

4. Justice Reinvestment

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Summary

4.1 Justice reinvestment involves the redirection of resources from the criminal justice system into local communities that have a high concentration of incarceration and contact with the criminal justice system. Incarceration is expensive: the annual cost per prisoner of providing corrective services in 2015–16 was \$103,295,¹ and it has been estimated that the total justice system costs of Aboriginal and Torres Strait Islander incarceration in 2016 were \$3.9 billion.² A justice reinvestment approach suggests that resources are better directed—and indeed savings will be made—by reinvesting a portion of this expenditure to address the causes of offending in places where there is a high concentration of offenders.

4.2 Justice reinvestment uses place-based, community-led initiatives to address offending and incarceration, using a distinct data-driven methodology to inform strategies for reform. There has been strong support in Australia for taking a justice reinvestment approach to addressing the rate of Aboriginal and Torres Strait Islander incarceration over a number of years, and justice reinvestment has been used overseas,

1 Based on a daily cost per prisoner per day of \$283: Productivity Commission, *Report on Government Services 2017, Volume C: Justice* (Produced for the Steering Committee for the Review of Government Service Provision, 2017) 8.19.

2 PwC's Indigenous Consulting, *Indigenous Incarceration: Unlock the Facts* (2017) 27.

particularly in some parts of the United States, to reduce criminal justice spending and to strengthen communities.

4.3 Justice reinvestment holds particular promise in addressing Aboriginal and Torres Strait Islander incarceration for at least two reasons. First, it has long been recognised that the key drivers of incarceration for Aboriginal and Torres Strait Islander people are external to the justice system, and justice reinvestment involves a commitment to invest in ‘front-end’ strategies to prevent criminalisation. Second, justice reinvestment, as a place-based approach, emphasises working in partnership with communities to develop and implement reforms, and thus accords with evidence that effective policy change to address Aboriginal and Torres Strait Islander disadvantage requires partnership with Aboriginal and Torres Strait Islander peoples.

4.4 The implementation of justice reinvestment requires significant technical expertise. To provide such expertise, the ALRC recommends that Commonwealth, state and territory governments should support the establishment of an independent justice reinvestment body to promote the reinvestment of resources from the criminal justice system to local community development initiatives to address the drivers of crime and incarceration, and to provide expertise in the methodology of justice reinvestment. While justice reinvestment should remain community-led, a national body with expertise in justice reinvestment methodology could assist in providing technical assistance to local sites wishing to implement justice reinvestment.

4.5 The body should be a national one because justice reinvestment involves a holistic approach to the drivers of incarceration, which extend beyond justice-related drivers to community and social drivers of offending. These policy priorities extend across all levels of government.

4.6 The ALRC envisages the justice reinvestment body’s role to be limited: principally, to providing technical assistance in the implementation of a justice reinvestment approach. It would not have the authority to impose reinvestment plans, nor to direct the allocation of resources. Therefore, the ALRC further recommends that Commonwealth state and territory governments support place-based justice reinvestment initiatives, through resourcing, facilitating access to data, and facilitating participation by and coordination between relevant government departments.

What is justice reinvestment?

4.7 A justice reinvestment approach to criminal justice reform involves a redirection of money from prisons to fund and rebuild human resources and physical infrastructure in areas most affected by high levels of incarceration.³ Justice reinvestment originated in the United States (US) as a response to an exponential growth in the rate of imprisonment since the 1970s.⁴

3 Susan B Tucker and Eric Cadora, ‘Justice Reinvestment’ (Ideas for an Open Society 3(3), Open Society Institute, 2003) 2.

4 In 1975, the imprisonment rate in the US was 150 per 100,000. In 2013 it was 478 per 100,000: David Brown et al, *Justice Reinvestment: Winding Back Imprisonment* (Palgrave Macmillan, 2016) 21.

4.8 Justice reinvestment suggests that prisons are an investment failure, ‘destabilising communities along with the individuals whom they fail to train, treat, or rehabilitate (and whose mental health and substance abuse are often exacerbated by the experience of imprisonment)’.⁵ Instead, to address the causes of offending, money is better spent—and indeed savings can be made—by reinvesting in places where there are a high concentration of offenders. Justice reinvestment, its proponents contend, can serve both the ends of economic efficiency and social justice: ‘the most efficient way to a just society is to reduce criminality at source through investment in social justice’.⁶

The costs of incarceration

4.9 Justice reinvestment has been supported on economic grounds, in that it provides a means for redirecting public money from imprisonment to strengthening individual and community capacity. Incarceration is expensive: the annual cost per prisoner of providing corrective services in 2015–16 was \$103,295, and it has been estimated that the total justice system costs of Aboriginal and Torres Strait Islander incarceration in 2016 were \$3.9 billion.⁷

4.10 When the costs of Aboriginal and Torres Strait Islander incarceration are broadened beyond those directly related to the justice system to include other economic costs, such as loss of productive output during incarceration, the cost of crime incurred by victims, the cost of increased mortality, excess burden of tax, and welfare costs, the cost rises to \$7.9 billion.⁸

4.11 As well as the cost of imprisonment to the State, imprisonment has immediate and ongoing financial and social costs for both the imprisoned person and their family:

Many people lose accommodation when imprisoned and become homeless once released from custody; these new problems lead to an increased likelihood of re-offending. Imprisonment of a parent can result in children having to relocate or having to enter into the care of the state—research confirms that these children are much less likely to complete secondary school and are more likely to become homeless, unemployed and come in contact with the criminal justice system. The social cost of imprisonment can also be seen through the inability of prison to reform or rehabilitate and in its self-reproductive nature: in NSW more than half of current prisoners have previously been imprisoned.⁹

4.12 Incarceration can also have a broader social cost, particularly when concentrated in a particular community. Commenting on the causes and consequences of the growth of incarceration in the US, the National Research Council of the National Academies noted that

5 Tucker and Cadora, above n 3, 3.

6 Chris Fox, Kevin Albertson and Kevin Wong, *Justice Reinvestment: Can the Criminal Justice System Deliver More for Less?* (Routledge, 2013) 7.

7 Productivity Commission, above n 1, 8.19; PwC’s Indigenous Consulting, *Indigenous Incarceration: Unlock the Facts* (2017) 27.

