

Chapter 7

Alternatives to imprisonment

Introduction

7.1 Submissions to the inquiry argued that traditional punitive responses to law and order are not working.¹ Despite the enormous cost of imprisonment both economically and socially, evidence suggests that incarceration does not have a positive impact on crime rates.² This is particularly the case for Indigenous Australians, as demonstrated by the fact that in 2014, 77% of Indigenous Australians in custody were recidivist.³ There is a need, therefore, to consider more effective solutions to addressing Indigenous imprisonment rates. In this chapter, the committee discusses the merits of prevention, early intervention, diversionary programs and justice reinvestment.

Prevention

7.2 Recognising that socioeconomic factors play a critical role in whether a person commits a crime, prevention is about working with communities to address the underlying factors which cause crime. This involves engaging those who are showing signs of antisocial behaviour with preventative programs.⁴

7.3 Ms Andrea Smith, Strategy and Communications Officer from the Western Australia Aboriginal Family Law Service, described the importance of engaging with people before their behaviour becomes criminal:

Before people reach criminal activity, there are usually a lot of factors in their lives that lead to that behaviour. For us, they can be issues particularly around experience of domestic violence in childhood and out-of-home care as well as a result of the domestic violence that their parents may experience. Then there are some important links between those two factors and contact with or experience of offending behaviour and contact then with detention centres, leading into criminal behaviour in adult life. For us, those are important factors to prevent and avoid the need for legal assistance services later down the track. For us, it is around preventing those factors before they happen.⁵

7.4 The Hon Wayne Martin AC, Chief Justice of the Western Australian (WA) Supreme Court noted that 'an ounce of prevention is worth a pound of cure':

1 *Submission 1*, p. 10, *Submission 25*, p. 46, *Submission 39*, p. 15, *Submission 40*, p. 15, *Submission 41*, p. 27.

2 *Submission 13*, p. 20.

3 *Submission 13*, p. 21.

4 *Submission 8*, p. 10.

5 *Committee Hansard*, 4 August 2015, p. 22.

Nowhere is that more true than in the justice system. So if we can identify people at risk and communities at risk.

...

[we can focus] resources on changing the conditions that put those people in the criminal justice system...⁶

7.5 Victoria Police have identified that a disproportionate number of persons in custody are Indigenous. As a result, Victoria Police are working to prevent Indigenous incarceration. The focus is now on communication between police and Indigenous elders, engaging with the youth communities, increasing the number of Australian and Torres Strait Islander Police employees and improving internal training:

Victoria Police partners with the Grampians Regional Justice Advisory Committee as part of the annual Murray River Marathon, in which a police and a Koori youth team compete. The objective is to engage with at risk youths and create a diversion from concerning behaviour.

In Mildura and Swan Hill a Koori Youth Cautioning and Diversion Program has been developed to support the use of cautioning as an alternative to other criminal justice options for Koori youths, and to improve the experiences of initial contact between Koori youths and the police.⁷

Early Intervention

7.6 Early intervention strategies seek to identify and address the sociological contributors to criminal behaviour including a lack of community support, financial disadvantage, poor physical and mental health and low literacy rates.⁸

7.7 Ms Tammy Solonec, Indigenous Rights Manager, Amnesty International spoke about the 'SHINE' early intervention school program which targets children who are truant or disruptive at school:

When we talk about diversion, we think about that at the court stage or the police stage—so they have got into trouble and can be diverted. But with early interventions prior to that, like with the Shine program that you are talking about, if a kid is starting to truant at school and things are going badly then you want to get in right there. You want to be able to help that child right there. We think that there does need to be separate strategies for the younger children—perhaps strategies for them in how to say 'no' if they are being pressured into doing things with older children. I think we have to accept that Aboriginal kids hang around with their cousins, brothers and sisters a lot of the time. A lot of things are done in group activities.⁹

6 *Committee Hansard*, 4 August 2015, p. 38.

7 *Submission 27*, p. 5.

8 WA Parliament Community Development and Justice Standing Committee inquiry '*Making our prisons work*': An inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies (November, 2010), p. 100.

9 *Committee Hansard*, 4 August 2015, pp 6 and 9.

