



NTCOSS Submission to the Justice Reinvestment Design
Discussion Paper

14 April 2022

The Northern Territory Council of Social Service (NTCOSS) welcomes the opportunity to provide a submission to the Justice Reinvestment Design Discussion Paper.

NTCOSS is the peak body for the Northern Territory (NT) Community and Social Services Sector and is a voice for people affected by social and economic disadvantage and inequality. NTCOSS membership is made up of community managed, non-government, not for profit organisations, which work in social and community service delivery, sector development and advocacy. NTCOSS's vision is a fair, inclusive and sustainable NT.

NTCOSS welcomes the opportunity to provide a submission to the Justice Reinvestment Design discussion paper. NTCOSS represents over 130 members across the NT, including Aboriginal community-controlled organisations (ACCOs), and organisations based in regional and remote areas. NTCOSS recognises the specialist knowledge of members and external stakeholders with expertise in matters relating to this discussion paper.

While this document uses the term 'Aboriginal', we respectfully acknowledge that Torres Strait Islander peoples are First Nations people living in the Territory. Therefore, strategies, services and outcomes relating to 'Aboriginal' Territorians should be read to include both Aboriginal and Torres Strait Islander Territorians.

NTCOSS acknowledges that we live and work on what always was, and always will be, Aboriginal land. We pay our respects to Aboriginal cultures and country, and to Elders both past and present. NTCOSS supports makarrata and acknowledges the Voice as a critical steppingstone to truth telling about Australia's colonial history, and creating a foundation to work and walk together to build a future based on equity and freedom. NTCOSS supports a constitutionally enshrined Voice to Parliament to enable Aboriginal people to provide advice to the Parliament on policies and projects that impact their lives and communities.

General comment

Justice reinvestment in the Australian context has five core principles.¹

1. Place-based
2. Evidence-based
3. Community Development through community-based leadership
4. Economically rational
5. Focused on decreasing incarceration of Aboriginal people

These five principles must be upheld throughout the entire process to ensure success and long-term sustainability.

Part of upholding these principles is thorough consultation and sufficient support to meet community needs and wishes throughout the process. NTCOSS has heard concern from organisations involved with preparing communities for potential funding that this consultation process has been too short and in a format that has not allowed communities to fully participate.

Recommendation: The Commonwealth Government should work more closely with communities to ensure communities not only understand but are driving and directing the process.

¹ Fiona Allison and Chris Cunneen, *Justice Reinvestment in Australia: a review of progress and key issues* (Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, 2022).

Systemic and legislative landscape

In order to be successful, justice reinvestment projects must operate within a system that supports rather than hinders. Commonwealth, State and Territory Governments must work together with genuine cooperation and commitment to justice reinvestment to create a supportive landscape.

In the NT, those implementing the Aboriginal Justice Agreement (AJA) are attempting to transform the legislative and systemic landscape into one that would support justice reinvestment. The AJA and the Pathways to the Northern Territory Aboriginal Justice Agreement report are at **Annexures A and B**. The AJA includes commitments across the spectrum of justice reinvestment. Upstream (or social justice) commitments include the establishment of community law and justice groups who may develop community safety plans and run community-based programs, and the review of systemic racism in Government agencies. Downstream (or criminal justice) commitments include the review of prison programs and the review of legislation to identify discriminatory impacts. Justice reinvestment initiatives will fail to achieve their full success potential if justice legislation continues to disproportionately negatively impact Aboriginal Territorians, Government services remain inaccessible to remote residents and Aboriginal Territorians continue to experience daily racism, both personal and systemic.

Despite bipartisan commitment to the AJA, knee-jerk responses to crime without any evidence-base continue to come from NT Government and Opposition. Most recently, NT bail laws were reformed, introducing a presumption against bail for those charged with violent offences involving a weapon, applying to both adults and young people. All the evidence indicates this will lead to more people incarcerated, in turn leading to increased reoffending.² These sorts of reforms are contrary to the principles of justice reinvestment and are a significant barrier to the success of justice reinvestment projects. Without genuine buy-in from all governments and decision-makers, communities will face an uphill battle to implement their strategies and see success.

It is also important to understand existing frameworks relevant to this work, including the 10-Year Generational Strategy for Children and Families, the broad Domestic, Family and Sexual Violence reforms, the work of the NT Children and Families Tripartite Forum, and the Closing the Gap strategy. Initiatives from communities that fit under these frameworks may be able to leverage these for funding and other support. Further, where initiatives are already driven by Government, it may be appropriate to shift control to the community.

Consultation questions

What sort of activities should be funded through the National Justice Reinvestment Program?