8 PwC’s Indigenous Consulting, *Indigenous Incarceration: Unlock the Facts* (2017) 25–7.

9 Chris Cunneen et al, *Penal Culture and Hyperincarceration: The Revival of the Prison* (Routledge, 2016) 16. See also William R Wood, ‘Justice Reinvestment in Australia’ (2014) 9(1) *Victims & Offenders* 100, 108.

because of the extreme social concentration of incarceration, the most important effects may be systemic, for groups and communities. If African American male high school dropouts have a high expectation of going to prison at some point in their lives, that expectation may change the behavior of all the men in the group, not just those actually going to prison. If a third of the young men in a poor community are incarcerated, skewing gender balance and disrupting family relations, incarceration may have community-level effects that shape the social context of community residents, even if their families are not involved in the criminal justice system.¹⁰

4.13 In the Australian context, research into impacts of incarceration on Indigenous Australians from remote communities has suggested that significant proportions of the population, particularly those aged 20–39, may be missing from these communities through incarceration, and that this contributes to ‘intergenerational demographic, social and economic dysfunction’.¹¹

4.14 Submissions to this Inquiry also pointed out the broader, community-level costs of incarceration. Jesuit Social Services noted that the

social fabric of communities can play an influential role in buffering the worst effects of disadvantage, with community factors being shown to influence mental health levels in children, education and levels of safety and crime. The impacts of trauma (including neglect and exposure to violence) on children are severe and have lasting consequences, with altered brain growth and psychological functioning shown to be linked to trauma. There are long-term social costs associated with this, including mental health issues and other chronic health problems, criminality, homelessness, substance misuse and abuse and intergenerational transmission of abuse. It is estimated that child abuse and neglect in Australia cost almost \$5 billion per year, including interventions and the associated long-term human and social costs.¹²

Approaches to reinvestment—criminal or social justice?

4.15 Early proponents of justice reinvestment emphasised that the ‘reinvestment’ envisaged was in communities affected by incarceration. In this analysis, justice reinvestment could be seen as ‘preventative financing, through which policymakers shift funds away from dealing with problems “downstream” (policing, prisons) and toward tackling them “upstream” (family breakdown, poverty, mental illness, drug and alcohol dependency)’.¹³ The Commission on English Prisons Today put it more starkly, arguing that ‘Justice Reinvestment is not about alternatives within the criminal justice process, it is about alternatives outside of it’.¹⁴

4.16 The focus on upstream, or preventative, approaches is linked with an emphasis on intervention at a local level: ‘a place-based community-focused justice reinvestment

10 National Research Council of the National Academies, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (2014) 355–6.

11 Andrew Taylor, Hannah Payer and Tony Barnes, ‘The Missing Mobile: Impacts from the Incarceration of Indigenous Australians from Remote Communities’ [2017] *Applied Mobilities* 1, 1.

12 Jesuit Social Services, *Submission 100*. See also, eg, National Congress of Australia’s First Peoples, *Submission 73*.

13 Tess Lanning, Ian Loader and Rick Muir, ‘Redesigning Justice: Reducing Crime through Justice’ (Institute of Public Policy Research, 2011) 6.

14 Commission on English Prisons Today, *Do Better, Do Less: The Report of the Commission on English Prisons Today* (The Howard League for Penal Reform, 2009) 49.

approach prioritises the importance of front-end holistic support which has the capacity to prevent criminalisation in the first instance'.¹⁵

4.17 However, as justice reinvestment has been implemented, especially in the US, it has largely involved redesign and reinvestment *within* the criminal justice system:

Increasingly the aspirations of JR programmes are limited to reducing the use of incarceration through analysis of demand for prison places and identifying opportunities at different points in the system to divert offenders from custody and/or reduce the likelihood of re-offending on release. This model of JR—which we may describe as a criminal justice system redesign approach—places little attention on what is happening beyond the criminal justice system or on preventing criminality in the first place.¹⁶

4.18 Thus, it is possible to contrast two different forms of justice reinvestment: a social justice and a criminal justice approach. There is not necessarily mutual exclusivity between the aims of social justice and criminal justice reforms: '[i]n fact, what they represent is JR as a continuum, where the approach that is adopted by local, regional or national agencies may be shaped by dynamic factors—factors which can and do change over time'.¹⁷

4.19 On this view, justice reinvestment measures may intervene at all points of the criminal justice spectrum—to prevent people entering into the criminal justice system, as well as diversion from custody and in lowering the numbers of people returning to custody through breaching parole or reoffending.¹⁸ Many of the recommendations in this Report, in this sense, are consistent with a justice reinvestment approach to the design of the criminal justice system.

4.20 A number of submissions made this observation. Jesuit Social Services provides a useful summation:

Reforming laws and legal frameworks could help to drive justice reinvestment initiatives. Reforming laws regarding sentencing and bail, the conditions on which prisoners leave prison, and parole and probation supervision could potentially facilitate a decline in Aboriginal and Torres Strait Islander peoples imprisonment rates as part of a justice reinvestment approach. There may be benefit in legislating for diversion and sentencing options that allow for community-based alternatives to detention, so that justice reinvestment programs are utilised.¹⁹

4.21 Some considered that community-based sentencing was a representation of justice reinvestment.²⁰ The New South Wales (NSW) Council of Social Service called

15 David Brown et al, above n 4, 119.

16 Chris Fox, Kevin Albertson and Kevin Wong, 'Justice Reinvestment and Its Potential Contribution to Criminal Justice Reform' (2013) 207 *Prison Service Journal* 38, 38.

17 *Ibid* 38–9.

18 Melanie Schwartz, 'Building Communities, Not Prisons: Justice Reinvestment and Indigenous over-Representation' (2010) 14(1) *Australian Indigenous Law Review* 2, 2.

19 Jesuit Social Services, *Submission 100*. See also, eg, Legal Aid NSW, *Submission 101*; Just Reinvest NSW, *Submission 82*; Criminal Lawyers Association of the Northern Territory, *Submission 75*; Victorian Aboriginal Legal Service, *Submission 39*.

20 Recommendations about community-based sentencing are made in ch 7.

for ‘more investment in community-based and Aboriginal-led assistance, diversion, rehabilitation, and post-release programs’.²¹

4.22 Reforms relating to fines and driving offences were also considered to be a form of justice reinvestment.²² Victoria Legal Aid argued that work and development programs that allow an offender to ‘work off’ outstanding infringement fines were justice reinvestment in action, ‘directing resources away from punishing individuals for outstanding fines and into addressing the issues which saw the individual incur the fine’.²³ A number of submissions also called for reforms to mandatory sentencing, arguing that current regimes inhibit the success of efforts to reduce spending on incarceration.²⁴ Submissions also considered justice targets to be important to promoting the adoption of justice reinvestment.²⁵

4.23 Some have argued that, while criminal justice system redesign may be a pragmatic response to high rates of incarceration, ‘in not extending their reach beyond the criminal justice system these programs may miss the opportunity to prevent criminality in the first place’.²⁶ Equally, in this Inquiry, many submissions emphasised that justice reinvestment should focus on the drivers of incarceration for Aboriginal and Torres Strait Islander peoples that extend beyond the criminal justice system.²⁷ For example, the Human Rights Law Centre submitted that ‘[a] justice reinvestment approach to criminal justice in Australia would provide a valuable framework to prevent crime and promote community safety, reduce imprisonment rates and deliver associated social and economic benefits for the community’.²⁸ The National Association of Community Legal Centres submitted:

We support a justice reinvestment approach in Australia and consider that it is a crucial element of addressing the high levels of imprisonment of Aboriginal and Torres Strait Islander peoples. One of the key elements in any solution focussed on addressing over-representation in the criminal justice system is to address disadvantage, including through approaches such as justice reinvestment which seek to divert funding from prisons to community programs.²⁹

4.24 The Aboriginal Legal Service of Western Australia submitted that ‘investment in early intervention, prevention and rehabilitation is far more effective for long-term

21 NSW Council of Social Service, *Submission 45*. See also Criminal Lawyers Association of the Northern Territory, *Submission 75*.

