



JUST  
REINVEST  
NSW

# REDEFINING REINVESTMENT

An opportunity for Aboriginal communities and government to co-design justice reinvestment in NSW

# PUBLICATION DETAILS

## Acknowledgement

JRNSW would like to acknowledge all Aboriginal and Torres Strait Islander people across Australia, the traditional custodians of the lands on which we work and live, and pay our respects to Elders, past, present and emerging. We also acknowledge the ongoing connections all Aboriginal and Torres Strait Islander people have to land, sea and community.

## Contribution to this report

We acknowledge the contributions made by Aboriginal communities to redefining the concept of reinvestment in NSW, as detailed in this report. We firstly acknowledge the trail-blazing work of Maranguka and the Bourke Tribal Council in this regard. The community of Bourke has innovated and led the way with justice reinvestment both in NSW and nationally. We have all learnt and continue to learn so much from their work.

Aboriginal people working with justice reinvestment in Moree, Mt Druitt and Bourke have also contributed vital insights and expertise around these re-definitions to inform this work and have also assisted others in their communities to do so. Progressing reinvestment raises complex questions and issues, and community understandings of this concept shared by these three communities makes an important contribution to Aboriginal people self-determining their pathway out of over-representation

within our justice system. Aboriginal members of JRNSW's Executive Committee have also shared their valuable insights into reinvestment in NSW.

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Financial support for this work has been provided by Paul Ramsay Foundation and through The University of Sydney's Sydney Research Accelerator (SOAR) Prize. King and Wood Mallesons have also provided significant contributions, assisting with transcription and background research on justice reinvestment in the US.

### Suggestion citation

Allison, F (2022), *Redefining Reinvestment. An opportunity for Aboriginal communities and government to co-design justice reinvestment in NSW. Final Report.* Just Reinvest NSW



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## Acronyms

<b>ABS</b>	Australian Bureau of Statistics
<b>ACCO</b>	Aboriginal Community-Controlled Organisation
<b>CTG</b>	Closing the Gap
<b>DCJ</b>	Department of Communities and Justice
<b>IDG</b>	Indigenous Data Governance
<b>IDS</b>	Indigenous Data Sovereignty
<b>JR</b>	Justice Reinvestment
<b>JRNSW</b>	Just Reinvest NSW
<b>NSW</b>	New South Wales

# EXECUTIVE SUMMARY

## Introduction

Over the last decade, Aboriginal communities in NSW have been implementing justice reinvestment (JR) to address Aboriginal over-representation in the justice system. They have returned to its early conceptualisation in the US as a place-based approach that addresses drivers of offending, whilst also emphasising self-determination. They define reinvestment, a key element of JR, as a redirection of funds away from more punitive justice responses into localised prevention approaches, but also as a much broader shift in resources and decision-making.

This paper presents an urgent call to action for the NSW Government to invest in JR, framed by Aboriginal definitions of reinvestment. Aboriginal over-representation in NSW continues to rise, alongside increases in NSW Government expenditure on incarceration. Aboriginal communities have been leading JR in NSW for close to a decade now. And while in some areas NSW Government policy aligns with and/or is facilitating reinvestment in NSW, including through the Federal Closing the Gap strategy, additional action is required of government.

Aboriginal communities see the criminal justice system has having harmful impacts and as not effectively contributing to reduced Aboriginal offending. It exacerbates rather than resolves causal factors of this offending while impacting negatively on

factors likely to reduce Aboriginal contact with the justice system. Aboriginal communities want to implement their own solutions to Aboriginal contact with the justice system that reflect and strengthen self-determination and are supported by a strong partnership with government. This partnership should facilitate a shift in resourcing and decision-making, informed by Aboriginal definitions of reinvestment.

## Key proposed actions for the NSW Government

### **Local decision-making around resource allocation**

Currently, service delivery is failing to make an effective contribution to reduced Aboriginal over-representation. There is insufficient funding for services or initiatives Aboriginal communities identify as having strong capacity to deliver positive outcomes, including those that are Aboriginal-led and focused on early intervention and prevention. Aboriginal communities identify that services and initiatives without sufficient cultural safety or competency are being funded.

Aboriginal communities also identify that service providers are not sufficiently accountable to either community or funders for delivering positive outcomes in Aboriginal communities.

There is not enough evidence being gathered and/or applied to funding and other decision-making of what is working well and what is not, or what 'effective' service delivery looks like from the perspective of Aboriginal communities.

Mechanisms for shared decision-making about allocation of service delivery funding are required at a place-based level to improve accountability. This is likely to lead to increased funding for early intervention and prevention and Aboriginal-led approaches. To inform this decision-making each community needs annual data on local Indigenous expenditure.

### **Data and outcomes measurement**

Reforms are required to address misalignment between government and community perspectives on data and its application to JR, including in a reinvestment context and in terms of community access to government data. These reforms must be informed by Indigenous Data Sovereignty and Indigenous Data Governance Principles.

Currently, government is not sufficiently guided in funding decisions and in its own service delivery by Aboriginal perspectives both on service delivery outcomes to be prioritised and whether those outcomes are being achieved. The financing of JR (reinvestment) is also often understood by government and others as being principally tied to achievement of reduced offending and incarceration. Aboriginal communities may identify other priority outcomes as likely to contribute to achieving this goal. They may also have different views to government on evidence that should be used to demonstrate progress against outcomes.

Aboriginal communities should be contributing to identification of appropriate outcomes in a service delivery context and whether these outcomes are being achieved, with this input then applied to funding decisions. In a reinvestment context, Aboriginal community perspectives on the type of outcomes that are important for reducing over-representation, whether these outcomes are being delivered and their monetary value are also crucial.

Aboriginal communities are currently experiencing significant barriers to accessing data from government and other service providers. Access to this data is important as it reinforces self-determination. The NSW Government should be providing data to Aboriginal communities as required, and as far as possible in the form requested.

### **Reinvestment mechanisms**

Aboriginal-led backbone and leadership teams provide essential infrastructure for community-led JR in NSW. They are leading work and delivering outcomes that are not currently a focus for, or that cannot be delivered by government. These teams require sustained funding.

Maranguka is ready to co-design a place-based reinvestment mechanism with the NSW Government. This involves two streams; the first to provide sustained funding for Maranguka and the Bourke Tribal Council and the second being a flexible funding pool controlled by Maranguka and the Bourke Tribal Council. The NSW Government and Maranguka should negotiate and agree on how this funding can be provided with increasing degrees of community control to achieve agreed outcomes or targets. These ought not to be justice related targets (alone), as above. Maranguka and the Bourke Tribal Council should determine how this funding should be allocated.

As an alternative to the rising cost and increasing rates of Aboriginal imprisonment, a state-level reinvestment mechanism should be co-designed with Aboriginal people to shift resources into early intervention and Aboriginal-led approaches in those communities most impacted by the criminal justice system. A justice reinvestment fund could be established into which the NSW Government deposits an annual levy, potentially based on the number of Aboriginal people imprisoned. This upfront financial commitment by government should generate increased savings and decrease government costs as the number of Aboriginal prisoners reduces. To achieve this reduction government will need to reform legislation, policy and practice, informed by Aboriginal perspectives.

# PROPOSALS FOR NSW GOVERNMENT

We are asking the NSW Government to commit to the following actions to progress reinvestment.

1

## Acknowledge

- i) That significant harm is caused by the criminal justice system and that Aboriginal people are over-represented at every stage of contact with this system
- ii) That more effective solutions to crime and offending are achievable when Aboriginal people lead change, enabled by a shift in existing resources and decision-making
- iii) That solutions to over-representation require government to enact state-level legislative, policy and practice reform aimed at reducing Aboriginal contact with the criminal justice system.

2

**Co-design a NSW Justice Reinvestment Action Plan** to support community-led justice reinvestment. The following actions are high priorities, for implementation in 2023:

- a) Appoint state and regional senior level government champions and/or cross-sector leadership groups to authorise different ways of working led by each community
- b) Provide ongoing operational funding for community leadership and backbone teams
- c) Commit to a process for establishing shared decision making around resource allocation at the local level and provide annual *loca*/Indigenous Expenditure Reports
- d) Continue reforming outcomes measurement relevant to financing of justice reinvestment to establish a mutually agreed framework for assessing its ongoing effectiveness and performance. This framework should incorporate Aboriginal community perspectives on:
  - i. priority goals and outcomes
  - ii. monetary values attributed to these outcomes
  - iii. the type of data used to demonstrate progress against these outcomes.
- e) Increase timely and responsive access to data for community-led justice reinvestment, aligned with Indigenous data sovereignty and governance principles.

3

## Co-design mechanisms for reinvestment at the state and local level:

- a) **A justice reinvestment mechanism for NSW** - Consideration should be given to an annual levy based on the number of Aboriginal people incarcerated in NSW. The mechanism will:
  - direct funding towards early intervention and prevention in Aboriginal communities in NSW most deeply impacted by the criminal justice system
  - increase local community decision-making control over the allocation of justice funding
  - provide funding for initiatives identified as priorities through justice reinvestment, other Aboriginal community-led initiatives and Closing the Gap.
- b) **A place-based reinvestment mechanism for Bourke** - co-designed with Maranguka and the Bourke Tribal Council.

