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12th September 2017

To Commissioner Myers,

Just Reinvest NSW Submission to Australian Law Reform Commission Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples

We write to you on behalf of Just Reinvest NSW and the Maranguka Justice Reinvestment Project in relation to the Australian Law Reform Commission's inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples.

Just Reinvest NSW is a coalition of more than twenty [organisations](#) and individuals that have come together to address the significant over-representation of Aboriginal people in custody through a [Justice Reinvestment](#) framework.

Just Reinvest's key message to the government and the community is that there is a solution; a smarter approach that will reduce crime and create safer, stronger communities.

In 2013, Just Reinvest NSW began a partnership with the Bourke Aboriginal community to implement the first major [justice reinvestment trial](#) in Australia, the Maranguka Justice Reinvestment Project in Bourke.

In November 2016, Just Reinvest NSW convened a roundtable to develop legislative and policy reforms to reduce the rising prison population in NSW, with a particular view to addressing the levels of Aboriginal overrepresentation.

The paper was developed following a roundtable discussion with representatives from the Law Society of NSW, the NSW Bar Association, the Law Council of Australia, the Aboriginal Legal Service NSW/ACT, Legal Aid NSW, the Public Interest Advocacy Centre, the University of NSW, the University of Technology Sydney, the Public Defenders office, and other prominent members of the NSW legal and justice communities. It has been the subject of consultation with peak NSW Aboriginal organisations and other key organisations and agencies.

The paper was launched in August 2017 at a parliamentary forum hosted by the NSW Attorney General, the Honourable Mark Speakman SC MP.

Given our experience and expertise, in this submission we have focused on providing information on justice reinvestment as a framework that would better respond to the rates of over incarceration of Aboriginal and Torres Strait Islander peoples. Where applicable we have provided case studies from the Maranguka Justice Reinvestment Project in Bourke in the relevant subject areas. We have limited our responses to the ALRC questions and proposals to those areas where we have relevant expertise.

Attached to our submission are the following documents:

- Just Reinvest NSW Policy Paper #1 – Smarter Sentencing and Parole Law Reform
- JRNSW's Strategic Plan 2016-2019
- KPMG's Preliminary Assessment of the Maranguka Justice Reinvestment Project
- Snapshot of Life for Aboriginal Children & Young People in Bourke (the data snapshot)

The sections of our submission relating to the Maranguka Justice Reinvestment Project in Bourke are submitted as a joint submission between Maranguka and Just Reinvest NSW. The remaining sections of our submission are submitted with the endorsement of Maranguka.

Just Reinvest NSW and Maranguka thank you for the opportunity to comment and would welcome the opportunity to provide further information to the Inquiry if required. Questions may be directed to nicole@justreinvest.org.au or sarah@justreinvest.org.au.

Yours faithfully,

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Chair, Just Reinvest NSW
Managing Solicitor, Justice Projects, ALS NSW/ACT

Alistair Ferguson
Founder and Executive Director, Maranguka
Executive Committee Member, Just Reinvest NSW

PROPOSALS AND QUESTIONS

2. BAIL AND THE REMAND POPULATION

We strongly support Proposal 2-2 that State and territory governments should work with peak Aboriginal and Torres Strait Islander organisations to identify service gaps and develop the infrastructure required to provide culturally appropriate bail support and diversion options where needed.

We draw your attention to the final page of our attached Policy Paper which includes a proposal for framing smarter orders and implementing breach reduction strategies through:

- better tailoring court orders including bail, supervised orders and AVOs
- improving support services and supervision for those on community orders and domestic violence orders (e.g. community supervision, especially for young people)
- providing support services and accommodation options for those on bail (including bail hostels)

4. SENTENCING OPTIONS

We strongly support Proposal 4–1 that state and territory governments work with peak Aboriginal and Torres Strait Islander organisations to ensure that community-based sentences are more readily available, particularly in regional and remote areas.

Question 4-2 Should short sentences of imprisonment be abolished as a sentencing option? Are there any unintended consequences that could result?

Proposal 2 in our attached Policy Paper proposes that steps be taken to reduce the imposition of sentences of six months or less, by encouraging greater use of ICOs and other non-custodial options.

In the 12 months to June 2016, almost half (43.4%) of those sentenced to prison in NSW received a sentence of less than 6 months.¹ In the same period approximately two-fifths (37.6%) of persons sentenced to prison in NSW for less than 6 months were Indigenous.²

Short sentences are costly and ineffective in rehabilitating offenders and reducing recidivism, as well as providing only a limited period of incapacitation. People in prison for short periods often do not have access to programs, while at the same time are disconnected from employment, education and family.

In NSW, in the 12 months from October 2013, 63% of all people who received a sentence of less than 6 months reoffended within two years.³

A 90% reduction in the number of sentences of less than 6 months in NSW would:⁴

- cut the number of prison sentences handed down in NSW courts and the number of people coming through the prison system by almost 40%.

¹ BOCSAR data request kr17-14992

² BOCSAR data request jh17-15161

³ BOCSAR data request kr17-14992

⁴ BOCSAR data request – Savings from 85% reduction in short sentences

- result in a 5% reduction in the overall prison population.
- free up approximately \$30 million the government currently spends on locking up people for less than 6 months each year - not including potential savings in capital expenditure.

Any reduction in recidivism will also generate savings extending to court costs, police resources, property damage, health care and victims compensation, as well as reduced lifelong individual and societal costs as a result of improved productivity.

Reducing the imposition of sentences of less than 6 months is not viable unless there are adequately resourced sentencing alternatives (see Proposal 1 in attached Policy Paper).

Question 4-4 Should there be any pre-conditions for such amendments, for example: that non-custodial alternatives to prison be uniformly available throughout states and territories, including in regional and remote areas?

As noted above, reducing or abolishing sentences of 6 months or less will not be viable unless there are adequately resourced sentencing alternatives.

In NSW, Intensive Corrections Orders (ICOs) should be made available across all NSW locations to ensure equal access to alternatives to imprisonment and to programs that address the underlying causes of crime (see Proposal 1 in attached Policy Paper).

ICOs are an underutilised sentencing option, particularly in regional and remote NSW. In 2015 in NSW, 74% of offenders who were sentenced to ICOs were in major cities, 19% in regional towns, and just 0.6% in remote NSW.⁵ Additional resources and greater flexibility for approved community service options are required to ensure the availability of ICOs as sentencing options for all NSW courts. This would have the flow-on effect of increasing the availability of Community Service Orders.

Expanding the availability of ICOs will require a significant commitment in recruiting and training a trauma-informed and culturally competent workforce, as well as investing in the development of local people so that a stable and skilled workforce in the longer term is ensured.

Consideration should also be given to extending the maximum length of an ICO, which is currently 2 years. The current maximum length means that where a term of imprisonment of more than 2 years is warranted but an offender has demonstrated positive rehabilitation, there is no community based alternative available. The Victorian model of Community Correction Orders has the maximum length for an ICO being 5 years.⁶

We note that the Discussion Paper highlights the restrictiveness of suitability requirements for Intensive Correction Orders (ICOs) (4.71 - 4.72). Proposal 1(b) in our attached Policy Paper recommends that the scope of ICOs be expanded to include therapeutic programs as alternatives to the work component. The current assessment process deems many offenders with substance dependency issues, cognitive impairment, mental illness or physical disability

⁵ NSW Sentencing Council, Intensive correction orders: Statutory review Report September 2016, <https://www.parliament.nsw.gov.au/la/papers/DBAssets/taledpaper/webAttachments/69812/Sentencing%20ouncil%20Report%20Intensive%20Corrections%20Orders%20Statutory%20Review%20September%202016.pdf> pg13

⁶ s 38, Sentencing Act 1991 (Vic).

unsuitable for the mandatory work component of an ICO. BOCSAR has found that only 55% of ICO assessments result in an ICO being imposed, due mainly to alcohol or other drug dependency rendering the person unsuitable for an ICO.⁷ Rather than exclude these offenders, the mandatory conditions could be tailored to address the underlying causes of offending and expanded to include orders to attend rehabilitative programs or violent offender programs, as an alternative to the work component.

