

4.2 Justice reinvestment in Australia five years on

In the past five years, it has been encouraging to see so many different people and groups embrace justice reinvestment. However, in all of this enthusiasm we have seen some confusion around what justice reinvestment actually involves. Some academics have warned of the potential pitfalls if justice reinvestment becomes a:

catch-all buzz word to cover a range of post release, rehabilitative, restorative justice and other policies and programs and thus lose both any sense of internal coherence and the key characteristic that it involves a redirection of resources.⁷

In my view, it is not necessarily detrimental that advocates in Australia are already trying to adapt justice reinvestment for the Australian context. What works in the United States can be a powerful catalyst for action, but will require thoughtful adaptation to the Australian context. Nonetheless, if the Australian brand of justice reinvestment strays too far from the evidence we may lose some of the strength of this approach.

There is now a growing body of literature on justice reinvestment,⁸ so this chapter will only briefly summarise some of the key principles and processes of justice reinvestment to provide clarity and context.

(a) Justice reinvestment explained

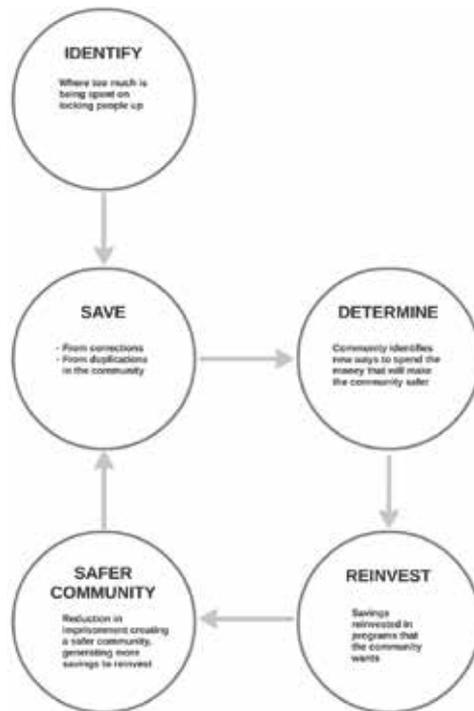
Justice reinvestment is a powerful crime prevention strategy that can help create safer communities by investing in evidence based prevention and treatment programs. Justice reinvestment looks beyond offenders to the needs of victims and communities.

Justice reinvestment diverts a portion of the funds for imprisonment to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested into services that address the underlying causes of crime in these communities. Figure 4.1 illustrates the primary process of justice reinvestment.

7 D Brown, M Schwartz and L Boseley, 'The Promises of Justice Reinvestment' (2012) 37(2) *Alternative Law Journal* 96, p 97.

8 J Austin and G Coventry, 'A Critical Analysis of Justice Reinvestment in the United States and Australia' (2014) 9(1) *Victims & Offenders: An International Journal of Evidence-based Research, Policy, and Practice* 126; University of New South Wales, *Australian Orientated Sources*, <http://justicereinvestment.unsw.edu.au/node/31> (viewed 1 October 2014).

Figure 4.1:
Justice reinvestment



Justice reinvestment was developed in the United States by George Soros' Open Society Foundation. There are currently 30 states in the United States pursuing justice reinvestment at the state level, and at least 18 counties in six states undertaking justice reinvestment at the local level.⁹

While justice reinvestment approaches vary depending on the needs of communities, justice reinvestment does have a consistent methodology around analysis and mapping. This work is the basis for the justice reinvestment plan.¹⁰ Justice reinvestment approaches also require commitment to localism and budgetary devolution¹¹ and are only made possible through political bipartisan support.¹²

The success of justice reinvestment in the United States has been well documented.¹³ Moves to justice reinvestment are also underway in the United Kingdom.¹⁴

9 Australian Justice Reinvestment Project, *Newsletter* (July 2014). At <http://justicereinvestment.unsw.edu.au/sites/justicereinvestment.unsw.edu.au/files/AJRP%20Newsletter%20July%202014.pdf> (viewed 1 October 2014).
 10 Council of State Governments Justice Center, *Justice Reinvestment*, <http://csgjusticecenter.org/jr/> (viewed 1 October 2014).
 11 D Brown, M Schwartz and L Boseley, 'The Promises of Justice Reinvestment', note 7, p 97.
 12 D Brown, M Schwartz and L Boseley, 'The Promises of Justice Reinvestment', above, p 97.
 13 Council of State Governments Justice Center, *Facts and Trends*, <http://csgjusticecenter.org/justice-reinvestment-facts-and-trends/> (viewed 1 October 2014).
 14 D Brown, M Schwartz and L Boseley, 'The Promises of Justice Reinvestment' (2012), note 7, p 98.

