Policy Paper: Key Proposals #1 - Smarter Sentencing and Parole Law Reform

Just Reinvest NSW is a coalition of organisations that have come together to address the significant over-representation of Aboriginal young people in custody through a Justice Reinvestment framework.

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.

This policy paper proposes a number of legislative and policy reforms to reduce the rising prison population in NSW, with a particular view to addressing the levels of Aboriginal overrepresentation.

The three proposals in this paper were selected from a broader range of proposals as they are achievable in the short to medium term and their implementation will have an immediate impact on the size of the prison population, thereby freeing up resources for reinvestment.

They comprise part of an overall justice reinvestment strategy through which resulting savings would be reinvested into supporting community driven strategies to reduce crime.

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 will now be the subject of consultation with peak NSW Aboriginal organisations and other key organisations and agencies.

Key objectives:

- **Reducing crime to create safer communities:** adequate resourcing to meet the complex needs of offenders in the community to address the underlying causes of crime, reduce recidivism and create safer communities.

- **An end to post-code justice:** equal access to and adequate resourcing for diversionary sentencing options, rehabilitation programs and therapeutic court settings across NSW.

- **A smarter way to spend $3.8 billion:** focusing expenditure on measures that will support early intervention, improve public health, strengthen communities and prevent crime.
Ensure the availability and expand the scope of Intensive Corrections Orders (ICOs)

**a) Ensure ICOs availability for all NSW locations**
ICOs seek to address the complex needs of offenders in a community setting. Ensuring that ICOs are available across NSW will provide equal access to alternatives to imprisonment and programs that address the underlying causes of crime.

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. 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.

**b) Expand the scope of ICOs to include intensive rehabilitation orders and violent offender therapeutic programs (VOTPs) as alternatives to the work component**
The current assessment process deems many offenders with substance dependency issues, cognitive impairment, mental illness or physical disability 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. Rather than exclude these offenders, the mandatory conditions could be tailored to address the underlying causes of offending and expanded to include an order to attend intensive rehabilitative program or a violent offender therapeutic program, as an alternative to the work component.

Evidence suggests that intensive supervision coupled with rehabilitative treatment has a higher impact on reducing the rate of re-offending than imprisonment. It is also more cost-effective, per person, per day:
- Community-based order: $22
- Rehabilitation centre: $120
- Prison: $217

**Additional 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 lack of ICO availability is a serious issue for many of our remote and regional offices. ICOs are often not available due to the lack of available community service placements.

There are instances where ICO’s are granted but only on the condition the client travel, or move, to another town in order to complete the community service requirement. This poses great difficulties for Aboriginal clients due to the distances involved, the need for a vehicle, and the punitive nature of licence disqualification. We have even had a matter where the reason for unavailability of an ICO was the lack of Telstra coverage. It really is post-code justice.

The other major problem is that many of our clients are also excluded from ICOs because of substance abuse issues – even those who have started to make a real effort to address their addiction. Offenders who most need the help are excluded from eligibility. Sending them into custody halts any progress which is ultimately detrimental to them and to the community.”

- Chris Day, Regional Principal Legal Officer, Criminal Law Practice, ALS NSW/ACT
Taking steps to reduce the imposition of sentences of six months or less, by encouraging greater use of ICOs and other non-custodial options, and to consider strategies to encourage courts to also provide reasons as to why an eligibility assessment for an ICO was not made.

Proposal 1 and Proposal 2 must be implemented together. Reducing the imposition of sentences of less than 6-months is not viable unless there are adequately resourced sentencing alternatives.

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. In the same period approximately two-fifths (37.6%) of persons sentenced to prison in NSW for less than 6 months were Indigenous.

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

"Many of our clients are addressing complex issues and have a history of offending. In those circumstances, magistrates often impose a short custodial sentence, even where the offence is of a minor nature.

We recently had a matter where a woman received a two month sentence for stealing $5 worth of chicken from the IGA, another where a man with an intellectual disability was given 3 weeks for breaching an AVO by making contact with his ex-partner.

These are clients with drug and alcohol and mental health problems - none of which get addressed in custody in those short stints. Then there is no supervision or support on release. It doesn’t make sense."

- Jeremy Styles, Regional Principal Legal Officer, Criminal Law Practice, ALS NSW/ACT

A 90% reduction in the number of sentences of less than 6 months would:
- cut the number of prison sentences handed down in NSW courts and the number of people coming through the prison system by almost 40%
- 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

The reduction in recidivism as a result of intensive community based support will also generate savings extending to court costs, police resources, property damage, and victims compensation, as well as reduced lifelong individual and societal costs, savings on health care, savings made due to better education outcomes and improved lifetime’s productivity.
3 Change the response to breaches of parole and support measures to reduce the likelihood of breach

a) Remove the requirement for an offender whose parole has been revoked to wait 12 months before being able to re-apply for parole.

