manufactured and ‘sold’ to the public based on political needs even if that policy is not effective in reducing offending, rehabilitating offenders or providing justice.

While policymakers appeared to accept that the Citizens Juries findings were valid or a reasonable representation of what a selection of the community wants, study limitations reported above make claims that the findings are ‘democracy at work’ tenuous. Perhaps this tenuous position, along with the Justice Reinvestment challenges noted above, reinforced political initiatives coming to the forefront of policymaker views and thwarting cognitive and normative learning among policymakers.

# Conclusion



This study shows that, when given the opportunity to deliberate with others and critically engage in wider knowledge on offenders and responses to offending, jury members preferred non-punitive approaches. Overall, policy recommendations by jurors contained strategies to address the social determinants of health and offending in order to prevent people coming into contact with the criminal justice system in the first place and non-incarceration options for those who do.

The research translation potential of Citizens Juries in this study appears unpromising and requires further investigation. While some policymakers indicated new insights gained into what community members think about offenders, they did not change their views on non-incarceration options, including Justice Reinvestment, after considering principles and policy recommendations

produced by critically informed jurors. Policymakers understand and must contend with practical and political challenges attached to preventative approaches like Justice Reinvestment—challenges that appear to override what a critically informed public may want.

This study makes an important contribution to the debate about prison alternatives in Australia by illustrating the propensity of a critically informed public to endorse prison alternatives, including ideas that underpin a Justice Reinvestment approach.

The research translation component of the study illustrates some of the practical and political challenges faced by policymakers that need to be considered in progressing discourse and debate on alternatives to incarceration.

# Implications of Study



1. Given the opportunity to deliberate on wider knowledge about offenders and responses to offending (i.e. opportunity to be critically informed), community members are likely to prefer non-incarceration options and be less concerned with punitive 'hard on crime' approaches.
2. Justice and penal policies should be informed by the views of a critically informed community.
3. Deliberative-based research methods are more suitable than opinion surveys to inform justice and penal policies because they assess the views of a critically informed community.
4. Current understandings of Justice Reinvestment present significant challenges to policymakers and politicians in terms of political and economic risk management.
5. Evidence-based research that contributes to consensus building regarding the concept, implementation and effectiveness of Justice Reinvestment in Australia is needed.

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# Appendix A: Policymaker interview schedule

## Pre-jury summary report exposure

1. What kinds of approaches or programs based on non-imprisonment alternatives to incarceration are you aware of?
2. What are your views of these?
3. [If Justice Reinvestment not mentioned or covered adequately in Q1 & Q2 then ask Q3] What are your views of Justice Reinvestment?
  - a) On a scale of 1 to 10, how ready would you be to endorse or not a Justice Reinvestment approach? (1 absolutely would not endorse & 10 meaning absolutely would endorse).
  - b) Why did you give this level of endorsement?
4. [If spoke of more alternatives than Justice Reinvestment in Q1 or Q2, then ask Q5]
  - a) On a scale of 1 to 10, how ready would you be to endorse or not the other non-imprisonment alternatives you spoke of in response to question 1? (1 meaning absolutely would not endorse & 10 meaning absolutely would endorse).
  - b) Why did you give this level of endorsement?
5. What would you expect is the general public's views on incarceration and alternatives to incarceration?

We have obtained the views of a randomly selected group of citizens from Canberra, Sydney and Perth who were brought together, given relevant information and empirical evidence from various experts and asked to play the role of citizens representing the broader community. The process involved is known as a 'Citizens Jury' and it is recognised as a way of tapping into the values of the community. This is however the first time as far as we are aware that the process has been used in this context of dealing with offenders.

Could you now please read this two-page summary report on the jury findings I spoke of and afterwards I will ask you some more questions.

## Post-jury summary report exposure

6. What are your first impressions or thoughts after reading the summary report?
7. Can you tell me of any 'standout' findings or comments within the report?
8. Why did that, or they, 'standout' to you?
9. Have these Citizens Jury findings changed your level of endorsement at all to any non-imprisonment alternative?
  - i) *[If answered yes to Q9 ask Q10]*
    - a. On a scale of 1 to 10, what now is your level of endorsement or not of non-imprisonment alternatives you spoke of? (1 meaning absolutely would not endorse & 10 meaning absolutely would endorse).
    - b. Why did you give this level of endorsement change?
  - ii) *[If Justice Reinvestment not mentioned or covered adequately in Q9 then ask Q11]*
10. Have these Citizens Jury findings changed your level of endorsement at all to Justice Reinvestment?
  - a) *[If answered yes to Q11 ask Q12]*
    - a. On a scale of 1 to 10, what now is your level of endorsement or non-endorsement of Justice Reinvestment? (1 meaning absolutely would not endorse & 10 meaning absolutely would endorse).
    - b) Why did you give this level of endorsement change?

# Appendix B: Jury outcomes as presented to policymakers

## Selecting Jury members

- 900 people randomly selected from phone directory (300 for Sydney, Canberra and Perth)
- Sent an 'Expression of Interest' and demographic form to complete
- 51 selected: 15 people & 2 reserves for each Canberra, Perth and Sydney jury
- Final selection to reflect cross-section of community, by gender, age, ethnic and cultural background, socio-economic status

## Process of Citizens Jury

- Various kinds of experts present to jury members
- Jury members question experts
- Jury members deliberate amongst themselves (with facilitator) for 4 hours
- Recommendations created by jury in terms of: 1) principles and 2) enacting principles
- Recommendation report written up and jurors evaluate report to validate accuracy

## Main findings

### *PRINCIPLES*

#### Equity and fairness

- Taking into account the social, cultural and economic circumstances of the offender and crime committed
- Fairness and justice to victim

#### Prevention focus

- Address social and economic causes of offending
- Education
- Give sense of belonging to community and society

#### Community involvement (Sydney and Perth Jury members)

- In informing, assessing, determining how we should treat offenders
- Examples given: Citizens Jury and Offender Assessment panels (with community representation on panel)

## *ENACTING PRINCIPLES*

### **Non-incarceration options strongly supported in all Citizens Jury**

- Deprivation of liberty for serious offences (Canberra and Perth jurors)
- Services and programs to address the social and economic determinants of crime
- Physical and mental health services
- Community connections / involvement programs
- Drug education and treatment
- Anger management
- Vocational and education options
- Cultural specific programs
- Offender family support
- Mentor programs

### **Platform to raise public awareness, dialogue and sanctioning of non-incarceration options**

- Media campaign and putting pressure on governments (Sydney jurors)
- National referendum (Perth jurors)

### **Allocation of funding**

- 'Services, programs & knowledge there, just need the funding!' (Canberra jurors)
- Justice Reinvestment interpreted as a funding model (Sydney and Perth jurors)





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