(b) Developments towards justice reinvestment

Since 2009, justice reinvestment has been the subject of significant community advocacy. There are organised campaigns for justice reinvestment under way at the national level, as well as in New South Wales, Victoria, Western Australia, South Australia, the Northern Territory, Queensland and the Australian Capital Territory.¹⁵

Supporters include grass roots community members, service providers, academics, lawyers, Police and judges.

Importantly, we have also seen support from victims' groups. Prominent victims' advocate Ken Marslew, has made supportive comments about justice reinvestment in the media:

Some people see it as a soft option, when in fact it is a very powerful tool. Some would be a little reluctant to see offenders have more money spent on them, but if we're going to look at the big picture we really need to develop justice reinvestment across our communities.¹⁶

Aboriginal and Torres Strait Islander victims' groups have also supported justice reinvestment.¹⁷

This wave of community support has been instrumental in placing justice reinvestment onto the political agenda. Justice reinvestment has been considered in at least six government inquiries in the past five years. In particular, the 2013 Senate *Inquiry into the Value of a justice reinvestment approach to criminal justice in Australia* received over 130 submissions.¹⁸ Table 4.1 contains a summary of all of these inquiries and their recommendations.

15 For Victoria see: Smart Justice Project, *Welcome to Smart justice*, <http://www.smartjustice.org.au/>; for Western Australia see: Deaths In Custody Watch Committee, *Build Communities Not Prisons Campaign*, <http://www.deathsincustody.org.au/build-communities-not-prisons-campaign>; for Queensland see: Project 10%, *Project 10%*, <http://www.project10percent.org.au/>; for the Australian Capital Territory see: Australian National University, Justice Reinvestment Forum: 2 August 2012, http://ncis.anu.edu.au/events/past/jr_forum.php (all pages viewed 1 October 2014).

16 C Heard, *The Future of Justice Reinvestment*, SBS TV (27 July 2013). At <http://www.sbs.com.au/news/article/2013/07/27/blog-future-justice-reinvestment> (viewed 1 October 2014).

17 Family Violence and Legal Services Prevention Services Victoria, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs on the value of justice reinvestment in Australia* (2013). At <http://www.fvpls.org/images/files/FVPLS%20Victoria%20-%20Justice%20Reinvestment%20Submission.pdf> (viewed 1 October 2014); See also North Australian Aboriginal Family Violence Legal Service, National Family Violence Prevention Legal Services, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs on the value of justice reinvestment in Australia* (2013). At http://www.nationalfvpls.org/images/files/National_FVPLS_Forum_-_Justice_Reinvestment_Submission.pdf (viewed 1 October 2014).

18 Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a justice reinvestment approach to criminal justice in Australia* (2013). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index (viewed 1 October 2014).

Table 4.1: Government inquiries into justice reinvestment

Inquiry	Recommendations
<p>Parliament of Australia, Senate Legal and Constitutional Affairs Committee:</p> <p><i>Value of a justice reinvestment approach to criminal justice in Australia</i>¹⁹</p> <p>(2013)</p>	<p><i>Recommendation 1:</i> The committee recommends that the Commonwealth take a leading role in identifying the data required to implement a justice reinvestment approach and establish a national approach to the data collection of justice indicators.</p> <p><i>Recommendation 2:</i> The committee recommends that the Commonwealth make a commitment to sharing relevant data held by Commonwealth line agencies with justice reinvestment initiatives in other jurisdictions.</p> <p><i>Recommendation 3:</i> The committee recommends that the Commonwealth, State and Territory Governments recognise the importance of long term, sustainable funding for programs including adequate provision for robust evaluation.</p> <p><i>Recommendation 4:</i> The committee recommends that the Commonwealth consider the establishment of a justice reinvestment clearinghouse to compile, disseminate, and promote research and program evaluation in all communities.</p> <p><i>Recommendation 5:</i> The committee recommends that the Commonwealth adopt a leadership role in supporting the implementation of justice reinvestment, through the Council of Australian Governments.</p> <p><i>Recommendation 6:</i> The committee recommends that the Commonwealth commit to the establishment of a trial of justice reinvestment in Australia in conjunction with the relevant states and territories, using a place-based approach, and that at least one remote Indigenous community be included as a site. Further, the committee recommends that any trial actively involve local communities in the process, is conducted on the basis of rigorous justice mapping over a minimum time frame beyond the electoral cycle and be subject to a robust evaluation process.</p> <p><i>Recommendation 7:</i> The committee recommends that the Commonwealth provide funding for the trial of justice reinvestment in Australia.</p> <p><i>Recommendation 8:</i> The committee recommends that the Commonwealth, through the Standing Committee on Law and Justice, promote the establishment of an independent central coordinating body for justice reinvestment (roles outlined).</p>

