

**INQUIRY INTO THE ADEQUACY OF YOUTH DIVERSIONARY
PROGRAMS IN NSW**

Organisation: Just Reinvest NSW

Date Received: 13 February 2018



Mr Geoff Provest MP
Chairperson
Portfolio Committee on Law and Safety
Parliament of New South Wales
Macquarie Street, Sydney
NSW 2000
Email: lawsafety@parliament.nsw.gov.au

8th February 2017

**Just Reinvest NSW submission to the Legislative Assembly Committee on Law and Safety
inquiry into the adequacy of youth diversionary programs in NSW**

We write to you on behalf of Just Reinvest NSW and the Maranguka Justice Reinvestment Project in relation to the NSW Parliamentary Inquiry into the adequacy of youth diversionary programs in NSW.

Just Reinvest NSW is a coalition of more than twenty organisations¹ and individuals that have come together to address the significant over-representation of Aboriginal people in custody through a Justice Reinvestment framework.

Just Reinvest's key message to the government and the community is that there is a solution; a smarter approach that will reduce crime and create safer, stronger communities.

In 2013, Just Reinvest NSW began a partnership with the Aboriginal community in Bourke to implement the first major justice reinvestment trial in Australia, the Maranguka Justice Reinvestment Project in Bourke.

In November 2016, Just Reinvest NSW convened a roundtable to develop legislative and policy reforms to reduce the rising prison population in NSW, with a particular view to addressing the levels of Aboriginal overrepresentation.

A policy paper was developed following the roundtable discussion with representatives from the Law Society of NSW, the NSW Bar Association, the Law Council of Australia, the Aboriginal Legal Service NSW/ACT, Legal Aid NSW, the Public Interest Advocacy Centre, the University of NSW, the University of Technology Sydney, the Public Defenders office, and other prominent members of the NSW legal and justice communities. It has been the subject of consultation with peak NSW Aboriginal organisations and other key organisations and agencies.

The Paper was launched in August 2017 at a parliamentary forum hosted by the NSW Attorney General, the Honourable Mark Speakman SC MP.

¹ The Aboriginal Legal Service NSW/ ACT, Aboriginal Medical Service Cooperative Limited, Aboriginal Child, Family and Community Care State Secretariat, Aboriginal Education Council (NSW) Inc, Amnesty International, ANTaR, Ashurst, Australian Indigenous Alpine Sports Foundation, Community Legal Centres NSW, Gilbert + Tobin, Infinite Hope Aboriginal Corporation, Kingsford Legal Centre, NSW Council of Social Services, NSW Reconciliation Council, Oxfam, Red Cross, Save the Children, Shopfront Youth Legal Service, Show Me the Way, Uniting, Weave Youth and Community Services, Whitelion, Youth Action and the Youth Justice Coalition.

Given our experience and expertise, in this submission we have focused on providing information on justice reinvestment as a framework that better responds to the over incarceration of young Aboriginal and Torres Strait Islander peoples (TOR b.). In its aims to deter and divert juvenile offenders from long-term involvement with the criminal justice system, Justice Reinvestment is directly relevant to this Inquiry.

Where applicable we have provided case studies from the Maranguka Justice Reinvestment Project in Bourke in the relevant subject areas.

The social and economic costs of incarceration are unacceptable and there is a clear and urgent need for a new approach to the delivery of diversionary programs for Aboriginal and Torres Strait Islander children and young people in NSW.

Attached to our submission are the following documents:

- Just Reinvest NSW Policy Paper #1 – Smarter Sentencing and Parole Law Reform
- KPMG's Preliminary Assessment of the Maranguka Justice Reinvestment Project
- Snapshot of Life for Aboriginal Children & Young People in Bourke (the data snapshot)
- *Maranguka Justice Reinvestment Project's: Safe Smart Strong Strategy*

The sections of our submission relating to the Maranguka Justice Reinvestment Project in Bourke are submitted as a joint submission between Maranguka and Just Reinvest NSW. The remaining sections of our submission are submitted with the endorsement of Maranguka.

Just Reinvest NSW and Maranguka thank you for the opportunity to comment and would welcome the opportunity to provide further information to the Inquiry if required. Questions may be directed to [REDACTED]

Yours faithfully,

Sarah Hopkins
Chair, Just Reinvest NSW
Managing Solicitor, Justice Projects, ALS NSW/ACT

Alistair Ferguson
Founder and Executive Director, Maranguka
Executive Committee Member, Just Reinvest NSW

INTRODUCTION

Justice reinvestment: a framework for better diversionary outcomes for Aboriginal and Torres Strait Islander young people

Addressing the complex issue of Aboriginal over-imprisonment requires a holistic, multi-pronged approach. Resources must be directed towards early intervention, prevention and diversion along with strategies that strengthen communities.

By adopting a justice reinvestment framework for NSW, the number of Aboriginal and Torres Strait Islander children and young people effectively diverted away from the criminal justice system would increase for the following reasons:

- By implementing legislative and policy reforms to reduce prison and juvenile detention populations, funding could be reallocated away from prisons and into youth diversionary programs, and other measures to prevent and reduce offending, thereby creating further savings for reinvestment.
- Through community-led justice reinvestment initiatives, Aboriginal and Torres Strait Islander communities will be empowered to
 - determine the strategies and programs most likely to effectively divert their children and young people away from the criminal justice system
 - monitor the effectiveness of youth diversionary programs and hold service providers to account when agreed outcomes are not achieved.
- By supporting place-based collaborative service delivery, youth diversionary programs will be more effective and accessible for Aboriginal and Torres Strait Islander children and young people across NSW, including rural, regional and remote areas.
- With an enhanced focus on data collection and performance monitoring under a justice reinvestment framework, youth diversionary program outcomes can be more closely monitored.

What is justice reinvestment?

Justice reinvestment offers a fiscally sound framework in which diversionary programs are one part of a community-led, long-term approach that is fiscally sound and sustainable. Under a justice reinvestment framework, savings from the corrections system are tracked and reinvested into community-led programs that address the underlying causes of crime.²

In NSW and across Australia, justice reinvestment initiatives are largely aimed at addressing the over representation of Aboriginal and Torres Strait Islander children and young people in the criminal justice system.

Justice Reinvestment is a place based, data-driven approach to justice that builds stronger communities by redirecting money that would be spent on prisons into early intervention,

² Patrick McCarthy, Vincent Schiraldi, and Mark Shark "The future of youth justice: a community-based alternative to the youth prison model." *New Thinking in Community Correction* (2016) 2: 1-36. <<https://www.ncjrs.gov/pdffiles1/nij/250142.pdf>>; Melanie Schwartz, David Brown and Chris Cunneen. "Justice Reinvestment." *Indigenous Justice Clearinghouse*, 21 July 2017. <<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/research-brief-23-fa-28-08-17.pdf>>

crime prevention and diversion. It recognises the strong correlation between locations of disadvantage and high rates of contact with the criminal justice system. Justice reinvestment identifies the causes of crime and invests in community-led solutions and programs to address drivers of offending and incarceration.³ It decreases the likelihood of children and young people entering the criminal justice system by investing in communities and early intervention.

Justice reinvestment is a two-level strategy for reducing offending and creating savings for reinvestment. The first level focuses on community-led, place-based solutions, like the Maranguka Justice Reinvestment Project. A portion of savings made possible as a result of reduced offending and incarceration is then available for reinvestment into what is working to reduce offending in the community. The second level requires the development and implementation of statewide policy and legislative measures to reduce the prison population, thereby freeing up resources for reinvestment into supporting community-led strategies to reduce crime.

Justice Reinvestment and Data

Justice reinvestment uses data to identify communities with a high concentration of offenders, in order to have a greater impact on reducing imprisonment numbers by targeting causal factors in those communities. JR also uses data to determine those causal factors.

JR involves the collection of comprehensive data to understand what is causing people to offend, the local cost of incarceration, how much money is being spent across sectors in service provision, and what outcomes are being achieved. Communities are supported to identify their own data needs. They can then use the data to develop long-term measures tailored to local needs that address the underlying drivers of crime.

Data is a central component of any JR strategy, for a number of reasons:

- to determine both the necessity for and possibilities of new JR initiatives
- to engage the community/government/other stakeholders
- to help the community to identify priority issues to focus on
- setting a baseline against which the success of a JR initiative can be measured
- measuring savings from a JR approach
- to identify where reinvestment could occur
- for ongoing monitoring of the success of specific JR initiatives.

See ToR (c) for further information.

Place-based

JR is **place-based**, it looks at local problems and local solutions. For Just Reinvest NSW, this means Aboriginal and Torres Strait Islander led, community-driven initiatives. Self-determination is critical.

In Australia, JR to date is being driven at a grassroots level by local communities, and centralised governments are being challenged to better coordinate their responses to local

³ Melanie Schwartz, David Brown and Chris Cunneen. "Justice Reinvestment." *Indigenous Justice Clearinghouse*, 21 July 2017. <<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/research-brief-23-fa-28-08-17.pdf>>

community needs and priorities and to take advantage of community strengths and capacity.

Place-based initiatives involve all levels of government and the local community in genuine partnerships characterised by networks, collaboration, community engagement and flexibility. Local community partnerships devise, implement and evaluate JR initiatives, supported by community engagement and participation mechanisms and local community capacity is enhanced to identify and tackle their own challenges with sufficient time and resources being allocated over the long term.

Fiscally sound

The two-pronged approach to JR means that both the community-driven initiatives and the state-wide legislative and policy measures will result in reduced contact with the criminal justice system and reduced prison numbers. JR requires that savings be quantified and the government commit to reinvesting a portion of those savings into evidence-based local solutions to crime preventions. This will ensure long-term fiscal sustainability.

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

Importantly, there must also be a commitment to long-term funding. Communities must trust the process for it to succeed, and building trust takes time. Insufficient funding and short-term commitment are key risks to the successful implementation of a JR approach.⁴

Supported by a centralised strategic body

JR requires a centralised body with a clear mandate to work across government departments and agencies to monitor and quantify social and economic outcomes of JR initiatives. The centralised body would support local initiatives through their governance structures by collecting data, assisting in strategy development and building community capacity.

CASE STUDY: Maranguka Justice Reinvestment Project

Just Reinvest NSW has been working in partnership with the Bourke Aboriginal community since 2013 to implement the first major JR trail in Australia; the Maranguka JR Project. The project is community-led, using a collective impact framework that brings together a diverse range of organisations and services to work on a common agenda.⁵ The Maranguka JR Project

⁴ Ibid; Melanie Schwartz, David Brown and Chris Cunneen. "Justice Reinvestment." *Indigenous Justice Clearinghouse*, 21 July 2017. <<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/research-brief-23-fa-28-08-17.pdf>>

⁵ KPMG. "Unlocking the future, Maranguka justice reinvestment project" KPMG. September 2016. <<http://www.justreinvest.org.au/wp-content/uploads/2016/11/KPMG-Preliminary-Assessment-Maranguka-Justice-Reinvestment-Project.pdf>>; Melanie Schwartz, David Brown and Chris Cunneen. "Justice Reinvestment." *Indigenous Justice Clearinghouse*, 21 July 2017.

illustrates how communities can work with a diverse range of service providers and government for youth diversionary efforts. The Justice Reinvestment approach in Bourke is holistic, encompassing early intervention, prevention and diversion by engaging the whole community and addressing the causes of incarceration of Aboriginal children and young people.

