



# Inquiry into the high level of First Nations people in custody and oversight and review of deaths in custody

Submission by Just Reinvest NSW

September 2020

## About this submission

We thank the Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths In Custody for the opportunity to provide a submission for this inquiry. This submission responds to Terms of Reference 1 (a) only: *the unacceptably high level of First Nations people in custody in New South Wales*.

For questions related to this submission, or for further information, please contact Joanna Lunzer (Coordinator, Policy & Advocacy, Just Reinvest NSW) at [jo@justreinvest.org.au](mailto:jo@justreinvest.org.au).

## About Just Reinvest NSW

Just Reinvest NSW supports Aboriginal communities to explore and establish justice reinvestment initiatives and advocates for systemic changes that build safer and stronger communities. We began in 2011 as a strategic initiative of the Aboriginal Legal Service NSW/ACT. Our small team are guided by an Executive Committee and supported by a network of champions, youth ambassadors and supporters across the legal, corporate, government and for-purpose sectors.

We work at a local level with Aboriginal communities to explore and implement community-led justice reinvestment initiatives, at the same time advocating for legislative and policy changes that will drive down interactions with the criminal justice system and incarceration rates and support community leadership and self-determination.

Members of Just Reinvest NSW include: Aboriginal Education Council, Aboriginal Medical Service (Redfern), AIASF, ANTaR, Ashurst Australia, Australian Red Cross, Community Legal Centres NSW, Gilbert + Tobin, Herbert Smith Freehills, Infinite Hope Aboriginal Corporation, Johnson Winter & Slattery, King & Wood Mallesons, Legal Aid NSW, The Network of Alcohol and other Drugs Agencies (NADA), NCOSS, Reconciliation NSW, Save the Children Australia, Shopfront Youth Legal Service, Show Me the Way, Weave, White Lion, Youth Action and the Youth Justice Coalition.

Just Reinvest NSW collaborated with the Bourke community to support the establishment of Maranguka using a justice reinvestment framework and we continue to support its important work. We are currently working closely with members of the Aboriginal communities in Mount Druitt and Moree to explore the how a justice reinvestment approach might work in those communities.

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## Introduction

For too long, our systems have failed to support Aboriginal communities. Despite decades of often ignored reports and inquiries, Aboriginal people remain over-represented at every stage of Australia's criminal justice system. Aboriginal and Torres Strait Islander children are 23 times more likely to be imprisoned than non-Indigenous children, women 21 times, and adults 15 times. Aboriginal people's interactions with police are disproportionately high compared to non-Aboriginal people, they are disproportionately fined, and do not benefit from the level of criminal justice diversions that non-Aboriginal people do.

Top-down policy interventions and programmatic approaches developed by agencies without regard to or input from communities for whom the interventions are intended are not working – as repeatedly evidenced in the poor Closing the Gap outcomes.

The current punitive approach to criminal justice does not address the underlying drivers of criminal justice interactions, offending and incarceration— intergenerational trauma, discrimination, punitive policing practices and fines that disproportionately impact on Aboriginal people, poverty and inadequate access to culturally safe essential services like housing, health and education.

A community-led justice reinvestment framework puts community expertise and lived experience at the centre of approaches to address these drivers. Using lived experience and access to data, communities can determine which drivers are causing the most harm and how they would like to see change in policy and practices. Community ownership of the problems and solutions leads to greater engagement in skills development, education, economic participation and well-being – all of which are well-known protective factors that when implemented in culturally safe ways will contribute to lowered interactions with the criminal justice system.

In this submission we:

- Highlight previous reports and inquiries that have set out recommendations for addressing the over-incarceration of Aboriginal people but have not been implemented
- Set out some of the key drivers of contact with the criminal justice system
- Discuss the need for government to lead a shift away from harmful and punitive narratives towards a more informed public discussion on criminal justice
- Present community-led justice reinvestment as a framework for addressing the complex and multifaceted drivers of contact with the criminal justice system
- Outline the approach taken by the Bourke community through Maranguka
- Summarise some of the exploratory work and findings through our justice reinvestment work in Moree and Mt Druitt.

We also include insights of Aboriginal people including young people we work with, many of whom can speak to the harms, from their direct experience, of policing and custody.

## PART 1 – Voices for change: the quantitative & qualitative story

### 1.1. The disproportionate impact of increased incarceration on Aboriginal people

***“Too many young people are getting caught up in the criminal justice system. Being locked up just makes things worse. People aren’t being given the chance to build a future.”***

- Taleigha Glover, Just Reinvest NSW Youth Ambassador

Over the past 20 years, the adult prison population in NSW has grown by 48%, from 148 to 219 prisoners per 100,000 adult population.<sup>1</sup> Notably, there was a spike in 2012 following reforms to the *Bail Act 2013*.<sup>2</sup> This increase in incarceration is not linked to an increase in offending. Rather, NSW has experienced ‘significant falls across most major crime categories’ since 2001.<sup>3</sup>