7.8 Professor Elizabeth Jane Elliott AM, Paediatrics and Child Health, at the University of Sydney Clinical School, discussed the Fitzroy Valley and the early intervention training programs they are working to implement. Professor Elliott and colleagues are looking at a 'positive parenting program' to assist parents with children who have disruptive behavioural issues. Leaders in the region are also looking at interventions to assist children in the classroom as well to cope with impulse control:

[T]here has been quite a lot of training and education across the professional groups during our study—police, teachers and health professionals who come in contact with his children. I think in this community we are seeing changes.¹⁰

7.9 The National Association of Community Legal Centres (NACLC) indicated that Community Legal Centres (CLCs) use a range of early intervention and preventative strategies such as:

...community legal education and community development, individual skill building, systemic advocacy and law and policy reform activities that assist individual clients, as well as disadvantaged and vulnerable groups in the community, including Aboriginal and Torres Strait Islander people.¹¹

7.10 However, NACLC commented that 2014 Commonwealth funding agreements will now include clauses amending the definition of 'core legal services' to clarify that this does not include law reform or policy advocacy. NACLC indicated that:

...while not explicitly preventing CLCs from undertaking this work, failure to provide Commonwealth funding for these activities has had and will continue to have an impact on the ability of CLCs to engage in this work, to the detriment of the most vulnerable and disadvantaged members of the community, including Aboriginal and Torres Strait Islander peoples.¹²

Diversion programs

7.11 Several witnesses advocated for diversion programs to provide the judiciary with the option to divert offenders from the criminal justice system into educational programs.¹³ The aim of a diversion program is to empower the offender and provide them with the resources to stop future criminal offending.

Aboriginal controlled diversion programs

7.12 In 2006, the Western Australian Law Reform Commission (the Commission) in its *Final report on Aboriginal Customary Laws*, indicated its strong support for the development of Aboriginal-controlled diversionary programs, particularly those which were determined by a 'community justice group'. The Commission explained how it envisaged such diversionary programs would operate:

10 *Committee Hansard*, 23 September 2015, p. 4.

11 *Submission 42*, p. 8.

12 *Submission 42*, p. 9.

13 *Committee Hansard*, 4 August 2015, Ms Tammy Solonec, p. 4, Mr Chris Twomey, p. 44, WA Supreme Court Chief Justice, Wayne Martin, p. 33.

[W]here a community justice group exists, the members of the group may decide to deal with a possible breach of Western Australian criminal law. This approach would mean that there is no involvement in the criminal justice system at all...

For Aboriginal children who have committed minor offences, the Commission strongly encourages a community justice group to deal with the matter without recourse to the criminal justice system. For serious offences, such as violence or sexual assault, the Commission considers it is vital that Aboriginal people are fully informed of their rights under Australian law and supported by criminal justice agencies to report the offence and have it dealt with by the criminal justice system.¹⁴

7.13 The Commission recommended:

That the Western Australian government establish a diversionary scheme for young Aboriginal people to be referred by the police to a community justice group.¹⁵

7.14 Amnesty International Australia and the Kimberley Aboriginal Law and Culture Centre (KALACC) noted that the Commission's recommendation on Aboriginal owned or controlled diversion programs had not been implemented:

According to the Department of Corrective Services, of the programs available to the courts prior to sentencing and as part of community-based orders, "none ... is currently Aboriginal owned or controlled, however they are designed to be culturally appropriate to address the over-representation of Aboriginal young people in the criminal justice system."¹⁶

7.15 Submissions and witnesses argued for investment in Aboriginal owned and controlled justice programs. For example, Chief Justice Martin made this point:

We have to encourage Aboriginal communities to take responsibility for their members and to empower them and provide them with the resources they need to live up to that responsibility. I think that far too often we have been imposing solutions on Aboriginal communities, doing too much talking and not enough listening.¹⁷

7.16 Ms Solonec, Amnesty International, informed the committee:

14 Law Reform Commission of Western Australia, Final Report, Aboriginal Customary Laws, *The interaction of Western Australia law with Aboriginal law and culture*, September 2006, pp. 202-203.

15 Recommendation 50, p. 204. [Recommendation 17 of the WALRC's report dealt with the establishment of community justice groups.]

16 *Supplementary Submission 39*, Amnesty International Australia, *There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia*, June 2015, p. 5. See also Kimberley Aboriginal Law and Cultural Centre, *Submission 6*, p. 1.

17 *Committee Hansard*, 4 August 2015, p. 33. See also Chief Justice Wayne Martin, *Submission 1*, p. 15; *Supplementary Submission 39*, Amnesty International Australia, *There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia*, June 2015, p. 5.

We have found that Aboriginal people respond well to programs that are run by Aboriginal people, particularly when children are led by elders and able to go out to their country and connect with their culture and identity. A lot of the programs which focused on building up an Aboriginal person's identity, particularly a young person's identity, really helped steer them onto the right path so that they would not repeat offend.¹⁸

7.17 Mr Wesley Morris, Coordinator of KALACC, acknowledged that there is still a role for the criminal justice system, however:

What we need is investment in Aboriginal owned and controlled justice programs. We do not want to own the whole situation. There are some very troublesome young people who do deserve to be behind bars and who deserve to be incarcerated, and that is the role of government. But where we are talking about preventative programs and young people who have made poor life decisions there should be a community empowerment model.