One of the first activities undertaken as part of the Maranguka vision is to address issues facing young people through a justice reinvestment approach. This is in response to community concerns over the level of youth offending, 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 identified a critical need for a framework that will provide long-term, sustainable funding.

In the short term a number of justice circuit breakers (detailed below) were identified to drive immediate change in the lives of children and young people. The Warrant Clinic and Justice Support Team, Bail Protocols, as well as the Driver Licensing Program are now in operation, with early signs of positive impact.

For more information on the Maranguka Justice Reinvestment Project in Bourke, please see Appendix 1.

1. Response to TOR (b): Aboriginal over-representation in the Juvenile Justice system

Aboriginal and Torres Strait Islander children and young people account for 45 per cent of juveniles in custody in NSW (130 out of 288, of which 71 in remand and 59 sentenced).⁶ This includes 112 Indigenous males (44% of total juvenile males in custody) and 18 Indigenous females (58% of total juvenile females in custody).⁷ The overall number of juveniles in custody has decreased, however the over-representation of Aboriginal and Torres Strait Islander juveniles in custody has continued.⁸

Juvenile detention is economically and socially costly. It does not act as a deterrent to offending and is not effective in reducing recidivism.⁹

<<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/research-brief-23-fa-28-08-17.pdf>>

⁶ NSW Bureau of Crime Statistics and Research, NSW Custody Statistics: Quarterly Update September 2017, <http://www.bocsar.nsw.gov.au/Documents/custody/NSW_Custody_Statistics_Sept2017.pdf>

⁷ NSW Bureau of Crime Statistics and Research, NSW Custody Statistics Quarterly September 2017, http://www.bocsar.nsw.gov.au/Documents/custody/NSW_Custody_Statistics_Sept2017.pdf

⁸ Australian Government Productivity Commission, Report on Government Services 2017, <<http://www.pc.gov.au/research/ongoing/report-on-government-services/2017/community-services/youth-justice/rogs-2017-volume-f-chapter17.pdf>>, pg117; BOCSAR, Accessed at: <http://www.bocsar.nsw.gov.au/Pages/bocsar_custody_stats/bocsar_custody_stats.aspx>; Juvenile Justice, Year in Review 2015-2016, p24,

<<http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/publications/2015-16%20Year%20in%20Review.pdf>> people: 292

⁹ Noetic Solutions. "A strategic Review of the NSW Juvenile Justice System: Report for the Minister of Juvenile Justice." Noetic Solutions. (2010)

The average cost per day, per young person subject to detention-based supervision was \$1,343.78.¹⁰ In comparison, community based supervision is \$137.92 per child/young person per day.¹¹ Last year, the cost of Indigenous incarceration in Australia was approximately \$7.9 billion per year.¹² In 2016, the cost of Juvenile Justice in NSW was \$97 million.¹³

Social costs are borne not only by the individual child or young person incarcerated but also to families and communities.¹⁴ The social costs for children and young people include poor health outcomes, decreased wellbeing, social exclusion, relationship disruption, and often a disengagement from education and involvement with the labour force later in life.¹⁵ Children and young people who have been through the juvenile justice system often experience psychological and physiological issues that can impact their ability to reintegrate back into their community.¹⁶ The social costs impacting a child or young person upon release often leads to recidivism and cyclical involvement with the criminal justice system.¹⁷

The number of juveniles in custody in NSW has decreased, however resultant savings do not seem to be tracked, or invested in early intervention and diversion.¹⁸ Under a justice reinvestment framework, savings at the state-level resulting from a reduction in the number of juveniles in detention should be tracked and reinvested into the expansion of programs that are demonstrated to be effective in diverting Aboriginal and Torres Strait Islander children and young people away from the criminal justice system. For communities implementing place-based justice reinvestment initiatives, savings from a reduction in the

<<http://www.juvenile.justice.nsw.gov.au/Documents/Juvenile%20Justice%20Review%20Report%20FINAL.pdf>>, p118

¹⁰ Australian Government Productivity Commission, Report on Government Services 2018, <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2018/community-services/youth-justice/rogs-2018-partf-chapter17.pdf>>, Table 17A.21

¹¹ *Ibid.* Table 17A.20

¹² Pricewaterhouse Coopers. "Indigenous Incarceration: Unlock the facts." PwC Indigenous Consulting. May 2017. <<https://www.pwc.com.au/indigenous-consulting/assets/indigenous-incarceration-may17.pdf>>, p7.

¹³ *Ibid.*, p30

¹⁴ McCarthy, P. Schiraldi, V. and Shark, M. (2016) The future of youth justice: a community-based alternative to the youth prison model. *New Thinking in Community Correction* 2: 1-36; Pricewaterhouse Coopers. "Indigenous Incarceration: Unlock the facts." PwC Indigenous Consulting. May 2017. <<https://www.pwc.com.au/indigenous-consulting/assets/indigenous-incarceration-may17.pdf>>, p3

¹⁵ Senate Legal and Constitutional Affairs References Committee. "Value of justice reinvestment approach to criminal justice in Australia." 2013. <https://www.aph.gov.au/parliamentary_business/committees/senate/legal_and_constitutional_affairs/completed_inquiries/2010-13/justicereinvestment/report/index>

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Judge Peter Johnstone, 'Early Intervention, Diversion And Rehabilitation From The Perspective Of The Children's Court of NSW' (Speech presented at the 6th Annual Juvenile Justice Summit, Sydney, 5 May 2017). Pg27 at [127]; *The NSW Bureau of Crime Statistics and Research reported on 30 January 2017 that the number of juveniles in custody in NSW has now fallen by 38 per cent, from a peak of 405 detainees in June 2011 to 250 in December 2016.* NSW Bureau of Crime Statistics and Research. "New South Wales Custody Statistics." (2016) <http://www.bocsar.nsw.gov.au/Documents/custody/NSW_Custody_Statistics_Dec2016.pdf>; Juvenile Justice NSW, 2016 *Year in Review*, <<http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/publications/2015-16%20Year%20in%20Review.pdf>>

number of juveniles from those communities entering detention should be tracked and reinvested into those communities in diversionary and other programs determined to be effective in reducing imprisonment in those communities.¹⁹ A justice reinvestment framework requires constant evaluation of what is working and reinvestment into effective community-led programs.²⁰

"I am excited to be a Youth Ambassador for Just Reinvest. It's 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." - JRNSW Youth Ambassador

RECOMMENDATIONS

1. *The NSW Government adopt a justice reinvestment approach, redirecting funding away from the expansion of prison infrastructure and into initiatives that strengthen communities and address the underlying causes of offending.*
2. *The NSW Government establish a framework to support and coordinate community-led justice reinvestment initiatives to ensure culturally responsive approaches to reducing the over-imprisonment of Aboriginal and Torres Strait Islander young people, building stronger and safer communities across the state.*
3. *The NSW Government work to create an enabling environment for Aboriginal community controlled responses to the overrepresentation of Aboriginal and Torres Strait Islander children and young people. This includes adequate resourcing of urban, regional and remote Aboriginal community controlled organisations. Further, that there is Aboriginal community control of service design and delivery, supported by data, consistent with the principle of Aboriginal self-determination.*
4. *A strategy be developed across the NSW Government to address the overrepresentation of Aboriginal and Torres Strait Islander young people in the juvenile justice system, including a plan for information sharing and collaboration between workers in the child protection and youth justice sectors, and other relevant agencies including Education and Health.*
5. *Diversionary programs for Aboriginal and Torres Strait children and young people adopt a holistic approach that focuses on connection to community and culture, family*

¹⁹ Juvenile Justice NSW, 2016 *Year in Review*

<<http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/publications/2015-16%20Year%20in%20Review.pdf>>; Melanie Schwartz, David Brown and Chris Cunneen. "Justice Reinvestment." *Indigenous Justice Clearinghouse*, 21 July 2017. <<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/research-brief-23-fa-28-08-17.pdf>>

²⁰ Melanie Schwartz, David Brown and Chris Cunneen. "Justice Reinvestment." *Indigenous Justice Clearinghouse*, 21 July 2017. <<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/research-brief-23-fa-28-08-17.pdf>>

*relationships and broader social identity and recognises the strength in young people and communities.*²¹

6. *A new Premier's Priority be established to reduce in the number of Aboriginal and Torres Strait Islander children and young people in the juvenile justice system.*
7. *NSW Government departments and agencies and non-government organisations create an environment in which collaboration at the local level is authorised and encouraged.*
8. *The recommendations from the Northern Territory Royal Commission into Child Protection and Youth Detention (NTRC) be closely examined by the Committee and where relevant adapted for NSW. Recommendations to be adapted should include:*
 - *Recommendations 7.1 and 7.2 regarding commitment to a place-based approach and working in partnership with communities in order to reach agreement on the strategies, policies and programs needed to provide sustained positive outcomes for children and young people at each 'place'*²²*and*
 - *Recommendation 7.3 regarding government engagement with community representatives to negotiate those partnerships built on the following principles:*
 - *the best interest of the child*
 - *local solutions for local problems*
 - *local decision-making*
 - *the centrality of family and community to the wellbeing of children and young people*
 - *the Northern Territory Government has the ultimate responsibility to ensure the safety and security of all Northern Territory children and young people, and*
 - *shared responsibility and accountability.*²³

²¹ Juvenile Justice NSW. "Year in Review." (2016)

<<http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/publications/2015-16%20Year%20in%20Review.pdf>>; Melanie Schwartz, David Brown and Chris Cunneen. "Justice Reinvestment." *Indigenous Justice Clearinghouse*, 21 July 2017.
<<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/research-brief-23-fa-28-08-17.pdf>>

²² *Royal Commission into the Protection and Detention of Children in the Northern Territory 2017*, Recommendation 7.1: The Northern Territory Government and the Commonwealth Governments commit to a 'place-based' approach for the implementation of the relevant recommendations of this report in partnership with local communities. The partnership should be built on the principles of mutual respect, shared commitment, shared responsibility and good faith. The location of the 'place' could be a single community, a group of communities or a region; Recommendation 7.2: The purpose of the partnership should be to reach agreement on the strategies, policies and programs needed to provide sustained positive outcomes for children and young people at each 'place'.

²³ *Royal Commission into the Protection and Detention of Children in the Northern Territory 2017*, Recommendation 7.3

2. Response to TOR (a): The way in which youth diversionary efforts work with

2.1 The Police

Diversionary options available at the point of contact with police are not being used consistently across Local Area Commands.²⁴ Diversionary options and police cautions are also not being utilised at the same rate for Aboriginal and non-Aboriginal young people. Aboriginal and Torres Strait Islander young people are less likely to receive a diversionary option or police caution than their non-Indigenous counterparts.²⁵

To more effectively divert Aboriginal and Torres Strait Islander children and young people, police should be encouraged to think laterally and move beyond traditional policing methods.²⁶ There is also a need for police to foster genuine connections and their responsiveness to the community agenda.