# 1

## INTRODUCTION

### 1.1 Aboriginal definitions of justice reinvestment

The concept of justice reinvestment or 'JR' emerged from the US over 20 years ago as a response to the problem of mass incarceration. JR was originally envisaged as a place-based, data-driven and community development focused framework, designed to reduce high rates of re-incarceration in specific places by addressing causes of offending. Data was used to identify sites for JR and to measure progress of JR over time. Additionally, savings generated by the reduction in incarceration achieved through JR was to be 'reinvested' back into these locations, to continue to address cycles of imprisonment and generate further savings for government. JR was also seen, therefore, as an economically sound response to increasing costs of incarceration in the US. This is still how JR is commonly understood, including in Australia. However, implementation in the US has in large part strayed from this original vision. It has primarily avoided justice costs through state-led initiatives and criminal justice reform (e.g., reducing incarceration through changes to mandatory minimum sentences) rather than through localised prevention approaches focused on drivers of offending.<sup>i</sup> Investment in JR has also largely involved a shift in funds across parts of the justice system rather than into community-based initiatives.<sup>ii</sup>

First Nations communities across the country are adapting the initial US model of JR to address the problem of mass First Nations incarceration in Australia. Aboriginal communities in NSW are initiating and developing JR as a community-led process that reinforces self-determination and culture, including through local Aboriginal-led governance. Self-determination in this context is seen as an important goal in itself, as well as being crucial to reducing Aboriginal over-representation in the justice system. This community-led process also targets drivers of incarceration, and the scope of work undertaken by these communities, therefore, is also very broad. Maranguka in Bourke, for example, has taken a 'life-course' approach, targeting issues likely to push Aboriginal people into the justice system that arise from a child's earliest years into adulthood. Through their focus on early intervention and prevention and self-determination, Aboriginal communities in NSW are drawing on, but also *re-defining*, JR methodology from the US.<sup>iii</sup> This redefinition is occurring with respect to reinvestment, giving rise to Aboriginal definitions of this essential aspect of JR methodology. According to these definitions, reinvestment encompasses a redirection of funds away from more punitive justice responses into localised prevention approaches, as above, but also a much broader shift in resources and decision-making, as described in this report.

## 1.2 Policy context in NSW

There are a number of existing strategic policy frameworks and decisions that align with and/or are already facilitating reinvestment in NSW. Firstly, there is agreement between Aboriginal people in NSW and the NSW Government that Aboriginal over-representation must be reduced and about methods of achieving this goal. This is reflected in the NSW Government's commitments under *The National Agreement on Closing the Gap* (CTG).<sup>iv</sup> CTG involves transformation of the way governments work with Aboriginal communities, informed by four CTG Priority Reform Areas: 1] Formal Partnerships and Shared Decision Making, 2] Building the Community-Controlled Sector, 3] Transforming Government Organisations, and 4] Shared Access to Data at a Regional Level.<sup>v</sup> Targets include reduced over-representation for young and adult Aboriginal people (Targets 10, 11). The proposed reinvestment actions for the NSW Government provide further opportunity for realising these CTG commitments, as can be seen in table 1.

The NSW Government has also committed \$10million in funding over four years for JR sites across the state and their backbone and leadership teams (with matched philanthropic funding).<sup>vi</sup> One of the above proposed actions for government calls for sustained funding for these teams, but a commitment to all other proposed reinvestment actions is required to effectively support community-led JR. The NSW Government through its Local Decision-Making initiative is also supporting devolution of local decision-making to Aboriginal people to improve service delivery,<sup>vii</sup> and through NSW Treasury, reforming outcomes measurement in outcome budgeting and reporting on Indigenous expenditure so that it better aligns with Aboriginal perspectives. These policy areas also align with the above proposed actions.

## 1.3 A call to action

This paper presents an urgent call to action for the NSW Government to invest in place-based, community-led JR, to be framed by Aboriginal definitions of reinvestment.

The urgency in this call to action arises because rates of Aboriginal over-representation in NSW continue to rise, despite the fact that NSW Government investment in incarceration is also rising. This indicates that it is time for a new approach to reducing Aboriginal incarceration. Relevant statistics include the following:



In the last decade, NSW prison expenditure has increased by 31.9%.<sup>viii</sup> This does not include a \$3.8 billion allocation to infrastructure builds to increase prison capacity in NSW announced in 2016. The cost for building new prisons often exceeds any single annual net operating expenditure.<sup>ix</sup>



The average daily number of Aboriginal adult prisoners in NSW has increased by 36.4% in the last decade.<sup>x</sup> In 2020-21, Aboriginal prisoners in NSW constituted 26.6% of the adult prison population,<sup>x</sup> and were 9.8 times more likely to be incarcerated than non-Aboriginal people.<sup>xi</sup>



Aboriginal young people are 11.2 times more likely to be incarcerated than non-Aboriginal young people.<sup>xii</sup>



86% of Aboriginal offenders convicted in 2010 were re-convicted within 10 years, compared with 56% of non-Aboriginal offenders.<sup>xiii</sup>

The other reason for urgency to act is that Aboriginal communities have been leading JR in NSW for close to a decade. A commitment to reinvestment by the NSW Government is essential for progressing their important work. The alignment between existing government policy and Aboriginal communities' call for reinvestment, noted above, lays important groundwork, but additional action is required to further align government and community perspectives on reinvestment.

Priority Reform 1 Partnerships and Decision-making	Priority Reform 2 Building Community-Control	Priority Reform 3 Transforming Government	Priority Reform 4 Shared Access to Data
Acknowledgements		Acknowledgements	
2(a), 2(c)-(d)	2(b)	2(a), 2(c)-(d)	2(c)-(e)
3(a)	3(a)-(b)	3(a)-(b)	

Table 1. Alignment between proposed reinvestment actions and Closing the Gap Priority Reform Areas



Aboriginal communities' call for action revolves around processes of co-design that should achieve the latter alignment. This involves, specifically, co-design of two reinvestment mechanisms, one at a place-based level in Bourke and one at a state-level. Despite its longevity, Maranguka has yet to establish a reinvestment mechanism with the NSW Government that will support their work and that of the Bourke Tribal Council. We note that there has previously been agreement between Maranguka, NSW Treasury and the Department of Communities and Justice (DCJ) (NSW) to explore a potential place-based mechanism for Bourke (see Appendix A: Journey Map of reinvestment in NSW). The state-level mechanism is intended to facilitate reform across criminal justice and other sectors and increased investment in community-led approaches to address over-representation. Moree, Mt Druitt and Bourke are also seeking to co-design a pathway forward for reinvestment by way of a reinvestment action plan for NSW. We note that these processes are a starting rather than an end point for communities and government to work in partnership to progress reinvestment in NSW, and that they will require further research and other expert input.

### **Methodology of this report**

This report presents Aboriginal perspectives on reinvestment as initial framing for the above reinvestment co-design processes. To gather these perspectives Just Reinvest NSW (JRNSW) has worked with backbone staff in Moree, Mt Druitt and Bourke to

talk about reinvestment with community members, both one-on-one and in small groups. Though there are important differences in perspectives across these three communities, in part due to their different stages of progression, it is possible to identify a shared understanding of reinvestment. Participants are identified below by location as 'Moree', 'Mt Druitt' and 'Bourke'. Reference to 'Aboriginal communities' below is to these three communities, Moree, Mt Druitt and Bourke. JRNSW also spoke with Aboriginal members of its Executive Committee, identified below as 'Aboriginal rep, JRNSW Executive'. All participant data below has been provided by Aboriginal people living in NSW.

This report has also been informed by other conversations. JRNSW has run a small number of 'learning sessions' to further explore the concept of reinvestment. This has involved the sharing of insights relevant to reinvestment by participant experts from diverse fields (e.g., economics, social impact investment and Indigenous data sovereignty). The work has also been supported by a working group with JRNSW, academic and Aboriginal backbone representation. This group has provided important input into the design of this reinvestment work and the content presented in this report.

The remainder of this briefing paper details how the NSW Government can invest in Aboriginal community-led JR, guided by Aboriginal definitions of reinvestment.

# 2

## SUPPORTING ABORIGINAL COMMUNITY-LED SOLUTIONS

This section presents Aboriginal perspectives on the importance of Aboriginal communities implementing their own solutions to over-representation. These communities identify current justice responses as both ineffective and harmful. They call for a shift in resources and decision-making to support community-led JR to contribute to reduced over-representation.

### 2.1 Problems inherent in current justice responses

Aboriginal communities in NSW experience the criminal justice system as both the most critical example of and a response to other failed government legislation, policy and practice – identified as first emerging during colonisation and persisting in present-day government approaches (e.g., in education, child protection, etc.). This broader failure directly contributes to social issues experienced in Aboriginal communities, with attempts made to then address these issues through the justice system. As an Aboriginal representative of JRNSW's Executive states, 'I think we need to be clear and up front that ... First Nations people, we didn't create' the issues that underpin Aboriginal offending.