19 Senate Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia*, above.

Inquiry	Recommendations
	<p><i>Recommendation 9:</i> The committee recommends that the Commonwealth refer to the Council of Australian Government justice targets for Aboriginal and Torres Strait Islander people as part of the Closing the Gap initiative, directed to reducing the imprisonment rate of Aboriginal and Torres Strait Islander people.</p> <p>A Minority Report was issued by Coalition Senators. While the Coalition Senators ‘warmly endorse the principles of justice reinvestment’,²⁰ they raised concerns around the lack of evidence base and possible over reach of the Commonwealth in the area of criminal law, which is traditionally the responsibility of the states and territories.</p>
<p>Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs:</p> <p><i>Doing Time –Time for Doing Report</i>²¹</p> <p>(2011)</p>	<p><i>Recommendation 40:</i> The Committee supports the principles of justice reinvestment and recommends that governments focus their efforts on early intervention and diversionary programs and that further research be conducted to investigate the justice reinvestment approach in Australia.</p> <p>The Australian Government accepted (in whole, in part or in principle) all of the Report’s recommendations.²²</p>

20 Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Minority Report from Coalition Senators on the value of a justice reinvestment approach to criminal justice in Australia* (2013). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/d01 (viewed 1 October 2014).

21 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, *Doing Time –Time for Doing: Indigenous youth in the criminal justice system* (2011). At http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=atsia/sentencing/report.htm (viewed 1 October 2014).

22 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time –Time for Doing*, above, p 36.

Inquiry	Recommendations
<p>Parliament of Western Australia, Community Development and Justice Standing Committee:</p>	<p><i>Recommendation 22:</i> The Committee recommends that as part of the implementation of the justice reinvestment strategies a mapping exercise be undertaken to identify those communities currently delivering the highest percentage of population to the prison system.</p> <p><i>Recommendation 23:</i> The Committee recommends that the government initiates a properly funded, evidence based, collaborative Justice Reinvestment strategy in one metropolitan and one regional ‘high stakes’ community identified by the recommended mapping exercise, as a pilot, to be evaluated against adequate performance measures. This pilot would measure the effectiveness of the role of each of the individual participating agencies as well as specific outcomes relating to the interagency collaboration on the ground.</p> <p><i>Recommendation 24:</i> The Committee recommends that government at the highest level charge a lead agency to establish the proposed pilot Justice Reinvestment strategy to:</p> <ul style="list-style-type: none"> – have an overarching responsibility for each of the agencies collaborating in the strategy insofar as their deliverables to the strategy are concerned; and – have control and be accountable for the pooled Justice Reinvestment budget.
<p><i>Making our prisons work</i>²³ (2010)</p>	
<p>Parliament of New South Wales, Legal and Constitutional Affairs References Committee:</p>	<p><i>Recommendation 21:</i> In conjunction with Recommendation 1, the committee recommends that the federal, state and territory governments recognise the potential benefits of justice reinvestment, and develop and fund a justice reinvestment pilot program for the criminal justice system.</p>
<p><i>Access to Justice</i>²⁴ (2009)</p>	

23 Community Development and Justice Standing Committee, Parliament of Western Australia, *Making our prisons work: An inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies*, Report No. 6 (2010). At [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(WebInquiries\)/6228E6A9C090FDB9482578310040D2B8?opendocument](http://www.parliament.wa.gov.au/parliament/commit.nsf/(WebInquiries)/6228E6A9C090FDB9482578310040D2B8?opendocument) (viewed 1 October 2014).

24 Legal and Constitutional Affairs References Committee, Parliament of New South Wales, *Access to Justice* (2009). At www.nswbar.asn.au/circulars/2009/dec09/access.pdf (viewed 1 October 2014).

