

## 13. Justice Reinvestment

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### Summary

13.1 In this chapter the ALRC acknowledges the growing area of ‘justice reinvestment’, with particular reference to the initiative in Bourke, New South Wales (NSW). It also refers to the 2013 report of the Senate Standing Committee on Legal and Constitutional Affairs, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* and the 2016 report of the Senate Standing Committees on Finance and Public Administration, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services*, both of which supported justice reinvestment approaches to some Aboriginal and Torres Strait Islander communities.

13.2 The ALRC asks if any further reforms to laws and legal frameworks are required to facilitate justice reinvestment initiatives for Aboriginal and Torres Strait Islander peoples.

### ‘Justice reinvestment’

13.3 There is no single accepted definition of the term ‘justice reinvestment’.<sup>1</sup> It is, however, generally understood to represent a form of economic modelling whereby resources are redirected from punitive responses to crime into preventative strategies and early diversion away from the criminal justice system in areas with high crime rates. According to the report, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services*:

justice reinvestment essentially refers to a policy approach to criminal justice spending, whereby funds ordinarily spent on keeping individuals incarcerated, are diverted to the development of programs and services that aim to address the

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<sup>1</sup> David Brown et al, *Justice Reinvestment: Winding Back Imprisonment* (Palgrave Macmillan, 2016) 11; Todd Clear, ‘A Private-Sector, Incentives-Based Model for Justice Reinvestment’ (2011) 10(3) *Criminology & Public Policy* 585, 586–7; Shadd Maruna, ‘Lessons for Justice Reinvestment from Restorative Justice and the Justice Model Experience’ (2011) 10(3) *Criminology & Public Policy* 661.

underlying causes of criminal behaviour in communities that have high levels of incarceration.<sup>2</sup>

13.4 Mission Australia, in their submission to the *Inquiry on the value of a justice reinvestment approach to criminal justice in Australia*, described some of the principles that underpin justice reinvestment: ‘The rationale for justice reinvestment is that diverting human and financial resources to disadvantaged communities and vulnerable people to address the underlying causes of crime will produce better value for money and long term economic benefits.’<sup>3</sup>

13.5 In their submission to the same inquiry, the Law Council of Australia characterised justice reinvestment as preventative criminal justice strategies that are both evidence-based and collaborative:

Justice reinvestment relies heavily on interactions between agencies at both the state and local level. It also has a significant community-focus, seeking ‘community-level solutions to community-level problems’. It is these aspects of justice reinvestment, along with its evidence-based approach and focus on addressing and preventing the underlying causes of crime such as unemployment and drug and alcohol abuse, that have given rise to the growing support for justice reinvestment in recent years throughout the world.<sup>4</sup>

13.6 The 2016 publication, *Justice Reinvestment: Winding Back Imprisonment*, reiterated these points, and referred to the importance of ‘bottom-up’ approaches to public policy developments. It stated that a ‘top-down’ approach loses much of the democratic value and potential of justice reinvestment initiatives, and stressed the importance of approaches that are ‘community’ and ‘place-based’.<sup>5</sup>

## Impact on Aboriginal and Torres Strait Islander peoples

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

2 Law Council of Australia, Submission No 78 to Senate Finance and Public Administration References Committee, Parliament of Australia, *Inquiry into Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (20 May 2015) 5; Senate Finance and Public Administration References Committee, Parliament of Australia, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (2016) 104.

3 Mission Australia, Submission No 99 to Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (March 2013) 4.

4 Law Council of Australia, Submission No 97 to Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (22 March 2013) 6.

5 David Brown et al, above n 1, 243.

13.7 Justice reinvestment has received widespread support in previous inquiries, including some of those referred to in the Terms of Reference for this Inquiry.<sup>6</sup> For example, the Senate Legal and Constitutional Affairs References Committee report, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* recommended that the Commonwealth Government take a ‘leadership role’ in implementing justice reinvestment in Australia, particularly in relation to issues of funding, data collection, and evaluation. In particular, the inquiry recommended that

the Commonwealth commit to the establishment of a trial of justice reinvestment in Australia in conjunction with the relevant states and territories, using a place-based approach, and that at least one remote Indigenous community be included as a site ... the committee recommends that any trial actively involve local communities in the process ... beyond the electoral cycle and be subject to a robust evaluation process.<sup>7</sup>

13.8 In preliminary consultations, the ALRC has heard widespread support for justice reinvestment initiatives for Aboriginal and Torres Strait Islander communities.