*"The perception [is] that we are the problem... Look at our people. We have been assimilated, we've had genocide [and] missions. People ripped out of their homes, out of their communities and placed in other communities and told how to live. Stripped everything away from them - stripped their language, culture. They've broken kinship, they've destroyed a lot of stuff that's been sustained for thousands of years ... This has created all these problems. It's created inter-generational trauma. It's created Stolen Generations and just a lot of havoc."*

**Bourke community member**

*"The impacts of colonisation [are] still going. It's in intergenerational trauma and stuff like that. And then once people act out because of their mental health issues, they're thrown in jail rather than addressing the real issue."*

**Moree community member**

Aboriginal communities see justice responses as creating and compounding more problems than they resolve and as having harsh impacts that are more pronounced for Aboriginal people.<sup>xiv</sup> Given their high rates of over-representation, imprisonment has particularly severe consequences for every Aboriginal person that reverberate across all aspects of Aboriginal community life. These include an undermining of self-determination and aspiration at both an individual and collective level and disconnection from culture and within communities. As a Bourke community member states, 'They get sent way ... out off Country, taken away from connection to Country - and stuff like that is so wrong.' Another community member in Mt Druitt states, 'The negative is obviously a loss of community really because the more that are sent away [to custody] the smaller the community effort gets.'

*"How are you meant to determine sovereignty and self-determination, all those kinds of elements when you're battling incarceration rates...? How are you meant to create empowerment when you're [constantly] dealing with the incarceration of a loved one? How are you meant to go out and ... create your own prosperity through that?"*

**Aboriginal rep, JRNSW Executive**

More specific areas of impact include the health and wellbeing of offenders, their families and entire communities.

*"...for Aboriginal people going to jail, it's no guarantee you are going to come out... So, there is a genuine fear ... that they may die in custody or be killed in custody for that matter. All of that trauma is going on in our communities all the time. The psychological impact of all of that becomes intergenerational. You've got kids, you've got babies, you've got parents, grandparents, all have been traumatised by that person being taken away."*

**Aboriginal rep, JRNSW Executive**

Over-representation continually disrupts family units, placing significant financial and other stress on those who take on the care of children left behind by an incarcerated parent or caregiver. Incarceration pulls important social and economic resources out of Aboriginal communities and at a significant rate: that is, Aboriginal people living in those communities – particularly males, both young and older. We know that family connectivity is fundamental in community. Those who are incarcerated have important contributions to make to their families and to their communities as fathers, uncles, brothers, mothers, aunts and sisters, with these contributions significantly impacted during and post- imprisonment.

*"We don't have any of the young fathers in our area because most of them are locked up.... Maybe if you didn't lock up our men so much, we wouldn't have so many single mothers."*

**Mt Druiitt community member**

*"My brothers have experienced the criminal justice system and from that their mental health has deteriorated pretty much... They are completely different people and now ...we have to, me and my sisters, make up for things that they can't do like supporting their children. It's an impact on the whole family, it's not just on them as individuals."*

**Moree community member**

There is increased likelihood of offending for children of adults caught up in the justice system.<sup>xv</sup> For these and other young people who offend schooling is impacted too. Those exiting prison also face barriers to accessing employment and housing, increasing the likelihood of their re-offending.

*"Get this, my year 10 class when I got arrested, there was 14 of us boys in that class. And 10 of us boys were locked up, half Islanders/half Kooris ... I done year 10 out here and my year 12 in [detention] ... I got halfway through, and it got too hard ... in custody, so I stopped it."*

**Mt Druiitt community member**

*"Once dad's been in jail it takes the kids a little while to adjust in the behaviours in school. The behaviour being a bit aggressive at first, they're very angry. Yeah, it makes a massive difference when their father or their mother goes to jail... In particular if they now have DOCS (child protection) involved... That can become a pretty bad experience for our kids, and they can act out in a big way [in school]."*

**Mt Druiitt community member**

*"I myself have trouble getting approved for a house. So, if it's a younger person than me and he's a male that's just come out of jail, they're going to have double the troubles that I have. ...My son [exited prison and] ... he couldn't get a house ... There was a lot of knock backs and I thought - you're not going to take too many more knock backs and you're going to blow up!"*

**Mt Druiitt community member**

Aboriginal over-representation clearly has major negative impacts on factors likely to prevent (re-)offending. It also exacerbates causal factors or the social determinants of Aboriginal (re-)offending and (re-)incarceration.<sup>xvi</sup> This is in large part why current justice responses are seen as so problematic in Aboriginal communities.

*"They just come out worse off. It's like setting them up for failure... Like it doesn't fix it at all. Do you know anyone that's gone to jail and come out and been good, like better?"*

**Moree community member**

## 2.2 Importance of community-led solutions

Aboriginal communities identify that they have effective solutions to Aboriginal over-representation. These solutions aim to address underlying reasons for offending while reinforcing the principle of self-determination - so crucial to achieving better justice and all other outcomes for Aboriginal people.<sup>xvii</sup> They are also informed, importantly, by lived experiences of both Aboriginal community life and of the justice system.

*"What's been proven over the years ... is when Aboriginal people are in control of things themselves, of their own destiny, it's far more successful."*

**Aboriginal rep, JRNSW Executive**

*"[A]s we've known [and]... have been saying for years, we're the only ones that can actually... tell people what's really wrong and what's the best way to fix it. And we're really the only ones that can actually do it."*

**Moree community member**

Currently, government has control over decision-making and resources directed towards reducing offending. Aboriginal communities want government to share decision-making and resourcing in this context but are concerned that their long-standing deficit view of Aboriginal people will prevent this from happening. They feel that Aboriginal communities are not trusted to lead change. They also suggest that without greater Aboriginal input into strategies designed to reduce their over-representation change is not possible.

*"Look at the finances, that is the key to change. But where the finances are allocated is coming from positions of unconscious bias ... [T]hey see me as a deficit. They see me as a statistic. That's how my narrative is painted ... I think it's about shifting those attitudes, so ensuring that community has more control... It's really painful to be described in certain lights by people ... [who are] thinking that I am not capable."*

**Aboriginal rep, JRNSW Executive**

*"They've never really given us an opportunity ... We want to look at doing things differently, so give us an opportunity and if it doesn't work then we've tried ... [The way it's working now] ... it just keeps us down all the time, and nothing is going to change."*

**Moree community member**

Aboriginal communities are aware of and open about the challenges they face in leading change in a justice space. They identify that mistakes will inevitably be made, but that this should not prevent a shift in resources and decision-making from occurring. An important part of the work to be done in and by communities within a JR context, in fact, is to identify and move through these challenges. As a community member in Bourke stated, 'Could we stuff it up anymore, realistically?'

## 2.3 Resetting the partnership between the government and community

In some respects, for Aboriginal people to have greater control government must take a step back and stand behind community leadership. It is recognised, however, that tackling over-representation requires contribution from government, best provided by community and government working together in strong partnership. As noted in [1.2], the NSW Government is already committed to and progressing aspects of this partnership discussed below through Closing the Gap.

An essential underpinning of this partnership requires that government trust and invest in the capability of Aboriginal communities to deliver solutions.

*"[F]or tens and thousands of years communities have been very good at self-organising ... and there's a big role for government to play in terms of moving out of the way and enabling that to continue. [But we're really talking about] how government can be best utilised as a partner for that community."*

**Aboriginal rep, JRNSW Executive**

Other key elements of this partnership include shared decision-making, as above. This requires that government is genuinely 'seated at the table' with Aboriginal communities, listening and being accountable by actively responding to what they hear at that table. Aboriginal communities do not feel that this is currently happening.

*"What a lot of community members would feel, you know, is that they are talking and telling people their concerns but they're only half listening and not following through."*

**Mt Druiitt community member**

*"Governments, their policies and the procedures, the way that they do things - what we've found in the past is that they have already got the ideas on what they think the answers are to some of our problems. And the process is they'll have these big bright ideas and they'll come out do some consultations,*

*and regardless of what community's input is, they go back, and they just roll their ideas out anyway, without community's ideas being built into the process ... Co-design with community is the most important part and that's the part that government hasn't been doing and that's what needs to change. Because communities know a lot of the problems. At the same time, they've got a lot of the ideas as well but just don't have the resources to put it into action."*

**Bourke community member**

Shared decision-making arises in the context of funding decisions or agreement on priority outcomes of community-led JR, discussed further below. It is also important for co-design of a justice reinvestment action plan for NSW and of reinvestment mechanisms. Effective co-design in this context requires sufficiently senior people to lead the work of government within the above partnership, removing blockages to and authorising more beneficial ways of working. Appointment of state and regional senior level government champions and/or cross-sector leadership groups are proposed for this purpose. Maranguka's Cross Sector Leadership Executive (CLSE), for example, has sufficiently senior government representation and various responsibilities, including to remove barriers to achievement of goals and targets set out in Maranguka's JR strategy *Growing our Kids up Safe, Smart & Strong*. These barriers relate to accessing data or limitations in terms of service provider accountability (discussed in [2.1], [4.1-4.3]), as examples.

*"[The] resources we need [from government] may be someone that has the influence within the justice system so that we can actually talk to them directly to say, 'This is what we want to do, how can you help us make it happen?' Obviously, if we're just sitting down as a community in a group going 'Well, this is what we need to do - 1, 2 and 3' and ... once that gets back to the government they say 'No, you can't do it ... We don't need that.' We actually need someone there to say 'Well, they're the three things you actually want. These are the things that we need to overcome so we can do that.' And one of these things might be [about] money and the other one might be a change in some sort of legislation or guidelines for a government department."*

**Moree community member**

As this comment suggests, one specific responsibility of government within this partnership is the reform of justice and related legislation, policy or practice directly or indirectly contributing to continued high rates of Aboriginal over-representation. This reform must be informed by Aboriginal community perspectives.