Inquiry	Recommendations
<p>New South Wales Minister for Juvenile Justice, Strategic Review of the New South Wales Juvenile Justice System:</p> <p><i>Juvenile Justice Review Report</i>²⁵</p> <p>(2010)</p>	<p><i>Recommendation 52:</i> NSW Government adopt a Justice Reinvestment policy based on diverting funds that would otherwise be spent on additional juvenile justice centres, to preventative and early intervention programs that address the underlying causes of crimes in communities.</p> <p><i>Recommendation 75:</i> The NSW Government engage with Indigenous communities to develop long-term strategies to address the underlying causes of juvenile offending. Preventative and early intervention strategies are to be funded in local communities based on the Justice Reinvestment approach outlined in Recommendation 52.</p>

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

Beyond these reasons, the reality is that if we were to map the locations with the highest concentrations of offenders, many of these locations would have very high numbers of Aboriginal and Torres Strait Islanders living in them.²⁶

(c) Community justice reinvestment initiatives

Governments have not yet adopted justice reinvestment in Australia. However, at the community level, we are seeing some very exciting work about what justice reinvestment could look like in Australia. This section will provide case studies for the Bourke Justice Reinvestment Project that I have been involved in, and for an innovative community research project in Cowra.

(i) Bourke Justice Reinvestment Project

Bourke is a small remote town in far western New South Wales with a population of nearly 3,000 people. 30% are Aboriginal and Torres Strait Islanders.²⁷ Like many similar communities, Bourke has a young population, high levels of unemployment and disengagement from education, and high imprisonment rates. Text Box 4.1 provides more detailed demographic information.

25 Noetic Solutions, *A Strategic Review of the New South Wales Juvenile Justice System: Report for the Minister for Juvenile Justice* (April 2010). At http://www.djj.nsw.gov.au/pdf_html/publications/general/Juvenile%20Justice%20Review%20Report%20FINAL.pdf (viewed 1 October 2014).

26 D Brown, M Schwartz and L Boseley, 'The Promises of Justice Reinvestment', note 7, p 99.

27 Office of Communities, *Community Portrait, Bourke: A portrait of the Aboriginal community of Bourke, compared with NSW, from the 2011 and earlier Censuses*, Aboriginal Affairs NSW Government (2011). At <http://aboriginalaffairs.nsw.gov.au/wp-content/uploads/2013/09/130910-Community-Portrait-Bourke.pdf> (viewed 1 October 2014).

Text Box 4.1:

Snapshot of the Bourke Aboriginal community

Bourke is within the traditional lands of the Ngemba peoples - occupying the east bank of the Darling River around Bourke and Brewarrina. A recent mapping exercise identified the presence of Aboriginal people from over 20 language groups. The traditional owners, the Ngemba, are a minority alongside other major language groups including the Wanggamurra, Murrawari and Barkindji.²⁸

There is a marked gap between the life experiences of Aboriginal and Torres Strait Islander peoples and non-Indigenous residents. For instance:

- in 2011, the median income of Aboriginal and Torres Strait Islander adults living in Bourke was approximately \$416 per week, which was 39% less than the median income for all adults (\$678)²⁹
- 17% of the Aboriginal and Torres Strait Islander workforce were unemployed, compared with 2% of the non-Indigenous workforce in Bourke³⁰
- compared with non-Indigenous residents of Bourke of the same age, there were:
 - 31% fewer Aboriginal and Torres Strait Islander 15–19 year olds in education
 - 7% fewer Aboriginal and Torres Strait Islander 5–14 year olds in education.³¹

Bourke faces significant challenges in relation to community safety. According to the Bureau of Crime Statistics and Research (BOCSAR) the Bourke Local Government Area has consistently ranked highest in the state for the rate of recorded incidents of domestic violence, sexual assault and breach of bail in recent years.³²

Australian Bureau of Statistics (ABS) data in 2011 shows that out of a total 223 Aboriginal young people/young adults in the Bourke Local Government Area, almost a quarter (21%) were on remand or sentenced. This does not include others in contact with the criminal justice system, for instance, those charged and on bail, or those on non-custodial orders. Crimes identified with youth include:

- car related crimes (car theft, stealing from cars and breaking windows)
- breach of bail

28 A Vivian and E Schnierer, *Factors affecting crimes rates in Indigenous communities in NSW: a pilot study in Bourke and Lightning Ridge: Community Report November 2010*, Jumbunna Indigenous House of Learning University of Technology (2010). At <http://www.jumbunna.uts.edu.au/pdfs/research/FinalCommunityReportBLNov10.pdf> (viewed 1 October 2014).