We further recommend that strategies be considered to encourage courts to provide reasons when imposing a sentence of less than 6 months to as to why an eligibility assessment for an ICO is not made (Proposal 2 in attached Policy Paper).

Evidence suggests that intensive supervision coupled with rehabilitative treatment has a higher impact on reducing the rate of re-offending than imprisonment.⁸ It is also more cost-effective, per person, per day:

Community-based order: \$22⁹

Rehabilitation centre: \$120¹⁰

Prison: \$217¹¹

5. PAROLE

With regard to the ALRC proposals relating to parole, we refer the Commission to Proposal 3 of our Policy Paper and submit that consideration should be given to the removal of any requirement for an offender whose parole has been revoked to wait a set period before being able to re-apply for parole (eg the mandatory 12 month period in NSW). The adjournment period should remain in the discretion of the parole authority and be dealt with on a case by case basis.

We note the ALRC draws attention to the obstacle of accommodation to parole (5.34). Proposal 3(b) of our Policy Paper highlights the need for back end home detention to include half-way houses and residential rehabilitation facilities. There needs to be adequate resourcing around residential rehabilitation options and half way houses. This will, again, require mapping of existing residential drug and alcohol programs, to identify and meet additional needs including resourcing for:

- additional options for those with mental health issues, an intellectual disability or a cognitive impairment
- healing and cultural components

⁷ C Ringland, Sentencing Outcomes for Those Assessed for Intensive Correction Order Suitability, Bureau Brief No 86 (NSW Bureau of Crime Statistics and Research, 2013), in NSW Law Reform Commission, Sentencing, Report 139 (2013), [9.72], <http://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-139.pdf>

⁸ "The largest average reductions in re-offending were those associated with intensive supervision coupled with treatment (11 studies with an average 16% reduction)". NSW Bureau of Crimes Statistics and Research, 'Reducing Indigenous Contact with the Court System', (2010), pg3, <http://www.bocsar.nsw.gov.au/Documents/BB/bb54.pdf>

⁹ NSW Justice, Annual Report 2015–2016, pg62, <http://www.justice.nsw.gov.au/Documents/Annual%20Reports/JusticeAnnualReport2015-16.pdf>

¹⁰ WHOS, Annual Report 2015-2016, pg9, Sources: WHOS; NSW Auditor-General's Report to Parliament, 2013; Report on Government Services 2016.

¹¹ Productivity Commission Report 2017, Table 8A.18, <http://www.pc.gov.au/research/ongoing/report-on-government-services/2017/justice/corrective-services/rogs-2017-volume-c-chapter8.pdf>, pg67

- additional programs for women and juveniles (including access to trauma-informed and culturally safe community based healing)
- aftercare support

We would encourage the ALRC to further investigate the Miranda Project as a model of Aboriginal and Torres Strait Islander women specific through care. (DP 5.49)

6. DRIVERS LICENCES

Question 6–10 How could the delivery of driver licence programs to regional and remote Aboriginal and Torres Strait Islander communities be improved?

The Maranguka Driver Licensing Program is a successful model of a driver licence program in a regional Aboriginal community. The Program is auspiced by Birrang. Information on the program is as follows:

Who is it for?

- Those who have committed a driver licensing offence; and/or
- Those who have difficulties obtaining a licence.

Background

- Bourke has ranked first in NSW for offences relating to driving whilst disqualified/suspended and motor vehicle theft for those aged between 10-25 years (BOCSAR 2013).
- There were a number of schemes in place including Work Development Orders, Birrang and Yes I Can. They were having some success, but were limited in what they could achieve, they needed to be coordinated and adequately resourced to address the complexity and extent of the challenge.
- In 2009, the George Institute prepared the Crime Prevention and Driver Education Program Feasibility Study for the Bourke Community.
- In response to the lack of action taken by the government on the recommendations, the Maranguka Justice Reinvestment Project was implemented.
- The Bourke police were eager to explore alternatives to issuing a Court Attendance Notice (CAN) when they stop an unlicensed driver.
- The Maranguka JR Driver Licensing Program commenced in December 2015.

Barriers to obtaining and maintaining a driver's licence:

- Literacy problems and difficulties passing the driver knowledge test.
- Limited access to licensed drivers to supervise learner drivers.
- Limited access to registered and insured vehicles.
- The costs associated with obtaining a licence, owning and maintaining a car.
- Difficulties associated with the graduated licensing systems.
- Difficulties obtaining proof of identity documents.
- Particular difficulties with birth certificates and change of name registrations.

The impact of suspension or cancellation of a driver licence (or the inability to obtain a licence) can:

- make it harder to sustain a job and find work;
- deepen financial hardships;

- create more contact with the criminal justice system (through secondary offending); and
- ultimately lead to imprisonment (NSW Law & Safety Parliamentary Inquiry into Driver Licence Disqualification: NSW Legal Assistance Forum Submission).

The Maranguka Driver Licensing Program

A person either volunteers or is referred by the police or the courts to take part in the program. It provides:

1. Case management of a participant's particular needs, whether they are related to: drugs and alcohol, mental health, homelessness, or other issues.
2. The opportunity to obtain a Certificate 1 in Automotive Mechanics.
3. A more permanent and appropriately resourced driver licensing and education program. This includes access to registered cars, driver mentors, and associated costs.
4. Removal of barriers to identity documents. This can include streamlined and facilitated access to relevant identification documents in collaboration with: Department of Births, Deaths and Marriages, Transport for NSW, and Roads and Maritime Services.

Driver Licensing and Crime Prevention: The Economic and Social Benefits

- Reduction of costs: police resourcing, charging and handling, transport and custody.
- Minimising hidden costs of excluding people from employment and the opportunity to play an active role in society.
- Indirect financial and social costs of not having a driver's licence on families.
- Improving police-community relations.
- Reducing costs of incarceration and secondary impacts.
- Engaging youth (e.g. through Family Referral Service and linking to education services).

Outcomes:

The community has demonstrated support for the program.

December 2015- September 2016:

Licences:

- 30 learner licences and 28 Provisional Licences obtained; a total of 58 licences
- Of the 30 learner licences obtained, the group was comprised of 14 females and 16 males; there were 22 individuals aged 25 years and below, and 8 aged over 25 years
- Of the provisional licences achieved, 20 were female and 9 male; there were 15 aged 25 years and below, and 14 aged over 25 years

Case Management:

- Only two participants required assistance with obtaining their Birth certificate, as several organisations had provided Proof of Identity (POI) assistance over the previous 18 months.
- Of the 58 participants that achieved their licences, 53 required assistance with State debt recovery office, work development orders, or Centapay.
- Seven participants were referred to an authorised local work development organisation (Centacare). The remaining participants required support with SDRO,

most cases required staff to telephone the SDRO and encourage the participant to make arrangements or to undertake a WDO.