A shift in resources is also identified as a key component of this resetting of the partnership between government and community. As discussed below, this takes various forms. It involves investment in backbone and leadership teams in each community. It also involves the development of state and place-based reinvestment mechanisms that redirect funding towards early intervention and prevention approaches that address root causes of offending and those that facilitate Aboriginal communities self-determining a pathway out of over-representation.

# 3

## LOCAL DECISION-MAKING AND RESOURCE ALLOCATION

This section describes significant problems in service delivery, as identified by Aboriginal communities. To address these problems, Aboriginal communities are calling for shared local decision-making around the allocation of funding to services and programs. Data on local Indigenous expenditure should be provided to these communities to inform this decision-making. Also identified is a strong preference for funding of early intervention and prevention and Aboriginal community-led initiatives and organisations.

### 3.1 Problems related to service delivery

For Aboriginal communities, poor Aboriginal outcomes in justice and multiple other areas (including those likely to impact on Aboriginal over-representation, such as education) evidence failures in both government and non-government service delivery. A community member in Moree spoke about problems with education-related outcomes in this context as follows, 'I'm so sick and tired of actually [seeing] 15, 16-year-old Aboriginal kids that apparently finished school and cannot read and write!'

*"It's evident that things haven't been working in Moree...[T]hey need to look at changing this because we wouldn't have all these problems in the kids not being educated, in the criminal justice system, our young people that are homeless, the domestic violence, the lateral violence, mental health problems that we've got here in this community [if things were working]."*

**Moree community member**

Communities identify that currently, funded services and programs are not responding to local needs or delivering positive

outcomes. Poor service collaboration and coordination and funding and other decisions associated with service delivery can lead to gaps and duplications in and otherwise negatively impact the quality of service provision – and consequently, the outcomes it delivers. As a community member in Mt Druitt suggests, 'there's so many services out here but then you've still got so many young people missing out on things, and not just young people.' Operational issues highlighted by communities include that services and programs are too short-term, have limited capacity, are only operating 9-5 and/or have strict eligibility criteria.

*"That's always out there - a whole of government approach. You're wandering around with your heads up just trying to get services to work together in this community! It's all working in silos, and it's been like that for years!"*

**Moree community member**

*"It's about organisations having the capacity to meet the current demand. As an example, we have higher rates of domestic violence in Moree, but our refuge does not have the capacity to meet demand. Five beds only. The impact that it has on community is that if you cannot access the refuge because they are full, then the increase of domestic violence is there... Women and children are left still vulnerable and unsafe because they're going back into the community looking for somewhere to stay."*

**Moree community member**

Communities also point to the significant amount of money spent on tertiary-level justice responses (e.g., on additional policing) and the relative insufficiency of funding for early intervention and prevention services and programs and on Aboriginal community-led initiatives and Aboriginal Community Controlled Organisations (ACCOs), despite the perception that the latter are more likely to deliver positive outcomes.

"We look at Bourke as a community [with] a population of probably 2,000 people and we've got over 60 police here. So, what the hell does that tell you? They had 140 coppers here once. It's the most over-policed community probably in New South Wales."

**Bourke community member**

"Even in a cultural context, there's nowhere culturally safe to go ... We're over- serviced by programs that are run by white organisations, Christian organisations, and ... they don't work."

**Moree community member**

"[We need to] bring back things that worked. You go back and look at everything that's worked in the past that's been Aboriginal led – Aboriginal run, Aboriginal focused. Funding has dried up for it. There used to be crew of Aboriginal builders that built homes. The funding has gone for that. There used to be a night patrol keeping young people off the streets and the funding dried up for that ... So, there's all these community led initiatives that have been successful over the years and then all of a sudden, the money's dried up and it's not continued and it's an asset lost."

**Bourke community member**

Aboriginal people have their own ideas for initiatives likely to reduce Aboriginal contact with the justice system but don't have the same access to funding for these initiatives as government and non-government non-Aboriginal organisations.

"People keep saying, 'Oh this money gets thrown at Aboriginal [people]...' but it's actually not, because it's service providers who aren't First Nations led or don't have that flavour... [that] get the funding because they've got the skills to apply for [it] ... Mob have these ideas, but they can't necessarily be communicated in a way that funding bodies would recognise...and that's the problem. They can explain to you what they want to do in community but then you've got to write up this proposal."

**Aboriginal rep, JRNSW Executive**

Some programs are designed with no understanding of local context and rolled out without consultation or reference to the needs or aspirations of local Aboriginal community members. Funding services and programs that are not Aboriginal-led and that don't have sufficient Aboriginal input into their design or implementation is often an ineffective approach, as a community member in Bourke identified in discussing the local roll out of a domestic violence program from the US.

"I think it was a good concept. But at the end day, [the facilitator] delivered it the way he wanted to deliver it and because he didn't have a relationship with the community, it created a lot of conflict and a lot of division because of the way that he approached it. But if that was done with community by community, it would have been different. That's just another poor example of what doesn't work."

**Bourke community member**

Recruiting Aboriginal staff for non-Aboriginal services and programs is also not an appropriate alternative to funding Aboriginal-led initiatives, services and organisations. Similarly, employing non-Aboriginal staff to deliver services and programs to Aboriginal people is also problematic.

"A lot of the funding goes to ... white church organisations and then they get an Aboriginal worker [but] one worker isn't going to cover everyone. And then [these staff] are not culturally supported in their organisation because they've got white people managing them."

**Mt Druitt community member**

"I think the [issue] is not that you have non-Aboriginal people working in services, but these services that are very top heavy on Indigenous clients [need] Indigenous management up top... There are a couple of services in town with 95% and 98% Aboriginal clientele and they are run by white fellas."

**Moree community member**

In this same context, racism within service delivery is also identified as a problem that negatively impacts outcomes. This takes direct and less overt forms such as a service or program that lacks cultural competency or cultural safety. Racial profiling in policing is of particular concern across all three communities, with one young person in Mt Druitt identifying its link to disproportionate Aboriginal criminalisation. 'I'm not say all the boys is all criminals, but the police made us what we are, with over policing and just targeting us too much.' He claims that racism seems to be 'embedded in their bones. It's like [the police] must wake up and say "I'm gonna do this to a black kid today".'

"Just stop targeting our people, just do your job by the law and stop the racism ... [and] it's getting worse, it's not changing. They need to address their racism. Our kids are just targeted, you're just walking the street and they see a group of them, they're pulling them over. I've seen it happen plenty of times here."

**Moree community member**

## 3.2 Local decision-making and funding allocation

Legislative, policy and practice reform, as identified in [2.3], may be required to ensure that service provision is not directly or indirectly contributing to Aboriginal over-representation (e.g., through racist policing or where Aboriginal people are not engaging with support services because they are culturally unsafe).

Aboriginal communities also identify a lack of accountability for service providers to deliver better outcomes. This includes accountability to both community and funders. They suggest that there is not enough evidence being gathered and/or applied to funding, policy and other decisions of what's working well, what's not and what 'effective' service or program delivery looks like from a community perspective.

"You read [service provider] policies and what their job requirements are, and they don't do nothing, none of it! ... With [named org], I read everything on the internet on what they're meant to be accountable for. They're getting away with [not doing] that stuff."

**Mt Druitt community member**

"The one thing we do know that whatever we are doing right now is not working...so we have to come up with new ways of doing business. And that's part of our problem - that people are happy to just - they fund the same old thing...I can remember senior bureaucrats saying to me years ago - and I asked that question, how do these mob keep getting funded, and they said, '... [I]t's the lazy bureaucrats' syndrome.' They ticked all the boxes, their financial reports are amazing, they've ticked every KPI on paper. And then away they go, they read it and go 'Oh this is amazing, we'll re-fund them'. No one has actually gone in and evaluated that ... independently. We are relying on people to do their own assessment of how well they are going."

**Aboriginal rep, JRNSW Executive**

Aboriginal communities believe that funds currently allocated to service delivery are not being well spent. They want to share in (better) decision-making about the funding of services, with direct input from young people and other consumers of services into this decision-making.

"It's easy to ... keep throwing money at [services] and you don't actually see what's really happening. We are throwing millions and millions of dollars and millions of funds, and nothing is coming out of it. It's not used in the right spots. So, it's just thrown into something [and]... it's like a flame, you throw it in, and it just burns."

**Bourke community member**

"Services won't be operating if it wasn't for the peoples' needs... I think there should be more control. We've got no control here in Western Sydney... We need better governance [over] funding. We need to have a more of say when ... we're getting in funding here ... [H]ow is that funding going to be distributed?"

**Mt Druitt community member**

"[Services] have failed us in lots of ways. [Money] should be coming back to community, [with community then] having more control over [it]... Even the government providing those services with that funding, they're not getting those outcomes."

**Mt Druitt community member**

The end-goal is improved service provider accountability and ultimately, better outcomes as funding is realigned with community priorities.