Within this growing prison population, Aboriginal people have been disproportionately negatively impacted. Between 2001 and 2015, the number of Aboriginal people imprisoned in NSW more than doubled. The rate of imprisonment for Aboriginal people rose by 40% compared with an increase of 10% for non-Indigenous people.<sup>4</sup>

Despite making up less than 3% of the overall population in NSW, Aboriginal people currently constitute 25.6% of the adult prison population.<sup>5</sup> This overrepresentation is even more stark for Aboriginal women, children and people with disabilities. Aboriginal women comprise 32.6% of the female adult prison population. Aboriginal children and young people comprise 41.9% of the total number in youth justice centres in NSW.<sup>6</sup>

Aboriginal people with cognitive disabilities and mental health disorders are also overrepresented in the criminal justice system.<sup>7</sup> While precise statistics are difficult to obtain – due to a lack of access to professionals for diagnosis, and the frequency of misdiagnosis and under-diagnosis – research demonstrates that a higher proportion of Aboriginal people in custody have mental health disorders and cognitive disabilities compared to non-Indigenous people.<sup>8</sup> We also know that young people entering custody present with high rates of disability, often times undiagnosed and not treated.<sup>9</sup>

While the number of Aboriginal people imprisoned in NSW more than doubled between 2001 and 2015, the same period saw a decrease in rates of Aboriginal people’s involvement in violent and property crime.<sup>10</sup> Over the last 15 years, the rate of arrest of Aboriginal people for violent offences decreased by nearly 36.8%, while the rate of arrest of Aboriginal people for property crime decreased by 32%.<sup>11</sup>

## 1.2. The costs of incarceration

### *Economic costs*

The direct costs of incarceration in NSW are currently \$263 per day for an adult<sup>12</sup> and \$1414 per day for a child or young person.<sup>13</sup> These figures do not include the costs of building new prisons. In 2016, the NSW Government allocated \$3.8 billion to accommodate for the anticipated surge in the prison population. The ‘centrepiece’ of this investment is a new prison, based in Grafton, NSW, which opened in June 2020 at a cost of \$700 million.<sup>14</sup>

The indirect economic costs of incarceration are also substantial. They include loss of productive output, reduced employability and skills deterioration.<sup>15</sup>

***“Justice reinvestment is a heaps better way to deal with the number of our people in jail and juvie. If the money that was spent on keeping my family apart was spent on helping us out I know that the first 18 years of my life and all of my siblings lives would have been much easier.”***

- Just Reinvest NSW Youth Ambassador

### *Social costs*

Research demonstrates causative links between imprisonment and increased recidivism, with studies indicating that any period of detention has a criminogenic effect;<sup>16</sup> damage to mental health; difficulty reintegrating into community; disconnection from community and family;<sup>17</sup> reduced access to accommodation; and social exclusion.<sup>18</sup>

There is a significant body of research demonstrating the link between imprisonment and reoffending.<sup>19</sup> Those who spend time in custody are more likely to offend than those who are never detained, largely because detention necessitates socialisation and identification with other offenders.<sup>20</sup> There is also evidence that long term contact with the criminal justice system engenders a criminogenic effect due to the combined effects of stigmatisation and disruption to everyday life.<sup>21</sup>

Incarceration removes people from their communities, families and schools, depriving them of support networks vital to their wellbeing and development.

***“Nothing improves by locking up kids. When you do, you take us away from everything – our family, our culture, our country. And you are spending \$1414 a day per kid. Imagine what that could do for us if it was spent putting the right supports in place.”***

- Isaiah Sines and Terleaha Williams, Just Reinvest NSW Youth Ambassadors

### 1.3. Policy and legislative reforms: numerous recommendations yet to be implemented

#### *Recommendations of the Royal Commission into Aboriginal Deaths in Custody ('RCIADIC')*

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) took place almost 30 years ago however numerous recommendations are yet to be implemented. While a review into the RCIADIC by Deloitte Access Economics (released in October 2018) reported that 78% of the 339 recommendations had either been 'fully' or 'mostly' implemented across all levels of government,<sup>22</sup> the veracity of those findings was challenged in a joint response from a number of leading academics at the Centre for Aboriginal Economic Policy Research, Australian National University (ANU) (and endorsed by 33 individuals across 12 academic institutions).<sup>23</sup>

The authors of the joint response raised concerns that the Deloitte review had *'the potential to misinform policy and practice responses to Aboriginal deaths in custody'*, both generally and across the spectrum of policy areas considered by the RCIADIC. The authors pointed out that since RCIADIC, the rate of deaths in custody has increased. There were 105 Aboriginal deaths in custody between 1980 and 1989, at a rate of 10.5 deaths per year. Since then, there have been 409 deaths in custody, at a rate of 15.1 deaths per year.<sup>24</sup>