Further, police who are designing and or delivering programs aimed at reducing offending in Aboriginal and Torres Strait Islander communities should be required to:

- document programs
- undertake systems and outcomes evaluations
- put succession planning in place to ensure continuity of the programs
- share crime data to support communities in developing strategies and initiatives to reduce offending behaviours.²⁷

Suspect Target Management Plan (STMP)

Our concerns around STMP and our below recommendation are due to concerns that a high percentage of people on STMP are young people, and a large percentage were identified as Aboriginal.²⁸ While STMP can ‘fundamentally undermine the foundations for positive police-youth relations’, it can also further ‘escalate conflict between young Aboriginal and Torres Strait Islander peoples and police.’ This is due to further harassment by the police, young people feeling ‘under siege’, ‘unfairly treated, discriminated against and victimised.’²⁹ One Legal Aid Lawyer explained, ‘the secrecy and arbitrary nature of the STMP amplifies historic patterns and experiences of policing.’³⁰ Family relations are also heavily impacted by

²⁴ Noetic Solutions. “A strategic Review of the NSW Juvenile Justice System: Report for the Minister of Juvenile Justice.” Noetic Solutions. (2010)
<<http://www.juvenile.justice.nsw.gov.au/Documents/Juvenile%20Justice%20Review%20Report%20FINAL.pdf>>, pg144

²⁵ *Ibid.*

²⁶ Australian Law Reform Commission, 2017, *Inquiry into the rates of incarceration of Aboriginal and Torres Strait Islander peoples: Discussion Paper*

²⁷ Australian Law Reform Commission, 2017, *Inquiry into the rates of incarceration of Aboriginal and Torres Strait Islander peoples: Discussion Paper*

²⁸ ‘Across 10 LACs 213 people were subject to an STMP... 104 (48.82% of STMP targets were young people. The youngest STMP target was just 11 years old, 94 (44.1%) were identified as Aboriginal.’ Vicki Sentas and Camilla Pandolfini, 201, *Policing Young People in NSW: A study of the Suspect Targeting Management Plan*, Youth Justice Coalition

²⁹ *Ibid.* p29

³⁰ *Ibid.*, p30

Aboriginal young people being placed on an STMP and in some cases 'STMP may be contributing to the intergenerational targeting by police of Aboriginal families.'³¹ The Youth Justice Coalition report also states, 'STMP exacerbates the marginalising impacts of extensive police contact for Aboriginal and Torres Strait Islander peoples by further stigmatising young people in their communities.'³²

See TOR (f) Bail Issues for more information on problems with bail breaches and the need for support services.

CASE STUDY: The Police and the Maranguka Justice Reinvestment Project in Bourke

In Bourke, the Local Area Command has been supported by Maranguka to enter into genuine and meaningful collaborations with the community.

In August 2017, the Bourke Local Area Command and the Maranguka Community Hub instigated daily morning meetings to provide updates and share data, with a view to providing support to community members in need, and a particular focus on children at risk of offending and their family members. This has continued daily and has become a space to workshop acute responses to situations requiring emergency action and identified support. These check-ins are also utilised as part of the Maranguka Support Model³³ for acute cases and planning for young people's return to the community from custody.

In its early stages, the Maranguka Justice Reinvestment Project also implemented several 'circuit breaker' initiatives including two examples of the police and services working collaboratively: (i) the establishment of a warrant clinic and (ii) the introduction of bail protocols. These circuit breakers formed part of the long-term vision of reducing offending and creating a safer community.

The Warrant Clinic was established to address the issue of people with warrants outstanding 'going underground', and often ceasing accessing services and engaging with work or education with consequences including homelessness and further offending. Through the Clinic, applications were made for a warrant to lie in office for 14 days and participants would meet with an inter-disciplinary support team. Together they would make a plan to submit to the Court on sentence or in relation to bail. The matter would be relisted and the plan presented to the Magistrate and either finalised or adjourned with a determination made as to bail (defended matters). With few warrants now being issued by the Court, there is presently limited need for the Warrant Clinic but the process is available should the need

³¹ *Ibid.* pp31-32

³² *Ibid.* p32

³³ The Maranguka Support Model is outlined below in **section 2.7**. There are four components of the Maranguka Support Model (MSM) for Young People:

1. School Based Component – *Our Place*³³
2. Family Component – Wrap around support for the whole family
3. Save our Sons/Sisters (SOS) Out of School Hours (OOSH) Component³³ – Weekends/holidays
4. Return to community and acute cases.

arise and it formed the basis of a program for wraparound support for young people under the Maranguka Support Model.³⁴

In response to Bourke having the highest breach of bail rate in NSW, protocols were developed by Maranguka, the police and key community stakeholders regarding bail conditions, breach, warnings and the use of the Young Offenders Act (YOA). Under the bail protocols, the police are now to issue warning/s and/or notify Maranguka in cases where the child should be linked to services.

Circuit breakers need to be adapted to the current needs of young people having contact with the criminal justice system; ongoing engagement and consultation with the Bourke community and the Maranguka working groups is essential to their success and sustainability.

Another collaborative initiative involving the police in Bourke that is currently in development is exploring ways to establish a more therapeutic approach to the children's list day at Bourke Local Court (in line with the NSW Youth Koori Court model).

RECOMMENDATIONS

9. *In consultation with community, consideration should be given to further trials of the 'breach reduction strategy' in communities with large populations of Aboriginal and Torres Strait Islander people³⁵, such as the Bail Protocols developed by Maranguka, Just Reinvest NSW and the Bourke Local Area Command.*
10. *NSW Police discontinue applying the STMP to children under 18. Children suspected of being at medium or high risk of reoffending should be linked to services and considered for evidence-based prevention programs that address the causes of reoffending, rather than placement on an STMP.³⁶*
11. *Legislation governing criminal procedures (includes the provisions of LEPR, the Children (Criminal Proceedings) Act, the Young Offenders Act and the Bail Act) be summarised in internal police policies and procedures (including the NSW Police Force Handbook and/or NSW Police Force Code of Conduct for CRIME) to*
 - (i) reinforce the message that arrest and detention should be a last resort and*
 - (ii) provide clear guidance as to the procedure police officers must follow, in accordance with law, when confronted with suspected offending by young people.³⁷*

³⁴ *Ibid.* see **section 2.7**

³⁵ Australian Law Reform Commission, Incarceration Rates of Aboriginal and Torres Strait Islander Peoples, Discussion Paper 84, July 2017, 2.69.

³⁶ Vicki Sentas and Camilla Pandolfini, 201, *Policing Young People in NSW: A study of the Suspect Targeting Management Plan*, Youth Justice Coalition

³⁷ PIAC submission to the Australian Law Reform Commission, *Inquiry into the rates of incarceration of Aboriginal and Torres Strait Islander peoples*, <<https://www.piac.asn.au/wp-content/uploads/2017/09/17.08.31-PIAC-Submission-to-ALRC-re-Indigenous-Incarceration-Final.pdf>>

12. *Bail laws expressly provide that police officers must have regard to a person's age when determining what action should be taken for breach of bail.*³⁸
13. *Increased funding be provided for bail support services for young people and priority be given to Aboriginal community controlled organisations.*
14. *That the NTRC Recommendation 25.20 be implemented in NSW, particularly in regards to young people on the STMP.*³⁹ *Policing success indicators should not include number of bail checks.*

2.2 Juvenile Justice

Aboriginal communities and community controlled organisations must be front and centre in the design and delivery of youth diversionary programs if they are to succeed for Aboriginal and Torres Strait Islander children and young people. Further, stronger connections must be facilitated between Juvenile Justice and local Aboriginal communities.

As recognised by the Royal Commission into the Protection and Detention of Children in the Northern Territory ('NTRC'), the treatment and case management of young people under the care of Juvenile Justice must be *therapeutic, non-punitive, non-adversarial, trauma informed and culturally competent*.⁴⁰

For some young people we have spoken to Juvenile custody is a pathway to adult custody:

My motto is a quote by Angela Davis, she said, "I'm no longer accepting the things I cannot change...I'm changing the things I cannot accept."

I cannot accept the numbers of our young people who are in custody and the way the system does nothing but prepare them

³⁸ PIAC submission to the Australian Law Reform Commission , *Inquiry into the rates of incarceration of Aboriginal and Torres Strait Islander peoples* <<https://www.piac.asn.au/wp-content/uploads/2017/09/17.08.31-PIAC-Submission-to-ALRC-re-Indigenous-Incarceration-Final.pdf>>

³⁹ Recommendation 25.20, *Royal Commission into the Protection and Detention of Children in the Northern Territory 2017*

The Commissioner of Police issue a Directive setting out:

- *guidelines for the police in relation to curfew checks, including the circumstances in which they should be used or avoided, and their frequency, and*
- *that police only arrest a child or young person for breach of bail where the breach occurs as a result of or in connection with further offending and after police have considered and rejected as inappropriate issuing a summons, or where the breaching conduct clearly indicates a materially increased risk of non-attendance at court or further offending.*

⁴⁰ Recommendation 19, *Royal Commission into the Protection and Detention of Children in the Northern Territory 2017*

Diversion under the *Young Offenders Act* can be extremely beneficial. Youth Justice Conferencing has been shown to reduce recidivism. However in many rural and remote locations there is a severe shortage of convenors. Even in some inner-city areas there is a shortage of convenors.

RECOMMENDATIONS

15. *Juvenile Justice support diversionary programs developed and delivered by Aboriginal communities and community controlled organisations, for example the My Journey My Life program.*
16. *Juvenile Justice increase employment of Aboriginal and Torres Strait Islander people in senior management positions to help foster cultural safety in juvenile justice centres.*
17. *The NSW Government increase funding for throughcare options/transitional support programs for young people and priority be given to those managed by Aboriginal community controlled organisations.*
18. *The NSW Government review and implement where appropriate the following NTRC recommendations:*
 - a. *Recommendation 19: Case Management and Exit Planning and*
 - b. *Recommendation 24.1: Leaving Detention and Throughcare.*⁴¹
19. *Broaden the scope of the Young Offenders Act 1997 (NSW) through measures including:*
 - a) *ensuring that Youth Justice Conferences are properly resourced and available equally across all geographical locations;*
 - b) *Removal of the exclusion of certain offences from the Act's operation that currently prevent the diversion of children in cases which could be appropriately dealt with under the Act;*
 - c) *Removal of the restriction on the number of cautions that a child can be given;*
 - d) *Removal of the requirement that a child or young person admit to committing an offence, and replacing with a requirement that the young person 'does not deny the offence' (in accordance with the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory).*

⁴¹*ibid.* Recommendation 24,

2.3 Community Corrections

RECOMMENDATIONS

20. *Increase the involvement and connections of Aboriginal Community Controlled organisations in the delivery of community corrections orders.*
21. *Increase the availability of community based sentences to keep young people on country and reduce the risk of reoffending.*

2.4 The Courts

Across NSW, there is a clear need for increased sentencing options for courts to effectively divert more juveniles away from the criminal justice system. In rural and remote NSW the need is particularly acute. There are clear inequities in the level of access to diversionary options for courts across urban, regional and remote areas in NSW.

Expanding the Youth Koori Court

One of the proposals in Just Reinvest NSW's *Policy Paper #1 – Smarter Sentencing and Parole Law Reform* is for the expansion of the operation of Indigenous Courts across NSW, including broadening the locations of the Youth Koori Court.

The Youth Koori Court, established by the NSW Children's Court, commenced on a pilot basis in February 2015. The Youth Koori Court adopts a deferred sentencing model which allows the court, prior to sentencing, to develop a plan which links young Indigenous offenders to services that help to address the underlying issues associated with their offending.