29 A Vivian and E Schnierer, *Factors affecting crimes rates in Indigenous communities in NSW*, above.

30 A Vivian and E Schnierer, *Factors affecting crimes rates in Indigenous communities in NSW*, above.

31 A Vivian and E Schnierer, *Factors affecting crimes rates in Indigenous communities in NSW*, above.

32 Bureau of Crime Statistics and Research, *Trends and patterns in domestic violence assaults*, http://www.bocsar.nsw.gov.au/bocsar/bocsar_mr_bb61.html (viewed 1 October 2014).

33 A Vivian and E Schnierer, *Factors affecting crimes rates in Indigenous communities in NSW*, note 28.

34 NSW Ombudsman, *Inquiry into service provision to the Bourke and Brewarrina communities - A special report to Parliament under section 31 of the Ombudsman Act 1974* (2010). At http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0018/3348/SR_ServiceProvisionBourke_Dec10.pdf (viewed 1 October 2014).

- property crimes (criminal trespass, break and enter and malicious damage).³³

At the same time, service mapping shows there are over 50 community organisations servicing the area and 40 Police. The problems of service integration have been well documented by the New South Wales Ombudsman.³⁴

In February 2013, Bourke was the subject of the dubious headline, 'Bourke tops the list: more dangerous than any country in the world'.³⁵ While this media reporting lacked nuance and sensationalised issues in the community, there is no denying the depth of challenges that need to be addressed to create a safer community in Bourke.

The Aboriginal community leadership in Bourke has courageously stepped up to take on the challenge of creating a safer community. The Bourke Aboriginal Community Working Party (BACWP), led by Mr Alistair Ferguson, approached Just Reinvest NSW in October 2012. They told the organisation that they had been working over many years to build the capacity of the Aboriginal community. Based on this work, they felt ready to trial justice reinvestment to try and break the intergenerational cycle of offending and incarceration.

One of Bourke's strengths is the established local governance structure. Since 2002, the BACWP has been the peak representative organisation for the local Aboriginal community. The BACWP includes community members and representatives from 18 different organisations and receives funding from the New South Wales Government.

The Bourke Aboriginal leadership has also developed a comprehensive agenda for change. The strategy and structure is called Maranguka, a word from the language of the Ngemba Nation which, when translated into English, carries the meanings of 'to give to the people', 'caring' and 'offering help'. The first priority of Maranguka is to reduce Aboriginal contact with the criminal justice system.

I have visited Bourke four times since 2013 to undertake community consultations. I have been impressed with the significant community commitment to face these issues in an inclusive way for change.

The National Children's Commissioner, Megan Mitchell, has also been involved with these community consultations. I believe involvement from the National Children's Commissioner has helped to enable the young people to have a voice in this process. There was a watershed moment at the end of our community meeting in October 2013, when one of the Elders said that this was the first time she had seen the young people take part in a meeting like this, and how proud she was of them. You could see those young people sitting up straighter and feeling really valued and heard. This foundation of respect and inclusion will help broad community ownership of any justice reinvestment plan.

35 R Olding and N Ralston, 'Bourke tops list: more dangerous than any country in the world', *The Sydney Morning Herald*, 2 February 2013. At <http://www.smh.com.au/nsw/bourke-tops-list-more-dangerous-than-any-country-in-the-world-20130201-2dq3y.html> (viewed 1 October 2014).

As the project has evolved, the concept of 'collective impact' has come to inform the methodology for a justice reinvestment plan in Bourke. Text Box 4.2 provides a summary of collective impact.

Text Box 4.2:

Collective impact explained

Collective impact can be summarised as diverse organisations from different sectors committing to a common agenda to solve a complex social problem. Collective impact is based on the premise that no single individual or organisation can create large-scale, lasting social change in isolation, and acknowledges that systematic social problems may only be solved by the coming together of organisations and programs.

There are five key elements underlying the collective impact model:

- a common agenda for change, including a shared understanding of the problem and joint approach
- shared measurement for alignment and accountability
- mutually reinforcing activities, whereby differentiated approaches are coordinated through a joint plan of action
- continuous communication focusing on building trust, and a backbone of support including the resources, skills and staff to convene
- the coordination of participating organisations.³⁶

Collective impact initiatives that have been employed around the world to address various social issues have shown substantive results. Some initiatives targeting complex social problems include those relating to education, healthcare, homelessness, the environment and community development.