As long [as] government thinks that it can solve those community issues then we will continue to have these problems.¹⁹

The Yiriman Project

7.18 The 'Yiriman Project', established in WA in 2000 is an intergenerational, cultural program, conceived and developed by Elders from four Kimberley language groups. The Yiriman Diversionary Project is an intensive cultural immersion program that focuses on the concept of returning to country:

Believing in the power of their own Culture and of Country to heal their own young people, the Elders began taking young people out on to Country, travelling over Country by foot, camel or vehicle, teaching and speaking in language, visiting ancestral sites, storytelling, engaging in traditional song and dance, preparing young people for ceremony and law practices, teaching traditional crafts, tracking, hunting, and preparing traditional bush tucker, practicing bush medicine, and passing on knowledge to the younger generations.²⁰

7.19 The Yiriman Project has carried out several diversionary programs including:

In 2009 at Fitzroy Crossing, Magistrate Bob Young bailed 15 boys to attend an intensive diversionary program run by the community Elders of the Yiriman Project, following a spike in youth offending in the community. The camp took place at Mt Pierre and Kupartiya pastoral stations in the Kimberley, was led by local Elders and involved traditional knowledge transfer, work and counseling by drug and alcohol, educational and vocational counselors over nine weeks...

18 *Committee Hansard*, 4 August 2015, p. 4.

19 *Committee Hansard*, 23 September 2015, p. 39.

20 Yiriman Project website, *Yiriman Story*, available at: www.yiriman.org.au/yiriman-story/ (accessed 29 March 2016).

A similar 10-week diversionary bush trip occurred in 2010 in partnership with Magistrate Col Roberts. It occurred at the remote community of Jilgi Bore.²¹

7.20 In its submission the Australian Human Rights Commission referenced the Children's Commissioner Megan Mitchell's comments from the Children's Rights Report 2014:

The Yiriman Project aims to 'build stories in young people' and keep them alive and healthy by reacquainting them with country.'²²

7.21 Amnesty International, quoting from the Productivity Commission's Overcoming Indigenous Disadvantage Report 2014, outlined that the Yiriman Project:

...builds young people's confidence and improves their self-worth, and is considered to have helped curb suicide, self-harm and substance abuse in the participating communities.²³

7.22 The committee was informed that the Yiriman Project's core funding does not come from justice funding, rather:

...the core funding that we receive at the moment for Yiriman comes from the Department of Social Services and from the Commonwealth Department of Health under the National Suicide Prevention Program.²⁴

7.23 Amnesty International noted the lack of funding for these types of projects:

The first camp run by the Yiriman Project was run without any funding, drawing entirely on the limited resources and in-kind contributions of KALACC staff and the Elders. The second camp run by the Yiriman Project was a one-off grant from the Federal Government. Despite repeated applications, the Yiriman Project has not secured any funding from the Department of Corrective Services to deliver programs in the youth justice space.²⁵

7.24 Mr Morris, KALACC, informed the committee that the funding future for the Yiriman Project looked more positive:

Just in the month of August, with the princely sum of \$20,000, we ran three camel walks in conjunction with the Fitzroy Crossing police. That was

21 *Supplementary Submission 39*, Amnesty International Australia, *There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia*, June 2015, p. 29.

22 *Submission 5*, p. 8.

23 *Supplementary Submission 39*, Amnesty International Australia, *There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia*, June 2015, p. 30, quoting from Productive Commission, *Overcoming Indigenous Disadvantage Report 2014*.

24 *Committee Hansard*, 23 September 2015, p. 38.

25 *Supplementary Submission 39*, Amnesty International Australia, *There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia*, June 2015, p. 30.

funded by a small \$20,000 grant from the Western Australian police service. Two weeks ago we received from the Western Australian Department of Corrective Services, through its Youth Justice Board, a draft grant agreement worth \$440,000 which will be for the years 2016 and 2017. That will enable us to scale up our youth justice offerings into the future.²⁶

The Balund-a Program

7.25 The Balund-a Program in Tabulam is known by participants as a 'wall-less prison.' The post-arrest diversionary program for adult male offenders aims to reduce recidivism by enhancing offender's skills within a cultural and supportive community environment:

Following acceptance into the program offenders participate in structured programs within a culturally sensitive framework. Programs address specific areas of risk to assist on improving life skills and reintegration into the community, for example, cognitive based programs, drug and alcohol, anger management, education and employability, domestic violence, parenting skills and living skills. Cultural activities include excursions to sacred sites, music, dance and art. Elders employed by the program provide support and assist residents to recognise, restore and value cultural links with their land and history.²⁷

