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## Assessing the Public's Views on Prison and Prison Alternatives: Findings from Public Deliberation Research in Three Australian Cities

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# Assessing the Public's Views on Prison and Prison Alternatives: Findings from Public Deliberation Research in Three Australian Cities

## **Abstract**

Consistent with other high income countries in the West, prisons are being built or expanded in every Australian state and territory to house increasing numbers of prisoners. Despite decreasing crime victimisation rates in Australia, incarceration rates have doubled over the last thirty years. Australia's use of imprisonment has major economic and social equity costs, especially given the over-representation of Indigenous Australians and other socially disadvantaged groups in prison. Evidence increasingly points to the limitation of incarceration as a tool for effective offender rehabilitation suggesting that a new policy agenda on responses to offending is warranted. Yet, public opinion is generally assessed and perceived to hold punitive views towards offenders. Such views are typically assessed using non-deliberative opinion polls. Research and perceived public opinion of this kind can be an obstacle to policy reform and a justification for prison expansion. This paper reports on a project that uses a Citizens Jury approach in three Australian cities. The aim of these Citizens Juries was to provide an opportunity for citizens to critically engage in and deliberate on the issues that underlie offending, and society's responses to it. This paper provides substantive insight into the considered views of members of the public on issues of criminal justice and makes recommendations about the value of the Citizens Jury method to explore public opinion on criminal justice issues. This has broader implications for the use of deliberative methodologies in other highly politicised public policy fields.

## **Keywords**

deliberative research, public opinion, policy, incarceration, prison

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## Introduction

Over the past two decades, most Organisation of Economic Co-operation and Development (OECD)<sup>1</sup> countries have experienced a continuous rise in prison population rates. On average, an increase has occurred, from a level of 100 persons per 100,000 of the total population in the early 1990s, to 140 persons in the late 2000s. The incarceration rate in the United States is now at a historically unprecedented level and is far above the typical rate in other developed countries (Schmitt, Warner, & Gupta, 2010). While the incarceration rate is highest in the United States (716 per 100,000 adult population in 2012) (Walmsley, 2013), increases in the prison population extend to other OECD countries (OECD, 2014). The incarceration rate in Australia in 2013 was 186 prisoners per 100,000 adult population, the highest imprisonment rate since 2004 (Australian Bureau of Statistics (ABS), 2014). Despite decreasing crime victimization rates between 2001 and 2012 in Australia, imprisonment rates during this period increased by 31% (Australian Institute of Health and Welfare, 2013).

The use of imprisonment has major economic and social equity costs, especially given the overrepresentation of Indigenous peoples and other socially disadvantaged groups in prison. Between 2003 and 2013 the imprisonment rate for adult Indigenous Australians increased by 57%. Juvenile detention rates for Indigenous Australians stand at around 24 times the rate of non-Indigenous youth (Steering Committee for the Review of Government Service Provision, 2014). Consistent with other high-income countries in the West, prisons are currently being built or expanded in every Australian state and territory in order to house the increasing population of prisoners (Guthrie, Levy, & Fforde, 2013; Steering Committee for the Review of Government Service Provision, 2014). In 2012–2013, Australian state governments spent \$AUD3.2 billion on prisons (Steering Committee for the Review of Government Service Provision, 2014). Yet, evidence increasingly points to the limitations of incarceration as a tool for effective offender rehabilitation (for example, see McGuinness, 2010; Weatherburn, 2010) as well as a strong link between contact with the justice system and poor health and social outcomes for individuals (Butler et al., 2006; Grace et al., 2013).