Collective impact has synergies with community development and may translate the more conceptual elements of justice reinvestment to a practical level.

With the community support established, the BACWP, Just Reinvest NSW and the Australian Human Rights Commission developed a project proposal. In August 2013, this proposal was distributed to philanthropic, corporate and government sectors, and the Australian Human Rights Commission hosted an engagement meeting with funders and stakeholders.

This approach has been successful in establishing funding and in-kind support to commence the justice reinvestment project. Starting in March 2014, for a two-year period, a consortium of partners will work with, and alongside, the Bourke community to develop a watertight social and economic case for justice reinvestment to be implemented in Bourke. The Bourke Community, the champions and supporters of Just Reinvest NSW and others will then take that compelling case for change to the New South Wales Government for response and action.

36 Collective Impact Australia, *What is collective impact?*, <http://collectiveimpactaustralia.com/about/> (viewed 1 October 2014).

The Bourke Justice Reinvestment team now has the financial support and resources required to pursue this work. The team comprises of:

- **Executive Officer:** Alistair Ferguson is the Executive Officer in Community Development, and will be based in Bourke over the two-year project period. The position of Executive Officer is funded by the Vincent Fairfax Family Foundation and the Dusseldorp Skills Forum.
- **Facilitator:** Lend Lease is releasing Cath Brokenborough, Chair of Indigenous Engagement and Reconciliation, to fill the role of External Facilitator, and to be based in Bourke for three days per month.
- **Data Manager:** Aboriginal Affairs NSW has agreed to provide an in-house Data Manager to coordinate the collection and collation of data on Bourke.
- **Data Reference Group:** A Data Reference Group has been established, and includes representatives from the University of New South Wales (UNSW), the ABS and BOCSAR. Both the ABS and BOCSAR are providing data for this project. Aboriginal Affairs NSW will assist the Data Reference Group by conducting data relevant research for this project. As the project's university partner, UNSW will further provide advice on best practice responses to achieve the agreed shared measures.
- **Economic Modelling Team:** Over the next two years, KPMG will lead the work of costing the implementation of justice reinvestment in Bourke. KPMG will also produce an economic modelling of the cost savings for government observers.
- **Project Coordinator:** The project will be coordinated by Sarah Hopkins, Chair of Just Reinvest NSW.
- **Collective Impact Consultant:** Kerry Graham will provide advice on the collective impact framework.
- **New South Wales Police support:** Sergeant Mick Williams, a respected Aboriginal Police Officer and recipient of the Australian Police Medal, has been assigned to support the project and Maranguka more broadly.
- **Project Officer:** St Vincent De Paul has funded a Project Officer to assist Alistair Ferguson for a 12 month term.

The project team has engaged with a range of stakeholders in the community and is currently working with the Courts, Police and other community stakeholders to develop a number of initial circuit breakers. Proposals include an amnesty on warrants for young people in Bourke, and a set of protocols relating to the imposition of bail conditions and the circumstances in which bail will be breached by the Police. The initial focus of this collaborative work will lead to a dialogue on a variety of underlying issues that impact on imprisonment, such as housing, employment and education.

Why is the Bourke Justice Reinvestment Project different?

The Bourke Justice Reinvestment Project is an innovative example of communities taking control for positive change. So far, I have identified two key differences in the process.

Firstly, this project is not just about creating a community plan. In my many years in Indigenous Affairs, I have seen numerous community plans, often initiated by government. Despite good intentions, many of these plans languished because there was too much emphasis on the creation of the plan, and not enough on building the relationships and commonalities of the stakeholders. Actions always speak louder than words. Or in this case, actions and relationships speak louder than plans.

In the Bourke Justice Reinvestment Project, we are seeing this process reversed. It is no accident that we spent such a significant period of time building relationships and expectations before we commenced the project. This goodwill is allowing us to find common ground and shared goals, for instance, around the initial circuit breaker proposals. Developing from our projects, relationships and learning, will be a justice reinvestment plan. The crucial difference will be that it will be built on achievements, not just aspirations.