22 Recommendations about fines and driver licences are made in ch 12.

23 Victoria Legal Aid, *Submission 56*. See also North Australian Aboriginal Justice Agency, *Submission 113*.

24 Queensland Law Society, *Submission 86*; Northern Territory Legal Aid Commission, *Submission 46*; Kingsford Legal Centre, *Submission 19*. See further ch 8.

25 See, eg, Law Council of Australia, *Submission 108*; Aboriginal Legal Service of Western Australia, *Submission 74*. In ch 16, the ALRC recommends that criminal justice targets be developed.

26 Kevin Wong, Chris Fox and Kevin Albertson, ‘Justice Reinvestment in an “Age of Austerity”’: Developments in the United Kingdom’ (2014) 9(1) *Victims & Offenders* 76, 90.

27 See, eg, Jesuit Social Services, *Submission 100*; Community Legal Centres NSW and the Community Legal Centres NSW Aboriginal Advisory Group, *Submission 95*; National Association of Community Legal Centres, *Submission 94*; ANTaR Queensland Management Committee, *Submission 55*; Human Rights Law Centre, *Submission 68*.

28 Human Rights Law Centre, *Submission 68*.

29 National Association of Community Legal Centres, *Submission 94*.

community safety and far cheaper than continuing to imprison the most marginalised and disadvantaged members of the community'.³⁰ The Commissioner for Children and Young People Western Australia argued that, for Aboriginal young people in particular, '[w]hat is clear from the work of my office over the last decade is that programs that divert young people away from the justice system and address underlying causes of offending are crucial'.³¹

How does justice reinvestment work?

4.25 Justice reinvestment involves four main stages:

- 'Justice mapping': analysing criminal justice data and cross-referencing this against indicators of disadvantage and available services;
- developing options for reducing offending and generating savings;
- implementing reforms, quantifying savings and reinvesting in communities ('reinvestment' may also take the form of initial funding in anticipation of future savings); and
- monitoring and evaluation.³²

4.26 Justice reinvestment is distinguished by its emphasis on using data to analyse the drivers of contact with the criminal justice system. In the US, for example, this form of data mapping identified so-called 'million-dollar blocks':

The United States currently has more than 2 million people locked up in jails and prisons. A disproportionate number of them come from a very few neighborhoods in the country's biggest cities. In many places the concentration is so dense that states are spending in excess of a million dollars a year to incarcerate the residents of single city blocks.³³

4.27 While not a justice reinvestment initiative, research commissioned by Jesuit Social Services and Catholic Social Services Australia provides an example of the mapping of disadvantage in Australia. The Dropping Off the Edge project analysed the extent to which a number of indicators of social disadvantage, such as poverty, poor health, disabilities, and low educational attainment are concentrated geographically in Australia.³⁴ It found that

30 Aboriginal Legal Service of Western Australia, *Submission 74*.

31 Commissioner for Children and Young People Western Australia, *Submission 16*.

32 Fox, Albertson and Wong, above n 16, 35; David Brown et al, above n 4, 56–8; James Austin et al, 'Ending Mass Incarceration: Charting a New Justice Reinvestment' (2013) 7; Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013) 45–8.

33 Center for Spatial Research, Columbia University, *Million Dollar Blocks* Center for Spatial Research <<http://c4sr.columbia.edu/projects/million-dollar-blocks>>.

34 Tony Vinson and Margot Rawsthorne, *Dropping Off the Edge 2015: Persistent Communal Disadvantage in Australia* (Jesuit Social Services/Catholic Social Services Australia, 2015). See also Just Reinvest NSW's JR calculator, which provides data and estimated costs of incarceration for local government areas in NSW: Just Reinvest NSW, *JR Calculator* <www.justreinvest.org.au/jr-calculator/>.

complex and entrenched disadvantage continues to be experienced by a small but persistent number of locations in each state and territory across Australia. These communities experience a web-like structure of disadvantage, with significant problems including unemployment, a lack of affordable and safe housing, low educational attainment, and poor quality infrastructure and services.³⁵

4.28 It also found a link between this locational disadvantage and crime, with 6% of postcodes in Victoria accounting for half of all prison admissions. The project noted that this highlighted ‘the often localised nature of crime, as well as the role of disadvantage as an underlying cause of offending’.³⁶

4.29 The relevant criminal justice data to be analysed, in the US context, has been identified as coming from ‘all agencies that influence the criminal justice system, including arresting agencies, the jail, pretrial services, the court system, and community supervision agencies’.³⁷

4.30 Justice mapping brings together information about the criminal justice system with other measures of wellbeing in a community, such as employment rates and health and education levels. Other relevant information may include government service provision, as well as identifying potential community ‘assets’ in a particular area, such as social support and health services.³⁸ This stage of justice reinvestment also involves an analysis of existing spending related to contact with the criminal justice system.³⁹

4.31 When the drivers of contact with the criminal justice system have been identified, the next stage of justice reinvestment involves identifying options for reform to address these issues. In the US, these options have principally concentrated on criminal justice reforms. However, they may also include front-end or preventative strategies such as programs and services addressing poverty, education, housing and health.⁴⁰ Once strategies have been chosen, they are implemented, and subject to monitoring and evaluation.

Justice reinvestment in action

The United States

4.32 Justice reinvestment has been most extensively implemented in the US under the banner of the ‘Justice Reinvestment Initiative’ (JRI). The JRI focuses on state-level reforms to reduce corrections spending and to reinvest in strategies to increase public safety and strengthen communities.

35 Jesuit Social Services, *Submission 100*.

36 Ibid.

37 Nancy La Vigne et al, ‘Justice Reinvestment at the Local Level Planning and Implementation Guide 2010’ (Urban Institute Justice Policy Center, 2010) 4.

38 Fox, Albertson and Wong, above n 6, 87.

39 House of Commons Justice Committee, *Cutting Crime: The Case for Justice Reinvestment* House of Commons Paper No HC 94-I, Session 2009–10 (2009) vol 1, 123-4.

40 Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013) 46.