Employment and Education:

- 4 people have either earned new employment or secured their current positions due to having a driving licence.
- 2 students of the program are involved in education and had to gain their Learners to continue in their current position.
- 1 participant can now attend TAFE in Dubbo and has improved her attendance/ grades due to the fact that she can now drive herself to the program. She has reported that this independence has helped improve her sense of self-worth.
- 1 student was able to increase her hours of employment, and consequently, take on more responsibility in outback childcare due to obtaining a provisional licence.

October 2016 to June 30th 2017:

Licences:

- 28 Provisional licences and 35 Learner licences were obtained
- Of those that achieved a Learner licence, there were 14 females and 21 males; 11 clients were 25 years and over, and 24 clients were below 25 years
- Of those that achieved a Provisional licence there were 17 males and 11 females, 17 clients were 25 years and over, and 11 clients were below 25 years

Case Management

- Five birth certificates were required to be obtained.
- The number of clients requiring Proof of Identity (POI) is declining due to "road shows" being delivered by other service providers/ Government agencies. However, clients require assistance and support with other forms of POI, including school cards, bank statements, Centrelink statements, etc.
- There are 15 Work Development Orders in place.
- An additional 10 clients have been assisted with State Debt issues.
- 5 clients settled State debt fines throughout the program.
- Birrang has been required to contact SDRO to establish if a debt remains outstanding - often advice is received that the debt has been archived or waived which enables clients to move forward more easily.

Reported benefits for participants:

- Able to retain employment
- Transport to get to work
- Independence
- Family care – for children and elderly
- Travelling to Dubbo for specialist appointments

7. JUSTICE PROCEDURE OFFENCES

We note that Chapter 7 of the Discussion Paper draws attention to the disproportionate imprisonment of Aboriginal and Torres Strait Islander people for justice procedure offences (DP 7.11 - 7.15). Our broader range of proposals on the final page of the attached Policy Paper includes the need to frame smarter orders and implement breach reduction strategies though:

- better tailoring court orders including bail, supervised orders and AVOs
- improving support services and supervision for those on community orders and domestic violence orders
- providing support services and accommodation options for those on bail

We strongly support Proposal 7-1 that to reduce breaches of community-based sentences by Aboriginal and Torres Strait Islander peoples, state and territory governments should engage with peak Aboriginal and Torres Strait Islander organisations to identify gaps and build the infrastructure required for culturally appropriate community-based sentencing options and support services.

In this regard, we again note that our broader range of proposals includes the need to map existing residential and non-residential drug and alcohol treatment programs for Indigenous people to identify and meet additional needs including resourcing for:

- options for those with mental health issues, an intellectual disability or a cognitive impairment
- healing and cultural components including access to trauma-informed and culturally safe community based healing for offenders and victims
- additional programs for women and juveniles
- aftercare support

An example of what may constitute a valuable community sentence option is the Kimberley Ranger Network. This is another example of a program that would complement a justice reinvestment framework by using a community-led, culturally appropriate and strengths based approach to reducing the rates of incarceration and recidivism for Aboriginal and Torres Strait Islander people for a relatively small cost.

10. ABORIGINAL JUSTICE AGREEMENTS

Just Reinvest NSW supports Proposal 10–1 - where not currently operating, state and territory governments should work with peak Aboriginal and Torres Strait Islander organisations to renew or develop Aboriginal Justice Agreements.

Question 10-1 Should the Commonwealth Government develop justice targets as part of the review of the Closing the Gap policy? If so, what should these targets encompass?

Just Reinvest supports the proposal for Justice Targets put forward in Change the Record's Blueprint for Change:

Set the following justice targets, which are aimed at promoting community safety and reducing the rates at which Aboriginal and Torres Strait Islander people come into contact with the criminal justice system:

- i. Close the gap in the rates of imprisonment between Aboriginal and Torres Strait Islander people by 2040;*
- ii. Cut the disproportionate rates of violence against Aboriginal and Torres Strait Islander people to at least close the gap by 2040; with priority strategies for women and children.*

In addition, these targets should be accompanied by a National Agreement which includes a reporting mechanism, as well as measurable sub-targets (These sub-targets will operate as

indicators to track progress against the primary goals and include, for example, child removal numbers, recidivism, and poverty and disadvantage indicators) and a commitment to halve the gap in the above over-arching goals by no later than 2030.

Further, Just Reinvest NSW supports the adoption more generally of Change the Record's Blueprint for Change as a means to build the core components of a national justice reinvestment framework.

11. ACCESS TO JUSTICE

Question 11-1 What reforms to laws and legal frameworks are required to strengthen diversionary options and specialist sentencing courts for Aboriginal and Torres Strait Islander peoples?

Expansion of Indigenous Courts

We draw your attention to our Policy Paper which proposes expanding the operation of Indigenous Courts across NSW, including broadening the locations of the Youth Koori Court and introducing a NSW Koori District Court.

In NSW, there are currently two Indigenous sentencing court programs: Circle Sentencing and the Youth Koori Court. Circle Sentencing, based loosely on the Canadian circle sentencing model, commenced in February 2002 in the Nowra Local Court. The program now operates in the Armidale, Bourke, Brewarrina, Dubbo, Kempsey, Lismore, Mount Druitt and Walgett Local Courts.¹² The Youth Koori Court, established by the NSW Children's Court, commenced on a pilot basis in February 2015. An evaluation of the NSW Youth Koori Court is currently being completed by researchers at the University of Western Sydney.¹³ The court is modelled on both the Circle Sentencing model for adult offenders in NSW and the Children's Koori Court in Victoria.¹⁴

While findings from the NSW Youth Koori Court are yet to be published, the model has been praised on the basis that "in contrast with some of the other Indigenous courts, it seeks to address underlying risk factors relating to employment, housing, health and substance abuse issues."¹⁵ The Youth Koori Court adopts a deferred sentencing model which allows the court, prior to sentencing, to develop a plan which links young Indigenous offenders to services that help to address the underlying issues associated with their offending.

The Youth Koori Court currently operates in Parramatta only. The NSW Government has stated that the Youth Koori Court could be expanded to additional locations if successful.¹⁶ The President of the NSW Children's Court, Judge Peter Johnstone, has stated that consultations have taken place with Aboriginal communities in Redfern, Glebe, La Perouse

¹² Cultural and Indigenous Research Centre Australia, *NSW Attorney General's Department: Evaluation of Circle Sentencing Program Report* (2008) <[http://www.agd.nsw.gov.au/lawlink/cpd/ll_cpd.nsf/vwFiles/Circle_Evaluation_Report_Final.doc/\\$file/Circle_Evaluation_Report_Final.doc](http://www.agd.nsw.gov.au/lawlink/cpd/ll_cpd.nsf/vwFiles/Circle_Evaluation_Report_Final.doc/$file/Circle_Evaluation_Report_Final.doc)>.

¹³ Judge Peter Johnstone, 'Early Intervention, Diversion And Rehabilitation From The Perspective Of The Children's Court of NSW' (Speech presented at the 6th Annual Juvenile Justice Summit, Sydney, 5 May 2017).

¹⁴ NSW Department of Justice, *News*, 'NSW Trials Youth Koori Court', 14 November 2014 <<http://www.justice.nsw.gov.au/Pages/media-news/news/2014/NSW-Trials-Youth-Koori-Court-.aspx>>.