The economic and social costs of the prison industry make it an appropriate topic for scrutiny and public deliberation. Globally, new policy approaches on responses to offending are increasingly called for (Australian Human Rights Commission, 2014; Senate Standing Committee on Legal and Constitutional Affairs, 2013; The Pew Charitable Trusts, 2015; United Kingdom Ministry of Justice, 2015). Moreover, democratic convention suggests that, as part of policy development or reform, policymakers should take into account public

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<sup>1</sup> Organisation for Economic Co-operation and Development

opinion alongside ‘expert’ and stakeholder knowledge. This idea reflects a ‘democracy at work’ approach to policy development, whereby penal policy is informed by what the people want (Beckett, 1997). Incorporating the views of the populace into state institutions increases their legitimacy (Tyler, 2006). However, the process of incorporating public views into policy is not straightforward. Discussions of crime and justice policy can be particularly emotive, tapping into uninformed or misinformed community concerns about violence, community safety, and law and order. Discussions in the public sphere can sometimes become overly simplistic and reductionist: for example, media representations and academic research often reduce this complex policy field to the question of whether criminal sentences are too lenient (Berry, Philo, Tiripelli, Docherty, & Macpherson, 2012; Indermaur, 2012; Mackenzie et al., 2012). Simplistic and sensationalist approaches to this topic fuel prejudice towards prisoners and prevent citizens from developing more nuanced understandings of the issues involved. These societal prejudices have an effect on policy as well. Policy tends to become “less evidence-based as lawmakers concern themselves more with responding to shallow measures of mass public opinion than to seeking more rational, nuanced and considered community views” (Mackenzie et al., 2013, p. 747). The reliance on shallow measures of public opinion, together with the lack of opportunities for the public to deliberate over these complex issues, is said to impede the development of informed and effective policies (Gleeson, 2004; Green, 2006; Indermaur, 2012).

This study responds to these concerns by providing an opportunity for members of the public to critically engage and deliberate on the issues that underlie offending and society’s responses to it. This opportunity was operationalised through the deliberative research method of the Citizens Jury, conducted in three Australian cities in 2012 and 2013. Specifically, we assessed what principles ‘jurors’ wanted to see underpin how we as a community respond to offenders, and how these principles might be put into practice. The study makes two chief contributions. First, it provides substantive insight into the considered views of members of the public on issues of criminal justice. Second, it makes recommendations about the value of the Citizens Jury method for exploration of public opinion on criminal justice issues. This has broader implications for the use of deliberative methodologies in other highly politicised public policy fields-

### **Traditional Methods for Assessing Responses to Offending**

Traditionally, methods for assessing the public’s views on responses to offending rely on quantitative opinion polls or surveys. While such survey methods have the advantage of aggregating the opinions of large numbers of participants, they have a number of limitations when it comes to their suitability for policy development. The chief limitation is that while criminal justice policy is a complex field, many public opinion surveys focus on the

simple binary notion of whether sentencing is too lenient or too harsh, or whether prisoners should have access to household items such as televisions, foodstuffs, health treatments, or other privileges. Large representative studies from the UK, North America, Australia and New Zealand show commonalities in opinion poll findings, suggesting that most people regard sentencing as too lenient (Roberts, Stalans, Indermaur, & Hough, 2003). In a more recent Australian study when participants were asked “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 respondents indicated that sentences are too lenient (Jones & Weatherburn, 2011). In a stratified random sample of 6005 Australian participants, Mackenzie and colleagues (Mackenzie et al., 2012, p. 52), found that respondents demonstrated relatively high levels of punitiveness with two-thirds agreeing that “People who break the law should be given stiffer sentences” and nearly 60% were of the view that sentences in general were too lenient.

Prima facie, such public opinion research suggests that people are punitive and that there is little sympathy for offenders among the general public. However, it should be acknowledged that survey questions about the leniency or otherwise of sentencing represent only one facet of public opinion on criminal justice issues. Ideally, public opinion research in this field would provide policymakers with *informed* views on a range of other related issues including the public's views on the desirability of prison alternatives, preventative social and health policies, or restorative justice, to name a few. Furthermore, these traditional methods of studying the public's views offer limited opportunity for respondents to consider the social context of the topic at hand, and to reflect on their own position and/or that of others through social interaction. In turn, respondents are likely to express views lacking a considered perspective, particularly if the subject matter is complex, potentially controversial and unfamiliar (Burchardt, 2014). Indermaur et al. (2012, p. 148) 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.” Public views informed by erroneous assumptions, fears, and stereotypes towards offenders often derive from representations and debate in market-driven news media (Peelo, 2005). Such media-driven discourse facilitates an emotion-laden social and political fixation on ‘law and order’, at the expense of wider public debate on the need to re-examine imprisonment policies. Accordingly, scholars have questioned whether we should be calling these surveys public ‘opinion’ polls at all. ‘Public emotion polls’, ‘word-association tests’ and ‘top-of-the-head polls’ have been suggested as more accurate terms (Indermaur, 2012; Mackenzie, Stobbs, Ferguson, & Gelb, 2013). In a sense, such research works towards reducing and conceiving the public as an emotionally reactive populace, rather than a critically informed citizenry.

