# JUSTICE REFORM INITIATIVE SUBMISSION TO THE 2023-24 ACT BUDGET COMMUNITY CONSULTATION

APRIL 2023

## ABOUT THE JUSTICE REFORM INITIATIVE

The Justice Reform Initiative (JRI) is a national justice advocacy organisation working to reduce over-incarceration in Australia and to promote a community in which disadvantage is no longer met with a default criminal justice system response. The JRI alliance includes people who share long-standing professional experience, lived experience and/or expert knowledge of the justice system. The Justice Reform Initiative is committed to reducing Australia's harmful and costly reliance on incarceration. We seek to shift public discourse and policy away from building more prisons as the primary response of the criminal justice system and move instead to proven alternative evidence-based approaches that break the cycle of incarceration.

Our patrons include more than 120 eminent Australians, including two former Governors-General, former Members of Parliament from all sides of politics, academics, respected Aboriginal and Torres Strait Islander leaders, senior former judges including High Court judges, and many other community leaders who have added their voices to end the cycle of overincarceration in Australia.

The JRI's patrons in the Australian Capital Territory (ACT) are:

- **Professor Lorana Bartels (co-chair)**, Australian National University (ANU); Adjunct Professor, University of Canberra (UC) and University of Tasmania;
- **Professor Tom Calma AO,** Chancellor, UC; Co-Chair, Reconciliation Australia; former Aboriginal and Torres Strait Islander Social Justice Commissioner and Race Discrimination Commissioner;
- **Kate Carnell AO,** former Chief Minister of the ACT; Deputy Chair, BeyondBlue; Australian Small Business and Family Enterprise Ombudsman;
- **Simon Corbell,** former Deputy Chief Minister, Attorney General, Minister for Police and Emergency Services of the ACT; Adjunct Professor, UC;
- **Dr Ken Crispin QC,** former ACT Director of Public Prosecutions, Justice of the ACT Supreme Court and President of the ACT Court of Appeal;
- **Shane Drumgold SC**, ACT Director of Public Prosecutions;
- **Gary Humphries AO (co-chair),** former Chief Minister of the ACT and Senator representing the ACT in the Australian Parliament;
- **Rudi Lammers APM,** former ACT Chief Police Officer;
- **Dr Michael Moore AM PhD,** former Independent Minister for Health and Community Care, ACT Legislative Assembly; Past President, World Federation of Public Health Associations; Distinguished Fellow, The George Institute, University of NSW; Adjunct Professor, UC;
- **The Honourable Richard Refshauge**, Acting Justice of the ACT Supreme Court; former ACT Director of Public Prosecutions; and

- **Dr Helen Watchirs OAM,** President, ACT Human Rights Commission.[1]

We are supported by our ACT Advocacy and Campaign Coordinator, Indra Esguerra.

## 2023-24 ACT BUDGET

Unfortunately due to a lack of time, the Justice Reform initiative is not able to write a full budget submission this year.

However, we would like to reiterate the funding proposals and programs that we promoted in our submission last year and note that although there has been some progress in a few of these areas, in general, our proposals and requests for increased funding in the justice reform space still stand. Thus this submission below from the Introduction onwards is our previous submission from 2022-23 – we also note that this submission was not lodged in time for budget consultations last year, so this is the first time it has been seen in that context.

The Justice Reform Initiative published a report in March 2023 on the State of Incarceration in the ACT, which can be found on our website here. The statistics available in this report support the proposals in our budget submission.

A recent report by Professors Ruth McCausland and Eileen Baldry of UNSW outline the social determinants of justice and the 8 factors that increase your risk of imprisonment. Their analysis shows that your chance of ending up in prison is greatly increased[2] by:

1. having been in out of home (foster) care
2. receiving a poor school education
3. being Indigenous
4. having early contact with police
5. having unsupported mental health and cognitive disability
6. problematic alcohol and other drug use
7. experiencing homelessness or unstable housing
8. coming from or living in a disadvantaged location

**Noting the longer set of recommendations in last year's submission, specific or additional areas we believe should be prioritised in this year's budget include:**

- Funding for bail support programs (see details below),
- Funding for the Aboriginal Legal Service ACT/NSW should be increased and their drivers' licensing support program should be reinstated,
- Funding for learner driver programs for low-income families to assist with gaining the 100 hours of required practice; the Road-Ready course should be made free of charge for everyone in the ACT and should be expanded to the AMC; drivers licences fees should have concessions, and
- Funding for public housing should be dramatically increased, as well as funds for the Justice Housing Program.

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[1] We recognise the conflicts of interests inherent in the roles held by some of our patrons, e.g. Acting Justice Refshauge is the judge in charge of the Drug and Alcohol Sentencing List (DASL), Shane Drumgold SC is responsible for prosecuting all serious ACT matters and Professor Bartels has evaluated some of the programs discussed in this submission, including DASL. However, we suggest that this expertise also gives us a unique insight into the operation of the ACT's justice system and how to design more effective strategies for its administration.

[2] Ruth McCausland and Eileen Baldry, *Who Does Australia Lock Up? The Social Determinants of Justice*, International Journal for Crime, Justice and Social Democracy, April 2023.

## INTRODUCTION

The Justice Reform initiative acknowledges the ACT Government's position on justice reinvestment and the work that has already been undertaken to try to better support our community, through improved support mechanisms, rather than taking a criminal justice approach as a first measure. This work in our community to build communities, not prisons is one we applaud. However, JRI believes that much more needs to be done to break entrenched cycles of justice system involvement and also to prevent the next generation of people entering the cycle of child protection, the youth and adult criminal justice systems and ultimately prison.

The ACT Government is proud to be a human rights jurisdiction and also a restorative city. However, JRI believes that the Government needs to strengthen these commitments with strong and effective restorative practices and actions that better support our citizens, including in our care and protection system and especially First Nations people.

JRI is committed to elevating approaches that seek to address the causes of contact with the criminal justice system, including responses to housing and employment needs, mental health issues, cognitive impairment, access to education, the misuse of drugs and alcohol, and problematic gambling. We are also committed to elevating approaches that see Indigenous-led organisations being resourced and supported to provide appropriate support to Aboriginal and Torres Strait Islander people who are impacted by the justice system.

To break the cycle of incarceration, we need to ensure effective, holistic, community-led and evidence-based diversion and post-release (reintegration/re-entry) programs are resourced and available to people who need this support to build lives in the community and reduce their contact with the justice system.

As outlined in JRI's principles, the overincarceration of Aboriginal and Torres Strait Islanders in the ACT, despite their overall low population rate in our community, is of high concern, as are the growing rates of women's incarceration. Implementing a range of proposals in the JRI's budget submission would not only address key domains and indicators in the ACT's Wellbeing Framework in relation to both Aboriginal and Torres Strait Islander people and women but would also make substantial inroads to implementing the recommendations of the Australian Law Reform Commission's 2017 report *Pathways to Justice*.[3]

## ACT GOVERNMENT EXPENDITURE ON THE JUSTICE SYSTEM, JUSTICE REINVESTMENT AND REDUCING RECIDIVISM

The JRI acknowledges the intensive investments required to change outcomes in peoples' lives to avoid the criminal justice system and the impacts to the ACT budget. However, just as with preventative healthcare and climate change investments, it is imperative to invest in early interventions for disadvantaged families to better support their children in ways that help them avoid the child protection and youth justice systems. There is now a substantial evidence base

[3] Australian Law Reform Commission (ALRC), *Pathways to Justice–Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (Pathways to Justice)* (2017).

outlining the significant cost savings and efficacy of early intervention. [4] There is also (as is outlined in more detail in this submission) a growing evidence base outlining the effectiveness of targeted support programs for people at risk of ongoing criminal justice system involvement.

Too many people are trapped in a cycle of incarceration and being 'managed' in justice system settings; this could be avoided, if effective supports were available in the community. Investment in evidence-based programs and services run by the community sector that address the social drivers of incarceration would lead to a **significant reduction in recidivism**. This shift in approach will also result in **significant cost savings** and **substantial improvements in health and well-being**. In 2020, the ACT Government released its Reducing Recidivism 25% by 2025 Plan (RR25by25) to reduce recidivism in the ACT by 25% by 2025, which seeks to put into effect a broad range of such programs and policies.