7.26 Mr Adam Schreiber, Principal Manager of the Aboriginal Strategy and Policy Unit, Corrective Services New South Wales, discussed the Tabulam correctional centre, which he described as 'a last-chance opportunity before [people] enter into custody—from the courts'.²⁸ Offenders are required to engage in alcohol and other drug programs to address their offending behaviour. Mr Schreiber outlined the success of the Indigenous program:

We have a great connection with the local community, with a number of our staff having been placed in that area. We have service provision. We have an Aboriginal service and programs officer. On top of that we have 4.5 Aboriginal mentor positions made up of people from the local community and involved with the local lands council, who provide cultural advice on what we can do to assist offenders.²⁹

26 *Committee Hansard*, 23 September 2015, p. 38.

27 NSW Government Justice, *Balund-a (Tabulam)*, available at www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/Community%20Corrections/offender-management-in-the-community/balund-a_tabulam.aspx (accessed 31 March 2016).

28 *Committee Hansard*, 23 September 2015, p. 43.

29 *Committee Hansard*, 23 September 2015, p. 43-44.

Justice reinvestment

7.27 The committee received evidence contending that prisons do not reduce crime or resolve the drivers of crime and imprisonment rates are dramatically increasing.³⁰ The committee heard that justice reinvestment is an alternative to imprisonment, without compromising the safety of victims/survivors.³¹

7.28 There is no single accepted definition of the term justice reinvestment.³² However, justice reinvestment essentially refers to a policy approach to criminal justice spending, whereby funds ordinarily spent on keeping individuals in prison, are diverted to the development of programs and services that aim to address the underlying causes of criminal behaviour in communities that have high levels of incarceration.³³

7.29 Justice reinvestment has also been described as a form of preventative financing:

...through which policy makers shift funds away from dealing with problems 'downstream' (policing, prisons) and towards tackling them 'upstream' (family breakdown, poverty, mental illness, drug and alcohol dependency).³⁴

7.30 Justice reinvestment is a collaborative partnership between government and community that uses the following steps:

- Identify communities

'Justice mapping' involves conducting analysis of data and trends affecting incarceration rates in particular communities, including identification of the areas producing high numbers of prisoners and the factors driving growth in prison populations.

- Develop options to generate savings

Development of both legislative and policy based options to reverse the rates of incarceration and increase the effectiveness of spending in the criminal justice arena.

30 *Submission 24*, p. 24, *Submission 41*, p. 12, *Submission 43*, p. 3, *Supplementary Submission 39*, Amnesty International Australia, *There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia*, June 2015, p. 36.

31 *Submission 46*, p. 9.

32 See University of New South Wales, Australian Justice Reinvestment Project, *Fact sheet: Justice Reinvestment Basics*, available at <http://justicereinvestment.unsw.edu.au/node/71>, (accessed 31 March 2016); and Law Council of Australia submission to the Senate Legal and Constitutional Affairs References Committee's inquiry into the value of a justice reinvestment approach to criminal justice in Australia, *Submission 78*, p. 5.

33 Law Council of Australia submission to the Senate Legal and Constitutional Affairs References Committee's inquiry into the value of a justice reinvestment approach to criminal justice in Australia, *Submission 78*, p. 5.

34 *Submission 12*, p. 5.

- Quantify savings to reinvest

The savings from the changes are quantified and reinvested back into communities which have high incarceration rates through programs and services that address the underlying causes crime.

- Measure and evaluate impact on identified communities

All stages of the process are evaluated in order to ensure the sustainability of the reforms.³⁵

Examples of overseas justice reinvestment

7.31 Justice reinvestment was initially developed and implemented in the United States (US)³⁶ and has been introduced in various forms in the United Kingdom (UK) and New Zealand.³⁷

Justice reinvestment in the US

7.32 Over the past decade several jurisdictions in the US have been trialling justice reinvestment which:

...have realised millions of dollars of savings in corrections budgets in the USA through reduced levels of imprisonment. Some of these savings have been reinvested in capacity building and crime prevention projects in communities that produce high numbers of offenders.³⁸

7.33 Critical to the US success is the presence of a strategic body monitoring and quantifying outcomes:

In the US, an example of a justice reinvestment advisory body is The Council of State Governments Justice Centre. The Justice Centre is [a] 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.³⁹

35 University of New South Wales, Australian Justice Reinvestment Project, *Fact sheet: Justice Reinvestment Basics*, available at <http://justicereinvestment.unsw.edu.au/node/71>, (accessed 31 March 2016); and *Submission 11*, pp 9-11.