Should funding be available to support governance, data collection and analysis, and other foundational and operational aspects of justice reinvestment, including through partnerships with organisations outside of the community?

Yes, foundational steps of justice reinvestment must be adequately resourced.

Community interest, participation and decision-making

² Justice Reform Initiative, *State of Incarceration: insights into imprisonment in the Northern Territory*, (2022), https://assets.nationbuilder.com/justicereforminitiative/pages/351/attachments/original/1679869813/JRI_Insights_NT_FINAL-7.pdf?1679869813, accessed 13 April 2023.

Justice reinvestment must be led by the community. It is dependent on “community leadership and cohesion around a shared goal”³. The role of Government and other funders is to provide support to communities to proceed as the community sees fit.

Communities in the NT are in the early preparation stages now. They are working to promote community understanding of justice reinvestment and develop governance structures that reflect the community and prioritise Aboriginal leadership and ways of working. They are doing this work however with no funding or support. Matters as seemingly simple as where to hold community meetings are made difficult by the lack of funding. Communities should have access to early funding to assist with this process, in the form of discretionary funding, remuneration for community members and community based paid positions to provide secretariat, research and other support. This may already be the intention of the Commonwealth Government. However, NTCOSS has been told that communities are feeling in the dark about the process ahead and feel pressure to progress through the important foundational stages quickly so as not to miss out on funding.

Data gathering / justice mapping

Justice mapping is an essential foundational step for justice reinvestment. The Australian Law Reform Commission’s Pathways to Justice report puts this as the first major stage. “Justice reinvestment is distinguished by its emphasis on using data to analyse the drivers of contact with the criminal justice system”.⁴ Before justice reinvestment strategies and indeed before appropriate sites can be identified, justice data must be analysed to determine need and potential success for justice reinvestment initiatives – this includes data demonstrating why people in their community are entering the justice system as well as identifying community strengths, existing structures, leadership and appetite for change.⁵ NTCOSS is not aware of sites receiving support to conduct the necessary data gathering and mapping. This aspect of the project requires resourcing to communities, expertise and buy in from local government agencies. It is unrealistic to expect communities to draw and analyse data themselves without this support.

As explained by Fiona Allison and Chris Cunneen, the data work at every stage of the justice reinvestment process must be informed by data sovereignty principles, including that community has access to the data it needs; community can design and gather their own data and identifies key measures of success.⁶

Ongoing monitoring and evaluation should also be built into resourcing from the outset. This is an issue of concern across the service sector. Many contracts require reporting of outputs rather than outcomes. Reporting systems and templates are frequently not fit to capture outcomes and stories of success or areas for improvement. Data gathering and reporting is often an unresourced burden on organisations. Services and programs are infrequently independently evaluated due to lack of resourcing. Monitoring and evaluation of the justice reinvestment process will be important to build an evidence base for future projects.

³ Fiona Allison and Chris Cunneen, ‘Implementing Justice Reinvestment in Australia’, *Indigenous Clearing House*, <https://www.indigenousjustice.gov.au/wp-content/uploads/2021/10/1.-Implementing-Justice-Reinvestment-IN-AUSTRALIA.pdf>, accessed 13 April 2023.

⁴ Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report No. 133 (2017).

⁵ Fiona Allison and Chris Cunneen, *Justice Reinvestment in Australia: a review of progress and key issues* (Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, 2022).

⁶ Ibid.

Partnerships

Partnerships with organisations outside the community must be determined by the community themselves. Further, they should uphold the Aboriginal Peak Organisations of the NT (APONT) Partnership Principles (**Annexure C**). These outline the importance of ACCOs and Aboriginal and Torres Strait Islander communities being in control of program creation and delivery. Place based, community driven, culturally appropriate and safe models of service delivery, ensuring principles of co-design, are essential to any program or framework success.

Recommendation: The Commonwealth Government should engage closely with communities to provide appropriate support for the foundational stages of justice reinvestment

Should funding be able to be directed to a range of activities within a community?

NTCOSS has been told that decisions on what activities should be funded, beyond foundational steps, is premature and risks derailing the process. Ultimately, where funding should be directed must be up to each community. Resourcing decisions must be community-led, specific to the needs and strengths of the location, evidence-based, economically rational and focused on decreasing incarceration of Aboriginal people.⁷

Funding must empower communities to make their own decisions rather than imposing a top-down narrative of what communities might need. As outlined above, NTCOSS has been told that early funded community-based positions to assist the community in getting ready, including helping the community learn about justice reinvestment, developing governance structures and engaging with the Government process, is necessary. Further, community members should be financially compensated for their contribution in doing the foundational work.