The joint response highlights that very few of the RCIADIC recommendations have in fact been implemented. The Deloitte review was limited in its scope, considering only actions taken to respond to each recommendation, rather than whether the intended outcome from each recommendation had been achieved, or whether the government had achieved any of the outcomes envisioned by the RCIADIC. Deloitte's methodology relied on summaries of government actions which were only analysed from either a desktop review of earlier reports, or reports directly provided by government agencies. The review relied wholly on government responses, and it appeared that no Aboriginal organisations or communities were consulted during the review.<sup>25</sup>

As the authors noted, the scope and methodology of the review

*"enables government to hide behind the veneer of simply having introduced policies and programs which they claim have addressed RCIADIC recommendations, rather than come to terms with the real-world impacts of these policies or programs, or their overall approach to Indigenous Affairs and Indigenous people in the criminal justice system".<sup>26</sup>*

#### *Inquiries since RCIADIC*

Since RCIADIC, numerous inquiries have considered the drivers of the over-incarceration of Aboriginal people. Aboriginal leaders, organisations and community members have continuously given their time and expertise, producing hundreds of submissions, giving countless testimonies, and making

numerous recommendations. An audit of those inquiry reports would undoubtedly demonstrate a failure to implement most of those recommendations.

To demonstrate the extent of existing recommendations on policy and legislative reforms to address the drivers of over-incarceration for Aboriginal people, Just Reinvest NSW undertook a basic analysis of a total of 799 recommendations from the following nine inquiries undertaken by government or commissioned by government:

<b>Inquiry/Report</b>	<b>Jurisdiction</b>	<b>Type of Inquiry</b>	<b>Final Report Date</b>	<b>Number of recommendations</b>
<u>Royal Commission into Aboriginal Deaths in Custody</u>	Cth	Government	Apr-91	332
<u>Noetic Review of NSW Juvenile Justice System</u>	NSW	Government-commissioned	Apr-10	77
<u>Inquiry into the High Level of Involvement of Indigenous Juveniles and Young Adults in the Criminal Justice System</u>	Cth	Government	Jun-11	40
<u>Value of a justice reinvestment approach to criminal justice in Australia</u>	Cth	Government	Jun-13	9
<u>Inquiry into the adequacy of youth diversionary programs in New South Wales</u>	NSW	Government	Sep-18	60
<u>The provision of drug rehabilitation services in regional, rural and remote New South Wales</u>	NSW	Government	Aug-18	12
<u>Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples</u>	Cth	Government-commissioned	Dec-17	35
<u>Special Commission of Inquiry into the Drug 'Ice'</u>	NSW	Government	Jan-20	109
<u>Family is culture - Independent review of Aboriginal children and young people in OOHC</u>	NSW	Government-commissioned	Oct-19	125
<b>Total</b>				<b>799</b>

The reports resulting from the above nine inquiries included:

- 165 recommendations for reforms to the out of home care system
- 121 recommendations for reforms to policing practices and procedures
- 77 recommendations for improving conditions within prisons and youth justice centres
- 53 recommendations for mechanisms to increase transparency and accountability in government decision making and processes
- 45 recommendations for increased investment and access to early intervention and prevention
- 41 recommendations for improved access to data and evidence-informed decision making
- 39 recommendations for increased investment and access to diversionary options

- 25 recommendations for increased investment and access to rehabilitation and mental health support
- 24 recommendations for reforms to the bail system
- 19 recommendations for reforms to parole and increased pre and post release support
- 16 recommendations for reforms related to sentencing and the judicial process
- 13 recommendations for addressing the disproportionate impact of fines.

*(Just Reinvest NSW can provide the Select Committee with the data we have collated upon request).*

### *Recommendations for justice reinvestment*

Justice reinvestment has been recommended multiple times over the past decade: firstly in the Aboriginal and Torres Strait Islander Social Justice Commissioner’s *Social Justice Report 2009*,<sup>27</sup> then the *Noetic Review of the NSW Juvenile Justice System* in 2010,<sup>28</sup> the Senate Standing Committee on Legal and Constitutional Affairs, *Value of a justice reinvestment approach to criminal justice in Australia*, 2013<sup>29</sup>, and most recently in the report of the *Special Commission of Inquiry into crystal Methamphetamine and other amphetamine-type stimulants*.<sup>30</sup>

In its 2018 report, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, the Australian Law Reform Commission recommended that Commonwealth, state and territory governments provide support for justice reinvestment sites and for the establishment of an independent justice reinvestment body. Both the Australian Government and the NSW Government have failed to respond to this report.