36 Australian Human Rights Commission, *Social Justice and Native Title Report 2014*, p. 103.

37 *Submission 41*, p. 24.

38 *Submission 12*, p. 6.

39 *Submission 11*, pp 11-12.

7.34 The trials have resulted in a reduction in imprisonment and re-offending rates.⁴⁰ The US experience is commonly used as an example of the positive effects of justice reinvestment. The Law Council of Australia (Law Council) reported that:

Connecticut, Georgia, Texas, Michigan, North Carolina, South Carolina, Pennsylvania, Rhode Island, Wisconsin and Colorado all implemented legislative changes to reduce the propensity for re-admission following parole violations and breaches of probation, which generated substantial cost-savings (\$50 million in Connecticut alone). That money was then reinvested in mental health and substance abuse treatment programs, community-based pilots and other evidence-based programs proven to increase the average time between release and re-offending.⁴¹

7.35 The Law Council also indicated that:

The most remarkable achievement of any US State has been in California. In 2003, the State's prison population had [soared] and a report released that year found that 70 per cent of the state's parole population returned to prison within 18 months. As a result of policies implemented between 2010 and 2013, the state's prison population fell by 2.1 per cent and parole population reduced by 63 per cent.⁴²

7.36 The Law Council noted that these apparent successes, while useful for evaluation purposes, should be viewed cautiously:

Whilst the reductions in Michigan's and Texas' prisoner population have been described by some commentators as evidence in support of justice reinvestment, other commentators have adopted a more cautious approach, noting that "true correctional savings have been difficult to document and even more problematic to capture," and that the "impact on offending or recidivism from the reinvestment of these savings into community-based crime prevention strategies will take a lot longer to emerge."⁴³

Justice reinvestment in the UK

7.37 Justice reinvestment has also been trialled in the UK in an attempt to reduce incarceration rates:

... [it] comes in part as a response to the fact that growing imprisonment rates are hugely expensive at a time of fiscal stringency, yet provide very little return in addressing high recidivism rates, and indeed may be counter

40 Law Council of Australia, *Submission 41*, p. 5. Note: In 2006 the Council of State Governments Justice Centre began promoting justice reinvestment and by 2014, 14 US States had implemented it in some form (see *Submission 41*, p. 22).

41 *Submission 41*, p. 23.

42 *Submission 41*, pp 23-24.

43 Law Council of Australia submission to the Senate Legal and Constitutional Affairs References Committee's inquiry into the value of a justice reinvestment approach to criminal justice in Australia, *Submission 78*, p. 9.

– productive and criminogenic, contributing to social breakdown and crime.⁴⁴

7.38 The Law Council, informed the committee that in the UK it was concluded that:

[T]here is a need for decentralisation of justice policy and empowerment of local government authorities or governance structures, which are better placed to identify the factors driving re-offending behaviour. For example, in areas with higher rates of homelessness, mental illness and drug problems, there is scope for increasing the rate of diversion for young offenders and reducing reliance on custodial sentencing for those who could be offered greater community-based support.⁴⁵

Justice reinvestment in NZ

7.39 The committee heard that in NZ, alternative 'justice models', such as Maori courts and family group conferencing had been in existence since the 1970s.⁴⁶ These alternative justice reinvestment models incorporate components of traditional justice and are culturally sensitive.

7.40 In 1999 NZ adopted an 'Integrated Offender Management' corrections policy which aimed for a greater involvement of Maori cultural leaders in managing recidivism. More recently:

NZ adopted a Framework for Reduction of Maori Re-offending: "The new range of targeted interventions has included the provision of new kaupapa Maori programming, where inmates are able to access and participate in aspects of Te Ao Maori: te reo [Maori] language programmes, general education in tikanga, and Maori arts such as carving and weaving."⁴⁷

7.41 NZ prisons have established 'Maori focus units,' therapeutic programs, designed to address rates of reoffending among Indigenous people.⁴⁸ The New Zealand Department of Corrections has commented:

Participants reported development in tikanga Māori and strengthened cultural identity, and psychometric testing showed positive progressions in offenders' thinking patterns.⁴⁹

Previous senate inquiries

7.42 The committee notes that justice reinvestment has previously been considered in great detail during previous Senate committee inquiries. In 2009 the Senate Legal

44 *Submission 12*, p. 6.

45 *Submission 41*, p. 24.

46 *Submission 41*, p. 24.

47 *Submission 41*, p. 24.

48 *Submission 41*, p. 24.