4.33 The JRI has been led by a number of think-tanks, non-profit organisations and non-government organisations, and financed by a mix of public and private funds, including charitable support. In 2010, the federal government began to fund the JRI through the Bureau of Justice Assistance.⁴¹ The Bureau of Justice Assistance has described the many organisations involved in implementing the JRI:

JRI is a public-private partnership between BJA and The Pew Charitable Trusts. Together with our technical assistance partners, BJA and Pew closely coordinate our efforts in this initiative. Urban Institute's Justice Policy Center serves as the Oversight, Coordination, Outcome, and Assessment provider, working with BJA, the Pew Center on the States, and the technical assistance providers to select JRI sites, set specific performance measures, track implementation, and assess the impact of JRI. The Council of State Governments Justice Center, Crime and Justice Institute, and the Vera Institute of Justice provide technical assistance and support to states selected as JRI sites. The Pew Center on the States also provides technical assistance and support to JRI states, both independently and in coordination with the Council of State Governments Justice Center and the Crime and Justice Institute. The Center for Effective Public Policy (CEPP) provides technical assistance to recipients of the JRI: Maximizing State Reforms grant program.⁴²

4.34 Through the JRI, 24 US states have implemented reforms to reduce their corrections populations. These reforms 'typically aim to reduce the flow of people into prison, limit their time behind bars, streamline their release when appropriate, strengthen community supervision, and monitor the progress of state reform'.⁴³ The kinds of reforms enacted have broadly focused on:

- Amending sentencing laws: through measures including diverting people committing less serious offences from prison, adjusting penalties for certain offences, and repealing mandatory minimum sentences.
- Reforming pre-trial practices: through measures including using risk assessment to reserve detention for those at high risk of failing to appear in court, and improving pre-trial supervision.
- Modifying prison release practices: through measures including expanding the types of offences eligible for parole, and establishing presumptive parole for certain people.
- Strengthening community corrections: through measures including strengthening reentry supervision, expanded access to treatment and services, and limiting time that can be spent in prison for violating supervision rules.⁴⁴

41 James Austin and Garry Coventry, 'A Critical Analysis of Justice Reinvestment in the United States and Australia' (2014) 9(1) *Victims & Offenders* 126, 127.

42 Bureau of Justice Assistance, *JRI Partners—Justice Reinvestment Initiative* <www.bja.gov/programs/justicereinvestment/jri_partners.html>.

43 Samantha Harvell, Jeremy Welsh-Loveman and Hanna Love, 'Reforming Sentencing and Corrections Policy: The Experience of Justice Reinvestment Initiative States' (Research Report, Urban Institute, 2017) vi.

44 *Ibid* vi–vii.

4.35 A 2017 review of JRI reforms noted that, while it is premature to draw firm conclusions,

a review of state efforts shows that 2015 prison populations in more than half the JRI states were below previously projected levels. In other words, JRI strategies helped 15 states either decrease their prison populations or keep them below levels they were predicted to reach without reform. On the fiscal front, through 2016, JRI states reported a total of \$1.1 billion in savings or averted costs attributable to reforms.⁴⁵

United Kingdom

4.36 Justice reinvestment has also attracted interest in the United Kingdom (UK). In 2009, the UK House of Commons Justice Committee endorsed a ‘holistic approach across central and local agencies and authorities in order to shift resources from the provision of custody for its own sake to the prevention of crime and the reduction of re-offending’.⁴⁶

4.37 The UK Ministry of Justice subsequently introduced pilots of an approach known as ‘payment by results’. These pilots aimed to reduce demand on the criminal justice system in local areas—when demand fell by a specified amount, local criminal justice partners would receive a ‘success payment’. An interim evaluation of one of these pilots found that insufficient incentives had been provided to encourage local agencies to make significant investment in reducing demand or to make substantial changes to practice.⁴⁷ Later evaluations noted that the overall cost of demand for youth and adult justice services had reduced. However, in the absence of a comparison site, it was not possible to precisely identify the reasons for this.⁴⁸

4.38 Though described as a form of justice reinvestment, payment by results did not involve the four-stage method described above, and it has been observed that, while payment by results is not at odds with justice reinvestment, ‘it is not in isolation capable of making the concept of JR real’.⁴⁹

Australia

4.39 In Australia, justice reinvestment has been seen as particularly suitable for addressing the disproportionate incarceration rate of Aboriginal and Torres Strait Islander peoples. As Change the Record, a coalition of Aboriginal and Torres Strait Islander, human rights and community organisations, said in their Blueprint for Change

45 Ibid v. However, the success of the JRI is contested: for a more critical view, see Austin et al, above n 32; Austin and Coventry, above n 41.

46 House of Commons Justice Committee, *Cutting Crime: The Case for Justice Reinvestment* House of Commons Paper No HC 94-I, Session 2009–10 (2009) 7.

47 Wong, Fox and Albertson, above n 26, 84–5.

48 K Wong, D Ellingworth and L Meadows, ‘Local Justice Reinvestment Pilot: Final Process Evaluation Report’ (Ministry of Justice Analytical Series, Ministry of Justice (UK), 2015) 4; Kevin Wong, D Ellingworth and L Meadows, ‘Youth Justice Reinvestment Custody Pathfinder: Final Process Evaluation Report’ (Ministry of Justice Analytical Series, Ministry of Justice (UK), 2015) 3.

49 Wong, Fox and Albertson, above n 26, 81.

on imprisonment rates of Aboriginal and Torres Strait Islander people: ‘invest in communities not prisons’.⁵⁰

4.40 Proponents of justice reinvestment in Australia largely advocate an approach to justice reinvestment that incorporates its original aspiration for reinvestment into tailored, community-driven strategies to address offending in a particular place. As academics from the Australian Justice Reinvestment Project have observed, in Australia,

support for justice reinvestment largely accords with a social justice-oriented approach directed towards (re)building community capacity using place-based strategies that respond to local needs and conditions, address the social determinants of incarceration and contribute to social inclusion’.⁵¹

4.41 Such a place-based approach offers the opportunity for developing initiatives led by and in partnership with Aboriginal and Torres Strait Islander communities:

key to JR is use of a community development approach to tackling offending. Within this approach, there is potential in an Indigenous context to realise principles of Indigenous self-determination and for application of Indigenous culture, authority and knowledge—essential contributors to any strategy designed to reduce Indigenous over-representation. Significantly, Indigenous people are empowered through JR to lead local responses to crime, including through resources diverted from correctional budgets and as government and service providers are required to work quite differently with Indigenous communities; that is, in a way that places Indigenous people firmly at the centre of the design and implementation of relevant JR initiatives.⁵²

4.42 Thus, in the Aboriginal and Torres Strait Islander context, justice reinvestment is transformed from a ‘technocratic means of crime control and de-incarceration, to one that is centrally concerned with Indigenous-controlled governance’.⁵³ Place-based justice reinvestment initiatives are underway or planned in a number of locations in Australia. These focus on strategies to address the contact of Aboriginal and Torres Strait Islander people—particularly young people—with the criminal justice system:

- The Australian Capital Territory (ACT): Two trials are planned, one targeting Aboriginal and Torres Strait Islander families with high and complex needs, and another a bail support program for Aboriginal and Torres Strait Islander offenders.⁵⁴
- NSW: in Bourke, the Maranguka Justice Reinvestment Project, coordinated by Just Reinvest NSW; and Cowra; facilitated by an Australian Research Council-funded research project.⁵⁵

50 Change the Record Coalition, *Blueprint for Change* (Change the Record Coalition Steering Committee, 2015) 6.

51 David Brown et al, above n 4, 141.

52 J Guthrie, F Allison, M Schwartz, C Cunneen, *Submission 50*.

53 David Brown et al, above n 4, 130.

54 ACT Government, *Submission 110*.

55 Just Reinvest NSW, *Submission 82*; J Guthrie, F Allison, M Schwartz, C Cunneen, *Submission 50*.

- The Northern Territory (NT): in Katherine, facilitated by the Red Cross and guided by the Katherine Youth Justice Reinvestment Working Group.⁵⁶
- Queensland: in Cherbourg, the Queensland Government has committed to working with the Cherbourg community on a justice reinvestment trial.⁵⁷
- South Australia (SA): the SA Government has committed to implementing justice reinvestment trials in two locations. Preliminary exploration has been done for a trial in Port Adelaide.⁵⁸