***“We have long championed community-led justice reinvestment as the key to addressing the over-incarceration of First Nations people.”***

- Prof Tom Calma AO, Champion of Just Reinvest NSW and Mick Gooda, Former Aboriginal and Torres Strait Islander Social Justice Commissioner and Co-Chair of Just Reinvest NSW

**Recommendation 1: That the Select Committee examine the NSW Government’s implementation of previous inquiry recommendations as part of the current inquiry.**



## 1.4. Key principles for reform

Reforms aimed at reducing contact with the criminal justice system must be underpinned by the following principles endorsed by the National Aboriginal and Torres Strait Islander Legal Services (NATSILS):

- *Aboriginal and Torres Strait Islander communities, their organisations and representative bodies must be directly involved in decision-making about matters that affect Aboriginal and Torres Strait Islander peoples*
- *Aboriginal and Torres Strait Islander community controlled organisations are the preferred provider of culturally safe services and supports that understand and are, therefore, responsive to the particular needs and requirements of Aboriginal and Torres Strait Islander peoples*
- *Aboriginal and Torres Strait Islander community controlled organisations, including legal services, must receive adequate levels of funding to have the capacity to respond to community needs and demand*
- *More flexible funding models should be established to enable Aboriginal and Torres Strait Islander community controlled organisations to deliver holistic wrap around services that are responsive to community needs and to ensure the collaboration of unique expertise across sectors; and*
- *Governments must shift away from punitive and law enforcement focused approaches, and towards approaches that prioritise prevention, early intervention and diversion from the criminal justice system.*<sup>31</sup>

## PART 2 – Understanding the conditions holding the problem in place

### 2.1. Drivers of incarceration

The over-representation of Aboriginal peoples in the justice system is the result of the culmination of key drivers and causal pathways. These drivers are multidimensional and interlinked, founded within the pervasive and structured disempowerment of Aboriginal peoples and communities.

<p><b>Intergenerational disadvantage &amp; poverty</b></p> <ul style="list-style-type: none"> <li>Material poverty, or limited access to basic social needs and services (e.g. education, healthcare, employment, housing and internet access) can all lead to increased rates of incarceration.<sup>32</sup></li> <li>43.2% of Aboriginal or Torres Strait Islander people are living in a household in the most disadvantaged IHAD (Index of Household Advantage and Disadvantage) quartile compared to 17.4% of non-Indigenous people.<sup>33</sup></li> </ul>	<p><b>Homelessness &amp; inadequate housing</b></p> <ul style="list-style-type: none"> <li>Homelessness, inadequate housing and over-crowded housing, are part of the broader social and economic disadvantage which have the potential to contribute to higher rates of Aboriginal and Torres Strait Islander people in incarceration.<sup>34</sup></li> </ul>	<p><b>Poor health &amp; intergenerational trauma</b></p> <ul style="list-style-type: none"> <li>In 2015, the Australian Medical Association noted the connection between health issues experienced by Aboriginal and Torres Strait Islander peoples—including poor mental health, physical disability, cognitive disability and substance abuse—and high incarceration rates.<sup>35</sup></li> <li>The effects of the history of colonisation and dispossession on Aboriginal and Torres Strait Islander communities and individuals cannot be ignored.<sup>36</sup></li> </ul>
<p><b>Unemployment</b></p> <ul style="list-style-type: none"> <li>Unemployment is a well-known indicator of disadvantage and imprisonment.<sup>37</sup></li> <li>Studies tracking the behaviour of individuals over time have found a strong relationship between unemployment and crime, particularly for offenders from low socio-economic status backgrounds.<sup>38</sup></li> </ul>	<p><b>Drivers &amp; causal pathways of Aboriginal incarceration</b></p>	<p><b>Low education</b></p> <ul style="list-style-type: none"> <li>Lack of educational access and attainment has been identified as a strong multiplier of disadvantage. Research demonstrates a close relationship between poor school performance, early school leaving and self-reported/officially recorded involvement in crime and imprisonment.<sup>39</sup></li> </ul>
<p><b>Drug &amp; alcohol abuse</b></p> <ul style="list-style-type: none"> <li>research on the relationship between substance abuse and crime is overwhelmingly supportive of the hypothesis that drug and alcohol abuse increase the risk of involvement in crime. Illicit drug dependence increases the rate of involvement in crime, at least in part because of the high costs associated with funding illicit drug dependence.<sup>40</sup></li> </ul>	<p><b>Disability</b></p> <ul style="list-style-type: none"> <li>Aboriginal people are 1.7 times as likely to be living with a disability than non-Indigenous Australians.<sup>41</sup> In Dec 2019, almost 4 in 10 (38%) Indigenous people reported they had a disability.<sup>42</sup></li> <li>Individuals with cognitive impairment (e.g. intellectual disability, acquired brain injury) are at greater risk of entering the criminal justice system.<sup>43</sup></li> </ul>	<p><b>Family and domestic violence</b></p> <ul style="list-style-type: none"> <li>Domestic and family violence has been identified as a key driver of incarceration of Aboriginal people in multiple studies and reports.<sup>44</sup></li> <li>Indigenous women in custody have often experienced long histories of abuse and been victims of child sexual assault and family violence.<sup>45</sup></li> </ul>
<p><b>Child protection &amp; out of home care system</b></p> <ul style="list-style-type: none"> <li>Contact with the child protection system and the youth justice system are both risk factors for adult incarceration. Aboriginal and Torres Strait Islander peoples are disproportionately represented in both systems, as well as in the crossover between the two.<sup>46</sup></li> </ul>	<p><b>Early contact with the juvenile justice system</b></p> <ul style="list-style-type: none"> <li>Contact with the juvenile justice system is a strong predictor of incarceration as an adult.<sup>47</sup></li> <li>Between the ages of 10 and 12, the proportion of Aboriginal children making their first contact with the criminal justice system is between 30 and 56 times higher than that of non-Indigenous Australians.<sup>48</sup></li> </ul>	<p><b>Systemic racism &amp; discrimination within the justice system</b></p> <ul style="list-style-type: none"> <li>Previous contact with the criminal justice system.</li> <li>Over-policing &amp; experiences of police discrimination.</li> <li>Barriers to accessing justice &amp; legal services.</li> <li>Refusal of bail, strict bail conditions and stringent enforcement of bail conditions impact incarceration rates of Aboriginal and Torres Strait Islanders.<sup>49</sup></li> </ul>