Productivity Commission[5] data show that the cost per prisoner per day in the ACT, including recurrent and capital expenditure was $528. in 2021-22; for recurrent costs alone, it was $386 per day. Both of these were the highest in Australia. Cost modelling undertaken by an independent contractor for the Justice and Community Safety Directorate (JACS) in 2019 examined in detail the cost of the whole process of a person's interaction with the criminal justice system in the ACT – from policing, through the courts, and imprisonment. The full costs of criminalisation and detention are far greater that those published by the Productivity Commission, when these additional areas are also included.

The subsequent ACT Justice System Cost Model is part of an ACT-specific evidence base under the Government's Justice Reinvestment Strategy. It is an innovative system-wide approach to costing the ACT's justice system from the point of apprehension to detention. This evidence base includes an overall baseline of the costs and drivers of crime for both adults and youths in the justice system and projects those costs into the future (over nine years to 2025/26).[6]

The RR25by25 Plan states that the ACT justice system costs over $270 million annually and, if we continue on this current trajectory, it is estimated to cost $337 million by 2025–26. The ACT Government has stated it will invest more than $132 million over four years to develop and implement new programs and measures to reduce the rate of reoffending.[7]
There is overwhelming evidence that prison (as it currently operates) is both expensive *and* ineffective. It is ineffective at reducing offending and re-offending; it is criminogenic (it increases the likelihood of future imprisonment), and its over-use causes enormous and inter-generational harm to the most vulnerable communities.

While the financial commitment to incarceration continues to increase, we have only seen a piecemeal approach to resourcing services and programs in the community that we know are effective at reducing contact with the justice system. This submission proposes a funding shift so that those 'caught' in the justice system instead receive effective support and assistance in

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[4] https://www.thefrontproject.org.au/images/downloads/THE_COST_OF_LATE_INTERVENTION/Gov_Infosheet_-_How_Australia_can_invest_in_children_and_return_more.pdf?vers=1.1

[5] Productivity Commission, *Report on Government Services, 2020-21* (2022) Table 8.19.

[6] ACT Government, *Building Communities Not Prisons* https://justice.act.gov.au/justice-programs-and-initiatives/reducing-recidivism/building-communities-not-prisons.

[7] ACT Government, *RR25by25 – Reducing Recidivism in the ACT* (2020) 3.

the community. **There is a particular need for this support to be available at the point of diversion (from the court system) and at the point of release (from custody).**

Making a clear policy shift to invest in policies and programs that divert people from our court and criminal justice systems, and instead make strong headway into case management, support and rehabilitation programs, supporting people to gain and retain employment, as well as reducing homelessness and maintaining good health are all vital steps to turning around the existing system that simply fails to support so many disadvantaged people in our community.

There is strong evidence of the efficacy of community-led approaches that address the social drivers of over-incarceration. We believe the ACT has the opportunity to lead the nation in turning around our reliance on incarceration as a default response to disadvantage. We can invest in accessible, evidence-based systems of supports in the community, where people at risk of imprisonment are given genuine opportunities to build productive and meaningful lives in the community.

The ACT Government already has the evidence, reports and recommendations that would set the ACT clearly on this path. The JRI recommends that actions in existing government plans and reports are implemented through budget investments as a matter of priority; these include:

- Reducing Recidivism 25% by 2025;
- Our Booris, Our Way and subsequent steering committee reports;
- the independent review of service gaps and alternative models (the 'Morag Report');
- the Pathways to Justice report; and
- the Disability Justice Strategy and corresponding Action Plan.

## OUR KEY BUDGET ASKS

### 1. Establish a Justice Reinvestment Coordinator-General

People who have contact with the justice system tend also to have a range of other social and legal needs. These needs extend across multiple government agencies and responsibilities as is well outlined in the ACT Government's Reducing Recidivism by 25 Plan as well as the JRI principles for good service delivery outlined in this submission. There is for instance a need across Government to have coordinated responses in the following areas that impact on recidivism and incarceration:

- homelessness – in the community generally and for people on bail and exiting prison;
- legal support and bail matters;
- education programs and supports;
- mental health programs, supports and processes;
- children and young people going through the child protection and youth justice systems, foster care, and changing schools;
- and the imprisonment of people with cognitive impairment who require specialist disability support in the community.

The **implementation of the RR25 Plan would benefit enormously from the creation of the position of Coordinator-General, to ensure effective coordination across relevant various government agencies and champion the initiatives that are essential to making progress in this important area.** The ACT Government is of course aware that these positions have been effective for the ACT Government in achieving aims across government areas and agencies, as is evidenced by the establishment of the Family Safety Coordinator-General, the

Mental Health Coordinator-General and the more recent Climate Change Coordinator-General positions.

JRI believes that the creation of a Justice Reinvestment Coordinator-General is a crucial step in helping the ACT Government prioritise real reforms towards building communities, not prisons. A Community Advisory Committee, comprising members with relationships across the relevant community sectors, including Aboriginal and Torres Strait Islander people and people with lived experience of the justice system would enhance the work of the Coordinator-General. Establishing this position and administrative support for this role would fulfil the requirements of Item 7, in the Executive Reform section of Appendix 2 of the Parliamentary Agreement for the 10th ACT Assembly, to 'Consider the best administrative arrangements to provide a holistic and coordinated approach to justice reinvestment, and to social inclusion and equality'.

JRI notes that the $79 million Federal Labor party commitment to justice reinvestment[8] focuses on Indigenous-led place-based approaches. This approach to Justice Reinvestment differs significantly to the ACT where justice reinvestment refers more broadly to investing in a range of programs that support vulnerable people at risk of imprisonment (including place based approaches) *instead* of investing in further prison capital projects. Despite the different frameworks, establishing a Justice Reinvestment Coordinator-General in the ACT would broadly give effect to Recommendation 4-1 of the Pathways to Justice report[9], and would also provide a useful pathway to connect with recent Federal engagement in this issue.

## 2. Establish an ACT 'Breaking the Cycle Fund'

As outlined above, breaking the cycle of justice system involvement is a whole-of-government responsibility and delivers whole-of-government outcomes and long-term savings to government, including in health, housing and economic engagement. As well as having better government focus and coordination, it is vital that further funding be invested in key initiatives, to achieve the aim of shifting people out of the criminal justice system, into support programs in the community.

**To stop the cycle of disadvantage and poverty characterised by justice system involvement, JRI proposes establishing a 'Breaking the Cycle Fund'. This fund should include all initiatives that sit under the broad aims of justice reinvestment, reducing recidivism and breaking the cycle of criminal justice system involvement.** It should be noted from the outset, that **s**ome initiatives will require time to scale up over time in order and

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[8] Labor, *Justice Reinvestment: Turning the Tide on Incarceration and Deaths in Custody https://www.alp.org.au/policies/justice-reinvestment*.

[9] The pathways report notes "Commonwealth, state and territory governments should provide support for the establishment of an independent justice reinvestment body. The purpose of the body should be to promote the reinvestment of resources from the criminal justice system to community-led, place-based initiatives that address the drivers of crime and incarceration, and to provide expertise on the implementation of justice reinvestment. Its functions should include:

- providing technical expertise in relation to justice reinvestment;
- assisting in developing justice reinvestment plans in local sites; and
- maintaining a database of evidence-based justice reinvestment strategies.

The justice reinvestment body should be overseen by a board with Aboriginal and Torres Strait Islander leadership. "

there may be the need to build capacity in the sector, while other approaches are easily and quickly scalable.

The Breaking the Cycle fund will enable the Government to better account for initiatives that will, in the longer-term contribute to reducing the ongoing costs of running the Alexander Maconochie Centre (AMC) and the associated criminal justice system. We know that, just as with climate action and preventative health, it is expensive in the short term to be both investing in the acute end of the problem, whilst also investing in the longer-term solutions. But, without starting to make those firm steps now – the policy changes and investments that will improve the lives of thousands of Canberrans and their families and our community as a whole – the ongoing cost pressures will continue on our community, on individuals and on our budget.