"In an ideal world, it would be good to get all the service providers, pack them up and just park them outside for a while and then bring them in one by one and make sure all of their programs are co-designed with community. Because we know there's a lot of duplication. There are also some [good] services that are fighting for clients and that get all the co-design and alignment with communities' expectations."

**Bourke community member**

This shared decision-making is likely to lead to more funding for services and programs communities identify having capacity to contribute to reduced over-representation, including those with an early intervention and prevention focus and Aboriginal-led initiatives and organisations, as above. As one community member in Mt Druitt stated, 'services shouldn't be funded to build community. Community should be funded to build community.'

"[I]t just makes me think about services who are getting money who are not doing what they are meant to be doing. They should really look at where funding is going, like it does make me think why can't that go to the community?"

**Mt Druitt community member**

"Aboriginal people tend to stay with their own mob, like say for me for instance, I was more sought after as a case worker than non-Indigenous case workers. I just find that building that rapport with families and stuff like that, because I'm an Indigenous worker, it's a lot easier for me than what it is for a non-Indigenous person. So why I say that is that if we were to have community-led programs and solutions then maybe we might get better results than what the government is achieving. We might be able to reduce offending if the support and the teaching and what not is led by our own."

**Moree community member**

Initiatives identified by communities to date that could be (further) funded include existing and new initiatives sitting both in and outside of the justice system. Aboriginal communities stress that support should not be easier to access after entry into that system. Examples include on-Country drug and alcohol rehabilitation facilities, community-run safe houses for children and young people, mentors for young Aboriginal people, local Aboriginal 'community connector' roles that link community with services and community-based and led supervision options for Aboriginal offenders.

"I never met any of these role models or mental health people outside of custody. [We need] more Aboriginal mentors [in community] so some of these kids [can] get a man in their life, a father figure, big brother, uncle or someone that the kid actually thinks cares about him."

**Mt Druitt community member**

"I have been through the criminal justice system myself. I have experienced different social factors as a child. And as I grew up and became an adult, I found that when I shared my story with [young people in contact with the justice system], they were more like, "if she can do it, I can do these things too" and a lot of them stayed connected to me as well. Because we have that mentality and understanding of our past, what it's like being in custody, and what it's like integrating back into community."

**Mt Druitt community member**

Mechanisms that facilitate shared decision-making about allocation of funding are required at a place-based level. What this looks like in each community may differ, but at a minimum, each community should have access to a report on local Indigenous expenditure on an annual basis to inform their decision-making.

"We need this data to come to the Bourke Tribal Council. Any funding that comes into our community, we need to be part of the budget [decision making around] how it should be spent if they're using it for Aboriginal [service delivery]."

**Bourke community member**

"... not losing sight of some of these services that are a bit dormant or not delivering... we're clearly identifying where that may be the case. Then, as opposed to ... losing that funding by it going back to ... government, we're wanting to create a roundtable to make decisions [about that funding and] front and centre of that is community."

**Bourke community member**

# 4

## DATA AND OUTCOMES MEASUREMENT

Working with data is a key element of JR methodology. Data and its application in a JR context is one area in which there is significant misalignment between government and community perspectives. This misalignment is evident where data is used to identify priority JR goals and outcomes and in determining what type of data is relevant to evaluating progress against these goals and outcomes. This has various implications, including in a service delivery context and for financing of JR. Additionally, Aboriginal communities have significant difficulties accessing government data to inform their work with community-led JR. Reforms are required, framed by Indigenous Data Sovereignty (IDS) and Indigenous Data Governance (IDG) Principles.

### 4.1 Misalignment in government and community outcomes measurement

When Aboriginal communities are involved in defining goals and outcomes and how these outcomes will be measured, they are more likely to feel a sense of ownership of their work with JR. Community-defined goals and outcomes, set out in local JR strategies and monitoring, evaluation and learning frameworks for example, also provide essential structure and direction to communities to guide this work. Aboriginal communities seek a commitment from government to be similarly guided by community-defined goals, outcomes and outcomes measurement. Where this is not happening, important cultural and other community perspectives are absent from government ways of working in and with Aboriginal communities.

*"Government sets goals [related to] Indigenous people but they don't understand the workings of Indigenous families, communities, culture... [and don't] take these into consideration."*  
**Moree community member**

*"We're continually relying upon a Eurocentric framework [to measure] ... success. We need to recognise the huge gap ... between First Nations people and non-First Nations people. And it's not just health, wealth, all those kinds of things ... It's the gap of culture. It's a different culture."*

**Aboriginal rep, JRNSW Executive**

As a first point, the mismatch between Aboriginal and government-defined outcomes and their measurement contributes to problems in service delivery, discussed in [3]. Generally, government neither imposes on the service providers it funds, nor adheres itself as a service provider, to an obligation to work to outcomes prioritised by Aboriginal communities. They also do not take adequate account of Aboriginal community perspectives on what constitutes effective delivery in assessing and responding to their service needs. Service providers may be required, for instance, to report to funders and will then be re-funded based on the number of Aboriginal clients they have serviced. This funding decision does not involve consideration of, for example, Aboriginal clients' experiences of cultural safety during service provision - data which can only be collected directly from the clients themselves. This is despite the fact that this is an essential indicator of service effectiveness from an Aboriginal perspective.

*"This program will collect data on how many Aboriginal people come through the service, how many Aboriginal people accessed drug and alcohol counselling, all that kind of stuff and that's what they get their funding from. But then what work have they done to reduce the impact of drug and alcohol use in a culturally safe setting or [with a culturally safe] worker? And that data is not kept ..."*

**Mt Druitt community member**

Moreover, reinvestment is generally understood as being tied to the outcomes of reduced offending and incarceration, an overarching goal of JR, discussed in [1]. Aboriginal perspectives on other priority outcomes, including those likely to contribute to this



goal, may differ from those of government. Aboriginal communities may also demonstrate progress against their preferred priority outcomes using data that government does not always see as sufficiently rigorous.

An Aboriginal community, for example, may identify a 5% reduction in the rate of suspensions of Aboriginal students as a priority target, recognising the link between suspensions and young peoples' contact with the justice system. Before this target is achieved, the community might identify as important milestones increased levels of participation in JR activities by young Aboriginal people disengaged from education and that those young people have established a sports team, with membership drawn from those that are similarly disengaged. Government may not see value in these types of 'process' and 'impact' outcomes, respectively, but for community they are valuable both in their own right and for what community perceive to be their likely contribution to achieving justice or other targets (as they demonstrate a readiness amongst young people to lead change). Community may collect its own data to measure progress against these types of outcomes. This may constitute qualitative and quantitative data collected through community yarning, community surveys and so on. Government, however, may disregard the validity of such data, preferring quantitative over qualitative data, and government or service provider data over community data.

## 4.2 Aligning community and government perspectives on outcomes measurement

Reform is required to better align government and Aboriginal community positions on outcomes and evidence of their progress. This includes changes to government outcomes measurement to incorporate the type of process and impact outcomes and community data discussed above.

*"[We need flexibility] around the outcomes as there's nothing set in stone. [It] actually needs to be looked at as a whole picture. People can go - well we didn't achieve that goal but look at this one... which has a lot to do with the community engagement stuff. [Government's quite rigid with outcomes] ... It's increased attendance or decreased suspensions, and that's what they actually expect ... [I]t could be that the suspensions haven't been going down but something else has picked up ... [T]hey normally look at the end and not how it's done in the middle."*

**Moree community member**

*"So, outcomes [impact] can be measured in a variety of ways. Look the rates of attempted suicide. Look at the health outcomes. [Measure] how happy communities [are] by what ...flourishing...community projects [are underway]. We look at [all] the pieces of JR and what they're doing ... How is community coming together? We can measure [progress] through [a reduction statistically in] suicide attempts and school attendance and all of that. We can also look at the communities. How do they look? How do the streets look? ... Does it look like a happy community?"*

**Aboriginal rep, JRNSW Executive**

In a service delivery context, government ought to be drawing on Aboriginal perspectives of what outcomes service providers should be delivering *and* whether these outcomes are, in fact, being delivered in assessing and responding to service needs in Aboriginal communities. This could form an element of the above local decision-making mechanisms, discussed above in [3.2]. It is also an important element of shared decision-making within the community/government partnership discussed in [2.3].

*"It's community involvement and community having their say ...and being involved in achieving those goals. So, say as a community we actually set out what our goals are around reducing the number of incarcerations for our young fellas, and so we set the goal as wanting to reduce to whatever number by whatever date. And then we say, 'Well this is how we're going to do it' - and not only how we're going to do it but also how the services and the governments around us are actually going to help us achieve that goal.. We can't do it by ourselves."*

**Moree community member**

This approach might lead to government embedding in funding or service agreements an expectation that services will work to community-defined outcomes. In this same context, Maranguka's CSLE is exploring whether adapted service provider KPIs might require reporting against community-defined goals and outcomes. Funding may be declined or withdrawn from those that are unwilling or unable to align their work with community-defined goals and outcomes. As a Moree community member states, 'funding should go to services that are generally engaging with the community for the benefit of the community and not ... for their funding stats.'