We understand that an evaluation of the Youth Koori Court has been completed by researchers at the University of Western Sydney.⁴² While findings from the evaluation are yet to be made public, the model has been praised on the basis that 'in contrast with some of the other Indigenous courts, it seeks to address underlying risk factors relating to employment, housing, health and substance abuse issues'.⁴³

I was the first person to go before the Youth Koori Court. Over the next 12 months I worked on myself so that I wouldn't continue on the path I was heading. It has been over 2 and a half years since I last was charged by police.

I am still constantly harassed by police but I don't let them get the better of me and I keep my cool. I am currently doing a certificate in Youth Work at

⁴² Judge Peter Johnstone, 'Early Intervention, Diversion And Rehabilitation From The Perspective Of The Children's Court of NSW' (Speech presented at the 6th Annual Juvenile Justice Summit, Sydney, 5 May 2017).

⁴³ Lorana Bartels, Jane Bolitho, and Kelly Richards, "Indigenous young people and the NSW children's court: Magistrates' perceptions of the court's criminal jurisdiction." *AILR* 19 (2015/2016): 14.

TAFE and want to help out those in need. I plan on working with our youth and being there for them in their time of need. I also hope to show them that no matter if you are in juvie or on the streets that you can make something of your life like I am trying to. - JRNSW Youth Ambassador

The Youth Koori Court currently operates in Parramatta only. The President of the NSW Children's Court, Judge Peter Johnstone, has stated that consultations have taken place with Aboriginal communities in Redfern, Glebe, La Perouse and Dubbo and that these communities are "eager to see the expansion of the Youth Koori Court" to their communities.⁴⁴

RECOMMENDATIONS

22. *The NSW Government provide funding for the existing Youth Koori Court in Parramatta and for its expansion to additional locations.*
23. *Map existing youth diversionary programs across NSW and create a database to be utilised by legal practitioners and the judiciary.*
24. *Develop strategies to raise awareness throughout the judiciary and legal profession of youth diversionary options available in their region.*
25. *Children's Court Magistrates sit on regional circuits, especially in areas with a high level of engagement of young people in the criminal justice system.*
26. *All judicial officers in NSW be provided with access to seminars conducted by experts with particular emphasis on cognitive development, adolescent behaviour, communication with young people appearing in court and Aboriginal cultural competence.*⁴⁵
27. *Further learning for all judicial officers and prosecutors on framing smarter orders for young people, including cultural awareness issues in imposing some conditions and revisiting the aim of imposing conditions.*

2.5 Health, Housing and Children's Services

2.5.1 Health

In order to adequately provide diversionary options that are community-led, culturally appropriate and use strengths based approaches, we note that our broader range of proposals

⁴⁴ Judge Peter Johnstone, 'Early Intervention, Diversion And Rehabilitation From The Perspective Of The Children's Court of NSW' (Speech presented at the 6th Annual Juvenile Justice Summit, Sydney, 5 May 2017).

⁴⁵ Recommendation 25.26, *Royal Commission into the Protection and Detention of Children in the Northern Territory* 2017

in the *Just Reinvest NSW Policy Paper #1 – Smarter Sentencing and Parole Law Reform* (attached) includes the following recommendation.

RECOMMENDATION

28. *Map existing residential and non-residential drug and alcohol treatment programs for Aboriginal and Torres Strait Islander people to identify and meet additional needs including resourcing for:*
- a. *options for those with mental health issues, an intellectual disability or a cognitive impairment*
 - b. *healing and cultural components including access to trauma-informed and culturally safe community based healing for offenders and victims*
 - c. *additional programs for women and juveniles*
 - d. *aftercare support.*

2.5.2 Housing

There is a need for better housing options for high needs young people. Lack of housing increases the risk of young people entering the juvenile justice system, as well as often leads to extended periods in custody.⁴⁶ In limiting the options available to the Courts, homelessness increases the risk of child or young person being refused bail and/ or given a custodial sentence.⁴⁷

The lack of bail accommodation is also a major issue for young people in NSW. His Honour Judge Mark Marien, then President of the NSW Children's Court observed, the lack of bail accommodation for children has been a long-standing problem in NSW, especially in regards to children in OOHC. '[O]ften the young person will remain in custody bail refused until appropriate accommodation can be found... some argue (with justification) that these young persons remain improperly in custody essentially for welfare reasons rather than justice-related issues.' His Honour further said, 'the detention of such children (who would otherwise be released on bail) because they have no appropriate bail accommodation starkly demonstrates the 'need' v 'deed' dichotomy and how the criminal justice system may be inappropriately used for essentially welfare issues.'⁴⁸

Another risk point in being further enmeshed in the criminal justice system is when young people leave custody.⁴⁹ Our recommendation around increasing the availability of Throughcare for young people is outlined in section 2.2, Recommendation 17.

⁴⁶ Homeslessness NSW, 2011, *NSW Homelessness Community Alliance policy statement*, <https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2016-12/Homelessness_the_justice_system_policy_statement_NSW_HCA_July_2011.pdf> p5

⁴⁷ *Ibid.*

⁴⁸ Katherine McFarlane, 2015, *Care-criminalisation: the involvement of children in out of home care in the NSW criminal justice system*, University of NSW, pg155

⁴⁹ Homeslessness NSW, 2011, *NSW Homelessness Community Alliance policy statement*, <https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2016-12/Homelessness_the_justice_system_policy_statement_NSW_HCA_July_2011.pdf> p5

2.5.3 Children's Services

Out of Home Care (OOHC) and 'Care Criminalisation'

Young people living in residential OOHC services are much more likely to come into contact with police and other parts of the criminal justice system than their peers.⁵⁰ Children in OOHC also come into contact with the criminal justice system earlier.⁵¹ 'Care criminalisation' refers to the relationship between child welfare and justice systems and the processes by which children in OOHC become involved in the criminal justice system.⁵² Dr. Katherine McFarlane stated in her PHD, "I demonstrate that care-criminalisation has been repeatedly downplayed and ignored....I argue that the NSW policy and program vacuum is an example of the continuation of the 'institutional neglect and indifference' towards children in OOHC identified by Royal Commissioner Justice Wood almost 20 years ago."⁵³

Further Dr McFarlane writes,

'The nexus between OOHC and offending behaviour highlights the importance of a coordinated response from both welfare and justice agencies to the cohort's involvement in the justice system if the accumulation of risk factors - including those peculiar to the OOHC system - are not to increase the cohort's risk of involvement in crime and chances of recidivism. However... criminalising practices operating within the OOHC system escalated children into the criminal justice system for offences that would not have led to police involvement if they had occurred at home. The two factors - being in OOHC and offending - then exacerbated each other. Agencies' failure to work effectively together in the child's best interests further contributed to their poor long-term outcomes.'

It is critical that organisations collaborate to achieve the best outcomes for young people in OOHC.

Limited Cultural Awareness and Responsiveness amongst Care & Protection Workers and Legal Practitioners

Connection to culture is a known protective factor against involvement in the criminal justice system. For some young Aboriginal and Torres Strait Islander people in care, staff are not culturally responsive, nor are they culturally aware.

The President of the Children's Court of New South Wales, Judge Peter Johnstone stated in his July 2016 submission to the Legislative Council Inquiry into Child Protection,⁵⁴

⁵⁰ FACS, 2017, *Fact Sheet: Joint Protocol to reduce the contact of young people in residential out-of-home-care with the criminal justice system*,

http://www.community.nsw.gov.au/_data/assets/file/0010/408691/Factsheet_JP.pdf

⁵¹ Katherine McFarlane, 2015, *Care-criminalisation: the involvement of children in out of home care in the NSW criminal justice system*, University of NSW, p129

⁵² *Ibid.* pp3-5

⁵³ *Ibid.* pg17

⁵⁴ *Submission of the Children's Court of New South Wales to the Legislative Council Inquiry into Child Protection* (July 2016), Submission #80, *The Director-General of DFACS (NSW) and Gail and Grace [2013] NSWChC 4* at [95].

“I wish to place on record that this Court is increasingly frustrated by the lack of cultural knowledge and awareness displayed by some caseworkers and practitioners in their presentation of matters before it. The time has come for a more enlightened approach and a heightened attention to the necessary detail required, which may require specific training and education by the agencies and organisations involved.”

“The Court considers that it is critical to raise this issue until comprehensive cultural planning is embedded at all levels of the care and protection process. The Children’s Court submits that caseworkers and legal practitioners will benefit from increased training and professional development in this area.”⁵⁵

Culturally responsive care should be aspired to by all organisations working with Aboriginal and Torres Strait Islander young people. Indigenous Allied Health Australia explains, “Working in a culturally responsive way is about strengths-based, action-oriented approaches to achieving cultural safety that can facilitate increased access to affordable, available, appropriate and acceptable health care.”⁵⁶ AbSec explicitly states what is necessary for this below.



Aboriginal Case Management Rules and Practice Guidance – Strengthening Aboriginal families, delivering outcomes for Aboriginal children and young people

Practice Approaches

Culturally Responsive Case Management

- Inclusive approach that is respectful and understands the unique cultural perspectives and experiences of Aboriginal families and communities
- Values self-determination and the individual dignity and rights of Aboriginal people
- Practitioners critically reflect on how they have included and represented Aboriginal culture into assessment and planning

Strengths-based, family-centred

- Value Aboriginal cultural practices in family life and recognises the protective role of culture for ensuring the safety and wellbeing of Aboriginal children and young people
- Practitioners draw upon the unique strengths of the whole family and engage the family and engage the family as a partner through Aboriginal family-led decision making processes

Participatory Approaches

- Respect individuals and families as active agents in their own lives and seeks to engage with them to drive responses to identified challenges

Trauma-informed practice

- Practitioners are mindful of the indicators and impacts of trauma, appreciating the context of Aboriginal families and communities including intergenerational trauma
- Understanding how trauma affects thoughts, feelings and behaviours, as well as understanding of their beliefs and values
- Empowers families to take control of and responsibility for their own healing and recovery, including for the care and protection of their children

ABORIGINAL CHILD, FAMILY AND COMMUNITY CARE STATE SECRETARIAT (AbSec)
CARING FOR OUR CHILDREN, FAMILIES AND COMMUNITIES

⁵⁵ Ibid, pp 5-6.