***“Young people tell us that every time they see police they feel the same way; it is a physical feeling, a sick feeling in your stomach. Whether we've done anything wrong or not, they still target you and your family. They will pull you over and people looking on will think you've done something wrong. It is constant anxiety, a constant feeling of fight or flight.”***

- Isaiah Sines and Terleaha Williams, Just Reinvest NSW Youth Ambassadors

Programmatic responses which operate at the fringes of each of these separate drivers of incarceration have failed to achieve substantive progress, despite significant financial and policy investment. Systems change, which mandates enduring shifts in power and resources from government and service providers to the local Aboriginal community must be urgently resourced and pursued as the pathway to self-determination.

A justice reinvestment framework provides the mechanism for place-based, data driven, community-led and fiscally sustainable change at a systems level to address the drivers and causal pathways, improve life outcomes and reduce incarceration. Government must commit to the paradigm shift necessary to turn the tide on Aboriginal incarceration, as enablers of self-determination through shifts in power and resources to communities.

## 2.2. The need for leadership that is responsive to informed public opinion

The growth of incarceration rates is inextricably linked to the legislative and policy changes implemented over time under ‘tough on crime’ policies.<sup>50</sup> A reframing of public discourse and understanding of the justice system and its connection to social outcomes and public safety must be a corollary of a shift from punitive to supportive responses to offending. The authority and legitimacy of the justice system should be derived from the support of an informed community. Whilst government plays a key role in the education of the public on effective justice, equally important is the role of government in critically engaging with public opinion on justice system reforms including through appropriate research models.

There is a perception amongst some policymakers that a significant obstacle to the criminal justice reform agenda is perceived public opinion, specifically a “tough on crime” bias<sup>51</sup>, reinforced through the media.<sup>52</sup> Research suggests that policymakers are reluctant to change their views on non-incarceration options, including justice reinvestment, despite evidence showing public support for these models.<sup>53</sup> This in part appears to be reflective of opinion polling approaches to discussions of crime and justice policy in the public sphere which have been criticised as being ‘overly simplistic and reductionist’<sup>54</sup> soliciting punitive ‘tough on crime’ opinions which do not accurately reflect public opinion.<sup>55</sup> In contrast, a 2014 citizens jury study conducted into public opinion on alternatives to imprisonment indicated that all surveyed participants said that they supported investment in programs that target the ‘social and economic factors which drive high rates of Aboriginal and Torres Strait Islander incarceration’.<sup>56</sup> All participants believed that the increasing investment in prisons and corrective services is problematic and ineffective in reducing crime or rehabilitating offenders.<sup>57</sup> This

outcome is consistent with the 2019 study conducted by the Australia Institute in the ACT, indicating that 88% of surveyed participants indicated 'total support' for greater spending on programs to reduce youth crime and incarceration consistent with ACT's model of justice reinvestment.<sup>58</sup>

On the basis of deliberative research and recent polling, it appears that the views of a critically informed community are already generally aligned with the central tenets of a justice reinvestment framework, in contrast to more punitive responses. This demonstrates both the value of a more sophisticated approach to 'opinion polling' and a more educative and participatory process involving the public in the reform agenda. Sensationalised and inaccurate public discourse which often accompanies a 'tough on crime' agenda continues to feed public misconceptions and remains a challenge to widespread, necessary reform.

It is the responsibility of government to address public misconceptions on crime, prisons and public safety, including on matters specific to Aboriginal peoples. Many people appear to have misconceptions about Aboriginal and Torres Strait Islander peoples and communities.<sup>59</sup> When public views are informed by false 'assumptions, fears, and stereotypes', survey outcomes and attitudes towards offenders will inevitably be inaccurate. Government has the responsibility to lead accurate, informed public discourse on the justice system, including its impact on Aboriginal peoples, to ensure that community opinions are critically informed<sup>60</sup> and that the development of the policy agenda is broadly reflective of informed public debate.

Far from being a 'soft on crime' option, justice reinvestment offers a new public discourse based on a demonstration of better justice outcomes, including community safety, being achieved for less money and with improved broader social outcomes across the life course.