*"They should be running programs and services and everything else that are actually going to help the community... They should have the flexibility to actually do that. But again, it all goes back to funding. Obviously, all of the service providers, they're maybe getting ... government funding and with all of that comes their KPIs and...that's what inhibits them from actually changing their programs to specific communities. Because they're normally not Moree programs, they're normally state based programs or federal based programs, and so they think that one size fits all. They should have to actually change their services to meet community needs and community goals."*

**Moree community member**

As a further example, Maranguka's *Accountability Framework* incorporates outcomes that measure the extent to which government and non-government organisations are supporting Maranguka and the Bourke Tribal Council to achieve their priority goals and outcomes, as detailed in *Growing our Kids up Safe, Smart & Strong*. Progress is measured against indicators that include, for example, the percentage of 'collaboration members' providing automated data for JR work (discussed further at [4.3]) or implementing an evaluation strategy that incorporates key messages from the above JR strategy. Maranguka is also currently developing 'community expectation indicators' to (quantitatively) identify and measure the effectiveness of local service delivery from the perspective of the local Aboriginal community. Qualitative data is also used by Maranguka to assess 'service experience' for this community.

*"We know what needs to be done in community and that's what we have been doing. We've been calling it out because we are in the trenches. We are the sounding boards when things aren't working as well as they should be, but we are also the ... first to know when things are working as well as they should be."*

**Bourke community member**

*"Over the years some organisations have just got too comfortable doing what they're doing, which isn't quite good enough and there is no real accountability around that. We're relying on the honesty of the individual and the organisation to report against what they are doing [whereas] Maranguka's method [is] around test cases, case studies and testimonials of where the real evidence is - from the clients and families.... The financial reports, monthly quarterly, whatever, need to come to the Bourke Tribal Council. We can take control and tell the truth about where we're lacking, where we're failing, what changes need to be made."*

**Bourke community member**

Furthermore, evaluation of the performance of community-led JR for reinvestment purposes ought to be underpinned by mutually agreed outcomes or targets to be measured, the type of evidence to be used to demonstrate their progress, and the monetary values to be attributed to these outcomes and targets. To achieve this (and acknowledging the existing work of NSW Treasury in this space), continued reform is required within government outcomes measurement systems to ensure they are adequately informed by Aboriginal perspectives on the above.

## 4.3 Community access to government data

The above discussion identifies various forms of and applications for community data - data that is designed, collected by and in the control of Aboriginal communities (e.g., to measure progress against community-defined outcomes, as above). Bureaucratic data, conversely, is designed, collected by and in the control of government and service providers. It is also often quantitative. For Aboriginal people, community data may be preferred because of the level of control they have over it, but also as it is seen as often telling a more accurate story of life in Aboriginal communities.

*"We should have our own data instead of the ABS (Australian Bureau of Statistics) to have more community control. Every community should take control of their own stats and not rely on Australia-wide stats .... Then we'd know where we're failing and ... what needs to change. You also don't need to give our data to government, because government make all these decisions and keep failing."*

**Bourke community member**

*"I think with community [data] it would be different because it is them with their lived experience telling their stories. [When government provides data, they haven't] been out here within the criminal justice system, getting in trouble and harassed and everything like that."*

**Mt Druitt community member**

Bureaucratic data, on the other hand, may be identified as culturally unsafe or as having a deficit focus where it presents, in effect, statistical evidence of the negative impacts on Aboriginal people of problematic government legislation, policy and practice. Examples include statistics measuring rates of Aboriginal child removal, school suspension or incarceration. Aboriginal communities may see community data as capable of describing important cultural and other strengths.

Despite the problems inherent in bureaucratic data, Aboriginal communities want and need access to it for their work with JR. They currently experience significant difficulties of access, with barriers related to privacy concerns raised by data holders (possibly not shared by communities) and limited availability of data in the form requested by community. This is, in part, due to the fact it is not collected for community purposes to begin with.

Access to this data is important. Communities analyse bureaucratic data alongside community data in what is referred to as a 'truth-testing' process, used to set priority goals and outcomes (including those expected of government). Aboriginal communities also equate control over data with power, and access to bureaucratic data is important for self-determination. Sharing bureaucratic data is also a critical element of shared decision-making.

*"Is it going to be true data? They send you this data and then you have to investigate it... The data [comes from] services who are targeted to their contracts and we're not getting a broader picture of what's actually going on because that organisation is in control of that data and what they do with it. And it's what they supply back to meet their funding bodies' expectations."*

**Mt Druitt community member**

*"It's definitely important. And it's not just child protection data. It's youth justice, incarceration and education data. It's all that stuff there. Because we can ... do the audit [through this data... and you will see where the biases are ... [including in] our boys in blue (police) ... You can see it in black and white... It's a conversation starter. We can really look at working in collaboration together around what's not working then... Data is everything. Data gets you funding. Data gets you this and that ... So, we can go back and say well why is this happening here? Why are this many children coming into care? And then you break it down to what they are coming in for. Is it neglect? Is it physical abuse? Is it sexual abuse? Is it A, B and C? You can compare the differences. Well, that can give you what services we need."*

**Mt Druitt community member**

Government should be providing data to communities as required, and in the form requested, as far as possible. This is likely to require reforms within government data collection so that data ultimately being provided to Aboriginal communities better reflects community perspectives and meets community needs.

# 5

## REINVESTMENT MECHANISMS IN BOURKE AND NSW

Reinvestment in community-led JR in NSW takes three forms: (a) ongoing funding for Aboriginal community-led backbone and leadership teams, (b) a place-based mechanism for Maranguka and (c) a state-level mechanism that diverts existing resources into early intervention and prevention and community-led solutions to offending across NSW.

### 5.1 Funding backbone and leadership teams

Community-led JR is generally coordinated by a local, Aboriginal-led coordinating team working alongside and guided by an Aboriginal leadership group, referred to as backbone and leadership teams. Bourke, for example, has the Maranguka backbone and the Bourke Tribal Council. Similar structures are in place or in development in other communities. The work of these two complementary teams is vital for establishing conditions necessary for identifying and achieving better outcomes, including a strengthening of self-determination. This particular condition for success may be achieved by backbone and leadership teams working on building community ownership of community-led JR. As an example, they encourage and facilitate collective decision-making about resource allocation as above or around the setting of community goals and outcomes, discussed in [4.1].

*"There needs to be community ownership of what's going on. Not just the 'leadership' owning it but the community owning it and that's what JR does, it draws the whole community to work on this project..."*

**Bourke community member**

Aligned with community development principles, the aim is to create a whole-of-community 'social movement' around JR. Within this movement, a diversity of community members participate in community-led change, including young people and those with lived experience of the justice system. This is one of the significant challenges arising for communities working with JR referred to above in [2.2] but yields important outcomes that are both separate and essential to achieving justice related outcomes or targets.

*"The community also needs to be ready to actually do [JR] ... You see, that's the biggest [challenge] because there's a lot of us out there in the Moree community and everyone knows that the only way to fix problems is if we actually do it ourselves. It [may be] only a small majority of us ... that want to actually to do it [at first but... it needs to ... have more representation in it. We need to be able to spread that responsibility out as much as we possibly can so that it is an actual community program."*

**Moree community member**

*“Even if it’s about the young kids on the street, they have their input into it and then ... the [leadership] group can discuss that and give feedback back to them. We can say ‘What do you think about doing it like this’, getting their consensus on the idea ... By involving the broader community you’re empowering them by letting them know that they have got a voice and we are here to listen to them and take on anything that they suggest to best fix some of these problems that we’ve got.”*

**Moree community member**

Other activities of the backbone team and leadership groups include supporting community to access bureaucratic data, building partnerships between community and government and improving accountability of service providers to deliver better outcomes.

*“That’s what we’re trying to look at here ... through collaboration not just with the community but also with the service sector in this community. To stop them from working in bloody silos and fighting over funding in this community [and] the duplication of multiple services.”*

**Moree community member**

These backbone and leadership teams need to be sufficiently resourced as the essential infrastructure of community-led JR, leading adaptive work and delivering outcomes that are not currently a focus for or that cannot be done or achieved by government.

*“It is time ... to end the rate of volunteerism it takes to make social changes to government policy. [We should be] remunerating people from the community who are skilled in these processes ... [They] need to be paid for their service.”*

**Mt Druitt community member**

*“[T]he generosity of community and the goodwill [should be recognised] ... as our people and our First Nations are really stepping up to the plate to overcome and address [government failings] in some shape or form ... This goodwill and generosity are often overlooked...”*

**Bourke community member**

The complex work they undertake requires sustained funding, moreover, given its long-term nature and its challenges. Through community-led JR, Aboriginal communities are innovating new approaches in which there will be trials, errors, successes and learnings. Communities experience the common practice of stop-starting government funding of services and programs as highly problematic.