### **The Maranguka Project: Bourke, NSW**

13.9 Much of the support for justice reinvestment has been articulated in relation to the Maranguka Project operating in Bourke, NSW—a collaboration between Just Reinvest NSW and Aboriginal and Torres Strait Islander residents. In 2015–16, Bourke was reportedly one of the most disadvantaged Local Government Areas in NSW, and the area had the highest rate of juvenile convictions in the state.<sup>8</sup> The town was affected by high rates of long-term unemployment, low levels of education, and high rates of predominantly non-violent crime.<sup>9</sup>

13.10 In 2015–16, Bourke had a population of approximately 3,000 and was reportedly spending \$4,000,000 in costs associated with youth involvement in the juvenile justice system.<sup>10</sup> One in three community members of Bourke identified as Aboriginal.<sup>11</sup>

13.11 As explained by Just Reinvest NSW, the Maranguka Project seeks to provide

better coordinated support to vulnerable families and children in Bourke through community-led teams working in partnership with existing service providers, so that

6 House of Representatives Standing Committee on Indigenous Affairs, Parliament of Australia, *Alcohol, Hurting People and Harming Communities: Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities* (2015) 94; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2016* (2016) 48; Senate Community Affairs Reference Committee, Parliament of Australia, *Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia* (2016) 115–7; Senate Finance and Public Administration References Committee, Parliament of Australia, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (2016) 119.

7 Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013) rec 6.

8 KPMG, *Unlocking the Future: Maranguka Justice Reinvestment Project in Bourke—Preliminary Assessment* (2016) 1; Jesuit Social Services, *Dropping off the Edge 2015: Postcode 2840* <<https://dote.org.au/map/>>.

9 KPMG, above n 8, 1; Alison Vivian and Eloise Schrierer, ‘Factors Affecting Crime Rates in Indigenous Communities in NSW: A Pilot Study in Bourke and Lightning Ridge—Community Report’ (Jumbunna Indigenous House of Learning, University of Technology Sydney, November 2010) 6.

10 KPMG, above n 8, 50.

11 *Ibid* 1.

together we could look at what's happening in our town and why Aboriginal disadvantage was not improving, and together we could build a new accountability framework which wouldn't let our kids slip through.<sup>12</sup>

13.12 In order to ensure the initiative was community-led, Mick Gooda, the former Aboriginal and Torres Strait Islander Social Justice Commissioner, who has been heavily involved in the Maranguka Project, explained:

We decided to work with the community in a real and meaningful way. We did not start off with a plan; we just started talking to people. My role out there was to chair community meetings as an independent person from outside of Bourke. We spent about 18 months doing that, just talking to people, the community talking amongst themselves, before they were ready to make their first foray into change... I think the key to what is happening at Bourke is that the Bourke community runs it, the Bourke community owns it, and they are the ones that coordinate all the service providers.<sup>13</sup>

13.13 A number of pilot initiatives have also been ongoing in the ACT as well as Cowra (NSW), Katherine (NT) and Ceduna (SA).<sup>14</sup>

13.14 The ALRC welcomes submissions on whether laws and legal frameworks require reform in order to facilitate justice reinvestment responses such as the Maranguka Project.

### **Justice reinvestment in this Discussion Paper**

13.15 This Inquiry focuses on criminal justice responses. That is, what laws and legal frameworks can do to decrease Aboriginal and Torres Strait Islander incarceration rates. Nonetheless, this Discussion Paper canvasses many programs and criminal justice responses that are relevant to the principles of justice reinvestment. This includes proposals to provide for community-led diversion programs and bail support networks for Aboriginal and Torres Strait Islander peoples. The proposals within this Discussion Paper also emphasise the requirement for community-led collaboration and whole-of-government responses.<sup>15</sup>

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12 Just Reinvest NSW, *Justice Reinvestment in Bourke* <<http://www.justreinvest.org.au/justice-reinvestment-in-bourke/>> quoted in Senate Community Affairs Reference Committee, Parliament of Australia, *Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia* (2016) 116.

13 Commonwealth, *Committee Hansard*, Senate, 4 April 2016 (Mick Gooda) 2 quoted in Senate Finance and Public Administration References Committee, Parliament of Australia, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (2016) 111.

14 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2016* (2016) 48.

15 See, for example, chs 2, 4, 5, 7 10 and 11.