⁵⁶ Indigenous Allied Health Australia, 2015, Cultural Responsiveness In Action: An IAHA Framework, pg5

There is a need for an upskilling of workers to be culturally aware, to create culturally safe environments, but also to actively empower young people to connect to culture.⁵⁷

The following were identified as essential for Aboriginal case management during state-wide consultations conducted by AbSec Services:

1. *Aboriginal Case Management Policy must empower Aboriginal children, young people, families and communities*
2. *An effective Aboriginal Case Management Policy supports service integration across the continuum of support*
3. *Services are tailored, flexible and holistic to meet the individual needs and strengths of Aboriginal children, young people, families and communities*
4. *Aboriginal Case Management Policy must focus on culturally competent practice, working with Aboriginal children, young people, families and communities in culturally embedded ways*
5. *Aboriginal Case Management is accountable to Aboriginal peoples for meeting outcomes for Aboriginal children and young people.*⁵⁸

Participants also identified the following seven key principles:

1. *Child-focused approach to safety and wellbeing*
2. *Family-led decision making*
3. *Community involvement, including self-determination and advocacy*
4. *Culturally embedded*
5. *Holistic services tailored to the needs of Aboriginal children and families*
6. *Oriented to prevent harm and preserve families*
7. *Accountable to Aboriginal peoples for the outcomes achieved for Aboriginal children and their families.*⁵⁹

RECOMMENDATIONS

29. *The NSW Government invest in a specially designed, holistic and therapeutic case management approach delivered by Aboriginal community controlled organisations, to support Aboriginal children who cross over the child protection and juvenile justice systems, meeting their needs and changing behavior as well as addressing social and environmental risk factors.*

⁵⁷ Aboriginal Child, Family and Community Care State Secretariat, *Aboriginal Case Management Policy, Rules and Practice Guidance Strengthening Aboriginal families, delivering outcomes for Aboriginal children and young people*, AbSec Sector Conference 22 November 2017

⁵⁸ Aboriginal Child, Family and Community Care State Secretariat, 2017, *Aboriginal Case Management Policy Workshop Report 5 and 6 June 2017*, https://www.absec.org.au/images/downloads/AbSec_Aboriginal-CMP-Workshop-5-6-June-2017-final-report.pdf pg7

⁵⁹ Aboriginal Child, Family and Community Care State Secretariat, 2017, *Aboriginal Case Management Policy Workshop Report 5 and 6 June 2017*, https://www.absec.org.au/images/downloads/AbSec_Aboriginal-CMP-Workshop-5-6-June-2017-final-report.pdf

30. *The Department of Family and Community Services establish processes and structures necessary to ensure Aboriginal communities are more actively involved in decision making on issues affecting their young people.*
31. *Ensure care and protection practice approaches include: culturally responsive case management, strengths-based, family centred approach, participatory approaches and trauma-informed practices.⁶⁰*
32. *The application of the Joint Protocol to Reduce the Contact of Young People in Residential Out-of-Home-Care with the Criminal Justice System be monitored and training requirements of the protocol are maintained.⁶¹*
33. *Targeted police training be delivered around the Joint Protocol for Local Area Commands with residential care facilities within their LAC.*
34. *Strategies be established to encourage police to engage with residential care facilities and build constructive and positive relationships with young people outside of times of crisis.*
35. *Further research be undertaken to understand the characteristics and needs of children and young people who have been in both out of home care and detention, to identify the size and characteristics of the crossover issue, to measure the prevalence of trauma-related mental health issues within this group, and to identify the type of need and service requirements for this group.⁶²*
36. *Comprehensive cultural planning be embedded at all levels of the care and protection process including increased training and professional development for caseworkers and legal practitioners.⁶³*
37. *Enact the principle of self determination in child welfare, characterised as 'Aboriginal decision making carried through to implementation', including Aboriginal-led policy and service system design such as AbSec's Aboriginal Case Management Policy and Rules and Practice Guidance, 'Achieving a holistic Aboriginal Child and family service system for NSW' and other associated frameworks that seek to empower Aboriginal families and communities to deliver improved outcomes and greater accountability to Aboriginal communities. Implementation must include appropriate Aboriginal oversight.*

⁶⁰ Aboriginal Child, Family and Community Care State Secretariat, *Aboriginal Case Management Policy, Rules and Practice Guidance: Strengthening Aboriginal families, delivering outcomes for Aboriginal children and young people*, AbSec Sector Conference 22 November 2017

⁶¹ NSW Government, 2016, *Joint Protocol to reduce the contact of young people in residential out-of-home-care with the criminal justice system*, <http://www.community.nsw.gov.au/?a=408679>

⁶² Recommendation 35.1, *Royal Commission into the Protection and Detention of Children in the Northern Territory* 2017

⁶³ *Submission of the Children's Court of New South Wales to the Legislative Council Inquiry into Child Protection* (July 2016), Submission #80

2.6 Schools and Educational Authorities

Racism

Recent community forums held across NSW in late 2017 by the Aboriginal Legal Service NSW/ACT reflected consistent reporting on the link between systemic or institutional racism within the school system and negative impacts on behaviour, attendance and performance in classrooms.

Suspensions

School suspension contributes to academic failure and dropout,⁶⁴ and is a potential risk factor in the development of problematic adolescent behaviour, including violent and antisocial behaviour.⁶⁵ School suspension is also a key element of what is known as the 'school-to-prison pipeline', which is the increased risk of marginalised young people becoming incarcerated at the juvenile, and then eventually, adult level.⁶⁶

The evidence shows that not only does suspension fail to reduce and deter problem behaviours, but it actually contributes to future engagement in antisocial and problem behaviours.⁶⁷ Suspension or substantial time spent unsupervised outside school can lead to young people associating with antisocial peers.⁶⁸ Importantly, it can also lead to students developing and internalising their identity as a 'bad' student and disengage from the school community.⁶⁹ Studies have found that school suspension was linked with a 1.5 times greater risk of antisocial behaviour and that students most at risk of suspension are those already disadvantaged by racism and poverty.⁷⁰

Although it may be necessary for schools to suspend students to ensure an immediate and short-term safe learning environment for others, the long-term costs to the both students and the community are high, especially if it leads to students becoming alienated and engaging in criminal behaviour.⁷¹

It is critical to include the voice of Aboriginal young people in the development of strategies to address issues around high levels of suspension in communities. Members of the Maranguka Youth Advisory Council in Bourke have stated that school suspensions make it difficult to catch up which leads young people to further disengage from school, and that most people would rather not have that time away from school.

⁶⁴ Sheryl A Hemphill, David J Broderick and Jessica A Heerde, *Trends & Issues in Crime and Criminal Justice: Positive Associations Between School Suspension and Student Problem Behaviour: Recent Australian Findings*, Report No 531 (2017) pp1-2.

⁶⁵ *Ibid.*) p1, 4

⁶⁶ *Ibid.* p1

⁶⁷ *Ibid.* p10

⁶⁸ NSW Department of Education and Communities 2013 cited in Sheryl A Hemphill, David J Broderick and Jessica A Heerde, *Trends & Issues in Crime and Criminal Justice: Positive Associations Between School Suspension and Student Problem Behaviour: Recent Australian Findings*, Report No 531 (2017) p9

⁶⁹ *Ibid.* p9-10

⁷⁰ *Ibid.*

⁷¹ *Ibid.* pp10-11

It is estimated that inadequate educational attainment and high school-leaving rates cost Australia \$2.6 billion annually in social welfare, health, crime prevention, lower tax revenue and productivity losses.⁷²

Although state-specific student engagement policies state that suspension should be used as a last-resort, data on school suspensions across Australia indicates suspension is often enforced in an inconsistent and improvised manner.⁷³

Schools should be recognised and engaged as a protective factor that can prevent students engaging in problem behaviour.⁷⁴ Schools should adopt a proactive approach in the form of preventative measures rather than a reactive approach of dealing with situations when they arise.⁷⁵ The *Our Place Program* outlined below is an example of this. The negative effects of suspension do not only affect students, but also their families, schools and the wider community.

CASE STUDY: The Our Place Program (OPP) - School Based Component of the Maranguka Support Model (Outlined below)

OPP is a voluntary support system for young people with multiple and complex needs. It aims to engage young people who have disengaged from education or who are involved with the criminal justice system. Overall, the intent is to re-engage young people with education and build their capacity to lead successful lives.

Part of the *OPP* is an alternative school-based learning environment for at-risk young people. In part based on BackTrack in Armidale, the four components of the program are mastery, independence, generosity, and belonging. It is a holistic approach to education, that engages with young people's families and community.

In the first term of 2017, approximately 9 young men participated and school attendance increased by 25% (see below). The *OPP* is a flexible and individualised program, tailored specifically for the needs and interests to each participant, with the understanding that a young person's needs may shift over time. Also with the understanding that sustained change for young people with multiple and complex needs may take years. The young men participate in activities that will engage them and suit varied learning styles, including circle work, daily check-ins, obtaining their white paper, fencing, agriculture, and other life skills. The Maranguka SOS Youth Coordinator supports the young men alongside a Bourke High School teacher and a teacher's aid.

Further risk factors are mitigated through supporting students in not only education and employment, but health and well-being and substance abuse. This is through fostering and

⁷² *Ibid.* p2.

⁷³ NSW Department of Education and Communities 2013 cited in Sheryl A Hemphill, David J Broderick and Jessica A Heerde, *Trends & Issues in Crime and Criminal Justice: Positive Associations Between School Suspension and Student Problem Behaviour: Recent Australian Findings*, Report No 531 (2017) p3.

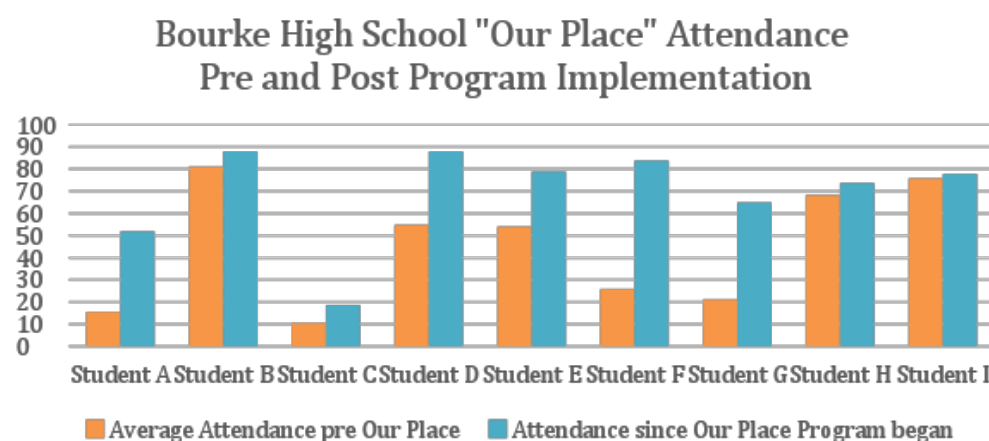
⁷⁴ Sheryl A Hemphill, David J Broderick and Jessica A Heerde, *Trends & Issues in Crime and Criminal Justice: Positive Associations Between School Suspension and Student Problem Behaviour: Recent Australian Findings*, Report No 531 (2017) p11

⁷⁵ *Ibid.* p10

nurturing cultural identity, education around substance abuse, health, and linking young people in with services and community. The *OPP* actively engages a wide range of stakeholders, such as Government, NGO, business and community members to support the young men and bring with them their own range of protective factors. Community support is a key determinant of program outcomes and the ultimate driving support for young people to re-engage with education and build their capacity to lead successful lives.

This therapeutic model has re-engaged students and is attempting to mitigate suspensions from occurring in the first place, by providing tailored learning to the individual, with a variety of therapeutic supports.

The *Our Place Program* fits into a larger Maranguka Support Model, that includes four components that are outlined below. The SOS Youth Coordinator plays a central role in each aspect of the Maranguka Youth Support model. The SOS initiative centres around supporting children and young people in Bourke who are at risk of disengaging with school and entering the criminal justice system.