49 New Zealand Department of Corrections 'Maori Focus Units' <https://www.hrc.co.nz/your-rights/social-equality/our-work/fair-go-all/maori-focus-units/> (accessed 23/03/2016).

and Constitutional Affairs References Committee held an inquiry into 'Access to Justice'. The committee made 31 recommendations, one of which, Recommendation 21, dealt with justice reinvestment:

In conjunction with Recommendation 1, the committee recommends that the federal, state and territory governments recognise the potential benefits of justice reinvestment, and develop and fund a justice reinvestment pilot program for the criminal justice system.⁵⁰

7.43 In 2010 the then government noted the recommendation and suggested that:

The approach proposed for the justice reinvestment pilot programs appears to be seeking to deliver similar benefits to many of the crime prevention and diversionary projects funded under Section 298 of the *Proceeds a/Crime Act 2002* (Cth) and the now closed National Community Crime Prevention Programme. It may be possible that lessons from relevant projects funded under these programs could be used to inform consideration of the potential effectiveness of justice reinvestment programs.⁵¹

7.44 In 2013, the Senate Legal and Constitutional Affairs References Committee held an inquiry into the 'value of a justice reinvestment approach to criminal justice in Australia'. During the inquiry, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Mick Gooda advocated for justice reinvestment to be trialled more broadly in the community:

I believe that Justice Reinvestment also provides opportunities for communities to take back some control. If it is to work properly it means looking at options for diversion from prison but more importantly, it means looking at the measures and strategies that will prevent offending behaviour in the first place. The community has to be involved and committed to not only taking some ownership of the problem but also some ownership of the solutions...I think we need to change the narrative from one of punishment to one of community safety. Funding people to go to prison might make people feel safer, but a far better way would be to stop the offending in the first place, and Justice Reinvestment provides that opportunity.⁵²

7.45 The committee made nine recommendations, including that the 'Commonwealth adopt a leadership role in supporting the implementation of justice

50 Senate Legal and Constitutional Affairs References Committee, *Access to justice*, December 2009 p. xxiii. Recommendation 1 of the report was: The committee recommends that the federal, state and territory governments jointly fund a comprehensive national survey of demand and unmet need for legal assistance services in Aboriginal and Torres Strait Islander communities, with particular identification of rural, regional and remote communities and Indigenous women's needs, to be jointly undertaken with state/territory legal aid commissions, community legal centres, Aboriginal legal services, National Legal Aid and the Law and Justice Foundation NSW.

51 Government response to Senate Legal and Constitutional Affairs References Committee Report 'Access to Justice', December 2009, p. 21.

52 See Senate Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia*, June 2013, p. 44.

reinvestment, through the Council of Australian Governments' and 'the Commonwealth commit to the establishment of a trial of justice reinvestment in Australia in conjunction with the relevant states and territories, using a place-based approach, and that at least one Indigenous community be included as a site'.⁵³

7.46 The committee understands that a justice reinvestment approach to criminal justice has garnered broad interest across a range of stakeholder groups. However, to date, the government has not provided a response to the recommendations of the Senate Legal and Constitutional Affairs References Committee in its 2013 report.

Justice reinvestment in Australia

7.47 In Australia, justice reinvestment has also been suggested as an approach to address the high rates of Indigenous incarceration.⁵⁴ The Aboriginal and Torres Strait Islander Social Justice Commissioner noted in his 2014 Social Justice and Native Title Report that:

There are persuasive arguments for trialling this approach in the Aboriginal and Torres Strait Islander contexts given the high levels of overrepresentation and disadvantage faced by these communities. The principles of a justice reinvestment approach include localism, community control and better cooperation between local services. These also align with what we know about human rights-based practice in Aboriginal and Torres Strait Islander service delivery.

Beyond these reasons, the reality is that if we were to map the locations with the highest concentrations of offenders, many of these locations would have very high numbers of Aboriginal and Torres Strait Islanders living in them.⁵⁵

7.48 While acknowledging that there is still some uncertainty about how a justice reinvestment approach would operate in Australia, the Law Council noted the benefits, particularly in Indigenous communities:

Despite having a greater understanding of the underlying causes of Indigenous involvement in the criminal justice system, governments at both the state and federal level continue to struggle with how best to address this serious social issue. Justice reinvestment has been suggested by some advocates as an approach that may provide a framework for addressing this issue. In fact, several aspects of this approach have been described as being beneficial to Indigenous offenders and their communities. These include the ability of a justice reinvestment approach to focus on community building through crime prevention as opposed to the weakening of communities through imprisonment; and the ability of justice reinvestment to address the multiple underlying causes of offending. Another benefit of justice reinvestment is its ability to provide sustainable sources of funding for

53 Recommendations 5 and 6, Senate Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia*, June 2013, p. xi.

54 *Submission 44*, p. 4.