¹⁵ Lorana Bartels, Jane Bolitho, and Kelly Richards, "Indigenous young people and the NSW children's court: Magistrates' perceptions of the court's criminal jurisdiction." *AILR* 19 (2015/2016): 14.

¹⁶ NSW Department of Justice, above n 14.

and Dubbo and that these communities are “eager to see the expansion of the Youth Koori Court” to their communities.¹⁷ We join the Law Society of NSW in calling for funding for the expansion of the program to additional locations.¹⁸

Most Indigenous sentencing courts across Australia operate at a Magistrates’ (or lower) Court level.¹⁹ Victoria is currently the only jurisdiction with a County (District) Koori Court. We support calls from the NSW Bar Association²⁰ and the Law Society of NSW²¹ for a District level Koori court in NSW.

The NSW Youth Koori Court was established without legislative amendment.²² We recommend, following the Victorian model, that legislation be enacted to give effect to the new District level court and to ensure the ongoing operation of the Youth Koori Court.

Question 11.2 In what ways can availability and access to Aboriginal and Torres Strait Islander legal services be increased?

In 2010, the United Nations Committee for the Elimination of All Forms of Racial Discrimination called for “an increase in funding for Aboriginal legal aid in real terms, as a reflection of its recognition of the essential role that professional culturally appropriate Indigenous legal and interpretive services play within the criminal justice system” in its Concluding Observations on Australia.²³ In 2017 the UN Special Rapporteur on the Rights of Indigenous Peoples made a similar statement.²⁴

The Productivity Commission’s report, *Access to Justice Arrangements* (2014), highlighted the detrimental impact that the uncertainty of funding since 2013 has had on the continued provision of legal services to Aboriginal and Torres Strait Islander peoples, including the ongoing employment of legal practitioners with experience in the area. The report notes that the current funding arrangements have not matched the increased demand and cost of service delivery.²⁵ The Productivity Commission recommended that an additional \$200m be provided recurrently to fund civil legal services.²⁶ Without this, legal services in areas such as family and civil law including family violence and child protection cannot be provided.

We strongly support Proposal 11-3 - State and territory governments should introduce a statutory custody notification service that places a duty on police to contact the Aboriginal

¹⁷ Judge Peter Johnstone, ‘Early Intervention, Diversion And Rehabilitation From The Perspective Of The Children’s Court of NSW’ (Speech presented at the 6th Annual Juvenile Justice Summit, Sydney, 5 May 2017).

¹⁸ Law Society of New South Wales

<<https://www.lawsociety.com.au/cs/groups/public/documents/internetpolicysubmissions/1228795.pdf>>.

¹⁹ In South Australia, criminal courts at all levels can convene an Aboriginal sentencing conference prior to sentencing, or an Aboriginal conference, which is convened out of court without the presence of a magistrate: *Courts Administration Authority: Home*, Courts Administration Authority of South Australia <<http://www.courts.sa.gov.au/Community/Pages/Aboriginal-Programs.aspx>>.

²⁰ Stephen Fitzpatrick, ‘NSW Bar pushes for indigenous court to cut incarceration’, *The Australian* (online), 14 July 2017 <<http://www.theaustralian.com.au/business/legal-affairs/nsw-bar-pushes-for-indigenous-court-to-cut-incarceration/news-story/372d39a2c98832cc2e1aa90064677147>>

²¹ Law Society of New South Wales, above n 18.

²² Sue Duncombe, ‘The NSW Youth Koori Court: A New Pilot Program’ (2015) 2(3) *Law Society of NSW Journal*, 80.

²³ 77th Session: UN Doc CERD/C/AUS/CO/15-17.

²⁴ Victoria Tauli-Corpuz, *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia* (2017).

²⁵ Productivity Commission, *Access to Justice Arrangements*, 802.

²⁶ *Ibid*, recommendation 21.4.

Legal Service, or equivalent service, immediately on detaining an Aboriginal and Torres Strait Islander person.

12. POLICE ACCOUNTABILITY

Question 12.1 How can police work better with Aboriginal and Torres Strait Islander communities to reduce family violence?

Police should be encouraged to think laterally and move beyond traditional policing methods. Police should be supported to enter into genuine and meaningful collaborations with communities.

An example of this approach can be found in the work of the Bourke Local Area Command and their collaboration with the Bourke Aboriginal community to reduce family violence, through the Domestic Violence Home Visiting Program in Bourke.

In 2013 Bourke was ranked highest in NSW for DV related assaults. The Bourke Tribal Council made it a priority area of action in its strategy *Growing our Kids up Safe Smart Strong*. In consultation with Maranguka, the Bourke Local Area Command implemented the home visiting program in 2016. The program involves the police visiting the home of perpetrators of domestic violence following a DV incident with a member of the community for a check-in – the purpose of the visit being both supervisory and supportive. The police and the Aboriginal community in Bourke worked together in partnership to reduce family violence. In doing so they created an environment of support for families. Repeat Victim Assaults have reduced from 45 in the second half of last year, to a total of 28 in the first half of this year (BOCSAR 2017).

Further, in August 2017, the Bourke Local Area Command and the Maranguka community hub instigated daily morning meetings to provide updates and share data, with a view to providing support to those in need, with a particular focus on children at risk of offending and their family members.

Police will now work in close collaboration with a new family violence initiative in Bourke - *Gawimarra Burrany Ngurung* - Picking up the pieces – auspiced by Birrang in partnership with Maranguka (through which 5 new positions are being funded by Prime Minister and Cabinet under the Third Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022).

It would be optimal if police could be incentivised to adopt similar approaches across Australia as part of measurable performance indicators and targets across regional and local area commands, as well as individual agreed performance indicators within command management systems.

Question 12.4 Should police that are undertaking programs aimed at reducing offending behaviours in Aboriginal and Torres Strait Islander communities be required to: document programs; undertake systems and outcomes evaluations; and put succession planning in place to ensure continuity of the programs?

Yes they should. Additionally, police should be required to share crime data to support communities in developing strategies and initiatives to reduce offending behaviours.

13. JUSTICE REINVESTMENT

In this section, we focus on 3 areas:

- What is Justice Reinvestment (JR) and what are the central principles of a JR approach
- The Maranguka Justice Reinvestment Project in Bourke
- Legal frameworks: the US example

What is Justice Reinvestment (JR) and what are the central principles of a JR approach

Justice Reinvestment is a place based, data-driven approach to justice that builds stronger communities by redirecting money that would be spent on prisons into early intervention, crime prevention and diversion. It recognises the strong correlation between locations of disadvantage and high rates of contact with the criminal justice system.

It is essentially a two-pronged strategy to reducing offending and incarceration and creating savings for reinvestment. The first is about community-led, place-based solutions, like the Maranguka Justice Reinvestment Project. A portion of savings made possible as a result of reduced offending and incarceration is then available for reinvestment into what is working in the community. The second is the development and implementation of state wide policy and legislative measures, the implementation of which will have an impact on the size of the prison population, thereby freeing up resources for reinvestment into supporting community driven strategies to reduce crime.

The NSW Government is spending to increase prison capacity, not to reduce crime. In 2016 it announced plans to spend \$3.8 billion (\$2.2 billion capital and \$1.6 billion recurrent) over the next four years to increase prison capacity by approximately 7,000 prison beds.²⁷

Just Reinvest NSW considers that to coincide with its recently announced Criminal Justice Reform Package,²⁸ the NSW Government should establish fiscal mechanisms to calculate savings from the reforms and to re-invest a portion of those savings (see US examples p24 Question 13-1 'Calculate Savings', 'Reinvestment of Savings') into early intervention, crime prevention and diversion.