Calls for alternative methods to assess the public's views on offending have emerged. Green (2006) argues that alternative methodologies to those that rely on 'top-of-the-head' answers to surveys are needed to inform justice policy as such surveys present shallow, unconsidered public opinion that thwart good policy development and reform. Former Chief Justice Murray Gleeson of the High Court of Australia has also 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). Australian scholars similarly recognise the merit in investigating alternative methods to gauge informed public opinion to shape policy development (Gelb, 2006; Indermaur, 2012; Mackenzie et al., 2012).

Deliberative research is emerging as one such method that has the potential to offer information that is of more value to the public policy process than the typical quantitative survey approach. Ultimately, the choice of either survey or deliberative techniques or both will depend on the objective. One key distinction is whether the objective is to understand what participants *would* think under conditions that encourage critical thinking on the subject at hand (Fishkin, 2010, p. 196), or what participants *do* think (Burchardt, 2014, p. 7) from the 'top of their head' (Indermaur, 2012). Mooney (2010) highlighted another distinction –whether one's objective is to understand what participants think acting on behalf of a community, or what participants think acting as individuals concerned for themselves. An increasing number of scholars have begun to draw attention to the potential benefits of qualitative and deliberative methods in public opinion research, and to argue that quantitative survey methods should be either replaced or supplemented by deliberative methods.

### **Deliberative Methods as an Alternative Approach to Assessing Responses to Offending**

The use of public deliberative methods to inform policy discourse in the offender health and criminal justice fields is rare. However, interest in deliberative practices to explore other public policy issues has emerged in recent decades (Davies, Wetherell, & Barnett, 2006; Smith & Wales, 2000). Various deliberative research methods have been described in the literature including deliberative polling (Fishkin, 1991), planning cells (Hendriks, 2005), consensus conferences (Dryzek & Tucker, 2008) and Citizens Juries (Parkinson, 2004; Pickard, 1998; Simpson, Guthrie, & Butler, 2014; Smith & Wales, 2000). Others, for example, World Cafe (Brown, 2001), "remain primarily outside academic peer-review and critique" (Street, Duszynski, Krawczyk, & Braunack-Mayer, 2014, p. 1).

Citizens Juries are one of the most popular of the deliberative methods within health care and public health fields. Detailed descriptions of the design and facilitation of various Citizens Juries have been provided by leaders in this field (Carson 2005; Mooney, 2010; Street, 2014).

In a systematic review of the use of deliberative methods in these fields, Street et al. (2014) identified 75 articles, 66 of which featured Citizens Juries. This compared with 20 consensus conferences, two citizens councils, two electronic juries, one deliberative poll, one deliberative mapping, one citizens parliament, one citizens workshop, and six deliberative methods which could not be categorised.

As with legal juries, Citizens Juries typically involve bringing together a selected group of citizens, usually 12-20. Jurors are provided with information on the issue at hand and asked, as community representatives, about their preferences for certain policy options or priorities. In contrast to participants in large-scale surveys, opinion polls or focus groups, jurors may have access to, and critically engage and interact with a range of 'experts' or knowledge producers on the subject at hand. They are able to ask questions and clarify key points through discussions with the experts. Extensive discussion with other jurors also occurs as part of the deliberative process, which can last from a half-day to five days. This is aimed at enabling jurors to develop nuanced conclusions about the subject area as well as more considered preferences for particular policy approaches (Carson, 2006; Crosby, 1995; Mooney, 2010).