Secondly, the funding consortium for the Bourke Justice Reinvestment Project is different. While the government is providing support to the project, the major funding and pro bono services come from philanthropic and corporate sources. Government funding requirements can be complex and cumbersome to manage, while corporates and philanthropists recognise and reward innovation. Corporates and philanthropists can also be nimble enough to provide resources more quickly and flexibly. This approach gives the Bourke Justice Reinvestment Project the correct degree of support and flexibility over the next two years.

(ii) Cowra Justice Reinvestment Project

Researchers from the Australian National University, led by Dr Jill Guthrie, are conducting an exploratory study in Cowra to evaluate the theory, methodology and potential use of a justice reinvestment approach to addressing crime, and particularly the imprisonment of the town's young people.

Cowra is located in the central west region of New South Wales and has a population of 10,000 residents.³⁷ Aboriginal and Torres Strait Islander peoples make up 6.5% of the population.³⁸ While Cowra has not received the high level of attention for justice issues that Bourke has, Cowra has been described as an 'ideal case study site'³⁹ due to its stable population and middle range crime profile. Further to this, there is no direct economic benefit drawn from having a prison in the community. Although the impact of incarceration is far greater for Australian Indigenous populations, the study will focus on issues of incarceration of all young people from Cowra.

Dr Jill Guthrie explains the focus of the research:

This study is a conversation with the town to explore what are the conditions, the understandings, the agreements that would need to be in place in order to return those juveniles who are incarcerated in detention centres away from the town, back to the town, and to keep those juveniles who are at risk of incarceration from coming into contact with the criminal justice system.⁴⁰

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

The project will continue until March 2016, having commenced in April 2013. The project's outcomes may lead to recommendations for addressing the levels of young people coming into contact with the criminal justice system. Similar to the Bourke Justice Reinvestment Project, the Cowra research will build an evidence base

37 Australian Bureau of Statistics, *2011 Census Quickstats*, http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/POA2794?opendocument&navpos=220 (viewed 1 October 2014).

38 Australian Bureau of Statistics, *Cowra (A) LGA*, http://stat.abs.gov.au/itt/r.jsp?RegionSummary®ion=12350&dataset=ABS_NRP9_LGA&geoconcept=REGION&datasetASGS=ABS_NRP9_ASGS&datasetLGA=ABS_NRP9_LGA®ionLGA=REGION®ionASGS=REGION (viewed 1 October 2014).

39 'Rethinking the justice system', *Cowra Guardian*, 5 June 2013. At <http://www.cowraguardian.com.au/story/1552398/rethinking-the-justice-system/> (viewed 1 October 2014).

40 'Rethinking the justice system', *Cowra Guardian*, above.

for justice reinvestment that may be used for future advocacy.

(d) Challenges

Five years on, it is worth considering some of the challenges that lay ahead in adapting justice reinvestment for the Australian context, about how we move from the speculative to the practical and how we can learn from the international experiences.

(i) Learning from the United States

The United States is now nearly ten years down the track with justice reinvestment. Even in the five years since justice reinvestment was first introduced in Australia, the concept has evolved in the United States and there is now a growing body of evidence and analysis.

Australian researchers have also been applying a critical lens to the way justice reinvestment has developed in the United States, in the context of Australian adaptations. Text Box 4.3 provides a summary of the preliminary findings of this research project.

Text Box 4.3:

Australian Justice Reinvestment Project

The Australian Justice Reinvestment Project (AJR Project) is a two year Australian Research Council funded project which draws together senior researchers across the disciplines of law and criminology, to examine justice reinvestment in other countries, and to analyse whether such programs can be developed in Australia. Researchers recently visited six states (Texas, Rhode Island, North Carolina, Hawaii, South Dakota and New York) to examine implementation.

Researchers noted that 'justice reinvestment has come to mean different things in different contexts',⁴² with a mix of initiatives affiliated with the government funded Justice Reinvestment Initiative (JRI) of the Bureau of Justice Assistance, as well as newer local level initiatives.

At the state level, JRI:

tends to emphasise the passage of legislation enshrining general criminal justice reform and ... typically this is no place-based component and as such, the 'reinvestment in high-stakes' communities contemplated in the original vision of justice reinvestment is largely absent. Local level initiatives were more likely to take up a particular issue (eg housing for people involved with the criminal justice system).⁴³

Researchers note that 'worthwhile criminal justice reform is occurring under the justice reinvestment banner'⁴⁴ although it might be different to the original concept.