RECOMMENDATIONS

38. *Schools improve access for youth workers and training for teachers so that at-risk young people can be identified and supported.*
39. *Schools pilot in-school suspensions and be provided with additional funding in order to employ sufficient supervision and oversight.*
40. *Facilitate mechanisms that allow for greater engagement of Aboriginal communities within schools.*
41. *Increase transparency of data in schools for the community and service providers, so that informed strategies can be developed to address problem areas.*
42. *Schools and educational authorities utilise opportunities to increase their engagement with early intervention and diversionary programs.*

43. *Schools embrace a proactive approach, aimed at preventing and/or limiting misbehaviour, including teaching students how to interact in prosocial ways and increase their conflict resolution skills.*⁷⁶

2.7 Non-Government Organisations and the Local Community

Collective Impact

The Maranguka Justice Reinvestment Project in Bourke has been designed and is being delivered using an approach known as Collective Impact, a different form of collaboration with dedicated roles and a purpose-built structure which focuses on the design of solutions to complex problems and the development of evidence based policy and shared measures to address system level change.

The Collective Impact framework enables service providers and community members to work collaboratively to achieve shared goals developed by the Aboriginal community in Bourke. The following are key elements of the Maranguka Justice Reinvestment Project's collective impact framework:

- A whole-of-community and whole-of-government **common agenda** to reduce youth crime and increase community safety.
- **Shared measures** for change based on real-time data.
- A **common approach**, based on best evidence, for creating change in the shared measures and developing the will and capability within the system to implement these responses.
- A **backbone organisation** to perform the necessary functions of facilitating the collaboration, continuously communicating and tracking change in the shared measures.
- A **clear financial picture** of the cost of implementation and the costs saved through effective implementation.

CASE STUDY: The Maranguka Justice Reinvestment Project and the Collective Impact Framework

The 8-18 year old Working Group and the Maranguka Support Model

More than 30 service providers, as well as community members have come together consistently over the last year and a half in this Working Group to facilitate improvements in the lives of Aboriginal children in Bourke aged 8 – 18 years.

The child-centred approach has oriented the group towards a common purpose with a focus on building trust in the community and raising awareness of available programs and services.

⁷⁶ Sheryl A Hemphill, David J Broderick and Jessica A Heerde, *Trends & Issues in Crime and Criminal Justice: Positive Associations Between School Suspension and Student Problem Behaviour: Recent Australian Findings*, Report No 531 (2017) p10

Having the involvement of the police and real-time data has meant that the 8-18 year old working group has been able to respond to crime rates and patterns in an informed and collaborative way. One example of this was over Summer 2017-2018 when there was a coordinated youth service response. Maranguka, Birrang, PCYC, Youth Off the Streets, Family Referral Service, FACS, Police and Bourke High School worked together to ensure activities were provided every day, as well as a night patrol every night.

A focus for this group next year will be exploring diversionary options for young women and better support for primary aged children and their families. These are gaps that have been identified in the community.

The Maranguka Support Model

The Maranguka Support Model (MSM) has been co-designed by the 8-18 year old Working Group with support from the Australian Centre for Social Innovation. The model was developed over a number of months, requiring sustained commitment and engagement to bring the necessary stakeholders together. There are now 3 families involved with MSM that includes 17 children.

There are four components of the Maranguka Support Model (MSM) for Young People:

1. School Based Component – *Our Place*⁷⁷
2. Family Component – Wrap around support for the whole family
3. Save our Sons/Sisters (SOS) Out of School Hours (OOSH) Component⁷⁸ – Weekends/holidays
4. Return to community and acute cases.

The SOS Youth Coordinator plays a central role in each aspect of the Maranguka Youth Support model. The SOS initiative centres around supporting children and young people in Bourke who are at risk of disengaging from school and entering the criminal justice system.

SOS Out of School Hours Component– July School Holiday Program

A need for activities during the school holiday period in Bourke was identified, as school holidays are always high-risk crime periods. The aim was to have a range of activities and places to go to keep the young people who attend *Our Place* engaged and in a routine. The young people attending *Our Place* had excellent attendance rates during the term (see diagram above) and the team wanted to ensure engagement continued during the holidays. Maranguka held several meetings with services in town to try and get them involved and to change their normal operating hours (9-5pm, Monday – Friday). While a number of services were not able to be flexible, others committed to working collaboratively and doing things differently.

Outcome: S.O.S Youth Coordinator, Maranguka, Birrang, YOTS and Education came together to implement holiday programs. The Bourke Shire Council, the Police and the ACLO, FACS, the Men's Shed and various community members, also offered their support. Each morning

⁷⁷ *Our Place* is an alternative learning environment for at-risk young people. It is centred around four components: mastery, independence, generosity, and belonging. Approximately 9 young men participate and school attendance has increased.

⁷⁸ The OOSH Component was primarily coordinated and implemented by Birrang, SOS and Maranguka.

breakfast was made for the boys and then each day they took part in a range of different activities. These included: building a bark hut for a display for the Pre-schools NAIDOC week; fishing and yabbying; touch football; participating in the NAIDOC celebrations; cleaning up 2CUZ radio station; playing golf; cultural tours of Brewarrina, Mount Gundabooka and Mt Oxley; volunteering at the Men's Shed to construct garden beds for a community garden; painting; a session on domestic violence and how it affects our families and community; cooking; cutting wood for didgeridoos and clap sticks and much more.

Impact: The SOS school holiday program resulted in a reduction in crime - for just under a month no offences in Bourke were committed by participants.

RECOMMENDATIONS

44. *Youth diversion programs for Aboriginal and Torres Strait Islander young people be operated in partnership with, or by, Aboriginal communities and/or Aboriginal controlled organisations.*⁷⁹
45. *Funding cycles be increased to 5 years. Competitive, short-term funding inhibits collaboration between organisations and services, and damages/inhibits relationships with communities.*
46. *Funding periods for case-management be extended to better reflect the complexity of addressing intergenerational trauma.*
47. *Increased funding be allocated for youth diversionary programs delivered by Aboriginal community controlled organisations.*
48. *Diversionary programs increase buy-in and involvement from local communities by utilising local mentors, employers providing training and taking on young people as workers.*
49. *Increased investment in early intervention and crime prevention programs particularly for primary-aged children.*
50. *Increased number of female specific youth diversionary programs.*
51. *Authorisation for collaboration from above- tenders should include partnerships and examples of collaboration.*
52. *Provide training across the service sector in all youth diversionary approaches to manage behaviours in a therapeutic, non-punitive, non-adversarial, trauma-informed and culturally responsive way.*⁸⁰

⁷⁹ Royal Commission into the Protection and Detention of Children in the Northern Territory 2017

⁸⁰ Adapted from NTRC Recommendation 19.1, Royal Commission into the Protection and Detention of Children in the Northern Territory 2017

3. Response to ToR (c): Evaluating outcomes and identifying areas for improvement

Justice Reinvestment and Data

As outlined in the introduction to this submission, data is a crucial element of justice reinvestment, including in evaluating outcomes and identifying areas for improvement. Justice reinvestment is an iterative process of identifying areas for improvement, then testing, trialling and adapting, based on what the evidence is saying. Savings are measured and tracked based on outcomes and those savings are reinvested to improve outcomes.

Access to Data

A key challenge for the Maranguka Justice Reinvestment Project was the collection of community level data from government in order to produce the *Snapshot of Life for Aboriginal Children & Young People in Bourke* (attached). For communities to be able to effectively implement data-informed strategies, access to government data must improve. To understand more about the data collection process see Appendix 1.

Indigenous Data Sovereignty

The concept of Indigenous data sovereignty recognises the rights of Indigenous peoples in relation to the collection, ownership and application of data about them and their communities.⁸¹ The overall aim is to shift the ownership, control, access and possession of data about Aboriginal people in Australia to Aboriginal people.

Through community-led justice reinvestment initiatives, communities can be supported to identify their own data needs. They can then use the data to develop long-term strategies tailored to local needs that address the underlying drivers of crime.

It is important to note that when evaluating youth diversionary programs aimed at Aboriginal and Torres Strait Islander communities, outcomes should not be limited to criminal justice indicators. Rather, what is seen as success should be determined by the community, and can include a range of indicators spanning employment, physical and mental health, housing, education, sense of belonging and various others.

CASE STUDY: Evaluating outcomes and areas for improvement in the Maranguka Justice Reinvestment Project

The Maranguka JR Project is one of the leading projects in its approach to data sovereignty. MJRP is shifting the ownership, control, access and possession of data to the community. The Bourke Tribal Council controls data collected under the *Safe, Smart, Strong* strategy (attached) and subsequent story of change framework. In addition to the Bourke Tribal Council, we also source vital community input from other groups such as the Men of Bourke, Maranguka Youth Advisory Council and the Journey to Healing Womens Group. Maranguka

⁸¹ Tahu Kukutai, John Taylor, *Indigenous data sovereignty: toward an agenda*,

gives Aboriginal people in Bourke the right to maintain, control, protect and develop the data that is collected.

The Maranguka Justice Reinvestment Project is following a Community based participatory research (CBPR) approach, as this is proven in yielding concrete knowledge and understanding that can guide policies and programs to reduce health and social disparities. Aligning with CBPR, the project is conducted by, for and with the participation of community members. The aim is to advance understanding, as well as to ensure that local knowledge contributes to making a concrete and constructive difference in Bourke.

The Shared Measurement System

The Maranguka Justice Reinvestment Project has developed a shared measurement system to track outcomes of progress of the priorities set out in *Safe Smart Strong*. A shared measurement system is a common set of measures to monitor performance, track progress towards outcomes and learn what is and is not working in the working groups collective approach, through which the community can ensure transparency and accountability and have access to real time data to shape and inform strategies. Using the shared measurement system, the Project can closely monitor the performance of the activities and will adapt the approach as necessary.

The Maranguka data team have created evidence based, feasible indicators for each outcome under *Safe Smart Strong*. Each outcome has indicators at varying response levels ensuring accountability across various sectors that allow us to measure the working groups' progress toward community defined outcomes. The four response levels include,

1. a pulse check - which gives interesting information that may be useful in guiding agenda amendment by the Bourke Tribal Council
2. community level responses- to track service and community progress,
3. service level responses- to demonstrate community potential and;
4. government level data - as proof that we are on track as a whole.

With such a large commitment and input from the Bourke community, it is vital to continuously report transparent, relevant and up to date data back to community. In ensuring this, a dashboard to share real time data has been developed.

The benefits of this approach are obvious for the community in that; change is in the hands of community; service sector supply and demand is mapped; there is consistent provision of transparent information; services adapt to become responsive to community and; achievements can be identified and celebrated.

For the service sector as well it yields real benefits by; sharing real time local level data; services having the ability to make informed decisions, learning and adapting to what is currently happening within the Bourke community; effectively shaping service delivery to be outcome focused and; have a direct partnership with community.

RECOMMENDATIONS

- 53. Police be required to share some crime data to support communities in developing strategies and initiatives to reduce offending.*

54. *Data sharing agreements be established between government agencies, including Education, Health and FACS, with local communities to better inform evaluation and identifying areas for improvement.*
55. *When conducting evaluations, principles of data sovereignty and community based participatory research should be respected and followed.*
56. *Evaluations must be adequately funded and supported.*
57. *Diversionary programs be evaluated based on range of indicators of success outside of the criminal justice system.*
58. *Create a public database of a range of examples of indicators of success for diversionary programs to be able to draw examples from in their evaluations.*

4. Response to ToR (d): Staff capacity and training requirements

See TOR a) - *Child Services, Schools and educational authorities and Non-government organisations and the local community* above.