4.43 The Maranguka Justice Reinvestment Project in Bourke is the most advanced engagement with place-based justice reinvestment so far in Australia. Bourke scores highly on indicators of disadvantage, and in 2015–16 had the highest rate of juvenile convictions in NSW.⁵⁹ The town has high rates of long-term unemployment, low levels of education, and high rates of predominantly non-violent crime.⁶⁰

4.44 In 2015–16, Bourke had a population of approximately 3,000. One in three community members of Bourke identified as Aboriginal.⁶¹ It was estimated that the direct costs of Aboriginal juvenile and young adult involvement with the justice system was approximately \$4 million per year.⁶²

4.45 Interest in justice reinvestment in Bourke originated in work by the Bourke Aboriginal Community Working Party to establish a whole-of-community agenda for addressing Aboriginal disadvantage—the Maranguka Initiative. Reducing young Aboriginal people’s contact with the criminal justice system was a priority goal of the Maranguka Initiative, and prompted a partnership with Just Reinvest NSW (an independent non-profit organisation auspiced by the Aboriginal Legal Service NSW/ACT) to develop the Maranguka Justice Reinvestment Project.

4.46 Aboriginal leadership of the project has continued. The first phase of the justice reinvestment process involved analysis of data relating to justice, as well as social and economic indicators, to develop a community profile for Bourke. This data was then

56 Amnesty International Australia, *Submission 89*; Criminal Lawyers Association of the Northern Territory, *Submission 75*.

57 Department of Justice and Attorney-General (Qld), *Youth Detention Implementation Review: Justice Reinvestment Recommendations* <www.justice.qld.gov.au>; Queensland Youth Justice, Department of Justice and Attorney General (Qld), *Submission 97*.

58 PwC’s Indigenous Consulting, *Consultation with Community of Potential for a Justice Reinvestment Trial in Port Adelaide* (Attorney General’s Department (SA), 2015).

59 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/>>.

60 KPMG, above n 59, 1; Alison Vivian and Eloise Schnierer, ‘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.

61 KPMG, above n 59, 1.

62 Ibid 50. This estimate included costs related to police recorded criminal incidents, offences including assault, break and enter dwelling, and motor vehicle theft, Local and Children’s Court finalisations, youth justice conferences, juvenile and adult custody: Ibid 50–4.

fed back to the community. The community, through the Bourke Tribal Council,⁶³ utilised this information to identify focus areas for reform to reduce young Aboriginal people's contact with the criminal justice system.⁶⁴

4.47 The Bourke project began implementation in 2016. The project is being led by a 'backbone organisation', whose role is to provide project management support, monitor progress, coordinate partnerships and relationships with stakeholders, and secure funding for the project.⁶⁵ Economic modelling of costs saved during the project will be undertaken, with reinvestment of those savings to fund long-term implementation of the project.⁶⁶

4.48 The ACT offers the most comprehensive governmental engagement with justice reinvestment to date. As well as the two trials mentioned above, the ACT Government has developed a justice reinvestment strategy. Under the strategy are a number of projects, including a justice system costing model; justice services and programs map; justice and human services system data snapshots; and an evaluation framework.⁶⁷

A national justice reinvestment body

Recommendation 4-1 Commonwealth, state and territory governments should provide support for the establishment of an independent justice reinvestment body. The purpose of the body should be to promote the reinvestment of resources from the criminal justice system to community-led, place-based initiatives that address the drivers of crime and incarceration, and to provide expertise on the implementation of justice reinvestment.

Its functions should include:

- providing technical expertise in relation to justice reinvestment;
- assisting in developing justice reinvestment plans in local sites; and
- maintaining a database of evidence-based justice reinvestment strategies.

The justice reinvestment body should be overseen by a board with Aboriginal and Torres Strait Islander leadership.

63 The Bourke Tribal Council is an Aboriginal local governance mechanism established to work with government to enable local decision making about community services in Bourke: KPMG, above n 59, vi–vii.

64 Ibid 33–8; Just Reinvest NSW, *Submission 82*.

65 KPMG, above n 59, 65. A 'backbone organisation' is an element of an approach to collaborative community development work known as 'collective impact': John Kania and Mark Kramer, 'Collective Impact' [2011] *Stanford Social Innovation Review*.

66 Just Reinvest NSW, *Justice Reinvestment in Bourke* <www.justreinvest.org.au/justice-reinvestment-in-bourke/>.

67 ACT Government, *Submission 110*.

Recommendation 4-2 Commonwealth, state and territory governments should support justice reinvestment trials initiated in partnership with Aboriginal and Torres Strait Islander communities, including through:

- facilitating access to localised data related to criminal justice and other relevant government service provision, and associated costs;
- supporting local justice reinvestment initiatives; and
- facilitating participation by, and coordination between, relevant government departments and agencies.

4.49 Justice reinvestment is place-based, in that it involves working with a community to design localised solutions to identified local drivers of contact with the criminal justice system. It also relies on a distinct data-driven method to inform the development of options for reform. Central to the success of the JRI in the US has been technical assistance to analyse data and develop policy options for reducing contact with the criminal justice system.

4.50 The ALRC considers that the promise of justice reinvestment in addressing Aboriginal and Torres Strait Islander incarceration relies on initiatives being designed in partnership with Aboriginal and Torres Strait Islander people, and with Aboriginal and Torres Strait Islander governance. However, it also considers that a centralised expert body can assist the process of justice reinvestment, acting to provide technical assistance to justice reinvestment sites and to promote, coordinate and track justice reinvestment initiatives.

4.51 There has been significant support for justice reinvestment in Australia, including from two successive Aboriginal and Torres Strait Islander Justice Commissioners, Tom Calma AO and Mick Gooda.⁶⁸ In addition, a number of Parliamentary Inquiries have recommended that there be support for justice reinvestment, including the:

- Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the value of a justice reinvestment approach to criminal justice in Australia (Senate Justice Reinvestment Inquiry) in 2013;⁶⁹

68 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2016* (Australian Human Rights Commission, 2016); Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2014* (Australian Human Rights Commission, 2014); Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009* (Australian Human Rights Commission, 2009).

69 Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013). However, Coalition members of the Committee, while 'warmly endorsing' the principle of justice reinvestment, did not support the recommendations in the report.

- House of Representatives Standing Committee on Indigenous Affairs Inquiry into harmful use of alcohol in Aboriginal and Torres Strait Islander communities in 2015;⁷⁰
- Senate Finance and Public Administration References Committee Inquiry into Aboriginal and Torres Strait Islander experience of law enforcement and justice services in 2016;⁷¹ and
- Senate Community Affairs Reference Committee Inquiry into indefinite detention of people with cognitive and psychiatric impairment in Australia in 2016.⁷²

4.52 A number of those closely involved in justice reinvestment in Australia supported a national justice reinvestment authority, including Just Reinvest NSW.⁷³ The 2013 Senate Justice Reinvestment Inquiry recommended that an independent central coordinating body for justice reinvestment be established.⁷⁴

4.53 The body should be a national one because justice reinvestment involves a holistic approach to the drivers of incarceration, which extend beyond justice-related factors to community and social determinants of crime and incarceration. These policy priorities extend across all levels of government.