Deliberative methods like Citizens Juries can complement official consultation processes. Responses to government inquiries 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 are typically overlooked as stakeholders in the 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, Hendriks, Palmer, White, & Balckadder, 2003).

A strength and limitation of Citizens Juries is that they typically involve a small number of jurors. While random selection attempts to eliminate selection bias (Carson & Martin, 2002), the small sample size means that jurors' conclusions may not be representative of broader community views. In response, Smith and Wales (2000) refer to the idea of 'inclusivity' due to the problems associated with representativeness including that no jury can accurately represent all the views present in wider society, issues of false essentialism (e.g. no woman can represent all women) and inference that individuals are unable to represent others who do not share one or some identified characteristic(s) but perhaps share other less salient, unrecognised ones. The reliability of Citizens Jury methods can be increased by having repeated Citizens Juries using different jurors. Citizens Juries should also be considered as but one stage of a broader, inclusive policy development process, which may also include discussion papers, public submissions, parliamentary committees, pilot programs and policy evaluation.

Although deliberative studies exist whereby *individuals* deliberate on case studies and information about offenders (Diamond, 1990; Lovegrove, 2007), studies involving *groups of citizens in deliberation together* are less common. Perhaps the best-known example of the latter is a study by Luskin, who in 1994 used a deliberative polling approach of 301 participants in a two-day forum in Manchester, England. Participants listened to experts who presented on criminal justice issues and were asked to deliberate on the issues. Deliberation was facilitated by question and answer opportunities with the expert presenters. At the end of the forum participants expressed less punitive and more informed responses than their views measured before the forum (Luskin, Fishkin, & Jowell, 2002). More recently in Australia, Mackenzie and colleagues (Mackenzie et al., 2013) examined the effects of group deliberation on public attitudes towards sentencing among thirty-five participants in four groups who deliberated over pre-recorded DVD presentations of sentencing options covering opposing policy statements regarding mandatory prison sentences versus the use of non-custodial alternatives. The findings indicated that there was a measurable reduction in punitive attitudes towards offenders, however, conceptual, methodological and practical challenges were reported in relation to the information provided to participants and the resource intensiveness of the methodology. It was also noted that there was some level of confusion and lack of understanding surrounding the concepts and information provided in the pre-recorded DVDs. This may have been caused by an oversimplification of the content (Mackenzie et al., 2013). Unlike in Luskin's study, participants were unable to critically engage with the expert presenters and thus, any clarification required was elusive.

## Methodology

The research methods comprised three Citizens Juries and an evaluation component at the conclusion of each jury, where jurors were invited to provide feedback on the jury process. A research reference group provided oversight of the research process.

### Research Reference Group

Independent oversight of research processes and consultation with the community is an important component of deliberative research. Independence between co-inquirers—including the funder, the researcher team and the Citizens Jury facilitator (Carson et al., 2003; Huitema, Cornelisse, & Ottow, 2010)—helps ensure that any agenda or interests of one co-inquirer do not influence processes in such a way that findings align to those interests (Wakeford, Singh, Murtuj, Bryan, & Pimbert, 2007). As Wakeford et al. 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’ (2007, p. 12). Key elements of the jury refer to methodological decisions that address potential bias and include: the selection of experts, and therefore information for the Citizens Juries, jury participant selection and the question or task put to the jury.

This independent oversight comprised forming and consulting with a Research Reference Group (RRG) over methodological decisions. Individuals and organisations invited onto RRGs should reflect a diversity of key issues that underpin the research topic. The RRG for this project included 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, and comprised of representatives of the National Congress of Australia’s First Peoples, New South Wales and Western Australian Council of Social Services, and the Aboriginal Legal Services of New South Wales and the Australian Capital Territory.