5. Response to TOR (e): Case management options

See TOR a) - *Child Services, Schools and educational authorities and Non-government organisations and the local community* above.

6. Response to TOR (f): Bail issues

The NSW Government needs to work with peak Aboriginal and Torres Strait Islander organisations to identify service gaps and develop the infrastructure required to provide culturally appropriate bail support and diversion options.⁸²

Further, we draw your attention to the final page of our attached Policy Paper which includes a proposal for framing smarter orders and implementing breach reduction strategies through:

- better tailoring court orders including bail, supervised orders and AVOs
- improving support services and supervision for those on community orders and domestic violence orders (e.g. community supervision, especially for young people)
- providing support services and accommodation options for those on bail (including bail hostels)

Please also refer to TOR a) and the Maranguka Justice Reinvestment Project's Bail Protocols as a case study of the ability of the Bourke Aboriginal community and the police collaborating in order to mitigate bail issues and develop an appropriate diversionary option.

⁸² Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper 84, July 2017.

The 2005 NSW Law Reform Commission found ‘the practice of imposing harsh and inappropriate bail conditions on young people has been the subject of repeated concern over the last decade or more.’⁸³ In 2018, we are still hearing from our Youth Ambassadors that bail conditions can be unreasonable, don’t take into consideration cultural sensitivities or family dynamics, and are not realistic. Bail conditions can be ‘more onerous than sentencing orders and are often imposed without adequate supports in place.’⁸⁴

RECOMMENDATIONS: See ToR a) Police

7. Response to TOR (h): Any other related matters

7.1 JR Recommendations

JR needs a national approach and whole-of government collaboration with a clear framework of support from the Federal Government for States and Territories.⁸⁵

Particular consideration should also be given to the establishment of a national statutory body to formalise efforts to fund, coordinate, evaluate and disseminate information about state and territory and local justice reinvestment efforts.

In order to progress the development of JR in Australia, state and territory governments should work with the Federal government to develop and establish:

- A framework for improved access to data for communities to inform early intervention, crime prevention and diversionary strategies, as well as data sharing arrangements and setting baseline data sets
- Seed resourcing for the funding of additional pilot sites
- A national data base of evidence-based early intervention, crime prevention and diversionary strategies
- An independent centralised JR body co-chaired and in partnership with Aboriginal and Torres Strait Islander people
- Treasury mechanisms to calculate savings and support reinvestment, including the reallocation of resources within and across agencies.

7.2 The Role of Young People

For Just Reinvest and our member organisations, the role of young people is critical in ensuring the success of diversionary options, as well as the establishment. This is ‘premised on the understanding that young people are the experts of their own experiences and that not only

⁸³ NSW Law Reform Commission, Young Offenders, Report 104, December 2005, p248

⁸⁴ Katherine McFarlane, 2015, *Care-criminalisation: the involvement of children in out of home care in the NSW criminal justice system*, University of NSW, pg152

⁸⁵ Noetic Solutions. “A strategic Review of the NSW Juvenile Justice System: Report for the Minister of Juvenile Justice.” Noetic Solutions. (2010)

<<http://www.juvenile.justice.nsw.gov.au/Documents/Juvenile%20Justice%20Review%20Report%20FINAL.pdf>>

services, but society as a whole benefits when young people are active, empowered participants.’⁸⁶

Having the active participation of young people, especially young people who will be participants in the programs designed, needs to be valued as an important opportunity for NGOs, health, education, the justice system and other sectors providing youth diversionary options. Young people who have faced challenges, barriers, adversity, who have engaged with diversionary programs, ‘are in a unique position to be able to reflect on their experiences and offer valuable insights into system reform.’⁸⁷ Young people’s voices need to be at the centre of development, implementation, evaluating and altering youth diversionary options.

The Northern Territory Royal Commission into Youth Diversion and Child Protection (NTRC) also highlighted this as an important policy.⁸⁸ Recommendation 2.1 called for a legislated Council of Children who have been in out of home care and the youth justice system to express views of legislation and policy affecting young people in those systems.⁸⁹

CASE STUDIES:

Maranguka Youth Advisory Council (MYAC)

The MYAC has met 8 times now at the Maranguka Community Hub. The Youth Council is a way for young people in Bourke to take ownership of the change they want in Bourke and have a strong voice in the community. The Maranguka Justice Reinvestment Project is informed by young people in Bourke and will work with the MYAC to make sure that young people know that they are listening and can take action. The MYAC has discussed suspensions, policing, youth diversionary options, local infrastructure and youth-led projects.

Weave Youth Advocates

WEAVE’s Youth Advocate Program aims to increase opportunities for young people: by increasing the involvement of young people in the design and implementation of projects led by young people; and through advocacy, by representing the needs and views of local young people. This is premised on the fact that community leadership builds on young people’s existing strengths and assets and that young people are experts of their own lives.

AbSec’s Youth Ambassadors

⁸⁶ Jessica Crofts, Sally Beadle, Helen Cahill and Katherine Romei, October 2017, *The Y-Change Project: Innovation in youth participation, youth leadership and social change: An evaluation of the 2016 pilot phase*, Melbourne Graduate School of Education, http://education.unimelb.edu.au/data/assets/pdf_file/0003/2520354/y-change-berry-street-publication.pdf, pg4

⁸⁷ Jessica Crofts, Sally Beadle, Helen Cahill and Katherine Romei, October 2017, *The Y-Change Project: Innovation in youth participation, youth leadership and social change: An evaluation of the 2016 pilot phase*, Melbourne Graduate School of Education, http://education.unimelb.edu.au/data/assets/pdf_file/0003/2520354/y-change-berry-street-publication.pdf, pg5

⁸⁸ Recommendation 2.1, *Royal Commission into the Protection and Detention of Children in the Northern Territory*

⁸⁹ Recommendation 2.1 *Royal Commission into the Protection and Detention of Children in the Northern Territory*

The AbSec Youth Ambassador program (YAP) is an initiative that aims to provide a platform for Aboriginal young people to engage with the child protection and out-of-home care sector in NSW. AbSec is working to ensure the voices of Aboriginal young people are heard right across the sector, influencing services and supports to deliver better outcomes for Aboriginal young people.

The purpose of the AbSec YAP is to:

- Motivate and inspire the non-government sector and wider community
 - Pursue priority areas as identified by the Ambassadors
 - Influence Government and decision-makers
 - Speak publicly, with support from AbSec, on experiences and issues impacting Aboriginal young people across NSW.
-

7.3 Raising the Criminal Age of Responsibility

RECOMMENDATION

59. The age of criminal responsibility to be raised to at least 14 years so that primary school-aged children are not entangled in the criminal justice system.

7.4 Driving Offences and Diversion

Young people in regional and remote places often commit driver licensing offences and/or have difficulties obtaining a licence.

CASE STUDY: Maranguka Driver Licensing Program

The Maranguka Driver Licensing Program is a successful model of a driver licence program in a regional Aboriginal community. The Program is auspiced by Birrang. Information on the program is as follows:

Background

- Bourke has ranked first in NSW for offences relating to driving whilst disqualified/suspended and motor vehicle theft for those aged between 10-25 years (BOCSAR 2013).
- There were a number of schemes in place including Work Development Orders, Birrang and Yes I Can. They were having some success, but were limited in what they could achieve, they needed to be coordinated and adequately resourced to address the complexity and extent of the challenge.
- In 2009, the George Institute prepared the Crime Prevention and Driver Education Program Feasibility Study for the Bourke Community.
- In response to the lack of action taken by the government on the recommendations, the Maranguka Justice Reinvestment Project was implemented.

- The Bourke police were eager to explore alternatives to issuing a Court Attendance Notice (CAN) when they stop an unlicensed driver.
- The Maranguka JR Driver Licensing Program commenced in December 2015.

Barriers to obtaining and maintaining a driver's licence:

- Literacy problems and difficulties passing the driver knowledge test.
- Limited access to licensed drivers to supervise learner drivers.
- Limited access to registered and insured vehicles.
- The costs associated with obtaining a licence, owning and maintaining a car.
- Difficulties associated with the graduated licensing systems.
- Difficulties obtaining proof of identity documents.
- Particular difficulties with birth certificates and change of name registrations.

The impact of suspension or cancellation of a driver licence (or the inability to obtain a licence) can:

- make it harder to sustain a job and find work;
- deepen financial hardships;
- create more contact with the criminal justice system (through secondary offending); and
- ultimately lead to imprisonment (NSW Law & Safety Parliamentary Inquiry into Driver Licence Disqualification: NSW Legal Assistance Forum Submission).

The Maranguka Driver Licensing Program

A person either volunteers or is referred by the police or the courts to take part in the program. It provides:

- Case management of a participant's particular needs, whether they are related to: drugs and alcohol, mental health, homelessness, or other issues.
- The opportunity to obtain a Certificate 1 in Automotive Mechanics.
- A more permanent and appropriately resourced driver licensing and education program. This includes access to registered cars, driver mentors, and associated costs.
- Removal of barriers to identity documents. This can include streamlined and facilitated access to relevant identification documents in collaboration with: Department of Births, Deaths and Marriages, Transport for NSW, and Roads and Maritime Services.

Driver Licensing and Crime Prevention: The Economic and Social Benefits

- Reduction of costs: police resourcing, charging and handling, transport and custody.
- Minimising hidden costs of excluding people from employment and the opportunity to play an active role in society.
- Indirect financial and social costs of not having a driver's licence on families.
- Improving police-community relations.
- Reducing costs of incarceration and secondary impacts.
- Engaging youth (e.g. through Family Referral Service and linking to education services).

Outcomes:

The community has demonstrated support for the program.

December 2015- June 2017:

Licences:

· 65 learner licences and 56 Provisional Licences obtained; a total of 121 licences

Case Management:

- Assistance with obtaining their Birth certificates, and other Proof of Identify documents, clients require assistance and support with other forms of POI, including school cards, bank statements, Centrelink statements, etc.
- 93 required assistance with State debt recovery office, work development orders, or Centapay.

Employment and Education/ Social and Health Benefits:

- More than 5 people have either earned new employment or secured their current positions due to having a driving licence.
 - 2 students of the program are involved in education and had to gain their Learners to continue in their current position.
 - 1 participant can now attend TAFE in Dubbo and has improved her attendance/ grades due to the fact that she can now drive herself to the program. She has reported that this independence has helped improve her sense of self-worth.
 - 1 student was able to increase her hours of employment, and consequently, take on more responsibility in outback childcare due to obtaining a provisional licence.
 - Increased ability to care for family - children and elders
 - Health Benefits: Travelling to Dubbo for specialist appointments.
-

APPENDIX 1

The Maranguka Justice Reinvestment Project in Bourke **Gathering the Data / Creating a Baseline**

The Bourke Aboriginal community decided that they wanted data collected reflecting the full life span of a young Aboriginal person in Bourke, from pre-natal to twenty-five - including indicators related to early childhood, education, health, employment, child safety, mental health, drugs and alcohol, as well as data surrounding a young persons involvement in the criminal justice system. The community wanted this information to get a better informed and complete picture of what was happening with their children and young people. This data was gathered from a range of Government departments. To help facilitate the data collection process and support the project more broadly, the Premier appointed the then Family and Community Services Minister Mr Brad Hazzard as the Cross-Sector Government Champion. The data collected was then collated into a *Snapshot of Life for Aboriginal Children & Young People in Bourke (the data snapshot)*. The data snapshot set the baseline in order to measure change and progress, and has also informed the strategies developed by the community.