Data driven

JR uses data to identify communities with a high concentration of offenders, in order to have a greater impact on reducing imprisonment numbers by targeting causal factors in those communities. JR also uses data to determine those causal factors.

JR involves the collection of comprehensive data to understand what is causing people to offend, the local cost of incarceration, how much money is being spent across sectors in service provision, and what outcomes are being achieved. Communities are supported to identify their own data needs. They can then use the data to develop long-term measures tailored to local needs that address the underlying drivers of crime.

Data is a central component of any JR strategy, for a number of reasons:

²⁷ Justice, NSW Government, *NSW budget: New prisoner beds, record corrections funding*, 16 June 2016, <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2016/NSW-Budget-New-prisoner-beds-record-corrections-funding.aspx>

²⁸ Justice, NSW Government, *Justice Reforms*, <<https://www.nsw.gov.au/news-and-events/news/a-tougher-smarter-and-safer-criminal-justice-system/>>

- to determine both the necessity for and possibilities of new JR initiatives
- to engage the community/government/other stakeholders
- to help the community to identify priority issues to focus on
- setting a baseline against which the success of a JR initiative can be measured
- measuring savings from a JR approach
- to identify where reinvestment could occur
- for ongoing monitoring of the success of specific JR initiatives

Place-based

JR is **place-based**, it looks at local problems and local solutions. For Just Reinvest NSW, this means Aboriginal led, community-driven initiatives. Self-determination is critical.

In Australia, JR to date is being driven at a grassroots level by local communities, and centralised governments are being challenged to better coordinate their responses to local community needs and priorities and to take advantage of community strengths and capacity.

Place-based initiatives involve all levels of government and the local community in genuine partnerships characterised by networks, collaboration, community engagement and flexibility. Local community partnerships devise, implement and evaluate JR initiatives, supported by community engagement and participation mechanisms and local community capacity is enhanced to identify and tackle their own challenges with sufficient time and resources being allocated over the long term.

Fiscally sound

The two-pronged approach to JR means that both the community-driven initiatives and the state-wide legislative and policy measures will result in reduced contact with the criminal justice system and reduced prison numbers. JR requires that savings be quantified and the government commit to reinvesting a portion of those savings into evidence-based local solutions to crime preventions. This will ensure long-term fiscal sustainability.

Central to the JR approach is the idea that the fiscal framework incentivises communities to keep people away from the criminal justice system and prison by making a commitment: if community initiatives result in a reduction of people in that community having contact with the criminal justice system and being imprisoned, then government will reinvest a proportion of those savings back into the community. This commitment ensures the long-term sustainability of effective, evidence-based programs being invested in the community.

Importantly, there must also be a **commitment to long-term funding**. Communities must trust the process for it to succeed, and building trust takes time.

Supported by a centralised strategic body

JR requires a centralised body with a clear mandate to work across government departments and agencies to monitor and quantify social and economic outcomes of JR initiatives. The centralised body would support local initiatives through their governance structures by collecting data, assisting in strategy development and building community capacity.

Maranguka and Justice Reinvestment in Bourke

The Maranguka Initiative is designed to create better coordinated support to vulnerable families and children in Bourke. It involves establishing community-led, multi-disciplinary teams working in partnership with relevant government and non-government agencies and organisations to focus on:

- Developing a new accountability framework for addressing Aboriginal disadvantage; and
- Developing a fiscal framework that ensures the long-term sustainability of effective programs and services.

The Maranguka Justice Reinvestment Project

One of the first activities undertaken as part of the Maranguka vision is to address issues facing young people through a justice reinvestment approach. This is in response to community concerns over the level of youth offending, the lack of detailed outcome-driven evaluations of the numerous programs delivering services into Bourke, and the short-term nature of the funding allocated by government for these programs. In order to provide effective programs and services, the Bourke community has identified a critical need for a framework that will provide long-term, sustainable funding.

In the short term a number of justice circuit breakers were identified to drive immediate change in the lives of children and young people. The Warrant Clinic and Justice Support Team, as well as the Driver Licensing Program are now in operation, with early signs of positive impact.

The Maranguka JR Project was initially funded for 2 years from April 2014 and has been funded for a further 3-year period.

Collective Impact Framework

The project is being designed and will be delivered using an approach known as Collective Impact, a different form of collaboration with dedicated roles and a purpose-built structure which focuses on the design of solutions to complex problems and the development of evidence based policy and shared measures to address system level change.

Through applying the Collective Impact framework over the next 3 years, the following elements will be strengthened and developed in Bourke:

- A whole-of-community and whole-of-government **common agenda** to reduce youth crime and increase community safety.
- **Shared measures** for change based on real-time data.
- A **common approach**, based on best evidence, for creating change in the shared measures and developing the will and capability within the system to implement these responses.
- A **backbone organisation** to perform the necessary functions of facilitating the collaboration, continuously communicating and tracking change in the shared measures.
- A **clear financial picture** of the cost of implementation and the costs saved through effective implementation.

Project Milestones

1. Backbone Organisation team is fully recruited and operational in Bourke
2. 1 x 1 and community meetings held with key leaders and influencers from all parts of the system
3. Relevant data points collected and analysed with data gaps identified.
4. Community conversations around the data in order to <ul style="list-style-type: none"> • inform community and obtain community feedback • gather key themes and goals
5. System mapped
6. Research on best evidence responses to reduce contact of children and young people with criminal justice system
7. High level common agenda and shared measures agreed and agreement on approach to achieve common agenda and shared measures
8. Cross-sector governance group established with clear terms of reference
9. A business case developed, including <ul style="list-style-type: none"> • Program design and delivery and capacity development • A backbone organisation's functions • A data sharing and reporting platform
10. Trial and Test: Implementation of plan The Working Groups: - Strategies and infrastructure for continuous communication agreed and put in place - Plan drafted to develop and leverage the existing system to implement the common agenda, common approach and shared measures
11. Detailed economic modelling of costs saved over a 5 – 10 year period as a result of effective implementation
12. A detailed plan tabled based on the: <ul style="list-style-type: none"> • Common agenda • Common evidence-based approach • Shared measures • Backbone functions/organisation • Costs of implementation • Costs of savings generated
13. The Reinvestment: ongoing use of savings to fund long-term implementation of the plan in Bourke past the set-up and trial run phases. Application of lessons learned and new found and applied relationship and consultative mechanisms that lead to better use of funds and social capital, better relationships with and inclusion of youth in decision making and the creation of diversionary infrastructure that benefits the whole community.

Gathering the Data / Creating a Baseline

The Bourke Aboriginal community decided that they wanted data collected reflecting the full life span of a young Aboriginal person in Bourke, from pre-natal to twenty-five - including indicators related to early childhood, education, health, employment, child safety, mental health, drugs and alcohol, as well as data surrounding a young persons involvement in the criminal justice system. The community wanted this information to get a better informed and complete picture of what was happening with their children and young people. This data was gathered from a range of Government departments. To help facilitate the data

collection process and support the project more broadly, the Premier appointed the then Family and Community Services Minister Mr Brad Hazzard as the Cross-Sector Government Champion. The data collected was then collated into a *Snapshot of Life for Aboriginal Children & Young People in Bourke (the data snapshot)*. The data snapshot set the baseline in order to measure change and progress, and has also informed the strategies developed by the community.