Funders must also consider the challenges of service delivery in remote and very remote locations. Funding models should reflect the complexity of services, workforce challenges and access issues.

NTCOSS has also heard concern about the amount of funding available. While justice reinvestment should ultimately involve already dedicated funds being re-directed to early intervention and circuit breaker initiatives, the early stages require proper funding to set the project up for long-term sustainability. It is yet unclear whether the amount of promised funding will be sufficient for the long-term nature of this project.

Recommendation: Funding should be directed as determined by communities and in line with justice reinvestment principles.

How can the Government ensure the grants process is accessible to communities and organisations wanting to apply for justice reinvestment funding?

Applying for grants is often time consuming and complicated. NTCOSS is frequently told that organisations are not resourced sufficiently to apply for grants, limiting the opportunities for service expansion. The aforementioned proposal of community based funded positions to assist communities to get ready would be well placed to assist the community in applying for grants. Grant portals and forms are often complicated or confusing. These should be simplified and streamlined.

A competitive tendering process is likely to undermine the justice reinvestment approach from outset, by pitting organisations against each other, entrenching existing politics, and excluding organisations without capacity. There are also pitfalls with the 'tap on the shoulder' approach as

⁷ Ibid.

organisations not chosen may disengage from the process and there is a lack of transparency about how and why an organisation was approached to deliver a project.

At this stage, the structure of funding is uncertain. It remains however that supporting or auspicings organisations must be back-bone supporters and community must be the drivers of decision-making.

Who should be involved in assessing applications for justice reinvestment funding?

As suggested in the discussion paper, Aboriginal people and justice reinvestment experts should be included in assessment panels. In determining the process, the five justice reinvestment principles must be upheld.

How should the success and development of justice reinvestment initiatives be measured?

In keeping with the principles of justice reinvestment, communities should be empowered to define what success looks like and to track their own progress. As stated above, the data work at every stage must align with data sovereignty principles. With that in mind, NTCOSS makes the following suggestions.

Justice reinvestment initiatives should ultimately result in reduced incarceration and reduced offending. These are long term goals. While this should be measured, it must not be the only metric and expectations of early success must not be unrealistic. Baseline data must be gathered from the outset, including data from government agencies as well as data from community on matters such as their experiences with the justice system and sense of self-determination. Justice reinvestment is a process guided by core principles rather than a program.⁸ The upholding of these principles including by measuring and monitoring community ownership, engagement and sentiments of the process is important.

Resourcing for monitoring and evaluation must be built into funding arrangements. Communities must be empowered to gather and analyse the data themselves. When called for by communities, external organisations may be contracted to assist.

Access to necessary data will largely depend on cooperation from local government agencies. Communities may need to work with local agencies to capture the data needed and should be empowered to do this – for example, Police may record the name and age of a child referred for diversion, the community may also want Police to record whether that child is Aboriginal or not, whether they are local to the community, etc. It may be appropriate for the Justice Reinvestment Unit (the Unit) to assist in brokering this level of cooperation. These and further data access issues are considered under Priority Reform Four of Closing the Gap.

Recommendation: Communities should be empowered and resourced to define success measures

National Justice Reinvestment Unit

How can the National Justice Reinvestment Unit best support justice reinvestment in Australia?

What functions or services should the Unit provide?

The Unit should provide back-bone support to justice reinvestment sites. All actions of the Unit must support communities to drive their own processes and align with justice reinvestment principles.

⁸ Ibid.

The ALRC report recommends that the Unit provide technical assistance, insofar as requested by communities. The report advises that the Unit should not be involved in imposing plans or allocating funding. It suggests the Unit be an independent body that creates policy options and helps to achieve buy-in from stakeholders, including governments and local agencies. NTCOSS supports this proposal. As described above, it is important that the legislative and systemic landscape supports justice reinvestment and that agencies cooperate as needed with justice reinvestment strategies.

Ultimately, different communities will have varying needs and levels of readiness. To determine the purpose of the Unit, communities engaging in the justice reinvestment process should be consulted directly to understand how the Unit can be useful while ensuring control of the process stays with communities.

Recommendation: The Unit should provide back-bone technical support and should consult with communities to determine how best to support, keeping justice reinvestment principles in mind

How should the Unit be structured and governed?

The principles of justice reinvestment must be considered when determining the governance and structure of the Unit. Aboriginal leadership and decision-making should be embedded in the structure and governance of the Unit.

For more information, or to discuss this submission further, please contact Sophie Hantz, Senior Policy Officer at sophie@ntcoss.org.au or Sarah Holder, Policy Manager at sarah@ntcoss.org.au.