### **Citizens Jury Method**

Citizens Juries were held in Sydney, in the State of New South Wales (NSW), Canberra, in the Australian Capital Territory (ACT) and Perth, in the State of Western Australia (WA) from approximately 9.30am to 5pm on 8 December 2012, 28 September 2013 and 5 October 2013 respectively. These sites were selected for several reasons: NSW, because it is the jurisdiction with the largest prisoner population and a site of an active campaign for the inclusion of a prison alternative approach called Justice Reinvestment; WA, because of its high Indigenous incarceration (ABS, 2014), and the ACT, because pilot work on the concept of Justice Reinvestment<sup>2</sup> had been undertaken in that jurisdiction (Guthrie et al., 2010).

### ***Questions Posed to Jurors***

The following questions were posed to jurors:

1. What principles do you want to see underpin the treatment<sup>3</sup> of 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. The idea behind these questions was to determine some agreed principles (question 1) on which policy and actions might be based (question 2).

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2. Justice Reinvestment is explained and discussed more fully in the Findings section.  
 3. The term ‘treatment’ was explained to Citizen Jury participants as referring to ‘responses to offending’ and not medically informed treatment.

### ***Selection of Jurors***

A sample of 300 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 them to submit an expression of interest (EOI) form. Potential jurors were informed that if they were selected they would be paid a sitting fee and all expenses paid if they attended the event. 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, Indigenous status, and income were collected on the EOI form.

Following the EOI process, researchers selected 15 jurors and two reserve jurors for each jury. This part of the selection process was not random as it was necessary to ensure that a single demographic did not dominate each jury and to facilitate the jury being broadly representative or 'inclusive' of the community. Researchers sought to ensure a range of age groups, education level, genders and cultural backgrounds in each jury. Ultimately a total of 43 jurors attended at the three events. Summary demographics of the jurors are shown in Table 1. Random selection meant that some minority groups, including Indigenous people, were not well represented. Despite additional purposive sampling efforts to recruit Indigenous jurors, only one juror identified as Indigenous. Selected jurors tended to come from older age groups and there was a slight majority of male participants.

### ***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 RRG. Experts were selected from across offender health-related fields including government, research and community sectors. This ensured that the process would be grounded in both academic and experiential 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' affiliation and their areas of expertise is provided in Table 2.

**Table 1: Demographic characteristics of Citizens Jury participants**

Demographic characteristic		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 duties	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/UK	12	28
	Africa	2	5
	Middle East	2	5
	Unknown	3	7
Income level (Australian dollars)	< \$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

### *Jury Structure and Deliberation Process*

Each jury was structured around opportunities for jurors to interact with each other and presenting experts and to reach their deliberations without interference by the researchers, facilitator and funder. One person facilitated the Sydney jury and a separate person facilitated the Canberra and Perth juries. Due to the untimely death of the facilitator shortly after the Sydney event<sup>4</sup> we were unable to standardise facilitation across juries. Nonetheless, at each event, the facilitator outlined key objectives, introduced experts and facilitated deliberation in relation to the two questions (above) posed to jurors, which

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4. See Simpson, Guthrie, & Butler, 2014

**Table 2: Experts' Affiliations and Areas of Expertise**

	Professional Affiliation	Area of Expertise
Sydney	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
	Faculty of Law, University of New South Wales	Justice Reinvestment
	Australian Institute of Criminology	Reintegration of Indigenous offenders and ex-prisoners
	Redfern Local Area Command	Clean Slate without Prejudice Program <sup>5</sup>
	Tribal Warrior Association	CSWPP, Diversion program for Indigenous youth
Canberra	National Centre for Indigenous Studies, The Australian National University	Royal Commission on Aboriginal Deaths in Custody: 20 years on
	Australian Institute of Criminology	Australian prisoner profile and statistics
	National Centre for Indigenous Studies, The Australian National University	Justice Reinvestment
	Justice Health Services, ACT Health	Prisoner Health and ACT Corrections
	ACT Victims of Crime	Victims of crime perspective
Perth	National Centre for Indigenous Studies, The Australian National University	Royal Commission on Aboriginal Deaths in Custody: 20 years on
	National Centre for Indigenous Studies, The Australian National University	Justice Reinvestment
	Kirby Institute, University of New South Wales	Prisoner health
	Australian Institute of Criminology	Australian prisoner profile and statistics
	Consultant Research Psychiatrist, WA Health	Forensic Psychology
	'Enough is Enough' Program <sup>6</sup>	Victims of crime perspective