**We would suggest setting an envelope of at least $20 million per annum for this fund for new initiatives to be funded to provide community-led services. We would also recommend that 30% of all funds in the 'Breaking the Cycle Fund' be dedicated to Aboriginal-led organisations, in recognition of the challenges and overrepresentation of both Aboriginal children and adults in the justice and child protection systems.** This is in line with the aspirations of Closing the Gap and the federal justice reinvestment focus.

This 'Breaking the Cycle Fund' could include new investment in:

- a range of new bail support programs;
- expansion of specialist drug and alcohol treatment programs to better meet the needs of justice involved populations;
- Indigenous led support and diversion programs;
- better programs and processes for early intervention and support for young people; and/or
- expansion of specialist post-release programs for adults and children leaving custody
- expansion of specialist mental health and disability programs to better meet the needs of justice involved populations and improved screening and assessment processes.

The ACT Government should work closely with the Federal Government to identify funding opportunities for justice reinvestment and reform in the ACT arising from the next federal budget, as a result of relevant federal Labor election promises.

## 3. Bail support programs

The JRI would like to see a court-based bail support program, as an evidence-based means of helping the ACT Government achieve its Reducing Recidivism target. The JRI co-chair has discussed this issue with the Chief Magistrate and her Honour has indicated that she would support such a program, if adequate resources were provided to the ACT Courts for its administration.

The ACT Government has already identified the need for an increase in pathways for safe and sustainable bail, as outlined on the JACS website: 'A significant proportion of people held on remand do not receive a custodial sentence upon conviction. More options are required that will allow release on bail with effective conditions for people who do not represent a serious risk of offending'.[10]

[10] ACT Government, *Building Communities Not Prisons* https://justice.act.gov.au/justice-programs-and-initiatives/reducing-recidivism/building-communities-not-prisons.

According to data from the Australian Bureau of Statistics (ABS),[111] in the September 2021 quarter, 36% of the detainee population of the AMC was unsentenced. This is higher for Indigenous populations; 40% of Indigenous detainees were unsentenced. For receptions into the AMC, 92% entering custody were unsentenced, compared with a national figure of 78%.

The ABS data on bail status at the time of release from custody also reveal that a much higher proportion of prison *releases* were unsentenced in the ACT than nationally, at 59% and 46% respectively. Collectively, these data indicate an issue with the high proportion of all detainees in the ACT who enter, are in, and leave the AMC unsentenced. This highlights the need for initiatives to support people remaining in the community on bail, rather than being remanded in custody, especially in respect of offences that would not lead to custodial outcomes in any event.

Remand periods in the ACT are comparatively shorter than elsewhere in Australia: the median length, at 2.5 months, is below the national median of 3.4 months. Notably, 60% of remand periods in the ACT last less than three months (the national figure is 47%).[12] Even short periods in custody can be disruptive to a person's housing, employment and family. Accordingly, measures that can support people to remain in the community for this period should be considered.

People on remand do not have access to the same kinds of programs as people who are sentenced. The high levels of people on short-term stays on remand mean that a high proportion of detainees in the AMC are unable to undertake programs or education and are not getting the crucial supports towards rehabilitation that they need to break the cycle.

**JRI believes that a government review of the *Bail Act 1992* should be undertaken, to assess the key points where legislative reform may be required, to ensure that people can be released into the community on bail, rather than remanded in custody. Any such review should have particular regard to the implications of sections 9D and 9F.[13] This review can be done within existing JACS resources or an additional $100k could be appropriated to cover a new initiative for this review.** The legislative review should be undertaken in conjunction with an exploration of the multi-agency and service options available required to support alternative pathways, including for victims and perpetrators of family violence.

Item 7.5 of Appendix 4 in the Parliamentary and Governing Agreement for the 10th Assembly calls for the Government to 'Enhance drug diversion pathways for law enforcement', and a number of these bail reforms would clearly count towards this.

JRI has written to the Attorney-General to propose a range of options and preferable criteria for provision of **further bail support programs**. The letter also outlines the many benefits and outcomes in relation to reduction in reoffending rates. In particular, JRI recommends **expanding bail support programs to non-Indigenous defendants.** There is only one adult bail support program in the ACT, the Ngurrambai Bail Support Program, delivered by the Aboriginal Legal Service. This program is only available to Indigenous people, leaving many people without appropriate support. Although Indigenous people are over-represented in the justice system and

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[11] ABS, *Corrective Services Australia, September 2021 Quarter* (2021).

[12] ABS, *Prisoners in Australia, 2020* (2020).

[13] See also Lorana Bartels, Patricia Easteal and Shannon Dodd, *Review of the Implementation of the* Family Violence Act 2016 *(ACT): Report Prepared on Behalf of the ACT Government* (2020) Recommendation 6.

rightly the focus of significant interventions, there is also a need (in addition and separate to the existing service) for a more generic bail support program.

There are multiple models of potential programs in other jurisdictions. The Magistrates Early Referral into Treatment (MERIT) program in NSW is a voluntary pre-plea program for adults to take 12 weeks to get support to treat their drug or alcohol problems before their hearing. This program shows good results, including a cost-benefit analysis yielding a benefit of between $2.41 and $5.54 for every dollar spent,[14] and could be replicated in the ACT. Another suitable program is the **Court Integrated Services Program (CISP)**. CISP is a case management program that operates in 20 magistrates' courts across Victoria. It is a wider-reaching bail support program than MERIT, and offers:

- drug and alcohol treatment services;
- crisis and supported accommodation;
- disability and mental health services;
- acquired brain injury services; and
- Koori-specific services.

To participate, a person must be charged with an offence, consent to participating, and experience:

- physical or mental disabilities or illnesses;
- drug and alcohol dependency and misuse issues;
- inadequate social, family and economic support that contributes to the frequency or severity of their offending; and/or
- homelessness.

Independent evaluations of CISP[15] found that it:

- reduced reoffending;
- improved health outcomes;
- saved money, with a return on investment of $1.70-5.90 for every dollar spent;
- increased referrals to treatment; and
- improved assessment, providing magistrates with access to timely, accurate and objective information about CISP clients' risk of reoffending and support needs, to address the causes of their offending behaviour.

JRI also notes the low rate of bail offered to defendants charged with domestic and family violence (DFV) offences. To address cycles of DFV, there is the need to ensure early intervention programs are available at the earliest opportunity and wherever possible options available for both protecting victim/survivors and ensuring perpetrators also have access to appropriate interventions including through the mechanism of a bail support program. One early indicator of potential DFV is animal abuse at home, and thus one item of relevance in the ACT Parliamentary and Governing Agreement 2020 is Appendix 4, item 10.3, to 'Improve early

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[14] Megan Passey et al, *Evaluation of the Lismore MERIT Pilot Program – Final Report*. Northern Rivers University Department of Rural Health (2003).

[15] See Victorian Department of Justice, *Court Integrated Services Program: Tackling the Causes of Crime – Executive Summary Evaluation Report* (2010). This summarises separate evaluations of CISP conducted by Stuart Ross and PriceWaterhouseCoopers.

intervention programs for people who use violence against their partners, family members or pets', which could easily be incorporated into bail support programs.

**JRI would like to see new bail support programs with significant case management and supports implemented in the Magistrates Court, as a matter of urgency.** This would reduce the high rates of remand and would be a cheaper, early-intervention supplement and complement to the Drug and Alcohol Sentencing List (DASL) in the Supreme Court.

## 4. Further investment in housing for people in or at risk of criminal justice system

The JRI is pleased that the Justice Housing Program (JHP) appears to be well utilised and making a difference for those people able to access JHP places. However, we recommend further significant investment in housing options for people involved in the justice system and experiencing or at risk of experiencing homelessness.

We note that addressing homelessness and the lack of affordable and accessible housing is a key determinant of people's ability to break the cycle of poverty and disadvantage. If the ACT does not address this housing shortage, the ACT will simply not be able to improve the corresponding impacts to people's ability to support their families, and hold stable and secure lives, including obtaining and retaining regular employment.
High priorities for further investment in justice housing options are:

- dedicated supported accommodation for women and First Nations people on bail and for post-release;
- more post-release housing specifically allocated to people leaving custody;
- establishing a housing program to support DFV defendants and people convicted of DFV offences.