## PART 3 – Community-led systems change through justice reinvestment: an opportunity for the NSW Government

### 3.1. What is justice reinvestment?

***“Justice reinvestment provides opportunities for communities to take back local control... to not only take some ownership of the problem but also to own the solutions”.***

- Mick Gooda, Former Aboriginal and Torres Strait Islander Social Justice Commissioner and Co-Chair of Just Reinvest NSW

Justice reinvestment is a way of working that is led by the community, informed by data and builds strategies to address issues at a local level. The aim is to redirect funding away from the criminal justice system and prisons and into communities that have high rates of contact with the criminal justice system, through both community-led initiatives and state-wide policy and legislative reform.

Justice reinvestment is not a ‘program’. It is an evolving process that improves service collaboration to build stronger communities. It recognises the power in placing communities in the driver’s seat to identify problems and lead solutions to reduce the number of Aboriginal people coming into contact with the criminal justice system. This includes addressing the socio-economic drivers behind interactions with the criminal justice and child protection systems, as well as finding impactful ‘circuit breakers’ that disrupt known pathways to prison and reduce the number of people imprisoned for minor offences.

NSW and Australia are at the cutting edge of community-led justice reinvestment. Justice reinvestment initiatives are self-determination in action. Aboriginal communities take the lead on data-informed solutions to challenges in their local area, aiming to drive down interactions with the criminal justice system that may lead to incarceration and create other positive economic and social impacts.

The below graphic sets out Just Reinvest NSW’s phased approach to supporting community-led justice reinvestment.



### 3.2. How is justice reinvestment aligned with government policy priorities and approaches?

#### *Closing the Gap*

There is strong alignment between the justice reinvestment framework and the new *Closing the Gap* (CTG) priority reforms which include a shift to shared decision-making, building the community-controlled sector and shared access to data at a regional level. A new justice target in CTG provides government with an opportunity to rethink how better justice outcomes may be achieved. The justice target sits alongside other socio-economic indices that are drivers into the criminal justice system, again providing clear alignment with the justice reinvestment approach in NSW communities which includes a strong focus on early childhood, education, family violence and working with families to support their kids and prevent interactions with the out of home care system.

#### *Local Decision Making*

A justice reinvestment framework is also strongly aligned with the Local Decision Making (LDM) approach of the NSW Department of Aboriginal Affairs (AA). While LDM is operating in parts of NSW covering substantial geographic regions and by aligning government and service providers in priority areas, community-led justice reinvestment is working in a more localised approach where Aboriginal community members are at the strategy-setting and decision-making tables with a clear focus on justice outcomes. The approaches are complementary and we are currently working with AA and LDM to amplify the opportunities for community-led change.

The NSW Government is currently considering a funding proposal for community-led justice reinvestment in the upcoming Budget. A business case has been prepared by the Department of Communities and Justice.

**Recommendation 2: That the Select Committee express their support to the NSW Government for the provision of funding for community-led justice reinvestment in the upcoming Budget.**

### 3.3. Working towards *reinvestment*

While the end goal is a shift in resources out of prisons and the criminal justice system into communities, a number of shifts in the way resources are directed and deployed can occur incrementally.

At a broad level, the *reinvestment* in community-led justice reinvestment is:

- A smarter way to fund ‘justice’ by taking a preventative and early intervention approach rather than a punitive one.
- Moving from crisis to prevention, shifting the focus upstream to prevent future problems.
- Supporting self-determination by providing flexible long-term funding for community-led change initiatives that are collaborative, place-based and data-driven.

For communities, justice reinvestment is an opportunity to reset their relationship with the justice system, with service providers and with governments. Through a reinvestment approach, community members bring their expertise and experience to bear on local challenges, determining outcomes and appropriate strategies to take the community agenda forward.

For service providers and governments, justice reinvestment is an opportunity to genuinely support communities to drive down incarceration rates through targeted early intervention and community-led prevention strategies. By creating space for community leadership, governments, service providers, philanthropists and other organisations play a key role in helping to create strong, inclusive and resilient communities.

### 3.4. A framework for reinvestment

A reinvestment framework has five levels.

1. **The community provides leadership and expertise:** An initial commitment to community-level agency, control and decision-making ensures a focus on local solutions to local problems – including the identification of justice ‘circuit breakers’ (refer to 3 section 3.6).
2. **External individuals and organisations provide support:** By resourcing a backbone team, community leadership and core operations, support organisations such as governments, philanthropists and service providers amplify community voices and enable cross-sector partnerships and collaboration.
3. **The community determines a plan for change:** early hard work and relationship building results in community-defined outcomes, targets and principles – a strategy for change over which the community has ownership and which becomes the foundation of a monitoring, evaluation and learning framework.

4. **The partners develop a joint-accountability framework:** Accountability works two-ways. Local leaders need to continually ensure community members are engaged in the collaboration, community building and decision-making. Governments, service providers and other partners must deliver on community defined outcomes, enable collaboration and provide access to data and information the community needs.
5. **Ongoing reinvestment builds stronger communities:** Over time, the shift of resources and decision-making to the community level encourages governments and service providers to work differently, around a strengths-based community agenda. In the long term, resources that were previously dedicated to punitive and carceral solutions are redirected and reinvested into community resilience and capacity building.