5. This diversion program for Indigenous youth, located in Redfern NSW, 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 <http://www.healthinonet.ecu.edu.au/key-resources/programs-projects?pid=1263>

6. Enough is Enough Anti-Violence Movement Inc. was founded in 1995 to specifically address the issue of violence in the community. See <http://enoughisenough.org.au/site.html>

were clarified during introduction sessions. Each jury occurred over one day (8.30am to 5.00pm) and comprised expert presentations followed by jury scrutiny and questioning during the morning session, and jury deliberation and outcomes during the afternoon session.

Each facilitator was sufficiently skilled to adapt their methods during the Citizens Jury event to accommodate the particular composition of a jury. For example, at one jury event, it became evident to the facilitator that within the small groups (members of which were randomly allocated) the more vocal jurors tended to dominate discussion. The facilitator mediated against this by re-forming the groups between rounds of deliberation, such that the more vocal members within each small group were reallocated to form their own discreet group. This had the effect of enabling the remaining members of groups to feel more valued by having their voices heard. Both facilitators were skilled enough to understand both the 'frailties' and the strengths of a randomly selected group of individuals, meeting for the first time at the Citizens Jury event, and to allow everyone's individual qualities to reach a satisfying, collective outcome.

#### ***Veracity of Citizen Jury outcomes***

A draft jury recommendation report was written up by the facilitators after each jury. This report outlined the deliberation processes, topics and outcomes. Jurors were asked to provide comments on their respective draft jury recommendation report, which was sent to them within 5-11 days after the Citizens Jury. This was to ensure veracity of the jury outcomes. Accompanying the report was an evaluation survey asking jurors to assess their experience of the process including facilitation, whether experts provided an unbiased representation of the issues involved, whether the length of deliberation was adequate, the overall satisfaction level in participating, ways for improving the process, and how successful they thought the event was. Jurors (98%) were satisfied with their participation and the jury processes, including the quality and unbiased nature of the experts and information presented to them. Almost all (99%) indicated that outcomes and deliberation topics reported were accurate. Three jurors did not return a completed survey or provide comment on the recommendation report.

Citizen Jury outcomes presented are based on a thematic analysis of the jury outcomes detailed in the three draft jury recommendation reports. Common themes across all three juries are reported.

### **Findings**

Findings are presented according to the aforementioned two questions asked of jurors:

## 1. □ Principles that Should Underpin the Treatment of Offenders

Three themes were identified among the principles generated by jurors:

### *Equity and Fairness*

Jurors recommended the principle of equity and fairness be applied to offenders and also to victims of crime. The idea of equity and fairness was informed by taking into account the social, cultural and economic circumstances of offenders in responses to crime and during sentencing. This reflects the endorsement of jurors of the notion that poor social and economic conditions—considered as ‘determinants of crime’—heightened the risk of people, including Indigenous people, being drawn into crime. Jurors also recognised that it can be difficult to balance the rights of both offender and victim in a fair and equitable manner.

### *Prevention Focus*

The notion of prevention was a strong theme across all three juries. Jurors recommended that preventing offenders from coming into contact with the criminal justice system should be an overriding policy principle. In this regard, jurors also noted that policies that address the social and economic determinants of crime, such as primary health care, education, employment, housing etc., are very important as part of a prevention focus.

### *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.

## 2. □ Putting Principles into Practice

Four policy recommendations were identified across all, or most, juries. Some of these recommendations relate to initiatives that have already been wholly or partially implemented in Australian jurisdictions and which have a high level of support from jurors. Other recommendations outline areas of policy development that policymakers could pursue.

### *Holistic Prevention Strategies*

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

Services and programs recommended included:

- Mental health 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
- Mentoring programs
- Anger management and coping strategy programs.