4.54 The ALRC envisages a limited role for the justice reinvestment body. It would not have authority to impose justice reinvestment on a site. Instead, similarly to the US, the justice reinvestment body would provide technical assistance only where requested to do so, working in partnership with relevant governance and decision-making structures.⁷⁵ The justice reinvestment body would also not have authority to direct the allocation of resources. Therefore, a supporting recommendation is that Commonwealth, state and territory governments support place-based justice reinvestment initiatives, through resourcing, facilitating access to data, and facilitating coordination between relevant government departments.⁷⁶

70 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) rec 14.

71 Senate Standing Committees on Finance and Public Administration, Parliament of Australia, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (2016) recs 7–8.

72 Senate Community Affairs Reference Committee, Parliament of Australia, *Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia* (2016) rec 24.

73 National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*; NSW Bar Association, *Submission 88*; Just Reinvest NSW, *Submission 82*; J Guthrie, F Allison, M Schwartz, C Cunneen, *Submission 50*.

74 Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013) rec 8.

75 Fox, Albertson and Wong, above n 6, 34.

76 A Senate Inquiry into Aboriginal and Torres Strait Islander experiences of law enforcement and justice Services recommended that that the Commonwealth Government contribute to the development of justice reinvestment trials at sites in each state and territory; and that the Commonwealth Government support Aboriginal led justice reinvestment projects: Senate Standing Committees on Finance and Public Administration, Parliament of Australia, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (2016) recs 8–9.

An independent expert body

4.55 The value of an external facilitator for justice reinvestment has been recognised in overseas jurisdictions. US justice reinvestment models routinely utilise expert bodies as technical assistance providers. Academics from the Australian Justice Reinvestment Project have observed that in the US, technical assistance providers have brought ‘independence and legitimacy’ to the justice reinvestment process. They have offered an ‘independent voice in developing policy options, helped achieve buy-in from stakeholders across the sector and eased the path for reforms that might not otherwise have been well received’.⁷⁷

4.56 The UK House of Commons Justice Committee endorsed the importance of an expert body, noting that ‘a policy which promotes the most effective use of resources to reduce crime and manage offenders would benefit from the existence of an independent cross-disciplinary centre of excellence’.⁷⁸ The Committee set out options for its establishment:

our preference would be to establish an independent national crime reduction centre of excellence, we acknowledge that this may not be immediately feasible in the current economic climate. Alternative shorter-term mechanisms could include: establishing a multi-disciplinary team of internal researchers from across Government; drawing on the expertise of a consortium, or regional consortia, of external academics similar to the Scottish Centre for Crime and Justice Research; or, an enhanced role for the correctional services panel which currently advises [the National Offender Management Service].⁷⁹

4.57 Some submissions supporting the establishment of a national justice reinvestment body argued that it should be established by statute.⁸⁰ However, the ALRC sees promise in utilising a corporate structure, in the form of a company limited by guarantee, to establish an independent not-for-profit body supported by Commonwealth, state and territory funding. There are precedents for this type of expert body. Australia’s National Research Organisation for Women’s Safety Limited (ANROWS) is an independent, not-for-profit company limited by guarantee, established as an initiative under Australia’s National Plan to Reduce Violence against Women and their Children 2010-2022. It is jointly funded by the Commonwealth and all state and territory governments, who are the members of the company.⁸¹ ANROWS has developed a national research agenda to reduce violence against women and their children, under which it conducts a national research program.

77 David Brown et al, above n 4, 155.

78 House of Commons Justice Committee, *Cutting Crime: The Case for Justice Reinvestment* House of Commons Paper No HC 94-I, Session 2009–10 (2009) 132.

79 Ibid 134.

80 See, eg, National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*; J Guthrie, F Allison, M Schwartz, C Cunneen, *Submission 50*.

81 Australia’s National Research Organisation for Women’s Safety, *Who We Are* <www.anrows.org.au/about/who-we-are>.

4.58 However established, Aboriginal and Torres Strait Islander leadership is important at all levels of justice reinvestment, and the ALRC recommends that the governance of the justice reinvestment body have Aboriginal and Torres Strait Islander leadership.

4.59 Technical assistance bodies in the US, such as the Council of State Governments Justice Center, the Vera Institute of Justice and the Urban Institute are independent not-for-profit bodies, supported by a mix of public and private funding.⁸²

4.60 The Commonwealth is well placed to champion and facilitate justice reinvestment, in recognition that a coordinated, whole-of-government approach to addressing drivers of incarceration is necessary. There is also considerable alignment between justice initiatives and other whole-of-government efforts to address Aboriginal and Torres Strait Islander disadvantage, through the Closing the Gap policy framework. This was acknowledged in the now lapsed National Indigenous Law and Justice Framework 2009-2015, which stated that

[t]here are clear links between the Framework and the work being undertaken by the Commonwealth and State and Territory Governments through the Council of Australian Governments (COAG) to 'close the gap' between Indigenous and non-Indigenous Australians in relation to key life outcomes, particularly life expectancy, child mortality, education, health and employment.⁸³

4.61 The ALRC has recommended that targets to reduce the incarceration rates of Aboriginal and Torres Strait Islander peoples be adopted.⁸⁴ Justice reinvestment would be one means of achieving these targets.

Working with communities

4.62 Central to the promise of justice reinvestment in addressing Aboriginal and Torres Strait Islander incarceration in Australia has been that it has operated with a community development approach, with ownership by the local Aboriginal community. This involves at least two elements: first, working in partnership with communities, rather than imposing justice reinvestment plans on them, and second, devising tailored strategies to address the particular drivers of incarceration in a community.

4.63 As to the first of these, Just Reinvest put it this way: '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'.⁸⁵ Similarly, the Law Council of Australia argued that 'programs and policies that incorporate the culture of

82 CSG Justice Center, *Funders and Partners* <<https://csgjusticecenter.org/funding-partners/>>; Vera Institute of Justice, *About* <www.vera.org/about/financials>; Urban Institute, *Our Funding* <www.urban.org/aboutus/our-funding>.

83 Standing Committee of Attorneys-General, *National Indigenous Law and Justice Framework 2009–2015* (2010) 6. The submissions of the ACT and NT Governments also recognised the need for a whole-of-government approach: Northern Territory Government, *Submission 118*; ACT Government, *Submission 110*.