55 Australian Human Rights Commission, *Social Justice and Native Title Report 2014*, p. 108.

culturally appropriate community programs such as Indigenous healing programs and residential drug and alcohol programs.⁵⁶

7.49 NACLCL considered a justice reinvestment approach to be 'a crucial element of addressing the high levels of imprisonment of Aboriginal and Torres Strait Islander peoples'.⁵⁷ NACLCL explained:

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. Accordingly NACLCL strongly supports investment in community-based and led programs that seek to address the issues and disadvantage underlying offending behaviour.⁵⁸

7.50 NACLCL added that to introduce a justice reinvestment approach:

- the Commonwealth Government must play a leadership role in encouraging state and territory governments to adopt justice reinvestment strategies;
- additional research, funding and pilot programs are an important step, and
- justice reinvestment approaches must be tailored to the needs of the particular community and must involve Aboriginal and Torres Strait Islander peoples and communities in determining how such approaches are implemented in communities.⁵⁹

7.51 Trials of justice reinvestment have begun in some Australian communities. While still in its infancy, these programs have been met with support and have been hailed as 'a grass roots solution to a grassroots problem'.⁶⁰

Bourke

7.52 Bourke, a small remote town in New South Wales, has an Indigenous population of 30 percent who belong to over 20 language groups.⁶¹ The Bourke Aboriginal Community Working Party (BACWP), led by Mr Alistair Ferguson, approached Just Reinvest NSW in October 2012 to commence a justice reinvestment program in the region:

In late 2012 Just Reinvest NSW began working with the Bourke community to develop a Justice Reinvestment approach. This was as a

56 Law Council of Australia submission to the Senate Legal and Constitutional Affairs References Committee's inquiry into the value of a justice reinvestment approach to criminal justice in Australia, *Submission 78*, p. 15.

57 *Submission 42*, p. 9.

58 *Submission 42*, p. 9.

59 *Submission 42*, pp 9-10.

60 *Submission 33*, p. 6.

61 *Submission 5*, p. 21.

response to community concerns over the lack of detailed outcome-driven evaluations of the numerous programs delivering services into Bourke and the short-term nature of the funding allocated by government for these programs. In order to provide effective programs and services, the Bourke community has identified a critical need for a framework that will provide long-term, sustainable funding.⁶²

7.53 Ms Sarah Hopkins, Chairperson of Just Reinvest NSW outlined that the Bourke program emerged as a:

...response to the community's concerns over the level of youth offending and what they perceived as an urgent need for a coordinated and effective approach to early intervention, crime prevention and diversion...⁶³

7.54 One of the key aims of the Bourke justice reinvestment model is:

[To] convince all tiers of Government to shift policy and spending from incarceration and services which are currently not effectively utilized in the community, to be reinvested into programs which address the underlying causes of youth crime and meet community need.⁶⁴

7.55 At the public hearing in Canberra, Mr Gooda commented on the unique process undertaken in Bourke:

We decided to work with the community in a real and meaningful way. We did not start off with a plan; we just started talking to people. My role out there was to chair community meetings as an independent person from outside of Bourke. We spent about 18 months doing that, just talking to people, the community talking amongst themselves, before they were ready to make their first foray into change.⁶⁵

7.56 Having utilised a lengthy process of consultation Mr Gooda reflected on the positives of the Bourke program:

I think the key to what is happening at Bourke is that the Bourke community runs it, the Bourke community owns it, and they are the ones that coordinate all the service providers.⁶⁶

7.57 In evidence to the committee, Ms Hopkins reiterated this point:

In terms of our engagement with community, Mick Gooda and I went to Bourke on many occasions, having some small meetings, then larger meetings and then we met at the TAFE hall with, I think, 60 community members there. It took a long time to gain the trust and to allow the community to take the lead. Mick was always very clear: we would not return to Bourke unless we were invited, and nothing would be formulated

62 *Submission 11*, p. 1.

63 *Committee Hansard*, 4 April 2016, p. 8.

64 *Submission 22*, pp. 46-47.

65 *Committee Hansard*, 4 April 2016, p. 2.