### ***Non-Incarceration Options***

All juries expressed the view that the escalating expenditure on prisons is problematic, a huge burden on the public purse, and not effective in terms of individual restoration. 'Decarceration' 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 (definition of what constitutes a serious offence was not articulated). However, even in these circumstances, jurors stated that incarceration should be focused on rehabilitation and restoration of offenders to their community.

### ***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 might be scaled up to the state or national level and could become a high profile element within a broader Justice Reinvestment approach. Jurors argued that any savings accrued through 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. A range of methods were proposed and discussed.

Sydney jurors thought that the media was the best platform for raising awareness and public support of prison alternative and 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 on the other hand recommended community representation on offender assessment panels, which help determine sentencing options and allocation, as a means of involving the public. 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-incarcerations options.

### **Participant Evaluation of Citizens Juries and Findings**

The response rate to the evaluation survey was 84% (36/43). Overall, participants responded favourably to the Citizens Juries and thought reports on jury outcomes were accurate. Common themes in this regard included participants feeling that their views counted and were respected; that they were making a contribution; and that they gained knowledge from experts and other jurors. However, a small minority had concerns with bias in terms of jury representativeness (lack of diversity) and format/procedure (more time to question experts and discuss and read about issues). Two Sydney jurors spoke of concerns about the facilitator and/or group conformity suppressing the ‘real’ views of individuals.

### **Discussion**

The Citizen Jury method employed in this research resulted in a substantively different view of public attitudes towards criminal justice issues than the punitive views highlighted by quantitative, survey-based research. Given the opportunity to deliberate on wider knowledge about offenders and responses to offending, and to critically engage in this knowledge by way of quizzing experts and input from other jurors, participants preferred incarceration alternatives. Jurors strongly believed that the escalating expenditure on prisons represented a huge burden on the public purse, and is ineffective in achieving individual restoration. They recommended a more holistic, non-punitive approach towards offenders. 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 moves towards ‘decarceration.’

Two juries cited the idea of Justice Reinvestment to cover funding allocation issues and holistic early intervention and prevention strategies. Justice Reinvestment is a recent development in criminal justice enjoying an impressive rise onto the political and policy agenda internationally. It should be noted, however, that while the rhetoric of Justice Reinvestment has gained some traction in Australia; it has not been adopted by any Australian jurisdiction as a policy option, though some preliminary work towards a Justice Reinvestment strategy is being conducted in one Australian jurisdiction<sup>7</sup>. To do so would require the political will not to add to the prison estate by building new prison beds, but instead allocating a portion of funds projected to be spent on building new prisons to be diverted to local communities with a high concentration of offenders for programs and services that address the social determinants of crime (Guthrie et al., 2013). In Australia, the idea has gained traction among politicians and community advocates, with particular emphasis on its potential in the Indigenous context.<sup>8</sup>

Justice Reinvestment aims to address the underlying causes of crime and improve the lives of both individuals and communities. It uses data to identify communities that have high concentrations of offenders and assess the particular problems facing those communities. The redirection of funds into early intervention, crime prevention and diversionary programs creates savings in the criminal justice system that can be reinvested into those communities. Justice Reinvestment has the ability to reduce crime, offer positive opportunities to young people and to save taxpayers' money (Justice Centre [Council of State Governments], 2010).

Two of the juries also recommended deliberative participation mechanisms to raise awareness and dialogue, and public involvement in decision-making for non-incarceration options. These jury preferences 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 or non-punitive views from the public than surveys that require a 'top of the head' response. It also supports findings from Mackenzie et al. (2013), who conducted the only other study in Australia that we are aware of to have used group-based deliberative methods, and which indicated that there was a measurable reduction in punitive attitudes towards offenders. The present study, while encountering methodological challenges of its own, addresses the challenge that Mackenzie et al. report regarding deliberation limitations surrounding the use of pre-recorded DVD as a method to present information for jurors to deliberate over: it did so by

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7. See <https://justice.act.gov.au/page/view/3829/title/justice-reinvestment-strategy>

