



15 April 2016

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary,

I write to you on behalf of Just Reinvest NSW in relation to the Inquiry into Indefinite detention of people with cognitive and psychiatric impairment in Australia.

Just Reinvest NSW is an independent, non-profit, membership-based, incorporated association auspiced by the Aboriginal Legal Service (NSW/ACT) Ltd. Formed in 2012 by a small group of people, there are now more than 20 organisations actively engaged in Just Reinvest NSW, with many others providing support. Our current membership, Executive Committee and Champions are listed in Appendix A.

Just Reinvest NSW is working to raise awareness of the need for a justice reinvestment plan for NSW to reduce the shameful rate of imprisonment of Aboriginal young people in NSW. For more information on justice reinvestment please refer to Appendix B. Since 2013, Just Reinvest NSW has been working in partnership with local Aboriginal organisation, Maranguka to develop a justice reinvestment framework for Bourke. To learn more about Just Reinvest NSW and the Maranguka Justice Reinvestment Project please refer to our website, www.justreinvest.org.au.

Given our experience and expertise, in this submission we have focused on justice reinvestment as a framework to redirect funding away from prison and into treatment and rehabilitation services for Aboriginal people with cognitive and psychiatric impairment.

Just Reinvest NSW thanks you for the opportunity to comment and would welcome the opportunity to provide further information to the Inquiry if required. Questions may be directed to info@justreinvest.org.au.

Yours faithfully

Sarah Hopkins
Chairperson
Just Reinvest NSW

**Submission from Just Reinvest NSW Inc
Inquiry into indefinite detention of people with cognitive and psychiatric
impairment in Australia.**

Terms of Reference:

1.n. the prevalence and impact of indefinite detention of individuals with cognitive and psychiatric impairment from Aboriginal and Torres Strait Islander and culturally and linguistically diverse backgrounds, including the use of culturally appropriate responses.

Given our experience and expertise, we have focused solely on Term or Reference 1.n. Just Reinvest wants to emphasize that utilising a JR framework would free up resources that would be redirected away from prisons and towards treatment and rehabilitation services for Aboriginal and Torres Strait Islander people with cognitive and psychiatric impairment.

The aim of Justice Reinvestment (JR) is to redirect funding from the corrections system to the community to fund programs and services to support people in the community to reduce offending behaviours and build community capacity (Tucker & Cadora 2003). For more information on Justice Reinvestment, refer to Appendix A and B.

Below Just Reinvest has collated relevant research to the term of reference, 1.n. to the enquiry.

1. Aboriginal and Torres Strait Islander people are more likely than non-Indigenous people to be living with disability.

The ABS reports that after adjusting for differences in the age structure of the two populations, Aboriginal and Torres Strait Islander people were 1.7 times as likely as non-Indigenous people to be living with disability.¹

2. Experiences of Aboriginal people with mental and cognitive disabilities in the Justice System.

A UNSW report, *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system*, analysed a cohort of 2,731 persons who had been in prison in NSW and whose mental health and cognitive impairment diagnoses were known.²

Some of the quantitative findings on the experience of Indigenous people with mental health disorders and/or cognitive disability include:

¹ Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander People with a Disability*, 2012

² Baldry, E., McCausland, R., Dowse, L., McEntyre, E. 2015, *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system*, Sydney: University of New South Wales

- Indigenous people with mental health disorders and/or cognitive disability are significantly more likely to have experienced earlier and more frequent contact with the criminal justice system and greater disadvantage than non-Indigenous people.
- Indigenous people with mental health disorders and/or cognitive disability are significantly more likely to: have been in out-of-home-care, to come into contact with police at a younger age and at a higher rate as a victim and offender, to have higher numbers and rates of convictions, more episodes of remand, and higher rates of homelessness than non-Indigenous people.
- Indigenous people with complex support needs (multiple diagnoses and disability) in particular are significantly more likely to have earlier contact with police, to have been Juvenile Justice clients, and to have more police and prison episodes throughout their lives than those with a single or no diagnosis.
- Most of the offences by Indigenous people in the cohort were in the less serious categories of offences – theft and related offences, public order offences, offences against justice procedures, government security and government operations, and traffic and vehicle regulatory offences.³

Some qualitative findings on the experience of Indigenous people with mental health disorders and/or cognitive disability include:

- Institutional racism, stigma and discrimination are common, marginalising and destructive experiences for Aboriginal people with mental and cognitive disabilities. Interviewees reported discrimination and stigma experienced on the basis of their Aboriginality, their disabilities, and in regard to criminalisation of their behaviour, affecting their access to education, employment, housing and just legal outcomes.
- The multiple and complex support needs experienced by many Aboriginal people in the criminal justice system can ... be understood as emerging from the siloed institutional responses to their circumstances; as in effect created from those responses. Negative, punitive criminal justice interventions rather than positive human or community based service interactions are the norm. The view that Aboriginal people with disability should be managed by criminal justice agencies, that this is 'just how it is', permeates all agencies' practice.
- There is a severe and widespread lack of appropriate early diagnosis and positive culturally responsive support for Indigenous children and young people with cognitive impairment. Aboriginal child with an intellectual disability or Fetal Alcohol Spectrum Disorder (FASD) rarely receives early diagnosis or positive intervention, resulting in their disengagement or expulsion from school at a relatively young age.
- Aboriginal people articulated the need for a holistic, integrated, culturally responsive model of care with rigorous client and community accountability to

³ Baldry, E., McCausland, R., Dowse, L., McEntyre, E. 2015, *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system*, Sydney: University of New South Wales

support Aboriginal people with multiple and complex support needs to reduce contact with the criminal justice system.⁴

3. Prevalence of Indigenous people with mental health disorders and/or cognitive disabilities being detained indefinitely

The Aboriginal Disability Justice Campaign found the following on the prevalence of indefinite detention of Indigenous people with mental health disorders and/or cognitive disability:

- In some Australian jurisdictions, Indigenous people with cognitive impairment are detained indefinitely. Unfortunately, other than Western Australia, there is no centralised data collection process at either the state and territory level or by the Commonwealth regarding how many people are being detained past the cessation of the supervision or custody order, and how many of that group are Indigenous Australians. Anecdotally, it seems that there are at least 100 people detained across Australia without conviction in prisons and psychiatric units under mental impairment legislation; that at least 50 people from this group would be identified as Aboriginal and Torres Strait Islander and that at least 20 people detained are detained indefinitely with the majority of people detained indefinitely identifying as Aboriginal or Torres Strait Islander.⁵

4. Prison is the wrong institution to be responding to Indigenous people with cognitive impairment

- ADJC takes the position that prison is the wrong institution and an ethically unacceptable environment in which to respond to offending behaviour and behaviours of concern by Indigenous people with cognitive impairment. This group is frequently unable to connect the punitive experience of imprisonment to their offending behaviour, or they may have not been found guilty of committing an offence. As a result, they are unable to address offending behaviour while in prison, or to transpose or generalise that learning to a community setting.⁶

5. Need to address the underlying causes of offending behaviour in order to prevent contact with the criminal justice system and appropriate pathways away from it.

- There is no question that the protection of the community, and the management of risk must be a priority when designing both justice and disability system responses to offending by Indigenous people with cognitive

⁴ Baldry, E., McCausland, R., Dowse, L., McEntyre, E. 2015, *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system*, Sydney: University of New South Wales

⁵ Aboriginal Disability Justice Campaign: Sotiri, M, McGee, P. & Baldry, E. (2012) No End in Sight: The Imprisonment and Indefinite Detention of Indigenous Australians with a Cognitive Impairment, Report for The National Justice Chief Executive Officers Working Group, September, <http://www.pwd.org.au/what-we-do/aboriginal-disability-justice-campaign.html>

⁶ Aboriginal Disability Justice Campaign: Sotiri, M, McGee, P. & Baldry, E. (2012) No End in Sight: The Imprisonment and Indefinite Detention of Indigenous Australians with a Cognitive Impairment, Report for The National Justice Chief Executive Officers Working Group, September, <http://www.pwd.org.au/what-we-do/aboriginal-disability-justice-campaign.html>

impairment. A range of equitable and rights based approaches and services are required to meet the multiplicity and complexity of need amongst this group. These approaches should address the causes of offending behaviour or behaviours of concern to prevent enmeshment with the criminal justice system and provide people with genuine pathways *out* of the criminal justice system.⁷

6. The costs of imprisoning Indigenous people with mental health disorders and/or cognitive disability are vast. A cost-benefit approach shows early support and diversion that could be supported by a Justice Reinvestment Framework is more cost effective.