*“We need to spark the interest [of community in JR because] it’s been lost over the years. You’ve got to remember that a lot of these older ones and even ones our age, they’ve been [let down] by the government. You hear it all the time, they go well ‘Why do I need to get involved in this? It’s just going to be like every other thing that ever happened in this town. It’s going to last a couple of years and then it’s gone.’”*

**Moree community member**

*“We shouldn’t be cutting funding off because this [JR] initiative falls over, or that one didn’t quite work. It’s just going to take a while. If you’re not used to in the last 230 years having any control over what’s happening in your community, we can’t expect them to turn that around in 5 minutes.”*

**Aboriginal rep, JRNSW Executive**

*“[We need to think about] ... how government genuinely partners to provide that long-term sustainability, so communities are not going cap in hand to government regularly and ... just building and then losing trust ... There is just so much harm caused by the way government is operating in community ... We [also] need to be clear on how we manage expectations because I keep reminding community but also, government and all the other critical friends ... there are intermediate, medium, long-term aspects to those as well. Everything is not going to happen in 12 months... so taking very optimistic but cautionary steps to ensure we get it right.”*

**Bourke community member**

## 5.2

### A reinvestment mechanism for Maranguka

Maranguka is ready to co-design a place-based reinvestment mechanism with the NSW Government. Maranguka perspectives on this mechanism are shared here, with further detail to be determined during the co-design process.

This mechanism has two streams. The first involves provision of upfront, ongoing funding to resource the operations of the Maranguka backbone team and the Bourke Tribal Council, as above.

A second stream of funding involves the establishment of a flexible funding pool to be controlled by Maranguka and the Bourke Tribal Council. The NSW Government and Maranguka should come to agreements about how this funding can be provided with increasing degrees of community control to achieve agreed outcomes or targets to sustain the positive change process. As a co-design process, there will need to be negotiation and agreement on appropriate outcomes or targets and how their progress will be measured. As a starting point, outcomes or targets over which Maranguka has little or no control should not be prioritised (at least, not without community consent). At present, government legislation, policy and practice significantly impact justice and other outcomes, as an example. For this reason, tying financing of community-led JR to justice-related targets alone - or indeed to any targets measured at a population level (e.g., reduction of school suspensions) is problematic. The monetary value to be attributed to the agreed outcomes and targets, used to calculate amounts of funding, requires negotiation and agreement too, with Aboriginal perspectives on value given appropriate weight within this negotiation process. Agreement on value at a place-based level will be supported by state-level reform in outcomes measurement, as discussed in [4.2].

The allocation of funds from this second stream will be determined by Maranguka and the Bourke Tribal Council. From this pooled funding, the community are likely to implement ‘try and test’ initiatives to drive down contact with the justice system, as discussed in [3.2]. Over time, as outcomes or targets are achieved, this funding pool will increase – and over time local Aboriginal community control over local funding for initiatives will also therefore increase.

*"[This is about] the right to self-determination. So, we're as smart as you. You simply give us the money, don't tell us how to use the money... There's always a problem attached with supply. There's always a condition attached."*

**Aboriginal member, JRNSW Executive.**

*"But if those funds were made available - to target youth crime right now we could employ someone after hours, we could employ someone on weekends. And the data shows that a lot of the crimes are committed between 6pm and 6am where there's very little services being provided at the time. So, if we could shift some of the resources to those times ..."*

**Bourke community member**

*"[To] even be out in the bush you've got to have permission now. We don't have any land to go out to and call our own. It's all taken up by the landowners. A lot of our kids, they don't get to go out and learn their culture. All they've got is the river in town and thieving and everything else. [With this funding we could consider buying land]"*

**Bourke community member**

Ensuring stable funding for this second stream is important, as discussed above in relation to sustainability of funding for backbone and leadership teams. Providing sustained funding for Maranguka to test and try initiatives identified as likely to reduce over-representation is to be distinguished from and preferred to current programmatic approaches to funding.

## 5.3 A state-level reinvestment mechanism for NSW

*"The criminal justice policy shouldn't be about building more prisons ... and employing more people in the prison system ... [Reform seems to be] all about how people get better access to inmates. The best access family can have to inmates is at home! ... [Government says] we are doing all this ... and things are improving. Things aren't improving. People are still going there, and we are building more jails. I think that's where most of the money goes by and large... Then we get crumbs from the table in terms of programs."*

**Aboriginal rep, JRNSW Executive**

### Why a state-level reinvestment mechanism?

Considerable amounts of money are spent by government on tertiary responses to offending, and at increasing levels each year, as detailed in [1.3]. Current justice responses have significant direct and indirect costs to government (including costly service responses to the impacts of over-representation), and considerable social and other costs for Aboriginal communities. As this demonstrates, there is little return on current justice investment.

*"I think there needs to be some accountability from government back to the taxpayer too... If we look at the Royal Commission into Aboriginal deaths in custody - well the only thing they've done is created more concrete beds [in gaols]."*

**Moree community member**

As identified previously, the ineffectiveness of the justice system is in large part due to its limited capacity to adequately address (in a timely manner) the issues that cause Aboriginal people to enter and then become entrenched within the justice system. The further into this system a person travels, the more severe and intractable these issues become. 'We rely on the jail to rehabilitate and address a lot of problems and it's not happening', as one community member in Bourke states. Aboriginal communities identify their greater capacity to address issues that cause offending and their escalation.

*"I'll give you my brother, God rest his soul, as an example. He was incarcerated from the time he was nine ... and it wasn't until he was 50 years of age the judge said, "Oh every time you've committed an offence, drugs have been involved. Maybe we should send you to rehab?" We need to address the root of the problem. We can address what's going on more if they didn't go [to prison]."*

**Mt Druitt community member**

*"[In spending money on prison] what's the outcome for them? A criminal record. That money is not being spent to better them. There's a lot of things they can do before they chuck them into jail. [That's] the first option out here ... [thinking] hopefully they'll learn from it, but they don't ... With all the boys ... girls too, when they're spending all their time in a cell, they're looking at four walls ... They're constantly thinking ... There's anger inside them ... "Once I get out, I'm going to do something bad again...to go back in again. They don't care [about consequences]. They're keeping them in a cycle ... Help him reconnect with his family... his culture. You could do a lot of things with that money."*

**Mt Druitt community member**

Aboriginal communities identify that as investment in the justice system grows, so too does the level of resourcing required to fund justice responses to offending. This point was raised by a community member in Moree, who indicated more and more Aboriginal people appear to be drawn into an ever-expanding system. 'Offending is getting much worse now because of the justice system ... That system in there is far too powerful - [more so] today than it was in our day and age.'

### Designing a state-level reinvestment mechanism

A more economically rational alternative involves a re-allocation of funds to approaches that will deliver better returns and avoid the sizeable cost associated with current justice responses. This shift in resources is required at a state level, achieved through a mechanism co-designed with Aboriginal people specifically for this purpose. Further detail about this reinvestment mechanism will emerge through this co-design process. The initial proposal, however, is for establishment of a justice reinvestment fund into which government deposits an annual levy. This levy could be based, as an example, on the number of Aboriginal people imprisoned in the year in question.

Aboriginal communities should share in decision-making about how the funds in this levy are to be expended. However, to have greater capacity to reduce Aboriginal contact with the justice system the funding should be allocated, as a priority, to early intervention and prevention and Aboriginal community-led approaches, and in communities most impacted by the criminal justice system.

*"Look how much they invest in [locking] a kid up when they could ... reinvest that into the community. And then I reckon if they did invest in the community, the community come up with a program or something around these young people instead of just [doing] the coppers way. I reckon you'd see a big difference."*

**Mt Druitt community member**

*"...obviously the funding, the existing funding formula is going into the punitive measures and punishment, and I think in terms of, and where it should go is obviously at the front end."*

**Bourke community member**

There is precedent for this type of levy.<sup>xviii</sup> There is also precedent for government using economic modelling to develop a sound business case for upfront funding that will produce economic benefit. In this instance, a justice reinvestment mechanism will require upfront financial commitment by the NSW Government, but it will generate increased savings and lead to decreased costs for government over time as the number of Aboriginal prisoners reduces.

More comprehensive cost-benefit analyses will provide further evidence of the economic rationale for the proposed levy. As a starting point, communities have identified some of the benefits of reduced Aboriginal incarceration to be incorporated into this cost-benefit analysis. These point to a strengthening of factors likely to avert or protect against (re-)offending in Aboriginal communities.

*"A lot of families would still be together [with less incarceration]. A lot of kids would be a lot happier...Because it would also mean that our ... community connection ... would be a hell of a lot stronger. The benefits would be that people are kept on Country. Where they come from. You're not separating families. You're not, as an example, removing a lot of our men ... separating dads from families."*

**Mt Druitt community member**

*"If we took away that idea of incarceration and over policing and all of those elements, how rich and vibrant communities could be...How rich and vibrant they are already in many ways, but then imagine what it would be like without that trauma associated with [criminal justice]. Imagine a world where Aboriginal people could exist alongside our non-First Nations community. Imagine that then we would have the same opportunities...That no one will look at me through a lens of deficit ... and as more likely to be incarcerated than ... educated."*

**Aboriginal rep, JRNSW Executive**

As a key element of this mechanism, reforms to justice-related and other legislation, policy and practice will be required to contribute to reduced Aboriginal contact with the justice system, as discussed in [2.3] and elsewhere in this report. Responsibility for these reforms sits with government, though as noted they must be informed by community perspectives.