In relation to housing support programs for people being charged with DFV offences, JRI notes Everyman's Room for Change program, which provides 3-6 months of accommodation and support. Unfortunately, this program has a narrow focus and is only able to support around 20-25 people per year. We know that there are many more defendants in the AMC with DFV charges and they are very rarely given bail. However, while they are unsentenced, they are also unable to receive any support or rehabilitation programs in the AMC. Establishing a bail accommodation option with accompanying support programs for such defendants would better support our community and lead to better outcomes for families in general.

## 5. Strong investment in drug and alcohol treatment programs

The lack of sufficient drug and alcohol treatment and support services in the ACT is well-known and the community sector has been consistently calling for significant increases to these services in the ACT for many years now. The lack of sufficient, available services means that people in the criminal justice system are being given very few opportunities to build pathways out of the justice system. This is an issue that was noted in the 2020 ACT election and is Item 7.1 of Appendix 4 in the Parliamentary and Governing Agreement for the 10th Assembly: 'Double the existing funding for services to address drug and mental health co-morbidity'. Early indicators are that DASL has been an effective additional tool for our court system to better support people with drug and alcohol related offending appearing before the Supreme Court. However, there are also many people appearing in the Magistrates Court who would also gain from similar support services being available. In particular, expanding bail support services

to the Magistrates Court would enable more women to access such services, at a lower cost than DASL. The CISP as outlined above is highly recommended.

The Assembly's Health Committee undertook an inquiry into the Drugs of Dependence (Personal Use) Bill 2021 and JRI draws Treasury's attention to the following relevant recommendations, in relation to expanding the provision of alcohol and other drug treatment services. Specifically, the Committee recommended that the ACT Government should:

- significantly increase its investment in alcohol and other drug services (Rec 7);
- continue its commitment to establish and fund an Aboriginal Community Controlled residential rehabilitation facility and increase the number of First Nations alcohol and other drugs Peer Support Workers (Rec 8);
- invest in housing options for people who use alcohol and other drugs and are at-risk or experiencing homelessness (Rec 9);
- commission a feasibility study into the establishment of a combined mental health and alcohol and other drug residential facility (Rec 10); and
- work collaboratively with the sector and industry experts in a co-design process to expand capacity, address infrastructure constraints and develop new models of care. Specialised models for consideration include:
    - intersection of mental health and alcohol and other drugs services (no wrong door approach);
    - specialised methamphetamine services;
    - southside peer-based model of care (Canberra Alliance for Harm Minimisation & Advocacy);
    - women's day detox/rehab program;
    - family member support services;
    - an alcohol and other drugs Police, Ambulance and Clinical Emergency Response service;
    - the We CAN program through Alcohol Tobacco and Other Drug Association to target smoking amongst injecting drug users;
- continue to support the distribution of naloxone and training in its administration to people likely to witness an overdose (cf Canberra Alliance for Harm Minimisation & Advocacy program);
- trials and research on medicinal drug use (such as ketamine, psilocybin and MDMA) for treatment of mental health and PTSD issues; and
- trials and research on a Hydromorphone Assisted Treatment program (Rec 15).

**JRI recommends that the ACT Government increases substantially the investment in drug and alcohol treatment options for justice involved populations. There is a particular need to target resources towards services which act as a circuit breaker for people who are at risk of incarceration directly as a consequence of their drug and/or alcohol use. All people who are struggling with drug and alcohol use and associated criminal justice system involvement should have the opportunity to receive specialist AOD support in the community.**

## 6. Stronger support for Indigenous led and Indigenous specific support and diversion programs

The rate of Indigenous imprisonment in the ACT has been steadily increasing over a number of years now. Worse still, since 2016, the ACT has held the ignominious title of having had the

worst relative rate of over-representation of Indigenous peoples in prison.[16] There is a need to significantly increase ACT Government's investments in effective programs to reduce this rate accordingly.

The JRI supports ongoing investments in existing Aboriginal and Torres Strait Islander-focused programs, such as Yarrabi Bamirr, Ngurrambai Bail Support Program, Front-Up, Extended Throughcare Support, Yarning Circles for Justice, and the Galambany and Warrumbul Circle Sentencing Courts.

However, we also recommend extending these programs, by:

- **further investments in Yarrabi Bamirr wrap around supports for families;**
- **expanding the range of bail support programs, as outlined in section 3 of this submission;**
- **expanding the criteria for Extended Throughcare Support, to ensure that all Indigenous detainees receive this support,**
- **implementing a throughcare program for young detainees in Bimberi; and**
- **extending circle sentencing to the Supreme Court.**

JRI also notes that these proposals would support Appendix 3, item 4.4 of the Parliamentary and Governing Agreement for the 10th Assembly: to 'Support the development of sustainable Aboriginal and Torres Strait Islander community-controlled organisations in areas such as child and family services, justice, housing and disability'.

### 6a. Policing and overrepresentation of Indigenous peoples in prison

While we know that we have a serious overrepresentation of First Nations people in our prison in the ACT, little has been done to examine the many causes of this. One area that needs serious investigation is systemic racial bias and profiling in our policing practices. Unfortunately, evidence seems to show that police apply racial profiling to their regular practices, which of course leads to higher Indigenous arrest and incarceration rates.

The Police Stop Data Working Group in Melbourne published a report in 2017[17] which examined the issue, practices and data in great depth. The report outlines a range of recommendations to improve our systems and reduce Indigenous overincarceration. The lead author of this report, Tamar Hopkins, is familiar with the ACT justice system and has been in contact recently with the JRI's co-chair, to discuss undertaking similar research in the ACT context.

**JRI proposes that the ACT commissions independent research to review police practices in the ACT in order to determine the levels of systemic discrimination in policing against Indigenous people in the ACT, and develop a blueprint for systems change. We estimate that this would cost around $100,000.**

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[16] ABS, *Prisoners in Australia, 2021* (2022) Table 18. On age-standardised data, in 2021, Indigenous people in the ACT were 19.5 times more likely than non-Indigenous people to be incarcerated, compared with 5.2 to 15.9 times in other jurisdictions.

[17] Police Stop Data Working Group, *Monitoring Racial Profiling - Introducing a Scheme to Prevent Unlawful Stops and Searches by Victoria Police* (2017) https://www.policeaccountability.org.au/wp-content/uploads/2017/08/monitoringRP_report_softcopy_FINAL_22082017.pdf.

This review of police practices would also give effect to Rec 14.1 of the Pathways to Justice Report, calling for an independent review to determine whether our laws are implemented fairly and without discrimination.

## 7. Supporting young people to avoid the youth justice system

We note the commitment from the ACT Government to break the cycle of incarceration, by ensuring effective, holistic, community-led and evidence-based support for children at risk of justice system involvement. This is accompanied by a Government commitment to raising the minimum age of criminal responsibility.

To enable this important legislative change, there is the need to improve the supports and interventions for children at risk prior to contact with the justice system, diversion (at the point of police and courts) and also supports post-release (reintegration/re-entry). There is also the need for Indigenous-led supports for children and young people that are culturally safe and connected to family and community.

An effective way to reduce the number of people entering the youth justice system is to reduce the number of children in our child protection system. This is certainly not fast or easy work, but serious efforts must be taken to stop the intergenerational cycles occurring here in the ACT. Again, the ACT has one of the highest rates of Indigenous over-representation in the country in this regard.

There is a need for a significant resourcing shift, so that those children 'caught' in the justice system instead receive effective support and assistance in the community. The answers to the problem of the over-use and failures of the youth justice system, exist primarily *outside* of this system.

JRI is aware that the numbers of children in detention in Bimberi is usually relatively low, and the level of investment required for that small number of children may seem disproportionately high. However, over the course of that person's lifetime, early intervention and support investment could reduce the ongoing burden to the ACT Government significantly.

We support the work on the first 1000 days program, but additional supports for families are needed, as well as for women with disabilities, so children are not removed from their families.