The Australian Human Rights Commission found on the cost of imprisoning Indigenous people with mental health disorders and/or cognitive disability⁸:

- Nationally in 2010-11, the total cost per prisoner per day, comprising net operating expenditure, depreciation, debt servicing fees and user cost of capital, was \$289. These figures equate to an annual total cost of \$105,485 per person in a correctional facility and net operating expenditure of \$80,665 per person in a correctional facility or \$7,300 per person subject to community corrections.⁹
- A recent cost-benefit analysis of early support and diversion indicates a number of small but successful initiatives appear to improve well-being and other outcomes for people with mental health disorders and cognitive impairment. These initiatives result in diversion from the criminal justice system. The study indicated that for every dollar spent on the early investment, between \$1.40 and \$2.40 in government cost is saved in the longer term.¹⁰
- In a related paper Professor Eileen Baldry and colleagues come to the following conclusion concerning numerous case studies based on a well-controlled dataset from NSW: The evidence is stark that ... early lack of adequate services is associated with costly criminal justice, health and homelessness interactions and interventions later ... Millions of dollars in crisis and criminal justice interventions continue to be spent on these vulnerable individuals whose needs would have been better addressed in early support or currently in a health, rehabilitation or community space. It is

⁷ Aboriginal Disability Justice Campaign: Sotiri, M, McGee, P. & Baldry, E. (2012) No End in Sight: The Imprisonment and Indefinite Detention of Indigenous Australians with a Cognitive Impairment, Report for The National Justice Chief Executive Officers Working Group, September, <http://www.pwd.org.au/what-we-do/aboriginal-disability-justice-campaign.html>

⁸ Australian Human Rights Commission. 2014, *Equal Before the Law: Towards Disability Justice Strategies – February 2014*

⁹ Steering Committee for the Review of Government Service Provision, *Report on Government Services 2012*, Vol 1, Productivity Commission (2012) pp 8.26 - 8.27. At <http://www.pc.gov.au/gsp/rogs/2012>

¹⁰ Ruth McCausland, Eileen Baldry, Sarah Johnson and Anna Cohen, *People with mental health disorders and cognitive impairment in the criminal justice system: Cost benefit analysis of early support and diversion*, Report based on a paper presented at the Australian Human Rights Commission and University of New South Wales roundtable Access to Justice in the Criminal Justice System for People with Disability, April 2013 (August 2013) p 12. At <http://www.humanrights.gov.au/sites/default/files/document/publication/Cost%20benefit%20analysis.pdf/>

obvious that access to integrated and responsive support services including drug and alcohol support, mental health and disability services or other psycho-social forms of support is needed.¹¹

- The National Indigenous Drug and Alcohol Council cost-benefit analysis has shown that the long-term savings for diversion to community-based rehabilitation for those with substance use problems are as high as \$111,458 per offender.¹⁵ Correctional measures can be a just outcome for a person with a disability. However, allowing for the costs of administering diversion programs, the gap of \$73,365 in favour of community correction over custodial correction suggests at the very least that diversion within the criminal justice system can bring economic benefits. Material presented elsewhere in this report indicates that diversion away from the criminal justice system, or appropriate diversion within it, can significantly improve the lives of people with disabilities by better respecting their human rights.¹²

¹¹ Eileen Baldry, Leanne Dowse, Ruth McCausland and Melissa Clarence, *Lifecourse institutional costs of homelessness for vulnerable groups, Final Report*, Department of Families, Housing, Community Services and Indigenous Affairs (May 2012) p 5. At <http://apo.org.au/research/lifecourse-institutional-costs-homelessness-vulnerablegroups->

¹² National Mental Health Commission, *A Contributing Life, the 2013 National Report Card on Mental Health and Suicide Prevention*, National Mental Health Commission (2013) p 74. At <http://www.mentalhealthcommission.gov.au/our-report-card.aspx>

APPENDIX A

Just Reinvest NSW Executive Committee

Sarah Hopkins, Chairperson
Gino Vumbacca, Treasurer
Tiffany McComsey, Secretary
Brad Freeburn, Ordinary Member
Kerry Graham, Ordinary Member
Jane Powles, Ordinary Member

Just Reinvest NSW Members

ANTaR
Weave
Lifestyle Solutions
Kingsford Legal Centre
Ashurst
NSW Reconciliation Council
Whitelion
Shopfront Youth Legal Service
Herbert Smith Freehills
Youth Action
Uniting Care NSW ACT
Aboriginal Education Council (NSW) Inc
MTC Australia Ltd
Show Me the Way
Public Interest Advocacy Centre
Community Legal Centres NSW
Youth Justice Coalition

Just Reinvest NSW Champions

Commissioner Mick Gooda
Commissioner Megan Mitchell
Dr Tom Calma AO
His Excellency General The
Honourable David Hurley AC DSC
(Ret'd)
Professor Dame Marie R Bashir AD
CVO
Secretary General Salil Shetty
Mr Bob Debus AM
Professor Mick Dodson AM
The Hon. Michael Kirby AC CMG
Ms Marcia Ella Duncan
Mr Jack Manning Bancroft

Professor Chris Cunneen
Mr Alistair Ferguson
Mr Shane Phillips
Mr Gary Oliver
Mr Shane Duffy
Mr Eddie Cubillo
Professor Ted Wilkes
Mr Nicholas Cowdery AM QC
Dr Naomi Mayer OAM
Mr Sol Bellear
Ms Tammy Solonec
Mr Phil Naden
Aunty Millie Ingram

APPENDIX B

What is Justice Reinvestment?