Developing a Community Strategy

Key nominated Government and non-Government workers in Bourke underwent training on how to read the data represented in the data snapshot, hold community conversations, and record community feedback. The trained Bourke personnel conducted and recorded these community conversations between September and December 2015. From these, key themes were extracted and summarised into a Community Feedback document.

In December 2015 the Community Feedback and *the data snapshot* was presented to the Bourke Tribal Council along with research on evidence-based interventions, to determine the community goals and targets. From this, the strategy 'Growing our kids up safe, smart and strong' was developed.

Strategic Working Groups have been established and developed from the priorities recognised in 'Growing our kids up safe, smart and strong'. The Working Groups comprise of government and non-government agencies, service providers and Bourke community members. The Strategic Working Groups are, Early Childhood and Parenting, 8-18 year olds, the Role of Men and Service Sector Delivery Reform.

KPMG has prepared a Preliminary Assessment of the Project. The report is attached. It provides:

- an overview of the key elements of the model being used in Bourke (Indigenous Self-Governance, Collective Impact, and Justice Reinvestment)
- estimated costs associated with the project and the costs associated with the justice system in Bourke
- a comparison of the approach with other potential approaches, and an assessment of implementation up to June 2016, including strategic alignment with NSW and Australian Government policies.

The report highlights the importance of Indigenous Self Governance as a precursor to improving economic and social conditions in Aboriginal communities and realising community priorities.

In its second stage of work, KPMG will conduct the necessary economic analysis to build the business case to government detailing projected savings for government resulting from implementation of the approach, and identifying fiscal mechanisms for reinvestment.

Current Focus

The Working Groups have been set up and have made substantial progress in developing key strategies across the focus areas including:

- Sustained home visits in the first two years of a child's life
- Three year old health checks

- Voluntary wrap around support for children and young people at risk of disengaging from school or offending
- Building and strengthening employment pathways
- Return to community strategies (pre and post release support)

The formation and engagement of the Cross Sector Executive group has also been a critical development to support and facilitate the work on the ground in Bourke. The Cross Sector Executive Group is convened by the Department of Premier and Cabinet and is comprised of representatives from Justice, Health, Education and FACS as well as Maranguka, Just Reinvest NSW, and the NSW Ombudsman.

The Executive meets every 2 months with a focus on:

- Creating the enabling conditions needed for the goals and targets articulated in *Safe, Smart & Strong* to be achieved in Bourke.
- Service Sector reform – a key priority identified by the Bourke Tribal Council.

Example of Collaboration and Impact in the 8-18 year old Working Group

The Maranguka Support Model (MSM) has been co-designed by the 8-18 year old Working Group with support from the Australian Centre for Social Innovation. It has taken months to develop this model and to bring the necessary stakeholders together. There are now 3 families involved with MSM that includes 17 children.

There are four components of Maranguka Support Model (MSM) for Young People:

1. School Based Component – *Our Place*²⁹
2. Family Component – Wrap around support for the whole family
3. Save our Sons/Sisters (SOS) Out of School Hours (OOSH) Component³⁰– Weekends/holidays.
4. Return to community and acute cases³¹

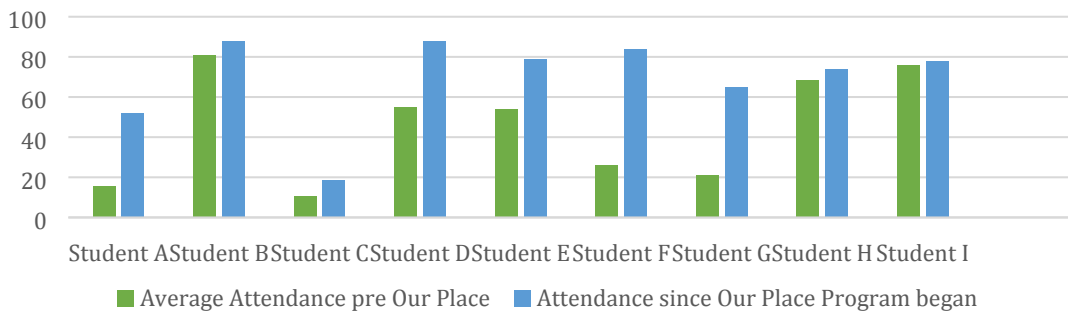
The SOS Youth Coordinator plays a central role in each aspect of the Maranguka Youth Support model. The SOS initiative centres around supporting children and young people in Bourke who are at risk of disengaging with school and entering the criminal justice system.

²⁹ *Our Place* is an alternative learning environment for at-risk young people. It is centred around four components: mastery, independence, generosity, and belonging. Approximately 9 young men participate and school attendance has increased.

³⁰ The OOSH Component was primarily coordinated and implemented by Birrang, SOS and Maranguka.

³¹ A strategy is being developed (between JJ/Police/Corrections and Maranguka) to address challenges of young people returning from custody on release or on bail at short notice (as this has resulted in spike in offending).

BHS "Our Place" Attendance Pre and Post Program Implementation



SOS OOSH Component– July School Holiday Program

It was identified there was a need for activities during the school holiday period. The aim was to have a range activities and places to go to keep the young people who attend *Our Place* engaged and in a routine. The young people attending *Our Place* had excellent attendance rates during the term (see diagram above) and the team wanted to ensure engagement continued during the holidays. Maranguka held several meetings with services in town to try and get them involved and to change their normal operating hours (9-5pm, Monday – Friday). While a number of services were not able to be flexible, others committed to working collaboratively and doing things differently.

Outcome: S.O.S Youth Coordinator, Maranguka, Birrang, YOTS and Education came together to implement holiday programs. The Bourke Shire Council, the Police and the ACLO, FACS, the Men’s Shed and various community members, also offered their support. Each morning breakfast was made for the boys and then each day they did a range of different activities. These included: building a bark hut for a display for the Pre-schools NAIDOC week; fishing and yabbing; touch football; participating in the NAIDOC celebrations; cleaning up 2CUZ radio station; playing golf; cultural tours of Brewarrina, Mount Gundabooka and Mt Oxley; volunteering at the Men’s Shed to construct garden beds for a community garden; painting; a session on domestic violence and how it affects our families and community; cooking; cutting wood for didgeridoos and clap sticks and much more.

Impact: The SOS school holiday program resulted in a reduction in crime - for just under a month no offences in Bourke were committed by participants.

Question 13–1 *What laws or legal frameworks, if any, are required to facilitate justice reinvestment initiatives for Aboriginal and Torres Strait Islander peoples?*

The Justice Reinvestment Initiative (JRI) in the United States provides useful examples of legal frameworks to support justice reinvestment initiatives for Aboriginal and Torres Strait Islander peoples in Australia.