8. See <http://justicereinvestment.unsw.edu.au/>

providing various information and perspectives presented ‘live’ to participants and allowing them the opportunity for critical engagement of this information through questions and answer time with presenting experts. Nonetheless, both studies contribute to dialogue on the question: *Which approach is more suitable to informing policies directed at offenders?*

The Citizen Jury method does have limitations, especially in regards to *representativeness and inclusivity*. The juries could have involved a greater diversity of people. Selected jurors 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 participate in public deliberation (Goidel, Freeman, Procopio, & Zewe, 2008; Griffin, Abdel-Monem, Tomkins, Richardson, & Jorgensen, 2015; Mooney, 1998). Despite the use of stratification in selecting jurors and efforts to purposively recruit Indigenous jurors, Indigenous Australians, younger adults, and people from a lower socio-economic background were underrepresented. Only one juror identified as Indigenous, and only four were aged 30 years or younger. This highlights a need to direct efforts and resources to ensure diversity of jurors. This is likely to be a challenge given the high costs already involved in conducting such deliberative events. However, as Smith and Wales (2000; 304) state: “the grounds of cost needs to be weighed against the potential damage to the legitimacy of the process”.

The letter of invitation to the 300 randomly-selected potential jurors stated, “This is your chance to have a say about the treatment of offenders through imprisonment and other non-imprisonment alternatives.” Therefore, a “self-selection effect” may have been at play (Ryfe, 2005). That is, those who are more favourable to considering prison alternatives may have been more likely to volunteer their time to participate in the study. These issues suggest that the conclusions of Citizens Juries should not be considered to be strictly representative of broader community views. Considering how different people or ‘voices’ can best be included within participatory processes is a concern to many practitioners (Hunsberger & Kenyon, 2008).

Provision of information to jurors by experts’ 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 RRG, other offender-related perspectives were not presented for example, those with lived experience of prison. 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, 2004; Niemeyer & Blamey, 2005). While more time

may be preferred, the social realities of jury members as well as funding limitations prevented longer deliberation. Striking a balance between appropriate duration of jury deliberation and having enough time to produce recommendations underscores an important challenge for deliberative practices (Bobbio, Lewanski, Romano, Giannetti, & Crosby, 2006; Gooberman-Hill, Horwood, & Calnan, 2008). Additionally, the change in facilitator (one for Sydney session, one for Canberra and Perth sessions) and their personal style may have introduced an element of inconsistency.

Deliberative-based research approaches are arguably best suited to begin addressing what Allen (2002) 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” (p. 6). Consequently, deliberative-based research methods that assess the views of a critically informed community should be given more import than opinion surveys to informing justice and penal policies. However, within the growing support of deliberative-based methods to inform policy remain the tasks of determining which deliberative-based method or methods are most suitable to the task at hand, and to ensure its methodology is robust given the likely resource constraints that accompany most deliberative and research projects. Future research would do well to address these issues.

### **Conclusion**

This study showed that, when given access to relevant information and the opportunity to deliberate with others, jury members preferred non-punitive responses to offending. 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. Jurors also supported non-incarceration options for most offender groups who come in contact with the criminal justice system.

This study contributes to debates on the assessment of public opinion in relation to criminal justice policy development and reform by illustrating the propensity of a critically informed public to endorse alternatives to incarceration. Ultimately, policy reform in this space will occur when the wider community accepts and demands change. Community demands should ideally be critically informed, not emotively driven. The latter lends itself to exploitation by media and political populists. We hope that our study illustrates the importance of examining how public opinion is conceived and assessed when it is used to justify policy. While the study identifies some limitations in Citizen Jury methodology, it also shows the potential for deliberative methods to lead to the emergence of more nuanced, detailed information about the public's views than can typically be identified using

survey-based research methods. This study focuses on the topic of incarceration but deliberative methods are likely to be equally useful and applicable within other contentious public policy spaces. Further research could, however, focus on determining which deliberative methodologies are most suitable and robust in such contexts, especially given the likely resource constraints that accompany most endeavours of this kind.

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