84 See ch 16.

85 Just Reinvest NSW, *Submission 82*.

Aboriginal and Torres Strait Islander people and are based on local community knowledge and understanding are critical in developing effective solutions and generating positive outcomes'.⁸⁶

4.64 A number of submissions emphasised the importance of adaptability in implementing justice reinvestment.⁸⁷ Queensland Law Society argued that 'a one-size-fits-all approach is not appropriate. Justice reinvestment should be based on the specific drivers of crime and the 'community assets' of that community'.⁸⁸ Aboriginal Peak Organisations NT observed that 'for justice reinvestment to be effective, it must embrace the culturally specific needs of Aboriginal people in the local context in which it is implemented'.⁸⁹

4.65 An emphasis on flexibility and tailored solutions is not incompatible with the existence of an expert justice reinvestment body. Indeed, a number of the submissions that stressed the importance of community-led, flexible approaches also supported the creation of a national justice reinvestment body. For example, Just Reinvest NSW argued that

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.⁹⁰

4.66 A group of academic experts on justice reinvestment, Dr Jill Guthrie, Fiona Allison, Professor Chris Cunneen, and Dr Melanie Schwartz called for a

JR Authority that has a mandate to implement and evaluate JR policy. Functions could include:

- data collection and analysis;
- economic cost-benefit analysis;
- justice mapping;
- testing JR methodological approaches, including where those approaches are informed by local community partnerships; and
- the formulation of options for JR initiatives to address the particular underlying causes of crime identified in focus sites.⁹¹

4.67 The role of the national body would not be to impose reforms on a particular community, but rather to provide technical assistance and expertise in justice

86 Law Council of Australia, *Submission 108*.

87 See, eg. Aboriginal Peak Organisations (NT), *Submission 117*; Queensland Law Society, *Submission 86*; Change the Record Coalition, *Submission 84*; Aboriginal Legal Service of Western Australia, *Submission 74*.

88 Queensland Law Society, *Submission 86*.

89 Aboriginal Peak Organisations (NT), *Submission 117*.

90 Just Reinvest NSW, *Submission 82*. The NSW Bar Association endorsed Just Reinvest's submission in relation to justice reinvestment: NSW Bar Association, *Submission 88*.

91 J Guthrie, F Allison, M Schwartz, C Cunneen, *Submission 50*. NATSILS also supported a national body: National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*.

reinvestment methodology, to support a community wishing to implement a justice reinvestment approach. In practice, this would likely involve the justice reinvestment body working with local governance structures to progress a justice reinvestment initiative through provision of technical expertise.

4.68 Technical assistance would primarily be required at the preliminary stages of justice reinvestment: justice mapping and development of options for reform. The technical assistance provided for justice mapping is described in this way by the Bureau of Justice Assistance:

Sites receive intensive, onsite technical assistance from nationally recognized criminal justice policy experts and researchers to analyze crime, arrest, conviction, jail, prison, and probation or parole supervision data from the last five to ten years provided by state and/or local agencies; and analyze the cost-effectiveness of the correctional system's policies, practices, and programs designed to reduce recidivism and increase public safety.⁹²

4.69 Technical assistance at the second stage of justice reinvestment—the development of options for reform—is used to ‘help the working group develop practical, data-driven, and consensus-based policies that reduce spending on corrections to reinvest in strategies that can improve public safety’.⁹³

4.70 There is also a role for targeted technical assistance in the implementation phase, including assisting in developing implementation plans, and in providing assistance in developing mechanisms for monitoring progress and measuring performance.

4.71 The justice reinvestment body should also act as a centre of expertise on justice reinvestment, including through maintaining a database of research about justice reinvestment, and acting as a centralised location for information about progress in justice reinvestment sites.

The role of government

4.72 Place-based justice reinvestment requires government to work with local communities in progressing strategies to reduce contact with the criminal justice system. While community ownership of an initiative is important, success relies also on governmental willingness to support the implementation of justice reinvestment in identified sites. This support would include participation in working groups or steering committees for local sites, facilitating access to data, and resourcing reinvestment strategies.

4.73 In Bourke, the Marunguka Justice Reinvestment Project has not received direct funding from government. However, the project has received in-kind support from both the Commonwealth and NSW Governments, and includes participation by NSW and Commonwealth department representatives on the project’s steering committee.⁹⁴ A

92 Bureau of Justice Assistance, *What Is JRI? Justice Reinvestment Initiative* <www.bja.gov/programs/justicereinvestment/what_is_jri.html>.

93 Ibid.

94 KPMG, above n 59, 35, 76.

preliminary assessment by KPMG noted that a condition of further success in implementation was ‘government developing a new way of working in partnership with the project; facilitating data sharing, and recognising the Bourke Tribal Council as the Aboriginal local governance mechanism to enable local decision making about the delivery and coordination of community services in Bourke’.⁹⁵

4.74 The ACT Government’s commitment to trials of justice reinvestment has occurred within a broader governmental strategy in relation to justice reinvestment. There may be benefit for other state and territory governments in developing justice reinvestment strategies, or to consider formalising a policy position on the alignment of justice reinvestment with other policies, plans or strategies related to Aboriginal and Torres Strait Islander communities. For example, the preliminary assessment of the Marunguka Justice Reinvestment Project by KPMG concluded that it was aligned with a number of NSW and Commonwealth Government priorities, including:

- the NSW Government Department of Justice Strategic Plan, by aiming to reduce the involvement of Aboriginal people with crime;
- the NSW Government Social Impact Investment Policy by proposing to invest in prevention approaches;
- policies and objectives of the NSW Government Department of Aboriginal Affairs by empowering Aboriginal peoples; and
- the NSW and Australian Governments, 10-year plan for improving Aboriginal health, Indigenous Economic Development Strategy 2011–2018 and the Council of Australian Government’s Closing the Gap in Indigenous Disadvantage by seeking to improve the social and economic outcomes of Aboriginal peoples.⁹⁶

Challenges for justice reinvestment

Availability of data

4.75 Access to data is a key challenge to the successful implementation of justice reinvestment. This includes the question of whether the appropriate data for analysis is currently captured, as well as the accessibility of this data.⁹⁷ The National Congress of Australia’s First Peoples argued that there are ‘many inadequacies in data collection in the Australian criminal justice system, especially on a national level’ and noted that the ‘collection, availability and sharing of data is essential to the successful implementation of a justice reinvestment approach. The first step of analysis and mapping requires standardised and efficient data collection about offending and offenders’.⁹⁸

95 Ibid 69.

96 Ibid ix.

97 See, eg, Change the Record Coalition, *Submission 84*; Criminal Lawyers Association of the Northern Territory, *Submission 75*; National Congress of Australia’s First Peoples, *Submission 73*.