41 University of New South Wales, *Justice Reinvestment Project, Fact Sheet: JR in the USA – Fieldwork Reflections* (2014). At <http://justicereinvestment.unsw.edu.au/sites/justicereinvestment.unsw.edu.au/files/AJRP%20Fact%20Sheet%20Reflections%20CY.pdf> (viewed 1 October 2014).

42 University of New South Wales, *Justice Reinvestment Project, Fact Sheet*, above.

When we apply some of the research reflections to the development of justice reinvestment in Australia, what strikes me is that the community driven approach of justice reinvestment that we are seeing in Bourke is in fact closer to the pure principles of justice reinvestment than some of the initiatives that have emerged in the United States.

Despite the promise of a place-based approach with strong community engagement, the United States experience has become more focused on state-wide criminal justice reforms and investment into community corrections, such as probation and parole services. That is not to discount this approach or the reductions in imprisonment that have been achieved. However, to me at least, the real underlying power of justice reinvestment has always been in the place-based approach of community involvement and capacity building to create safer communities. In this respect, I believe we are on the right track in Australia.

The current lack of government initiatives in justice reinvestment in Australia may even be a blessing in disguise, as it gives the community the time to set up robust governance, sustainable systems and a 'watertight case' for justice reinvestment. With this in place, justice reinvestment will be on community, not government, terms.

Community governance, capacity and involvement are crucial in developing justice reinvestment plans with Aboriginal and Torres Strait Islander communities. Without these necessary elements, there is a risk that justice reinvestment will become yet another well-meaning plan that is rolled out by government but ultimately makes little difference.

This means that doing justice reinvestment well is not an overnight solution. It may take some time to see the returns of investing in social rather than corrective services. However, if communities are in control through this process, I believe the rewards will be deep seated and dramatic over time.

(ii) Bipartisan support for alternative to imprisonment

Bipartisan political support is unanimously cited as one of the greatest assets and challenges for justice reinvestment. All sides of politics need to put aside populist 'tough on crime' rhetoric and punitive policies in favour of an economically, socially and morally responsible approach to criminal justice issues.

Unfortunately, over the past five years we have seen a continuation and, in some cases, expansion of punitive policies. We have mandatory sentencing in New South Wales, Victoria, the Northern Territory, Western Australia, Queensland and South Australia.⁴⁵ Researchers also argue that tough bail legislation continues to contribute to imprisonment rates.⁴⁶

In the Northern Territory, we have seen some concerning legislation in relation to alcohol, which also reflects this mood of popular punitive policies. As I mentioned in last year's *Social Justice and Native Title Report*,⁴⁷ I am concerned about implications of Alcohol Mandatory Treatment and Alcohol Protection Orders. Both of these measures raise human rights concerns. Alcohol Protection Orders also have the potential to criminalise harmful alcohol use, and may lead to over policing of Aboriginal and Torres Strait Islander peoples, particularly those who are homeless.

At the same time, we have also seen considerable cuts to legal and prevention services. Aboriginal and Torres

43 University of New South Wales, *Justice Reinvestment Project, Fact Sheet*, above.

44 University of New South Wales, *Justice Reinvestment Project, Fact Sheet*, above.

45 Appendix 2 of this report has full details of the current mandatory sentencing legislation.

46 D Brown, 'Looking Behind the Increase in Custodial Remand Populations' (2013) 2(2) *International Journal for Crime, Justice and Social Democracy* 80. At <https://www.crimejusticejournal.com/article/view/84> (viewed 1 October 2014).

47 M Gooda, *Social Justice and Native Title Report 2013*, Australian Human Rights Commission (2013), ch 4. At <http://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2013> (viewed 1 October 2014).

Strait Islander Legal Services are uniquely qualified to provide culturally secure services, and have the skills to ensure fair representation of Aboriginal and Torres Strait Islander defendants.

Punitive policies emerge because that is what politicians believe the public demands. There is no denying that there are times when heinous crimes do galvanise public opinion around punishment and deterrence, rather than rehabilitation and prevention. Indeed, I have always been clear that there are some people, including Aboriginal and Torres Strait Islander peoples, who need to be separated from society for a while.

However, I believe there is a serious need to reorientate the conversation towards safe communities. If we can create safer communities, this will lead to less offending which in turn means less people going to jail. This may show that imprisonment is not cost effective in these times of economic restraint. This, then, becomes something we can all agree on. Shifting this discourse is a major challenge but, as I will argue later in this chapter, I believe it is a challenge that we have the determination to tackle.