### 3.5. Developing models for place-based reinvestment

Because communities are taking the lead in establishing justice reinvestment initiatives, a proportion of savings that communities generate for government as a result of better outcomes should be returned to these communities. At the same time, each justice reinvestment initiative is unique to the community implementing it, so there will be a number of ways to shift the focus from punitive criminal justice practices to community-led prevention, or to determine fiscal return for government, community or philanthropic investors.

The proportion of savings that is redirected to communities – for example to maintain community-led operations and invest in new initiatives – could be agreed in contracts or ‘deals’ between funders and communities and based, for example, on a percentage or via a cap on investor return.

Upfront funding for communities is needed to first establish and then continue the core functions of a justice reinvestment initiative. Monitoring and evaluation over time would establish impact on the justice system and broader economy. If agreed outcomes are achieved an amount could be available as pooled funding to be directed as determined by the community.

Maranguka in Bourke (outlined below) began with philanthropic funding, with a view to working with government to use what was learned to develop a long-term funding model. Maranguka has since secured five years of Commonwealth and State Government funding. This new and direct funding to a place-based backbone team is a form of reinvestment.

Just Reinvest NSW is working with economists, lawyers, accountants, academics, philanthropists and the NSW Government to explore what long-term reinvestment models could work in NSW.



### 3.6. Maranguka: community-led change in Bourke

*“Too many of my community were being locked up. Kids were being taken away. Families were being shattered, again and again. We decided that a new way of thinking and doing things needed to be developed that helped our children.”*

- Alistair Ferguson, Executive Director, Maranguka

In 2013, Maranguka – the first Aboriginal-led place-based model of justice reinvestment was established in Bourke through a collaboration led by the Bourke Tribal Council, and supported by Just Reinvest NSW.

Maranguka developed a collaborative framework to change the way services were provided by government and non-government organisations, working towards the community developed long-term strategy: *Growing Our Kids Up Safe, Smart, Strong*.<sup>61</sup> The Maranguka Community Hub complements existing services, providing better pathways and supports for the Aboriginal community.

A KPMG Impact Assessment of Maranguka estimated that the changes in Bourke in 2017 achieved outcomes in areas such as **family strength** (including a 23% reduction in police recorded rates of domestic violence) **youth development** (including a 31% increase in Year 12 retention) and **adult empowerment** (including a 42% reduction in days spent in custody). The same report calculated that this saved the NSW economy \$3.1 million through the impact of the justice system and broader local economy—five times Maranguka’s operating costs in the same year.<sup>62</sup>

#### **Maranguka Daily Check-ins: An example of community-led collaboration**

Daily 9:30am meetings between Maranguka, Bourke Police, and various frontline services identify people requiring immediate support. Attendees discuss issues from the previous 24 hours including domestic violence incidents, suspensions, children out on the street late, ROSH reports, youth crime, etc. Responses are immediate, and action updates are provided the following day. This process has created a culture of action, accountability and a connected and informed response to issues. It also breaks down silos through information sharing that in turn means community members receive the most appropriate response to issues that arise.

*“[Police] have more ability to connect services to people who need them, rather than arresting people who have underlying issues.”* - Andrew Hurst, Superintendent - District Commander  
Central North Police District, NSW Police Force

### 3.7. Community-led justice reinvestment in other NSW sites

Following the positive outcomes as a result of community-led justice reinvestment in Bourke, Just Reinvest NSW has been approached by communities across NSW (and Australia) who want to explore whether a justice reinvestment approach is right for them. We received a small grant from the (then) Department of Justice that has allowed us to create a Community Justice Reinvestment Toolkit, and to explore readiness in two new sites: Moree and Mt Druitt. We have employed local Aboriginal community engagement officers in each site. This section sets out some of the work and circuit breakers in Moree and Mt Druitt.

#### *Moree*

Our work in Moree is building momentum. Community meetings are currently focusing on building community leadership and Aboriginal community governance to support the justice reinvestment work going forward. The community are also focusing on the priority areas of education engagement and supporting families to support kids. There is also a big focus on data and putting data in the hands of the community to facilitate change. Service sector reform is a key focus in Moree: the community want to move away from failed “off the shelf” programs, and instead take the lead in designing approaches more appropriate to community need and aspirations.

We are also exploring mechanisms to help communities, government and funders to work together to help alleviate blockages and authorise the emerging community-led solutions. Options include developing cross-sector leadership group forums as is in place in Bourke, or to work with or alongside emerging LDM regional leadership forums.

The **Education Engagement Working Group** is looking at both local and peak level engagement between students, families and the Department, working alongside the local Aboriginal Education Consultative Committee (AECG) and Student Councils/Committees. The community are activated to lower the unacceptably high and disproportionate rates of Aboriginal students being suspended from schools and to address the worrying trend of diverting kids into distance education, or unregulated and unaccountable alternatives that are not supported by the Aboriginal community. A Moree “Education Summit” is being discussed.