JRI notes the independent ANU review, led by Emeritus Professor Morag McArthur in partnership with Aboriginal consultancy Curijo and Dr Aino Suomi, which looked at the ACT's current service system and identified ways in which the system could be changed to better meet the needs of children most affected by raising the age of criminal responsibility. **The review proposed a model of wraparound and case management services for children and young people, including appropriate after-hours and crisis accommodation for this age group in the ACT.[18] JRI fully supports implementation of this model.**

There is a need for improvements to and enhanced investment in the systems of support for young people in the ACT. There is strong evidence of the efficacy of community-led approaches that address the social drivers of over-incarceration. We can and must invest in

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[18] ACT Government, *Raising the Age Report Released*, Media release, 11 October 2021 https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2021/raising-the-age-report-released.

accessible, evidence-based systems of supports in the community, where children at risk of incarceration are given genuine opportunities to build productive and meaningful lives in the community.

There is a particular need for this support to be available at key touch-points in the system, including:

- a comprehensive framework of supports that identify and respond to children and young people at risk of justice system involvement. These supports should include holistic, place-based services for children and families that focus on wellbeing, housing, education and health. Indigenous children and young people require access to culturally safe, Aboriginal-led community-based support;
- places of therapeutic support for young people who cannot stay at home and do not need to be in incarceration, **providing an option like Melaleuca Place for children over 12**;
- recognition of the importance of diversion at the point of court and a court-based focus on therapeutic intervention for children and young people with multiple systemic diversionary options for children who come before the court; while we have a separate specialist Children's and Young Persons Magistrates Court in the ACT, and **it is positive that we have the Warrumbul children's sentencing circle for Indigenous children, JRI believes that similar supports should be put in place for non-Indigenous children too;**
- access to high-quality community-led services and programs for children in custody. Services that address the individual health, well-being, developmental and educational needs of each child are essential;
- for all children who are incarcerated, there should be access to transition, pre-release and post-release planning and support programs. This should be provided by organisations with strong support models that can continue to provide support post-release. **One practical way to enhance these supports in our system is to implement a youth justice throughcare program, just as is available to adults in the AMC;** and
- JRI also notes the efficacy of screening of 10-12 year old's at school, to identify children that are at risk and need additional supports put in place (for example, in relation to educational disabilities and/or mental health issues). This is possibly the earliest, effective point to put in place transformative support programs.

In relation to screening of school-aged children, an expansion and improvement of the systems to provide restorative practices in schools would be highly beneficial. Karstedt-Henke and Crasmoller (1991) showed in Germany that for every youth crime the police detect, parents detect at least four, teachers detect about two, and peers detect more than five. Hence, processes in schools that bring peers, teachers and parents together to heal and prevent minor early incidents of stealing, assault at play, bullying, etc are a far superior way of early detection of problems that need intensive social support.[19]

The ACT has existing restorative practices programs in a number of schools. However, they depend upon teachers or other volunteers taking on extra responsibilities to prepare restorative conferences. It is usually the most dedicated and entrepreneurial teachers who take these on and these are precisely the ones who get promoted to more senior positions. Often when the restorative champion leaves, the program falls over for want of a new champion. Funding

[19] Karstedt-Henke, Susanne, and Bernhard Crasmoller. 1991. "Risks of Being Detected, Chances of Getting Away." In The Future of the Juvenile Justice System, edited by J. Junger-Tas, L. Boendermaker, and P. van der Laan. Leuven: Acco.

specific restorative practice coordinators within the Education Directorate to provide these supports would be a major step in this regard, and would enable specialisation, including being better connected to volunteer support from the Canberra Restorative Community. John Braithwaite, one of JRI ACT's patrons, a local expert in this field, and proponent of a universal program of Youth Development Circles stemming in education systems, would be keen to share his insights with the Education Directorate.[20]

We also note the need to implement the following agenda items in the Parliamentary and Governing Agreement for the 10th Assembly:

- 'Develop a new Youth Justice Strategy, including restorative approaches that support young people, with a pilot of Functional Family Therapy – Young People in 2021, and implement a Youth Justice Throughcare program to be delivered in partnership with community organisations' (Appendix 3, Agenda Item 19.4); and
- 'Increase the number of identified First Nations staff positions in CYPS, implement recommendations from Our Booris Our Way and fund family group conferencing' (Appendix 4, Agenda item 9.8).

JRI notes the difficulties in reducing the number of children in the justice system. As well as the recommendations here, Appendix 1 outlines JRI's principles and some suggestions for improvements and pilot programs that could be adopted in our youth service system.

## 8. Improved supports and screening for people with mental and cognitive disabilities

The ACT Government is aware of the broad range of issues facing people with disability in relation to the justice system, as can be seen in the Disability Justice Strategy.

JRI notes the high level of people in prisons and youth detention with disability, including mental health conditions and cognitive impairments. There are many people in prison who require support in the community. The suspension of the NDIS plan while people in custody can dramatically disrupt gains and opportunities made by people with disabilities when they are well supported in the community. While the NDIS is suspended during a person's incarceration. this period provides an important opportunity for assessment and ensuring that people leave custody with appropriate supports in place. In this context, we point to a small-scale program in the Queensland Murri Court, which supported eligible Murri Court participants to access the NDIS. None of the initial nine participants in this program subsequently reoffended.[21] We

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[20] More information about Youth Development Circles can be found here: J. Braithwaite (2001) 'Youth Development Circles' OXFORD REVIEW OF EDUCATION 27(2), 239-252.
Further discussion is also found here: J. Braithwaite (2004) Emancipation and Hope' The Annals Of The American Academy Of Political And Social Science 592(1), 79-98. (Reprinted in C. Slakmon, Machado & P. Bottini (eds) Novas Direções No Goverança Da Justiça E Da Segurança (New Directions In The Governance Of Justice And Security). Brasília-D.F.: Ministry of Justice of Brazil, United Nations Development Programme – Brazil & the School of Law of the Getulio Vargas Foundation – São Paulo, 2006, 389-410).

[21] Carers Qld Australia, *Bridging the Gap: How the Murri Court is Working with Carers Queensland to Support People to Access the NDIS* https://carersqld.com.au/bridging-the-gap-how-the-murri-court-is-working-with-carers-queensland-to-support-people-to-access-the-ndis/.

therefore urge the Government to consider implementing a program to support relevant defendants and detainees in court and corrections respectively to be supported to access the NDIS, with particular attention to the needs of Aboriginal and Torres Strait Islander peoples, who are more likely to experience disability issues. There is also a clear need for such screening at the beginning of court process and, at the minimum, at the point of entering Bimberi or AMC and as noted in the discussion above, benefit more broadly outside of the justice system for comprehensive screening in school for children 10-12 years of age.

**JRI would like to see the ACT's Disability Justice Strategy and 1st Action Plan[22] implemented as a matter of priority.**

## OVERALL RECOMMENDATIONS TO ACT BUDGET

1. **Establish a Justice Reinvestment Coordinator-General to ensure effective coordination across relevant various government agencies and champion the initiatives that will reduce recidivism, reduce incarceration and break cycles of disadvantage**

2. **Establish a 'Breaking the Cycle Fund' of at least $20 million pa, to fund new community-led initiatives that sit under the general aim of justice reinvestment, breaking the cycle of justice system involvement and reducing recidivism; 30% of these funds should be dedicated to Aboriginal-led organisations**

3. **Undertake a Government review of the Bail Act with specific attention to be paid to options for non-custodial responses, the legislative framework for non-custodial responses, alongside a review of potential service options for people on bail**

4. **Fund new bail support programs with significant case management and supports including expanding bail support programs to non-Indigenous defendants.**

5. **Invest in housing that is specifically intended for people at risk of incarceration, including options for people on bail, and post-release as well as options for women and Indigenous people.**

6. **Invest in drug and alcohol treatment options for justice impacted populations so that people who are 'managed' in prison because of their addiction are able to receive the health care and supports they require in the community, with a particular focus on options whereby participation enables diversion from the justice system**

7. **Invest and expand support programs for Aboriginal and Torres Strait Islander people in the ACT as outlined in detail in section 6 of this report.**

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[22] ACT Government, *ACT Disability Justice Strategy 2019-2029* (2019) https://www.communityservices.act.gov.au/disability_act/disability-justice-strategy.