Developing a Community Strategy

Key nominated Government and non-Government workers in Bourke underwent training on how to read the data represented in the data snapshot, hold community conversations, and record community feedback. The trained Bourke personnel conducted and recorded these community conversations between September and December 2015. From these, key themes were extracted and summarised into a Community Feedback document.

In December 2015 the Community Feedback and the data snapshot was presented to the Bourke Tribal Council along with research on evidence-based interventions, to determine the community goals and targets. From this, the strategy 'Growing our kids up safe, smart and strong' (*Safe, Smart Strong*) was developed.

Strategic Working Groups have been established and developed from the priorities recognised in *Safe, Smart Strong*. The Working Groups comprise of government and non-government agencies, service providers and Bourke community members. The Strategic Working Groups are, Early Childhood and Parenting, 8-18 year olds, the Role of Men and Service Sector Delivery Reform.

KPMG has prepared a Preliminary Assessment of the Project. The report is attached. It provides:

- an overview of the key elements of the model being used in Bourke (Indigenous Self-Governance, Collective Impact, and Justice Reinvestment)
- estimated costs associated with the project and the costs associated with the justice system in Bourke
- a comparison of the approach with other potential approaches, and an assessment of implementation up to June 2016, including strategic alignment with NSW and Australian Government policies.

The report highlights the importance of Indigenous Self Governance as a precursor to improving economic and social conditions in Aboriginal communities and realising community priorities.

In its second stage of work, KPMG will conduct the necessary economic analysis to build the business case to government detailing projected savings for government resulting from implementation of the approach, and identifying fiscal mechanisms for reinvestment.

Current Focus

The Working Groups have been set up and have made substantial progress in developing key strategies across the focus areas including:

- First two-thousand days of a child's life
- Three year old health checks
- Voluntary wrap around support for children and young people at risk of disengaging from school or offending
- Building and strengthening employment pathways
- Return to community strategies (pre and post release support)

The formation and engagement of the Cross Sector Executive group has also been a critical development to support and facilitate the work on the ground in Bourke. The Cross Sector Executive Group is convened by the Department of Premier and Cabinet and is comprised of representatives from Justice, Health, Education and FACS as well as Maranguka, Just Reinvest NSW, and the NSW Ombudsman.

The Executive meets every 2 months with a focus on:

- Creating the enabling conditions needed for the goals and targets articulated in *Safe, Smart & Strong* to be achieved in Bourke.
- Service Sector reform – a key priority identified by the Bourke Tribal Council.

Project Milestones

1. Backbone Organisation team is fully recruited and operational in Bourke
2. 1 x 1 and community meetings held with key leaders and influencers from all parts of the system
3. Relevant data points collected and analysed with data gaps identified.
4. Community conversations around the data in order to <ul style="list-style-type: none"> ● inform community and obtain community feedback ● gather key themes and goals
5. System mapped
6. Research on best evidence responses to reduce contact of children and young people with criminal justice system
7. High level common agenda and shared measures agreed and agreement on approach to achieve common agenda and shared measures
8. Cross-sector governance group established with clear terms of reference
9. A business case developed, including <ul style="list-style-type: none"> ● Program design and delivery and capacity development ● A backbone organisation's functions ● A data sharing and reporting platform
10. Trial and Test: Implementation of plan The Working Groups: <ul style="list-style-type: none"> - Strategies and infrastructure for continuous communication agreed and put in place - Plan drafted to develop and leverage the existing system to implement the common agenda, common approach and shared measures

11. Detailed economic modelling of costs saved over a 5 – 10 year period as a result of effective implementation. KPMG has been engaged to complete this work.
12. A detailed plan tabled based on the: <ul style="list-style-type: none"> ● Common agenda ● Common evidence-based approach ● Shared measures ● Backbone functions/organisation ● Ongoing community governance and leadership facilitation and support including for the Bourke Tribal Council, Maranguka Youth Advisory Council, Journey to Healing Women’s Group and the Men of Bourke (Men’s Group). ● Costs of implementation ● Costs of savings generated
13. The Reinvestment: ongoing use of savings to fund long-term implementation of the plan in Bourke past the set-up and trial run phases. Application of lessons learned and new found and applied relationship and consultative mechanisms that lead to better use of funds and social capital, better relationships with and inclusion of youth in decision making and the creation of diversionary infrastructure that benefits the whole community.

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

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

Justice reinvestment is a place based, data-driven approach to justice that builds stronger communities by redirecting money that would be spent on prisons into early intervention, crime prevention and diversion.

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

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

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

The paper was developed following a roundtable discussion with representatives from the Law Society of NSW, the NSW Bar Association, the Law Council of Australia, the Aboriginal Legal Service NSW/ACT, Legal Aid NSW, the Public Interest Advocacy Centre, the University of NSW, the University of Technology Sydney, the Public Defenders office, and other prominent members of the NSW legal and justice communities. It has been the subject of consultation with peak NSW Aboriginal organisations and other key organisations and agencies.

Key objectives:

Reducing crime to create safer communities:

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

An end to post-code justice:

equal access to and adequate resourcing for diversionary sentencing options, rehabilitation programs and therapeutic court settings across NSW.

A smarter way to spend \$3.8 billion:

focusing expenditure on measures that will support early intervention, improve public health, strengthen communities and prevent crime.

1 Ensure the availability and expand the scope of Intensive Corrections Orders (ICOs)

a) Ensure ICOs availability for all NSW locations

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

ICOs are an underutilised sentencing option, particularly in regional and remote NSW. In 2015 in NSW, 74% of offenders who were sentenced to ICOs were in major cities, 19% in regional towns, and just **0.6%** in remote NSW. Additional resources and greater flexibility for approved community service options are required to ensure the availability of ICOs as sentencing options for all NSW courts. This would have the flow-on effect of increasing the availability of Community Service Orders.

Expanding the availabilities of ICOs will require a significant commitment in recruiting and training a trauma-informed and culturally competent workforce, as well as investing in the development of local people so that a stable and skilled workforce in the longer term is ensured.

b) Expand the scope of ICOs to include therapeutic programs as alternatives to the work component

The current assessment process deems many offenders with substance dependency issues, cognitive impairment, mental illness or physical disability unsuitable for the mandatory work component of an ICO. BOCSAR has found that only 55% of ICO assessments result in an ICO being imposed, due mainly to alcohol or other drug dependency rendering the person unsuitable for an ICO. Rather than exclude these offenders, the mandatory conditions could be tailored to address the underlying causes of offending and expanded to include orders to attend rehabilitative programs or violent offender programs, as an alternative to the work component.

Evidence suggests that intensive supervision coupled with rehabilitative treatment has a higher impact on reducing the rate of re-offending than imprisonment. It is also more cost-effective, per person, per day:

Community-based order: \$22

Rehabilitation centre: \$120

Prison: \$217

Additional consideration should also be given to extending the maximum length of an ICO, which is currently 2 years. The current maximum length means that where a term of imprisonment of more than 2 years is warranted but an offender has demonstrated positive rehabilitation, there is no community based alternative available.

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

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

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

- Chris Day, Regional Principal Legal Officer, Criminal Law Practice, ALS NSW/ACT



2

Taking steps to reduce the imposition of sentences of six months or less, by encouraging greater use of ICOs and other non-custodial options, and to consider strategies to encourage courts to also provide reasons as to why an eligibility assessment for an ICO was not made.

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

In the 12 months to June 2016, **almost half** (43.4%) of those sentenced to prison in NSW received a sentence of less than 6 months. In the same period approximately **two-fifths** (37.6%) of persons sentenced to prison in NSW for less than 6 months were Indigenous.

Short sentences are costly and ineffective in rehabilitating offenders and reducing recidivism, as well as providing only a limited period of incapacitation. People in prison for short periods often do not have access to programs, while at the same time are disconnected from employment, education and family. In the 12 months from October 2013, **63%** of all people who received a sentence of less than 6 months **reoffended within two years**.

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

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

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

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



A **90% reduction** in the number of sentences of less than 6 months would:

- **cut** the number of prison sentences handed down in NSW courts and the number of people coming through the prison system by almost **40%**
- result in a **5% reduction** in the overall prison population.
- free up approximately **\$30 million** the government currently spends on locking up people for less than 6 months each year - not including potential savings in capital expenditure



Any reduction in recidivism will also generate savings extending to court costs, police resources, property damage, health care and victims compensation, as well as reduced lifelong individual and societal costs as a result of improved productivity.



Change the response to breaches of parole and support measures to reduce the likelihood of breach

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

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

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

Stephen (*name has been changed*), is a 30 year old Aboriginal man with significant drug issues. He had been in and out of custody from the age of 12. After he was released on parole he had a difficult time in the community, struggling to undertake routine daily tasks like using self-check out at the supermarket. He became anxious and depressed and committed a minor offence. Stephen's partner was 3 months pregnant with their first child and was very supportive. Stephen had further support from his partner's family as well as a Justice Health worker. He wanted to enter residential rehab to address his drug issues and although his Community Corrections Officer indicated she was willing to support him in this, his parole was revoked. He was ordered to serve the full 12 months left on his parole. Stephen was then released without any supervision or support.

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

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

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

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

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

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

– Miranda Project Work Placement

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

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

The proposals include:

Mapping existing residential and non-residential drug and alcohol programs for Indigenous people to identify and meet additional need including resourcing for:

- Options for those with mental health issues, an intellectual disability or a cognitive impairment
- Healing and cultural components including access to trauma-informed and culturally safe community based healing for offenders and victims
- Additional programs for women and juveniles
- Aftercare support

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

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

Establishing a more equitable approach to penalty notices and fines through measures including:

- limiting fines for people on any form of welfare benefit
- introducing 'capacity-to-pay' guidelines and limitations on multiple penalty notices
- decoupling non-payment of fines from motor vehicle license suspension, particularly for people without access to public transport living in remote and rural localities

Framing smarter orders and implement breach reduction strategies through:

- better tailoring court orders including bail, supervised orders and AVOs
- improving support services and supervision for those on community orders and domestic violence orders (e.g. community supervision, especially for young people)
- providing support services and accommodation options for those on bail (including bail hostels)

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

Organisations that have endorsed this paper include: the Aboriginal Legal Service NSW/ ACT, Aboriginal Medical Service Cooperative Limited, Aboriginal Child, Family and Community Care State Secretariat, Aboriginal Education Council (NSW) Inc, Amnesty International, ANTAR, Ashurst, Australian Indigenous Alpine Sports Foundation, Change the Record, Community Legal Centres NSW, Enough is Enough, Gilbert + Tobin, Kingsford Legal Centre, Mental Health Coordinating Council, National Indigenous Substance Misuse Council, NSW Council of Civil Liberties, NSW Council of Social Services, NSW Reconciliation Council, Red Cross, Save the Children, Shopfront Youth Legal Service, Show Me the Way, Uniting, The University of Sydney, Weave Youth and Community Services, Whitelion, Youth Action and the Youth Justice Coalition.

For sources, detailed briefing notes or more information about Justice Reinvestment and Just Reinvest NSW go to:

www.justreinvest.org.au