Background

Since 2004, states across the U.S. have been developing and implementing justice reinvestment policies. Initially, the Council of State Government Justice Centre, a national

non-profit organisation, provided assistance to states: firstly to Connecticut (in 2004), then Kansas, Texas, Nevada (in 2007), Arizona, Rhode Island, and Vermont (in 2008).³²

In 2010, Congress provided funding to the US Bureau of Justice Assistance (BJA) for the 'Justice Reinvestment Initiative' (JRI), a public-private partnership between the BJA and The Pew Charitable Trusts (Pew).³³ This partnership provides support to state and local level JRI by funding technical assistance through a number of organisations: the Crime and Justice Institute, the Vera Institute of Justice, and the Pew Centre on the States. Urban Institute's Justice Policy Centre serves as the oversight, coordination, outcome, and assessment provider, working with BJA, Pew, and the technical assistance providers to select JRI sites, set specific performance measures, track implementation, and assess the impact of JRI.³⁴

The Centre for Effective Public Policy (CEPP) provides technical assistance to recipients of the *JRI: Maximizing State Reforms* grant program (funded through BJA). CEPP works with each grantee to create a technical assistance plan tailored to support grant activities and select providers to meet the grantee's identified needs.³⁵

Funding is provided for participating sites to receive technical assistance in two phases:

- **Phase 1**
 - Technical assistance focuses on
 - identifying prison population drivers,
 - assessing the implementation of evidence-based practices, and
 - crafting policy solutions to control corrections costs while protecting public safety.
 - Sites establish a bipartisan, inter-branch working group, analyse data, and engage key stakeholders to develop policy solutions to address the unique drivers of their prison populations.
 - This phase typically lasts one to two years and culminates in the passage of reform legislation, executive orders and court rules, and budget measures.

- **Phase 2**
 - States that successfully codify policy changes can apply for additional technical assistance in phase 2 to support implementation.
 - Sub-award funding is also available through the BJA to support implementation of specific reform components.
 - This phase usually lasts two to three years.³⁶

³² Nancy La Vigne et al, Justice Reinvestment Initiative State Assessment Report, 2014, 6
<<http://www.urban.org/research/publication/justice-reinvestment-initiative-state-assessment-report>>

³³ Bureau of Justice Assistance, Justice Reinvestment Initiative,
<<https://www.bja.gov/programs/justicereinvestment/index.html>>

³⁴ Bureau of Justice Assistance, Justice Reinvestment Initiative, Partners
<https://www.bja.gov/programs/justicereinvestment/jri_partners.html>

³⁵ Ibid

³⁶ Samanta Harvell et al, Reforming Sentencing and Corrections Policy: The Experience of Justice Reinvestment Initiative States, 2016
<http://www.urban.org/sites/default/files/publication/86691/reforming_sentencing_and_corrections_policy_fin al.pdf>

Federal level legislation

The *Criminal Justice Reinvestment Act of 2010*³⁷ was introduced to 111th Congress on March 11, 2010, but was not enacted.³⁸ The bill was to establish a two-part grant program for states, local and territorial governments, or Indian tribes to (1) analyse and improve the cost-effectiveness of spending on prisons, jails, and community corrections; and (2) implement policies, programs, or practices to help control growth in spending on corrections and increase public safety.³⁹

Congress appropriated funding to BJA for JRI as part of the *2010 Omnibus Consolidated Appropriations Act*. This federal investment was intended to formalise efforts to fund, coordinate, assess, and disseminate information about state and local justice reinvestment efforts.

Between 2010 and 2016, Congress appropriated a total of \$112.8 million to support JRI in states and localities.⁴⁰

State level legislative and policy reforms through JRI

Through JRI, 24 states have enacted a package of legislative and policy reforms to reduce their prison populations. Approaches vary, but reforms generally fall into five categories:

- Amending sentencing laws
- Reforming pre-trial practices
- Modifying prison release practices
- Strengthening community corrections
- Ensuring sustainability of reforms.⁴¹

Four states did not enact comprehensive legislation during their JRI engagement: Indiana, Michigan, Rhode Island and Washington.⁴²

Amending sentencing laws

More than half of the JRI states⁴³ enacted “front-end” reforms, diverting people who commit less serious offenses away from prison or shortening prison sentences. States have:

- adjusted penalties for certain drug and property offenses and lower-level violent or person crimes (typically downgrading lesser offenses),
- repealed mandatory minimum sentences for certain crimes,
- revised sentencing enhancements, and created or expanded alternative sentencing options.⁴⁴

³⁷ Criminal Justice Reinvestment Act of 2010, S 2772 111th Congress (2010) [bill was not enacted]

³⁸ The bill approved by the Senate Judiciary Committee is available at <https://www.govtrack.us/congress/bills/111/s2772/text/rs>

³⁹ <https://www.govtrack.us/congress/bills/111/s2772/summary>

⁴⁰ The Council of State Governments, *The Justice Reinvestment Initiative (Fact Sheet)* https://csgjusticecenter.org/wp-content/uploads/2014/08/JR_Fact_Sheet.pdf

⁴¹ Harvell et al, above n 38.

⁴² Ibid.

⁴³ Alabama, Alaska, Arkansas, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Utah, and West Virginia.

⁴⁴ Harvell et al, above n 38.

Reforming pre-trial practices

Some JRI states⁴⁵ aim to reduce how many people are held in jail while awaiting trial. States are:

- using risk assessment tools to reserve detention only for those at high risk of failing to appear in court
- improving their pre-trial supervision practices
- reducing their reliance on monetary bonds, which disproportionately affect poor people, and
- expanding law enforcement's use of "citation in lieu of arrest."⁴⁶

Modifying prison release practices

Through JRI data analysis, many states learned that the average length of stay had increased over the previous decade. In response, states⁴⁷ adopted several policies, such as:

- expanding the types of offenses eligible for parole,
- increasing the availability of earned time credits that allow for shorter sentences through good behaviour or program completion,
- establishing presumptive parole for certain people,
- establishing or expanding geriatric and medical parole, and
- requiring the use of risk assessment tools and structured parole guidelines to inform release decisions.⁴⁸

Strengthening community corrections

Strengthening community supervision practices is a centrepiece of JRI efforts in many states.⁴⁹ States have:

- mandated and strengthened re-entry supervision,
- required the use of risk and needs instruments to guide supervision decisions,
- expanded access to treatment and services,
- created intermediate responses to supervision violations,
- established earned discharge from supervision, and
- limited how much time people can spend behind bars for violating supervision rules.

⁵⁰

Legislation ensuring sustainability of JRI reforms

To date, reform packages have:

⁴⁵ Alaska, Delaware, Georgia, Hawaii, Kentucky, Maryland, Oklahoma, and West Virginia.

⁴⁶ Harvell et al, above n 38.

⁴⁷ Alabama, Alaska, Arkansas, Delaware, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, New Hampshire, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Utah, and West Virginia

⁴⁸ Harvell et al, above n 38.

⁴⁹ Alabama, Alaska, Arkansas, Delaware, Georgia, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, and West Virginia.

⁵⁰ Harvell et al, above n 38.

- established data collection and reporting requirements,
- created oversight panels to monitor progress, and
- required that future legislative proposals include a fiscal impact statement.

Data collection and performance measures requirements

States are increasingly incorporating data collection and performance measurement requirements in legislative packages.

- Maryland’s JRI legislation required an oversight board to create performance measures to track reform implementation and outcomes.⁵¹
- Kentucky’s 2011 legislation required State Department of Corrections to submit an annual report to the General Assembly with figures on crime reduction, recidivism, and other public safety concerns. Also defined performance measures for system accountability and cost effectiveness.⁵²

Establishing oversight bodies

Establishing oversight bodies has become increasingly common.