The mandatory 12 month deferral of parole reconsideration after breach is costly, ineffective in reducing recidivism, and raises significant questions of procedural fairness. As a result of the mandatory deferral, offenders are often released at the end of their parole period, without adequate supervision or transitional support. There is clear evidence that supervision after release results in a lower rate of recidivism. Reintroduction of the discretion to fix a date for parole reconsideration would allow for the requisite emphasis on community-based supervision, rehabilitation and a stable transition back into the community.

The mandatory deferral results in some offenders being kept in custody longer than necessary, as their individual case cannot be considered unless they fall into the narrow exception of manifest injustice. This not only raises significant questions of procedural fairness, but also of appropriate use of public resources – particularly with regard to matters where the breach is of a technical nature or consists of only minor offending.

b) Increase the use of work release and weekend leave, with the introduction in appropriate cases of back-end home detention, residential rehabilitation and halfway house options.

Through the increased use of work release and weekend leave, and the introduction (in appropriate cases) of back-end home detention, residential rehabilitation and halfway house options, offenders will receive the necessary support to integrate back into community life.

This gradual and stable transition coupled with monitoring and supervision can reduce recidivism rates and therefore increase community safety.

In 2015-2016, only 1.3% of prisoners eligible to work were granted work release, a program with the potential to provide skills and training and improve job prospects. Addressing the limited vocational skills and poor employment history of some prisoners has been identified as a key contributor to decreasing the risk of re-offending.

A gradual and stable transition can be further supported by making back-end home detention, residential rehabilitation and halfway house options available for non-serious, non-violent and non-sexual offenders.

“I am in custody at Parramatta Transitional Centre. Through work release I can leave the centre during the day to attend employment. The experience I have gained will help me transition back into the community and workforce. My payments get directly paid into an account and are available throughout my sentence for personal needs and then given back to me upon my release. I have had the chance to make the most of my time in custody. In fact, since finishing my placement, I have secured employment at a Miranda Program pilot site. This means that I am going home to my family with a qualification, work experience and secure employment.”

– Miranda Project Work Placement
The proposals for reform in this policy paper are part of a broader range of proposed measures, each of which is targeted to support the key objectives of:

- Reducing crime to create safer communities
- An end to post-code justice
- A smarter way to spend $3.8 billion

The proposals include:

**Mapping existing residential drug and alcohol programs for Indigenous people** - to identify and meet additional need including resourcing for:
- Additional options for those with mental health issues, an intellectual disability or a cognitive impairment
- Healing and cultural components
- Additional programs for women and juveniles (including trauma-informed support for victims of violence)
- Aftercare support

**Expanding the operation of Indigenous Courts across NSW** including broadening the locations of the Youth Koori Court and introducing a NSW Koori District Court.

**Addressing the specific needs of Indigenous women who are at risk of offending/re-offending** through Indigenous women’s-specific services and residential programs; holistic support services, particularly in relation to family violence, child protection and inter-generational trauma; and ensuring the availability of culturally appropriate and community-controlled women’s health services.

**Establishing a more equitable approach to penalty notices and fines** through measures including:
- limiting fines for people on any form of welfare benefit
- introducing ‘capacity-to-pay’ guidelines and limitations on multiple penalty notices
- decoupling non-payment of fines from motor vehicle license suspension, particularly for people without access to public transport living in remote and rural localities

**Framing smarter orders and implement 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)

**Giving consideration to implementation of the broader sentencing reform recommendations of the NSW Law Reform Commission, in Report 139, 2013**

Just Reinvest NSW is a coalition of member organisations, including: the Aboriginal Legal Service NSW/ACT, Aboriginal Medical Service Cooperative Redfern, Aboriginal Child, Family and Community Care State Secretariat, Aboriginal Education Council (NSW) Inc, Amnesty International, ANTaR, Ashurst, Australian Indigenous Alpine Sports Foundation, Community Legal Centres NSW, Gilbert + Tobin, Herbert Smith Freehills, Kingsford Legal Centre, NSW Reconciliation Council, Public Interest Advocacy Centre, Red Cross, Save the Children, Shopfront Youth Legal Service, Show Me the Way, Uniting Care, Weave Youth and Community Services, Whitelion, Youth Action and the Youth Justice Coalition.

For sources, detailed briefing notes or more information about Justice Reinvestment and Just Reinvest NSW go to: www.justreinvest.org.au