The **Supporting Families to Support Kids Working Group** is exploring a “Moree way” to support families who are doing it tough. As with the Education Working group, the focus is to ensure young people and their families are better supported through locally led and designed approaches - rather than being subject to top-down programs that have not been designed with community.

The **Data Working Group** is exploring the Indigenous Data Sovereignty principles under which Moree will collect, distribute, collate and store data that will inform Moree’s strategy for change. We are currently meeting over zoom with subject matter experts from the Moree Aboriginal community to detail the data asks that will shortly be put to government to inform the community strategy for change.

## *Mt Druitt*

From our engagement work with community and ACCOs, including the Elders at Baabayn Aboriginal Corporation, it is clear that the focus in Mt Druitt is for young people to lead the work and set the agenda for change. Accordingly, our work in Mt Druitt continues to focus on bringing the voices, expertise and aspirations of young people to the forefront to direct change. We are working closely with our Mt Druitt Just Reinvest NSW Youth Ambassadors in this work.

**A focus on policing.** The Mt Druitt community have stated a clear priority on improving Police and community relations, especially around policing practices involving young Aboriginal people. This includes lowering negative interactions with Police and addressing police enforcement practices and issuing fines: Mt Druitt is the highest ranking postcode for fines debt in NSW. **Indigenous data sovereignty** principles and practices are also being explored in Mt Druitt.

## *Circuit breakers in Moree and Mt Druitt*

We have commenced a number of 'circuit breakers' in collaboration with some of our legal, corporate, philanthropic and government partners aimed at reducing contact with the criminal justice system. These quick impact initiatives are aimed at reducing contact with the criminal justice system and engaging community.

These include:

**Bail project:** with funding secured from Herbert Smith Freehills, we will work with the ALS and local Police in Mt Druitt and Moree to encourage practices to divert young people away from police charges and bail refusals early in the criminal justice process, and to encourage less onerous bail conditions and better supported non-criminal justice responses in policing practices.

**TAFE and WDOs:** we are exploring place-based approaches to increase access to and engagement with TAFE in Moree and Mt Druitt (and Bourke) while making it easier to do a Work & Development Order (WDO) to work off fines which are a known pathway to driving offences. We are partnering with TAFE, Legal Aid NSW, Revenue NSW and our local justice reinvestment teams.

**COVID and the digital divide: access to data, devices and dongles:** we conducted a small survey of young Aboriginal people in Bourke, Moree and Mt Druitt about what IT they needed to stay connected and maintain engagement in education during lockdown. The data exposed the impact of the digital divide. We are currently exploring partnerships with law firms, corporate supporters and IT companies to access data and devices, but also opportunities to develop longer term sustainable IT partnerships. To date, DELL with King, Wood and Mallesons have partnered with us to provide 100 laptops for Moree, and IAG have provided a small number of laptops for Mt Druitt.

**Mounty Yarns:** is a Mt Druitt based youth-led project that will gather stories, expertise and knowledge by and from Aboriginal young people with lived experience of the criminal justice system

and mental health challenges. These stories will form a resource that will reflect the experiences, strengths and resilience of young people living in Mt Druitt. Young people will then be supported to advocate with this resource, which will also have ideas and suggestions for community, services, businesses and governments around how to best partner with Aboriginal young people to meet their needs.

***A learner driver licence mentor program (LDMP) for Aboriginal people in Mt Druitt:*** funding has been approved to run a LDMP in partnership with Kimberwalli, IAG, Red Cross and NRMA. Barriers to licensing will be addressed through assistance with the Driver Knowledge Test, getting identity documents and free lessons. Participants will be able to work off fines through a WDO. Births, Deaths & Marriages and Revenue NSW have come on as partners with financial and in-kind support.

***Referrals from the Youth Koori Court project:*** with various partners to refer every Youth Koori Court user to Sydney Children's Hospital Network's (SCHN) clinic for adolescent AOD services for FASD assessment, treatment and establishment of appropriate and supported long term NDIS plan. Based in Western Sydney, we are partnering with Gilbert + Tobin, ALS, Youth Koori Court, Justice Health, Children's Court Support and SCHN.

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<sup>3</sup> Lily Trimboli, 'NSW Trends in the Age-Specific Rates of Offending, 1995-2018', NSW BOCSAR Bureau Brief, October 2019, Issue paper no. 143, 1.

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<sup>7</sup> Ruth McCausland, Elizabeth McEntyre, and Eileen Baldry, 'Indigenous People, Mental Health, Cognitive Disability and the Criminal Justice System,' Indigenous Justice Clearinghouse, 1.

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<sup>11</sup> *Ibid*.

<sup>12</sup> Productivity Commission, 2020, Report on Government Services 2020, table 8A.19 <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/justice/corrective-services>.

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