66 *Committee Hansard*, 4 April 2016, p. 2.

in terms of a plan. He used to call 'plan' the 'P-word'. There was nothing we formulated in terms of a plan unless the community were driving it. I think there is an idea of a new way of doing business to create that trust. It needs to happen.⁶⁷

7.58 The Bourke project has collected an extensive amount of data to not only understand a person's passage through the criminal justice system but how the community manages in terms of offending, diversion, bail, sentencing, punishment and recidivism.⁶⁸ Data has also been collected on early life outcomes, education, employment, housing, healthcare (including mental health), child safety and drugs and alcohol. As a result:

They have identified and the government is now implementing a number of cross-sector initiatives or 'circuit breakers'...including three justice circuit breakers addressing breaches of bail, outstanding warrants and the need for a learner driver program in Bourke.⁶⁹

7.59 However, at the public hearing in Canberra, Ms Hopkins indicated that the acquisition of data to understand the situation and be able to monitor it effectively as one of the greatest challenges of the project:

Access to data, the process of obtaining data, updating data, getting the right data and going back and forward has been very onerous, time consuming and complex. Without having a position resourced to be able to do that on behalf of the community, I would not think it is possible.⁷⁰

Cowra Justice Reinvestment Project

7.60 Dr Jill Guthrie from the Australian National University is leading an exploratory study in the NSW community of Cowra to evaluate the theory, methodology and potential use of a justice reinvestment approach to addressing crime. Dr Guthrie's study has a particular focus on the imprisonment of Cowra's young people (indigenous and non-indigenous).⁷¹

7.61 Dr Jill Guthrie explained the focus of the research:

This study is a conversation with the town to explore what are the conditions, the understandings, the agreements that would need to be in place in order to return those juveniles who are incarcerated in detention centres away from the town, back to the town, and to keep those juveniles who are at risk of incarceration from coming into contact with the criminal justice system.

67 *Committee Hansard*, 4 April 2016, p. 11.

68 Justice reinvestment in Bourke, <http://www.justreinvest.org.au/justice-reinvestment-in-bourke/> (accessed 6 April 2016).

69 Justice reinvestment in Bourke, <http://www.justreinvest.org.au/justice-reinvestment-in-bourke/> (accessed 6 April 2016).

70 *Committee Hansard*, 4 April 2016, p. 10.

71 Reducing Incarceration using Justice Reinvestment: an exploratory case study, <http://ncis.anu.edu.au/cowra/>, (accessed 23/03/2016).

Participation in the project by the Cowra community has enabled the team to identify issues underlying the incarceration of its young people. Specifically, community groups and organisations have been consulted throughout the project to assist in identifying effective alternatives to prison which ought to be invested in, such as holistic and long-term initiatives, and better integrated services. Young people will also be interviewed about their experiences and suggestions for change.⁷²

7.62 The Cowra research aims to build an evidence base for justice reinvestment that may be used for future advocacy.⁷³

South Australia

7.63 In 2015 South Australia began to look at addressing the over-representation of Aboriginal people in the criminal justice system. The South Australian Government has committed to implementing justice reinvestment trials:

Port Adelaide has been selected as a potential trial area. In order to get it right from the start, we need to consider what the community might think about it and how it might work.

In July and August 2015, the Attorney-General's Department (with support from PwC's Indigenous Consulting (PIC)) began consultation with community members, service providers, government, non-government organisations and others about what a trial justice reinvestment project could look like for Port Adelaide. Further work is being undertaken to refine the scope of the trial and further [engagement] process.⁷⁴

Australian Capital Territory

7.64 In 2010, the ACT Government entered into a formal 'Aboriginal and Torres Strait Islander Justice Agreement' (from 2010-2013) with the ACT's Aboriginal and Torres Strait Islander elected body as a step towards addressing the over-representation of indigenous persons in incarceration.⁷⁵

7.65 The ACT's current partnership (committed to from 2015-2018) seeks to continue the work of the original agreement in addressing:

Aboriginal and Torres Strait Islander over-representation in the ACT justice system, as both victims and offenders, and to reduce the incarceration rate of Aboriginal and Torres Strait Islander people in the ACT. It seeks to improve justice outcomes for Aboriginal and Torres Strait Islander people

72 *Submission 5*, p. 26.

73 *Submission 5*, p. 25.

74 South Australia Attorney-General's Department 'Justice Reinvestment', <http://www.agd.sa.gov.au/initiatives/more-our-initiatives/justice-reinvestment> (accessed 22/03/2016).

75 *Submission 50*, p. 1. The Agreement was in response to a joint report launched in 2008 by the ACT Council of Social Services/Aboriginal Justice Centre entitled *Circles of Support: Towards Indigenous Justice: Prevention, Diversion and Rehabilitation*.

in ACT through the development and implementation of policies and programs that have long-term benefits for the local community.

It is clear that traditional approaches to reducing incarceration do not work, or do not work as effectively, in relation to the incarceration of Aboriginal and Torres Strait Islander people.⁷⁶

7.66 The ACT is also working on reducing the offences for which people can be incarcerated and providing an option for imprisonment to be served in the community (an intensive correction order):

Combined with other justice reform program initiatives, such as a proposed bail support program, the ACT Government has committed to reducing the incarceration rate.⁷⁷

76 *Submission 50*, p. 5.

77 *Submission 50*, p. 5.