8. **Commission independent research to review police practices in the ACT in order to determine the levels of systemic discrimination in policing against Indigenous people in the ACT, and develop a blueprint for systems change**

9. **Establish a model of wraparound and case management services for children and young people, including appropriate after-hours and crisis accommodation in the ACT**

10. **Introduce a similar option for non-Indigenous children as the children's sentencing circle for Indigenous children model**

11. **Implement a youth justice throughcare program, comparable to the throughcare program available to adults in the AMC**

12. **Improve supports and services to people with mental and cognitive disabilities and implement the ACT's Disability Justice Strategy and 1st Action Plan as a matter of priority.**

**APPENDIX 1:**

# GOOD PRACTICE PRINCIPLES IN SERVICE DELIVERY: HOW TO BUILD SERVICE SYSTEMS THAT WORK TO KEEP PEOPLE AWAY FROM THE JUSTICE SYSTEM

The JRI wants to see service systems that focus on supports, intervention and diversion away from the criminal justice system, via the following means:

a. Intervention programs, supports and community-led approaches that focus on community-based and-led support for children and adults who are at a high risk of contact with the criminal justice system;
b. Support services must be holistic, and identify and respond to the needs and unique circumstances of children and adults as individuals, including by focusing on their cultural, legal, health, education, employment and social needs;
c. Intervention, diversion and support programs must be developed in partnership with local communities to ensure that they are responsive to the individual and their circumstances, culture and learning styles; and
d. Children should remain with their families and in their communities, with custodial detention being considered only as a last resort.

While the fact of disadvantage cannot be used to discount the consequences of crime,[23] it is crucial to understand the context in which most people are coming into contact with the justice system,[24] to build and implement effective policy to reduce the numbers of people in custody and strengthen genuine alternatives to incarceration.

The principles underpinning successful services have been noted across multiple academic research reports into 'what works'.[25] All of them recognise the importance of acknowledging the social drivers of over-incarceration, working holistically with people leaving detention, ensuring a flexible and person-centred approach to service delivery, and working with people long-term to address the significant challenges in 'staying out' of prison. The research recognises the centrality of relational casework, the importance of housing, and the necessity of long-term support.

We consider the key principles for good practice to be:

1. **Reintegration, diversion and support framed *outside* of the lens of rehabilitation and 'addressing offending behaviour'**. There is a need to create and facilitate pathways for people that focus on addressing the systemic drivers of incarceration and allow the opportunity to develop connection and identity outside of the justice system. This means addressing barriers to reintegration, including discrimination, poverty and homelessness. For Aboriginal and Torres Strait Islander populations, identity is often related to culture, family

[23] Australian Institute of Health and Welfare, *The Health of Australia's Prisoners, 2018* (2019). See also ALRC, *Pathways to Justice*.

[24] For example, see analysis in Chris Cunneen et al, *Penal Culture and Hyperincarceration: The Revival of the Prison* (Routledge, 2013).

[25] Melanie Schwartz et al, *Obstacles to Effective Support of People Released from Prison: Wisdom from the Field* (Rethinking Community Sanctions Project, UNSW, 2020) https://apo.org.au/sites/default/files/resource-files/2020-02/apo-nid274951.pdf; Sacha Kendall et al, 'Systematic Review of Qualitative Evaluations of Re-entry Programs Addressing Problematic Drug and Alcohol Use and Mental Health Disorders Amongst People Transitioning From Prison to Communities', *Health and Justice*, 6(4) (2018) doi: 10.1186/s40352-018-0063-8.

and community. Programs, services and supports for children impacted by the justice system should not just be framed in terms of addressing offending, but emphasise the importance of building a life *outside* of the prison environment.[26]

2. **Service delivery incorporating systemic advocacy.** Service delivery must include a significant advocacy component that addresses structural barriers (such as access to housing, education, health-care, and financial support), and advocates systemically for change when it is required. Systemic advocacy sees workers walking alongside people at risk of justice system involvement and challenging the multiple forms of perpetual punishment experienced by people who have been incarcerated.[27]

3. **Pre-release engagement for people who are incarcerated.** Meeting and working with people prior to release is highly beneficial when it comes to building the engagement necessary to sustain the casework relationship, building trust between the person in detention and the community organisation on the outside, and practical planning for re-entry into the community with complex needs populations.[28]

4. **Holistic, relational, intensive and long-term casework models**. People should not be excluded from services, on the basis of complexity, criminal records or past offending behaviour. Services should be resourced to work with people with multiple and complex support needs. People with histories of trauma, often require long-term support to build engagement and trust. Long-term support also allows people the opportunity to develop the skills required to navigate frequently hostile or unwieldy service systems. Services that can work with people around their various support needs, rather than simply referring on, are also critical in terms of building engagement, trust and providing meaningful support. Although there is the need for specialist services (for instance, specialist mental health support), the role of the youth case worker or support worker is to genuinely support this engagement (not just make a referral).[29]

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[26] See Mindy Sotiri, *An Exploration of Best Practice Community Based Reintegration Programs for People Leaving Custody in the US and the UK* (Churchill Fellowship Report (2016); Women's Justice Network, *Adult Mentoring Program*: *Evaluation Report* (2016); Community Restorative Centre, *Alcohol and Other Drugs Transition Program: Evaluation Report* (2016); Megabn Schwartz and Mareese Terrare, *Creating Futures: Weave's Intensive Support Service for Young People Leaving Custody or Involved in the Criminal Justice System – Evaluation Report* (2020); Mindy Sotiri et al, *'They're There to Support You and Help You, They're Not There to Judge You': Breaking the Cycle of Incarceration, Drug Use and Release: Evaluation of the Community Restorative Centres AOD and Reintegration Programs* (2021) https://www.crcnsw.org.au/wp-content/uploads/2021/11/CRC-AOD-Evaluation-final-report-1Dec21.pdf.

[27] Mindy Sotiri and Sophie Russell, 'Pathways Home: How Can We Deliver Better Outcomes for People Who Have Been in Prison?', *Housing Works*, 15(3): 41-43 (2018); Sotiri (2016) Churchill Fellowship Report

[28] Maria Borzycki and Eileen Baldry, 'Promoting Integration: The Provision of Prisoner Post-release Services' (Trends and Issues in Crime and Criminal Justice No 2, Australian Institute of Criminology, 2003); Beth Angel et al, 'Engagement Processes in Model Programs for Community Re-entry from Prison for People with Serious Mental Illness', *International Journal of Law and Psychiatry*, 37: 490-500 (2014); Jarrod Gilbert and Benjamin Elley, 'Reducing Recidivism: An Evaluation of the Pathway Total Reintegration Programme', *New Zealand Sociology*, 30(4): 15-37 (2015).

[29] Gilbert and Elley, ibid, 15-37; Angell et al, ibid, 490-500; Bronwyn Hunter et al, 'A Strengths-based Approach to Prisoner Re-entry: The Fresh Start Prisoner Re-entry Program', *International Journal of Offender Therapy and Comparative Criminology*, 60(11) 1298-314 (2016).

5. **Community-based and community-led outreach**. Services that work with people at risk of involvement in the criminal justice system need to operate outside of the criminal justice system and within the communities in which people are living. Services should be outreach-focused – workers should travel to where clients are 'at' rather than relying on appointment-based systems (at least initially).[30]

6. **Programs should be developed in partnership with local communities**
For First Nations people, the most effective early intervention responses are those which are culturally appropriate, designed and delivered by local First Nations communities and organisations and which foster a genuine sense of community ownership and accountability.[31] Many First Nations people have intergenerational and/or personal experience of mainstream services working against them.[32] Engaging with First Nations communities ensures that programs are more effectively targeted to local priorities and needs, and are aligned with local systems and circumstances.[33] Community involvement should occur at each stage of the process, including at the feedback stage, to ensure that feedback methods used align with First Nations communication and knowledge

7. **Housing first approaches.** Support must be practical and people at risk of imprisonment need somewhere safe and secure to live. They require a solid base, from which they can make the changes required to stay out of detention.[34]

8. **Genuine collaboration with people with lived experience of incarceration at all levels of program delivery.** The expertise of people who have themselves been involved in the justice system is critical in both the design and delivery of community-based diversion and reintegration services. People who have experience of these systems are best equipped to provide honest and critical insights into what is needed to change and improve them.[35]

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[30] Deborah Padgett et al, 'Housing First Services for People who are Homeless with Co-occurring Serious Mental Illness and Substance Abuse', *Research on Social Work Practice*, 16: 74-83 (2006); Kendall et al, 'Systematic Review of Qualitative Evaluations of Re-entry Programs'.