- South Carolina established the South Carolina Sentencing Reform Oversight Committee and charged it with finding ways to use tax dollars more effectively while improving public safety.⁵³
- Maryland established JR Oversight Board in 2016 as part of SB 768. The group, made up of state representatives and criminal justice stakeholders, is tasked with developing data-driven reform proposals, especially strategies to contain spending and safely reduce the prison population.⁵⁴
- Nebraska, LB 605 created Committee on JR Oversight as a special legislative committee to track the implementation of evidence-based strategies; monitor performance measure outcomes; and review policies to improve public safety, reduce recidivism, and curtail spending.⁵⁵

Fiscal impact statements

Fiscal impact statements can help ensure that costs are a central part of the discussion surrounding legislation by requiring transparency about the effect proposed initiatives might have on the state budget.

- Mississippi’s JRI legislation required future proposals that could impact the prison population to include a fiscal impact statement summarizing the projected cost to the state (H.B. 585, 2014 Reg. Sess. (Miss. 2014)).
- South Carolina’s SB 1154, known as the Omnibus Crime Reduction and Sentencing Reform Act, mandated fiscal impact statements for legislation that creates or amends a criminal offence (S.B. 1154, 118th Sess. (S.C. 2010)).⁵⁶

⁵¹ S.B. 1005, 2016 Reg. Sess. (Md. 2016).

⁵² H.B. 463, 11th Reg. Sess. (Ky. 2011).

⁵³ S.B. 1154, 118th Sess. (S.C. 2010).

⁵⁴ S.B. 1005, 2016 Reg. Sess. (Md. 2016).

⁵⁵ Legis. B. 605, 104th Legis., 1st Sess. (Neb. 2015).

⁵⁶ Harvell et al, above n 38.

Legislation on calculation and reinvestment of savings through JR reforms

Some states have legislated directives relating to the calculation of savings and the reinvestment of those savings in proven and promising crime reduction strategies.

Calculating savings

States use different methods to calculate savings from JRI reforms. Some states have codified in legislation directives for how and when to calculate savings while others have empowered agencies to make their own decisions about methods and frequency of calculations.

- Maryland established an oversight panel as part of JRI legislation enacted in 2016 and charged it with calculating savings from JRI reforms annually.⁵⁷ The JR Oversight Board, in collaboration with the state’s Department of Public Safety and Correctional Services, will determine annual savings from reforms based on the difference in the prison population as measured on October 1 of the current year and October 1 of the previous year, multiplied by the variable cost.⁵⁸
- Pennsylvania, HB 135 of 2012 directed the Office of the Budget to develop a formula to calculate savings within the Department of Corrections budget from FY 2013-14 to FY 2017-18 and deposit a clearly specified percentage of those savings into a justice reinvestment fund to support programs that improve criminal justice service delivery. The legislation says the calculation may include decreases in the prison population resulting from diversion to counties, the elimination of pre-release programs and efficiencies in the parole system directly resulting from SB 100, Pennsylvania’s companion JRI legislation enacted in 2012.⁵⁹ HB 135 therefore requires the Office of the Budget to calculate savings for four years while giving the office latitude in deciding how those savings should be calculated.⁶⁰
- Kentucky’s HB 463 directed the State Department of Corrections to document cost savings resulting from specific provisions in the bill. The baseline population for savings calculations was specified as people in penitentiaries and local jails in FY 2010–11. The legislation then detailed how average costs for incarceration and community supervision should be calculated—specifying, for example, that such costs should include health care expenses. The legislation also directed that savings be calculated for the decrease in the incarcerated population from mandatory re-entry supervision and accelerated parole hearings as well as the decrease in people under community supervision through parole credit. It further specified that net savings should take into account the cost of supervision for people released because of these policies.⁶¹ Kentucky is a good example of how savings calculations might be limited by legislation specifying what effects of policies to consider and how to do so.⁶²

Reinvestment of savings

Generally, there are three mechanisms through which states reinvest:

⁵⁷ S.B. 1005, 2016 Reg. Sess. (Md. 2016).

⁵⁸ Harvell et al, above n 38.

⁵⁹ H.B. 135, 2011 Reg. Sess. (Pa. 2012).

⁶⁰ Harvell et al, above n 38.

⁶¹ H.B. 463, 11th Reg. Sess. (Ky. 2011).

⁶² Harvell et al, above n 38.

- authorisation legislation
- appropriation legislation, and
- reallocation.

Authorisation legislation

States either laid out priorities or specified a set percentage of savings to be reinvested in certain programs or practices.

- Pennsylvania – in one of its 2012 JRI bills, HB 135, established a formula to determine the percentage of savings to be reinvested and identified programs that reinvestment must fund.⁶³

Legislation was less prescriptive in most states.

- South Dakota’s JRI legislation simply listed the types of programs that should be funded with savings – specifically, treatment programs for those on supervision. Legislation did not specify how to calculate savings or apportion reinvestment funding, but the state has reinvested nearly \$9.5 million.
- Alaska – set out a plan for how to reinvest savings if the state matches its projected total over 6 years following legislation, appropriated nearly \$9m in upfront funding, and attached a six-year fiscal note to their return package that estimates more than \$98m in total reinvestment using funds from expected savings from JRI and tax revenue expected from the sale of marijuana.⁶⁴

Annual appropriation of reinvestment resources

Some states opted to preserve more legislative flexibility and make reinvestment decisions each year or budget cycle. It is important to note that this flexibility also means that reinvestment itself is more tenuous and more likely to be influenced by the state’s broader budget situation.⁶⁵

- Alabama – decided to make reinvestments through annual appropriations.
- Hawaii and South Carolina also make reinvestment decisions each fiscal year.
- South Carolina’s Sentencing Reform Oversight Committee can recommend appropriations of up to 35% of the saved expenditures for reinvestment, but the legislature has not appropriated any reinvestment funding to date (The South Carolina Sentencing Reform Oversight Committee 2013).⁶⁶

Reallocating resources within and across agencies

A few states have also reinvested outside of legislation by prioritising JRI efforts within an agency’s budget or by moving funds between agencies. Specifically, agencies can unilaterally shift funding to programs that follow recommendations made during the JRI process while reducing funding for programs that are not JRI priorities. In Arkansas, agencies shifted \$500,000 from the Department of Correction to Arkansas Community Correction for

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

transitional housing.⁶⁷ This approach gives states more flexibility to cope with changing legislative priorities but requires the buy-in of relevant agencies and staff. This approach is also dependent on the organisational structure of the relevant agencies in each state.⁶⁸

Legislative and policy reform to support Justice Reinvestment in Australia

In Australia, state and territory criminal justice reform packages to reduce prison populations (including legislative and administrative provisions relating to bail, sentencing and parole) should be considered to support a national Justice Reinvestment Initiative.

Particular consideration should also be given to the establishment of a national statutory body to formalise efforts to fund, coordinate, evaluate and disseminate information about state and territory and local justice reinvestment efforts.

In order to progress the development of JR in Australia, state and territory governments should work with the Federal government to develop and establish:

- A framework for improved access to data for communities to inform early intervention, crime prevention and diversionary strategies, as well as data sharing arrangements and setting baseline data sets
- Seed resourcing for the funding of additional pilot sites
- A national data base of evidence-based early intervention, crime prevention and diversionary strategies
- An independent centralised JR body co-chaired and in partnership with Aboriginal and Torres Strait Islander people
- Treasury mechanisms to calculate savings and support reinvestment, including the reallocation of resources within and across agencies.

⁶⁷ S.B. 750, 88th Gen. Assemb., Reg. Sess. (Ark. 2011).

⁶⁸ Harvell et al, above n 38.