In this context, the NSW Government might consider more formally incorporating law and order measures into budget considerations, placing similar demands on such proposals as are currently placed on communities seeking to address mass incarceration. For example, proposals that increase sentencing, make it more difficult to seek bail or that intensify policing are likely to have substantial fiscal costs from growing prison populations. Those costs are reinforced by the subsequent increased risk those going to prison face across their life course. The Government could require any such proposal to be formally costed and to identify how fiscal trade-offs will be met – for example by raising new tax revenues or cutting existing services. This would be in addition to any levy paid from the subsequent outcomes of the policy, and reflect the direct costs of policing, prisons and additional services required. Such an approach would increase accountability and apply similar discipline to punitive approaches to that are currently demanded of those advocating community building.

Alternatively, the same fiscal approach could highlight fiscal benefits of preventative and less punitive proposals. By formalising a costing model, governments could include fiscal benefits of law reform in the forward estimates, and parliamentarians and parties could use law reform as a legitimate mechanism for funding other initiatives through the Parliamentary Budget Office.

Without the above reform, it is unlikely that numbers of Aboriginal prisoners, and therefore the amount of funding to be committed to the levy each year will reduce over time.

By reforming legislation, policy and practice, government will share accountability for improving justice outcomes for Aboriginal people, making an important additional contribution to change that will be delivered by Aboriginal communities through community-led JR.

*"What works is when the community takes control. Especially the grassroot people, the Elders of the town and families and that. They know exactly what needs to be done to make the change - because jail isn't the answer ... With these Government policies and stuff like that... it makes it hard for our people. We're going backwards, but if we had our own community led program, project, program whatever, it will work. We'll never fail, we'll never be a statistic."*

**Bourke community member**

# 6

## CONCLUDING COMMENTS

This report describes how Aboriginal communities are already progressing innovative, community-led responses to Aboriginal offending in NSW. It presents an urgent call to the NSW Government for (further) investment in the capability of Aboriginal communities to contribute to reduced Aboriginal over-representation through this community-led response. Reducing this over-representation is a goal that the NSW Government shares with Aboriginal communities, having committed to its achievement through Closing the Gap. The nature of this investment, moreover, is to be defined by Aboriginal definitions of reinvestment.

The report sets out key elements of an effective partnership between the NSW Government and Aboriginal communities to work towards the above shared goal. These largely centre around a shift in decision-making and resources that recognises the above capability of Aboriginal communities. Specific actions are proposed that will enable this shift in decision-making and resources.

The report identifies problems within existing government systems or ways of working that prevent Aboriginal communities from contributing to reduced over-representation. These include failures of service delivery to deliver meaningful, positive outcomes to Aboriginal people and misalignment between

government and community definitions of data and its application to JR that fails to recognise and respond to IDS and IDG Principles. Over-spending at a tertiary level and insufficient funding for early intervention and prevention and Aboriginal-led solutions is also identified as problematic.

The report identifies solutions to these problems. These include increased Aboriginal decision-making about resource allocation at a local level and reforms around data and outcomes measurement that better reflect IDS and IDG principles. It also proposes three mechanisms for reinvestment: that is, funding for backbone and leadership teams and development of a place-based reinvestment mechanism for Maranguka. Development of a state-level reinvestment mechanism that diverts funding from more punitive justice responses to early intervention and prevention and Aboriginal community-led approaches across NSW is also proposed. Co-design processes through which the NSW Government and Aboriginal communities can build shared understandings of reinvestment and ultimately, shared ownership of both the problem of and the solution to Aboriginal over-representation, are also proposed. As noted, this is to be a starting rather than end point in tackling this issue, which has such significant negative impacts within Aboriginal communities.

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# APPENDIX A: JOURNEY MAP OF REINVESTMENT IN NSW



# ENDNOTES

<sup>i</sup> Sabol, William J and Baumann, Miranda L (2019), 'Justice Reinvestment and the Justice Reinvestment Initiative: Impractical Vision and Oversold Program', 3(14) *Annual Review of Criminology (Review in Advance)* 14.1, 14.11. It is noted above that there has been some focus on top-down reform to avoid costs through JR in the US. Some JR funding in the US has been provided to community-led solutions. As an example, an initiative was funded in South Dakota that expanded the use of non-custodial sentencing options and released prisoners to community rather than investing in expanding the main women's prison. As part of the relevant legislative and policy reform, community organisations were funded to supervise women offenders, including tribal leaders for the significant proportion (40%) of First Nations women involved. See discussion in Crime and Justice Institute (n.d.), *Justice Reinvestment: South Dakota*, at < [http://www.crj.org/assets/2017/07/14\\_SD\\_JRI.pdf](http://www.crj.org/assets/2017/07/14_SD_JRI.pdf)>

<sup>ii</sup> The Transforming Safety Program in Colorado is an example of this approach, funded through savings generated through parole-based reform and seeking to address economic and employment-related drivers of offending (e.g., through small business lending). See discussion, Sakala, L, Harvell, S and Thomson, C (2018), *Public Investment in Community-Driven Safety Initiatives – Landscape Study and Key Considerations*, Urban Institute Research Report. Of note, aspects of JR methodologies have been implemented in the UK and New Zealand. These initiatives are similarly unrepresentative of JR in its original form. In the UK, for example, investment has occurred through a 'payment by results' approach. This incentivises local criminal justice partners to reduce demand on the local justice system by way of 'success payments', with a similar focus on criminal justice reform rather than community-led efforts to reduce offending. See discussion in Australian Law Reform Commission (2017), *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report 133, 134 and Sabol and Baumann (n. i), 14.6.

<sup>iii</sup> Further discussion of innovation in First Nations-led JR in Australia is available in Allison, F and Cunneen, C (2022), *Justice Reinvestment in Australia: A review of progress and key issues*, [https://jrna228913579.files.wordpress.com/2022/07/national-report\\_jr.pdf](https://jrna228913579.files.wordpress.com/2022/07/national-report_jr.pdf)

<sup>iv</sup> Reduced over-representation of adults and young people is identified in CTG Targets 10 and 11. Target 13 is also directly relevant, which relates to increased safety for Aboriginal families and households.

<sup>v</sup> NSW has a fifth Priority Reform Area, Economic Prosperity

<sup>vi</sup> At a national level, the Federal Government has committed \$79million over four years to fund JR.

<sup>vii</sup> NSW Government (Aboriginal Affairs) (2017), *Local Decision Making: Policy and Operational Framework NSW*

<sup>viii</sup> This was an increase from \$855.5million in 2011-2012 to \$1.26billion in 2020-2022. Productivity Commission (2022), *Report on Government Services, Part C: Section 8 – Corrective Services*, Table 8A.2. Police and corrective services accounted for 95.9% of real recurrent expenditure per person on justice services (66a% and 29.9%, respectively). Productivity Commission (2022), *Report on Government Services, Part C – Justice Sector Overview*, Table CA.2

<sup>ix</sup> Audit Office (NSW) (2019), *Managing Growth in the NSW Prison Population*, NSW Government

<sup>x</sup> The increase was from 2192 persons in 2011-2012 to 3445 persons in 2020-2021. Productivity Commission (2022), *Report on Government Services, Part C: Section 8 – Corrective Services*, Table 8A.6

<sup>xi</sup> Ibid

<sup>xii</sup> Ibid, Table 8A.5

<sup>xiii</sup> Productivity Commission (2022), *Report on Government Services, Part F: Section 17 – Youth Justice*, Table 17A.7

<sup>xiv</sup> NSW Bureau of Crime Statistics and Research (BOCSAR) (2022), *Long-term re-offending rates of adults and young people in NSW*, Crime and Justice Statistics Bureau Brief Number 162, BOCSAR. Of note, 81% of young people convicted in 2010 were re-convicted within 10 years, c.f. 59% of 18 to 25yr-olds, 58% of 26 to 35yr-olds and 55% of 36 to 45yr-olds.

<sup>xv</sup> The ALRC writes that 'incarceration itself has a compounding effect' on the 'disadvantages' that underpin offending in Aboriginal and Torres Strait Islander communities. This then leads to 'a cycle of incarceration – both for ex-prisoners, and for their families.' ALRC (n. ii), 81.

<sup>xvi</sup> Justice Health & Forensic Mental Health Network and Juvenile Justice NSW (2015), *2015 Young People in Custody Health Survey: Full Report*, NSW, 19. In NSW 53.6% of young people detained reported having at least one parent who had been incarcerated in the past, but 67.5% of Aboriginal young people detained reported having at least one parent who had been incarcerated in the past.

<sup>xvii</sup> ALRC (n. ii), 61ff. See discussion of social determinants of justice outcomes in Guthrie, J, Levy, M and Fforde, C (2013), 'Investment in Prisons: An Investment in Social Exclusion?' 1(2) *Griffith Journal of Law and Dignity* 254

<sup>xviii</sup> Rigney et al have discussed the importance of nation building as a political determinant of health outcomes. The arguments and discussion raised in a health context also apply to social determinants of justice. See Rigney, D, Bignall, S, Vivian, A and Hemming, S (2022), *Indigenous Nation Building and the Political Determinants of Health and Wellbeing, Discussion Paper*, Lowitja Institute, Melbourne, DOI: 10.48455/9ace-aw24

<sup>xix</sup> The NSW Government, as a relevant example, has used a levy to divert a percentage of Department of Communities and Justice (DCJ) funding into ACCO-led approaches, with the aim of reducing the number of Aboriginal children in out of home care.



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