[31] Legislative Assembly of New South Wales Law and Safety Committee, *Inquiry into the Adequacy of Youth Diversionary Programs in NSW* (Report 2/56, 2018) 9; Kristen Davis and Daryl Higgins, *Law and Justice: Prevention and Early Intervention Programs for Indigenous Youth* (Australian Institute of Health and Welfare and Australian Institute of Family Studies, 2014) 10.

[32] Law Council of Australia and Australian Medical Association, *Minimum Age of Criminal Responsibility* (Policy Statement, 2019) 5.

[33] Davis and Higgins, *Law and Justice*.

[34] Padgett et al, 'Housing First Services; Sotiri and Russell, 'Pathways Home'; Guy Johnson et al, *Policy Shift or Program Drift? Implementing Housing First in Australia* (Australian Housing and Urban Research Institute Limited, 2012).

[35] Caroline Doyle et al, 'The Importance of Incorporating Lived Experience in Efforts to Reduce Australia's Incarceration Rates', *International Journal for Crime, Justice and Social Democracy*, 10(2): 83-98 (2021). See also Mindy Sotiri, 'Building Pathways Out of the Justice System: Supporting Women and Reducing Recidivism', *Precedent*, 161 (Nov/Dec): 48-52 (2020).

Service delivery should be person-centred, strengths-based, flexible, trauma-informed, culturally safe, holistic, and relational in approach.[36] The quality of the relationship between workers and people using services is critical, in terms of building trust, engagement and hope. Long-term support, where relationships can be developed over time, should always be an option. First Nations people should also always have the option of receiving culturally safe support.

People with multiple and complex support needs are accustomed to their needs being’"too much" for service and support providers in the community and too often end up ‘managed’ in justice system settings, rather than supported in the community. In order to build an alternative system, support services must be equipped to be able to work intensively and long-term with highly vulnerable people. Workers and services must have the capacity to ‘hold’ multiple and complex issues and, wherever possible (although specialist support is essential), there should be one point of contact and connection for the child, who also serves as an advocate, when it comes to navigating service systems. People need to feel and know that there is someone in their corner, who can help them through a difficult time. Consistency and the option of long-term support is critical here.

## SUPPORT SERVICE MODELS THAT WORK

While there is no single ‘reform fix’ to reduce the numbers of people in the justice system, there are multiple proven, cost-effective reforms that can work together to make progress. Many of these reforms are already catalogued in an abundance of government and non-government reports and reviews.[37] In addition, there are clear examples and case studies, both Australian and internationally, that point to approaches led by the community and health sectors, which can make a profound difference in disrupting entrenched criminal justice system trajectories. There are excellent examples of successful evidence-based practice in the community (early intervention), in policing (pre-charge diversion), diversionary programs at the point of court, and post-release. These programs have demonstrated ability to achieve significant reductions in recidivism as well as other improvements in health and wellbeing. There is a need to look at evidence-based, cost-effective alternatives to detention in terms of ‘what works’ to improve community safety and to reduce recidivism. Some recent Australian examples are noted below.

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| Community Restorative Centre (NSW) | This UNSW/CRC evaluation, undertaken over two years explored outcomes for 483 CRC clients who participated in intensive, case-work, post-release and diversionary programs between 2014 and 2017. An interrupted time series analysis examined criminal justice system trajectories over ten years (including post-participation in programs), and found that for participants: |

[36] Mindy Sotiri, ‘Meeting the Needs of Marginalised Young Men: An Analysis of Service Provision, *Youth Studies Australia*, 27: 29-38 (2008); Megan Semczuk et al, *An Analysis of the Relationship Between a Community-based Program for Young* (University of NSW, 2012); Chris Cunneen et al, ‘Principles in Diversion of Aboriginal and Torres Strait Islander Young People from the Criminal Jurisdiction’, *Current Issues in Criminal Justice*, 33: 170-190 (2021).

[37] For example, as detailed in ALRC, *Pathways to Justice.*

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| | ➢ The number of new custody episodes fell by 62.6% following CRC support<br>➢ The number of days in custody fell by 65.8% following CRC support<br>➢ The number of proven offences fell by 62.1% following CRC support.<br><br>The report also undertook a comparison analysis with clients from the MHDCD linked administrative dataset at UNSW, comparing their outcomes to CRC clients. This analysis found engagement in CRC programs dramatically reduced contact with the justice system when compared to a similar group who did not receive support. The research also showed savings to the criminal justice system of up to $16 million over three years for an intake of 275 new clients (not including institutional and community savings). [38] |
| Intellectual Disability Rights Service – Justice Advocacy NSW | This independent EY evaluation of the support provided by the Intellectual Disability Rights Service's Justice Advocacy Program concluded it improved access to justice, improved understanding of court processes, and improved outcomes for people with cognitive impairments in police and court settings. The evaluation noted that people who received JAS support were more likely to understand and follow court orders, more likely to understand cautions and bail conditions, less likely to be found guilty and more likely to receive a section 32 diversion order.<br><br>The evaluation noted that when the JAS program operated at full capacity, the program would deliver $3.37 in return for every dollar invested. The report also recommended exploring the value of case management for people participating in the JAS program.[39] |
| Weave (Creating Futures) NSW | This independent three-year evaluation of the Weave Creating Futures program (which provides intensive, culturally safe casework support to Aboriginal children on release from custody) found that only 4% of the 93 children engaged in the program over the period of the evaluation re-offended. This was compared to a 57% reoffending rate for a comparable cohort of young Aboriginal people.[40] |

[38] Sotiri, McCausland, Reeve, Phelan and Byrnes (2021), 'They're there to support you and help you, they're not there to judge you' Breaking the cycle of incarceration, drug use and release: Evaluation of the Community Restorative Centres AOD and Reintegration Programs; NSW Health Report, https://www.crcnsw.org.au/wp-content/uploads/2021/11/CRC-AOD-Evaluation-final-report-1Dec21.pdf

[39] EY, Evaluation of the Justice Advocacy Service Department of Communities and Justice Final Report 4 February 2021, https://www.justice.nsw.gov.au/diversityservices/Documents/evaluation-of-the-justice-advocacy-service-report.PDF

[40] Schwartz, M., & Terare, M., (2020) Creating Futures: Weave's intensive support services for young people leaving custody or involved in the criminal justice system, Evaluation report, Sydney, https://www.cclj.unsw.edu.au/sites/cclj.unsw.edu.au/files/Creating%20Futures%20Evaluation%20Report%202020%20_%20with%20images.pdf

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| Backtrack Youth Services, Armidale, NSW | Over the last 10 years, the intensive, holistic and relational case work provided by Backtrack Youth Services has supported 1,000 children at risk of criminal justice system involvement or entrenched in the justice system. An impressive 87% of the children who leave Backtrack transition into employment or education. A University of NSW report of the impact of the program on the local community in Armidale found a 35% reduction in crime, because of the engagement of children in the program.[41] |
| Yiriman Project, WA | The Yiriman Project is regarded as an exemplar of national best practice for working with First Nations youths at risk of involvement in the criminal justice system. Youth aged 15 to 25 years are taken out on country to visit Elders, where they are involved in deep learning and transmission of culture and language, workshops, making artefacts and taking care of the land. This allows participants to experience a cultural connectedness with others and build self-respect, confidence and resilience.[42]<br>A three-year review of the Yiriman Project found it had helped reduce children's involvement in the criminal justice system. International research supports the correlation between the practice of culture, language and 'on-country' activities and decreases in crime. A magistrate concluded that Yiriman was more capable of reducing recidivism than most other diversionary and sentencing options.[43] |
| Maranguka Justice Reinvestment Project, Bourke NSW | This community-led justice reinvestment program commenced in 2013 to reduce First Nations children's disproportionate rates of offending, reoffending and incarceration in Bourke. The project was initiated through a grassroots coalition of concerned local First Nations residents.<br>The project aims to ensure that Bourke First Nations children grow up safe, smart and strong. The project targets children from when they are born, ensuring that every First Nations parent values the importance of learning for their child and feels supported and confident in their parenting. This is achieved through measures such as nurses undertaking home visits for the first two years of a child's life. For school-aged children, the project co-ordinates and integrates services around children showing early signs of school disengagement or anti-social behaviour, ensuring they engage in positive activities, complete Year 12 and address the impacts of trauma, grief and loss. Every service provided engages First Nations people in its design and delivery.[44]<br>For children and young people aged 10-25, between 2014 and 2015, the project saw a:<br>- 12% reduction in the number of youth charged with offences; |

[41] Backtrack Annual Report 2020, Backtrack_AnnualReport_2020.pdf

[42] Melissa Marshall and Kathryn Thorburn, *The Yiriman Project in the West Kimberley: An Example of Justice Reinvestment?* (Indigenous Justice Clearinghouse, 2017) 2-3, 5.