The aim of Justice Reinvestment (JR) is to redirect funding from the corrections system to the community to fund programs and services to support people in the community to reduce offending behaviours and build community capacity (Tucker & Cadora 2003). The Justice Reinvestment for Aboriginal Young People Campaign advocates that the methodology and objectives of justice reinvestment must be:

- Data driven
- Place based
- Fiscally sound
- Supported by a centralised strategic body

Data driven

JR is premised on the fact that it is possible to identify which communities produce large numbers of offenders, and to strategically use that information to guide investment in community programs to most effectively reduce imprisonment numbers. 'Justice mapping' or 'prison geographies', allow policy makers to identify 'million dollar blocks' - literally, a block of housing that is home to people whose incarceration costs over \$1 million per year' - where prison related expenditure is concentrated. Using data mining techniques to create detailed prisoner density maps in residential areas, decisions can be strategically made about how and where to allocate funds to most effectively bring about a reduction in crime.

Incarceration maps, on the other hand, show concentrations of prison admissions in particular areas so that public investment can be targeted towards the places that most need reshaping in terms of local infrastructure, production of social capital and better governance.

It is, however, important to note that the justice reinvestment approach is not purely data driven. While mapping underpins the identification of focus communities and, to some extent, the assets available to build community capacity, this is supplemented by years of research, countless conversations, and a network of local and national participants' committed to the justice investment approach. The experiences, perceived needs and capacities expressed by the community are instrumental in developing tailored programs to address offending and, at the same time, achieving social justice outcomes.

Place based - "Not individual cases, but particular places".

JR has been developed with a view to 'improve[ing] the prospects not just of individual cases but of particular places' (Allen 2007).

In other words, JR is focused on communities rather than individual offenders.

JR adopts best practice characteristics of place-based initiatives that include:

- Government entering into genuine government/ community partnership with the community
- Power devolving to the local level through local governance structures comprised of government departments, community organisations and community leaders
- The local governance structure supported and enabled by a skilled community facilitator

- Time and resources are invested into building trust between stakeholders, creating a shared vision for change, establishing effective governance, and developing a JR implementation plan
- Ongoing engagement and participation mechanisms are created to allow community members and other stakeholders to input into decision making
- The community is supported to determine, monitor and evaluate their JR initiatives
- The capacity of the community is enhanced to identify and tackle their own challenges
- Sufficient time and resources are allocated over the long-term

Fiscally sound

A JR approach must be fiscally sound offering long-term costs efficiency. For this to be achieved, the current costs of the criminal justice system, (in particular the incarceration of young people and adults) and effects to criminal recidivism in a particular geographical region should be identified. Cost benefit ratios and economic modelling should then be conducted for alternative service and program models (along with community consultation) to ensure the lowest risk – highest benefit program is selected for the area. The spending must then be tracked. However there must also be a commitment to long-term funding. The most successful community programs are those that have built trust with the community. It would be un-safe and ineffective to only commit to short term funding: it would be unlikely that the community would readily engage with the project.

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

A JR approach:

- Quantifies the current costs that exist in the criminal justice system, breaking down these costs at different stages within the criminal justice system
- Quantifies the current costs that exist in the human services, which are consumed by individuals who are involved in the criminal justice system
- It estimates the savings associated with potential policy changes
- It is an iterative process that tracks spending and achieves tangible savings

Supported by a centralised strategic body monitoring and quantifying outcomes

Critical to the success of a JR policy is an independent centralised body.

A Statutory Authority will ensure longevity: a small body with a focused agenda to work across departments and to monitor and quantify social and economic outcomes of JR initiatives. A Centralised strategic Body would have the following roles:

- To support the Government in identifying appropriate communities and monitoring initiatives
- To support the Local Government System by collecting data, assisting in strategy development and building community capacity.

In the US, an example of a justice reinvestment advisory body is The Council of State Governments Justice Centre. The Justice Centre is bi-partisan not-for-profit organisation funded by a combination of Federal, State and private philanthropic funds. Its functions are to:

- Identify communities for a JR approach
- Support community based strategy development, including advising on what evidence-based initiatives will reduce offending / re-offending, increase community safety, and address disadvantage
- Build the capacity of the community to implement the JR strategy and initiatives
Monitor and quantify the social and economic outcomes