98 National Congress of Australia’s First Peoples, *Submission 73*. On the availability of data, see further ch 3.

4.76 Nonetheless, existing initiatives have progressed justice reinvestment with available data. In Bourke, this was facilitated by ‘support from several government departments and project champions ... Data from a broad range of government departments (both state and federal) were collected which related to the Bourke community’.⁹⁹ The Bourke process also involved collection of a secondary dataset, focused on hearing the views of children and young people in the community, ‘collected through engagement with young people through a series of groups at the local high school’.¹⁰⁰

4.77 In Cowra, data collection was facilitated through the project’s status as a university research project. Data was obtained from the NSW Bureau of Crime Statistics and Research, as well as collected through interviews with young people, parents, service providers and other stakeholders in the Cowra community, and young people from Cowra who were incarcerated in juvenile or adult corrections systems.¹⁰¹

4.78 Kingsford Legal Centre, which sits on the steering committee of Just Reinvest NSW, recommended that data availability be improved:

Data is essential for the identification of underlying causes of incarceration, and the ability of Just Reinvest to specifically tailor its responses according to local needs. Just Reinvest currently relies upon analysis of publically available data. As such, KLC recommends that the NSW government improve the availability of all relevant data, and reduce the cost of its acquisition wherever possible. For instance, currently Australia suffers from a lack of data regarding the costs, availability and effectiveness of alternatives to imprisonment.¹⁰²

4.79 The recommended national body could play a role in brokering the release of such data, as well as in identifying gaps in the data necessary to progress justice reinvestment.¹⁰³

Identifying savings for reinvestment and measuring success

4.80 It has been observed that, compared to the US, the relatively lower overall rates of incarceration and smaller population in Australia may mean that there are ‘relatively less savings to be recaptured and reinvested’.¹⁰⁴ As a consequence, measuring the success of justice reinvestment may require a broader analysis than whether savings are made on criminal justice spending, to incorporate other social benefits, including improving public safety and community wellbeing. For example, as Brown et al have pointed out, a strategy such as ‘supporting women in the community may bring

99 KPMG, above n 59, 37.

100 Ibid 38.

101 Jill Guthrie et al, *Exploring the Potential of Justice Reinvestment in Cowra: Community Report* (Australian National University, 2017) 20–21.

102 Kingsford Legal Centre, *Submission 19*.

103 Some submissions identified difficulties in obtaining information from government departments to enable justice mapping: Criminal Lawyers Association of the Northern Territory, *Submission 75*; Aboriginal Peak Organisations (NT), *Submission 117*.

104 Wood, above n 9, 114.

financial and social benefits, such as fewer living on welfare and fewer children in care, that do not accrue to the criminal justice system'.¹⁰⁵

4.81 The Senate Justice Reinvestment Inquiry considered that the economic value of justice reinvestment was likely to be realised over the long term, and best measured through considering the value of averted costs associated with contact with the criminal justice system in a broad sense:

The committee considers that justice reinvestment provides economic benefits in the long term through shifting resources away from incarceration towards prevention, early intervention and rehabilitation. Benefits will accrue to government through improved economic participation of offenders and potential offenders, decreased use of the welfare system and improved health outcomes.

While there will be economic benefits to government, the committee considers that the benefits through a justice reinvestment for individuals and communities will be more important. By addressing the social determinants of crime—unemployment, homelessness, health and education issues—justice reinvestment has the potential to improve the life outcomes of individuals and build strong, safe and cohesive communities.¹⁰⁶

4.82 Especially where a justice reinvestment focus is on preventative, 'front-end' strategies to reduce or prevent contact with the criminal justice system, it is likely that initial implementation of justice reinvestment would require some level of upfront or seed funding. The Senate Justice Reinvestment Inquiry Report canvassed views on this, and noted that submissions suggested that:

Once initial funding has been obtained, and community programs are running effectively, savings will accrue as offenders are rehabilitated and provided with treatment to deal with the underlying causes of their behaviour and reoffending is significantly reduced.

The Attorney-General's Department provided its views ... that justice reinvestment was probably not budget neutral. It is a long term strategy and savings will be not be generated from law and order budgets in the short term. Potentially, significant upfront funding will be needed with savings 'hopefully' becoming available in the long term.¹⁰⁷

4.83 There are existing approaches which can be drawn on to undertake analyses of the costs and benefits of justice reinvestment strategies. In the US, the Washington State Institute of Public Policy has developed an influential method for undertaking a 'benefit-cost analysis' of public policy options, including options to improve criminal justice outcomes. This is a three-stage process:

First, we systematically assess all high-quality studies from the United States and elsewhere to identify policy options that have been tested and found to achieve improvements in outcomes. Second, we determine how much it would cost Washington taxpayers to produce the results found in Step 1, and calculate how much it would be worth to people in Washington State to achieve the improved outcome.

105 David Brown et al, above n 4, 185.

106 Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013) 81.

107 Ibid 91.

That is, in dollars and cents terms, we compare the benefits and costs of each policy option. It is important to note that the benefit-cost estimates pertain specifically to Washington State; results will vary from state to state. Third, we assess the risk in the estimates to determine the odds that a particular policy option will at least break even.¹⁰⁸

4.84 Another such approach is to quantify the ‘social return on investment’ of justice reinvestment strategies. In the UK, a social return on investment analysis of alternatives to incarceration for women found that, over ten years, for every £1 spent on alternatives to prison, £14 worth of social value was generated to women and their children, victims and society.¹⁰⁹ Professor Julie Stubbs has observed that this

demonstrates the paradox of women’s imprisonment, in that while the number of women imprisoned relative to men is small, the potential negative impact it has on society is very large; women’s incarceration is very likely to diminish the prospects of future generations since women are an important ‘resource’ for their communities and families, and especially their children.¹¹⁰

4.85 In Australia, cost-benefit studies of diversion and early intervention for vulnerable groups has concluded that an integrated social and disability support program for these groups would provide between \$1.20 and \$2.40 in savings for criminal justice and tertiary health and human services for each dollar invested.¹¹¹ A social return on investment analysis of youth programs in remote central Australia also found that for every dollar invested, between \$3.48 and \$4.56 of value would be created.¹¹²

4.86 Additionally, in the context of JRI in the US, it has been observed that alternative outcomes, in addition to identifying savings, are relevant to measuring the success of justice reinvestment:

In addition to reducing justice system spending and encouraging reinvestment, JRI has encouraged systems change and the creation of new, collaborative roles within agencies, as well as ongoing data analysis, increased training and capacity, and implementation of evidence-based practices.¹¹³

4.87 Given the complexity of the task of quantifying the costs and benefits of justice reinvestment, the ALRC considers that the recommended national justice reinvestment body could provide an important locus of expertise for such analysis.

108 Washington State Institute for Public Policy, *Benefit-Cost Results* <www.wsipp.wa.gov/BenefitCost>. See also Fox, Albertson and Wong, above n 6, 31; David Brown et al, above n 4, 145–7.

109 Julie Stubbs, ‘Downsizing Prisons in an Age of Austerity? Justice Reinvestment and Women’s Imprisonment’ (2016) 6(1) *Oñati Socio-Legal Series* 91, 107.

110 Ibid.

111 David Brown et al, above n 4, 147, citing Eileen Baldry, ‘Disability at the Margins: Limits of the Law’ (2014) 23(3) *Griffith Law Review* 370.

112 Central Australian Youth Link-Up Service, *Submission 18*; Nous Group, *Investing in the Future—The Impact of Youth Programs in Remote Central Australia: A Social Return on Investment (SROI) Analysis* (2017).

113 Erika Parks et al, ‘Local Justice Reinvestment Strategies, Outcomes, and Keys to Success’ (Urban Institute Justice Policy Center, 2016) 15.