[43] Dave Palmer, '"We Know They Healthy Cos They Are on Country with Old People": Demonstrating the Value of the Yiriman Project' (Community Development Programme, Murdoch University, May 2016) 9-10.

[44] KMPG, *Unlocking the Future: Maranguka Justice Reinvestment Project in Bourke – Preliminary Assessment* (2016) v, 39.

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| | - 14% reduction in the rate of reoffending within 12 months of release;<br>- 38% reduction in youth proceeded against for driving offences; and<br>- 43% reduction in the number of youth proceeded against for breaches of AVOs or domestic violence related assault.[45]<br>In March 2019, an additional $1.8 million in government funding was announced for this project. This costs less than keeping four children in detention for a year.[46] |
| Danila Dilba, NT | Danila Dilba delivers a range of early intervention services targeted at children at risk of becoming involved in the criminal justice system, including:<br>- The Assessment of Behaviour and Child Development Clinic, a collaborative assessment and planning clinic for First Nations children with learning, behaviour and development problems including foetal alcohol spectrum disorder (FASD). The Clinic assists families to navigate complex referral pathways and systems and ensures children access all relevant assessments and supports to meet their needs; and<br>- A Youth Social Emotional Wellbeing service, to build the capability and skills of children and parents.<br>Danila Dilba is also currently developing a culturally safe youth diversion service, to target the holistic needs of children and provide an intervention wholly outside of the criminal justice system. This service will include:<br>- a holistic and comprehensive assessment of the child and their family, including a screening for a potential neuro-cognitive disability;<br>- restorative justice conferencing involving the victim and/or their family;<br>- access to programs/activities aimed at connecting children with culture, family and country; and<br>- a range of internal and external referral pathways, to ensure a child is in a safe and supportive environment and their developmental needs, such as physical and mental health, education, culture, and family are being met.[47] |
| Youth Crime Action Plan, New Zealand | The New Zealand 10-year Youth Crime Action Plan[48] provides an interesting and relevant approach to reducing youth offending rates, with a focus on the overrepresentation of Maori people in the justice system. |

[45] Just Reinvest NSW, *New Evidence from Bourke* (2018).

[46] Law Council of Australia and Australian Medical Association, *Minimum Age of Criminal Responsibility.*

[47] Danila Dilba Health Service, Submission to the Council of Attorneys-General Age of Criminal Responsibility Working Group, *Review of the Age of Criminal Responsibility* (2020) 4, 14-15.

[48] New Zealand Ministry of Justice, *Youth Crime Action Plan 2013-2023: Report* (2013) https://www.justice.govt.nz/assets/Documents/Publications/YCAP-full-report.pdf.

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| | In 2015, the New Zealand Justice and Courts Minister reported that the number of young people (aged 10-16 years) appearing in court had more than halved since 2007.[49]<br>The program has sought to have a 'genuine partnership with communities', by involving Maori communities, frontline practitioners and schools, to allow 20 communities across New Zealand to develop their own solutions to youth offending problems.[50]<br>With an innovation fund of $400,000, the program aims to reduce escalation, by implementing informal interventions, warnings, family group conferences and diversion programs.[51]<br>The Youth Courts in New Zealand have also implemented solution-focused court practices.[52] |

The JRI is currently undertaking ongoing research on models of evidence-based practice in the community (programs that are effective in reducing contact with the justice system), in policing (pre-charge diversion), diversionary programs at the point of court, and post-release. We would be happy to update the ACT Government with additional examples of effective service delivery in these areas as we become aware of them, if that would be considered useful.

[49] New Zealand Justice and Courts Minister, 'Lowest Number of Youth in Court in 20 years', Media Release, 24 March 2015 https://www.beehive.govt.nz/release/lowest-number-youth-court-20-years.

[50] New Zealand Associate Justice Minister, 'Action Plan the Next Step Forward for Youth Justice', Media Release, 31 October 2013 https://www.beehive.govt.nz/release/action-plan-next-step-forward-youth-justice.

[51] Ibid.

[52] New Zealand Bar, *At the Bar* (December 2016) 10 https://www.nzbar.org.nz/sites/default/files/uploaded-content/field_f_content_file/at_the_bar_december_2016.pdf; see also Youth Law and Smart Justice for Young People, *Investing in Communities Not Prisons* (2017) 18579-MIS-YouthLaw-Advocacy-Report-2017-WEB.pdf.

**APPENDIX 2:**

# KEY PRINCIPLES OF THE JUSTICE REFORM INITIATIVE

## OUR KEY PRINCIPLES

The JRI's general principle is that **jailing is failing**. Specifically, we argue that it is failing:

- **Aboriginal and Torres Strait Islander people:** In 2018, Aboriginal and Torres Strait Islander peoples accounted for 3% of the total population, but 28% of the adult prison population. In an even grimmer statistic, only 5% of young people (age 10–17) are Aboriginal and Torres Strait Islander people, but they represent 59% of young people in detention. It is now 30 years since the Royal Commission into Aboriginal Deaths in Custody. Although governments accepted almost all of the Commission's recommendations, many of them have not been implemented. Although the recommendation that imprisonment be used only as a 'last resort' exists in principle in the legislation, there are a range of reasons why this is not a reality in practice (including, critically, due to the absence of adequate alternatives). Governments have also failed to adequately address the underlying systemic issues which the Royal Commission identified as the cause of the disproportionate rate of Indigenous incarceration;

- **young Australians**: sadly, most of the young people in Australia's juvenile justice system come from backgrounds where they have already often suffered from severe neglect or abuse and/or have been placed in out of home care. This was clearly demonstrated by the Royal Commission into the Don Dale Centre in the Northern Territory. The children in these centres, who can be as young as 10, have often had the hardest of young lives and need family and community support, education and life opportunities, rather than being locked up;

- **women:** women represent the fastest growing cohort of Australia's prison population and a disproportionate number of those women are Aboriginal and Torres Strait Islanders. Many have committed non-violent offences and many are themselves victims of domestic abuse. One immediate consequence of incarcerating these women is that they are separated from their children, who are thereby made victims of the same systemic failure;

- **those with particular challenges, such as people living with mental illness and cognitive disability**: more than 50% of adults in prison have a history of mental illness and more than 80% of young people in custody have had a diagnosed psychological disorder. The estimates of people in prison with intellectual disability or borderline intellectual disability are as high as 20%. These populations have limited access to appropriate mental health or other critical support while they are in prison and most will be released back into the community in a relatively short period of time from remand or having served their sentence, but still lacking strong enough supports to prevent reoffending. We should be diverting more people away from detention and into community-based support where possible and providing better therapeutic responses for those who cannot be diverted;

- **the most disadvantaged:** the number of people in prison has increased by nearly 50% since 2000. People from disadvantaged or marginalised groups are far more likely to come into contact with police and prisons than anybody else. Inter-generational poverty, homelessness, lack of education and opportunity, and exposure to constant policing cause more and more young people from disadvantaged communities to be criminalised. We should be providing solutions to disadvantage, not locking people up; and

- **victims of crime**, who indicate that they are not helped by 'tough-on-crime' rhetoric. Victims have frequently called for support and processes that recognise and give voice to their experience as victims, alongside programs that genuinely address the causes of offending and also ensure that people who have committed crime are held accountable for their actions.[53]

[53] JRI, *Jailing is Failing* https://www.justicereforminitiative.org.au.