

# **Feedback for the Attorney General’s Department (AGD) on national justice reinvestment (JR) funding roll-out**

**1 September 2022**

## **1. Justice Reinvestment Network Australia**

Justice Reinvestment Network Australia (**JRNA**) has met since 2015 to share knowledge and to create a community of practice around JR. The aims of JRNA are to directly support communities, predominantly Aboriginal and Torres Strait Islander communities, to explore and implement JR and to advocate for more systemic policy and other reforms that align with JR principles, approaches and objectives. The network’s membership includes Aboriginal and Torres Strait Islander people leading JR work in their respective communities, other JR practitioners, researchers and policy colleagues working in the area of JR and other alternative approaches to incarceration.<sup>1</sup>

## **2. Interim feedback prior to comprehensive consultation**

This document sets out responses to questions raised by the AGD with JRNA regarding the Federal Government’s rollout of its national JR funding. In developing these responses members of JRNA have raised some additional questions about this roll out. These are included below.

JRNA understands that there will be further opportunity for the network and others to provide more detailed feedback during a comprehensive consultation process that will inform the national funding rollout. Given this, in this document we provide initial or interim feedback on a limited set of questions only.

JRNA is pleased to hear that there will be more extensive consultation. In our view, a consultation process that allows for detailed input to be provided by a range of stakeholders will be essential to the success of this national initiative. It will be especially important to hear from Aboriginal and Torres Strait Islander leaders and communities with expertise in JR. Aboriginal and Torres Strait Islander communities have been leading the way with JR in Australia over the past decade. Failing to seek input from these leading practitioners of JR as a starting point for decision-making around the funding rollout would be in conflict with and undermine the principles, methodologies and objectives of JR.

## **3. Feedback on key issues**

### **3.1 Function, structure, and scope of a National JR Body**

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<sup>1</sup> More detail about JRNA is available at <https://justicereinvestment.net.au>

The AGD has asked what an ideal independent national JR unit would look like in terms of function, structure and scope.

Our views on the key functions, structure and the scope of a JR coordinating body we see as being tasked with progressing a national JR reform agenda have been discussed in previous JRNA member and joint JRNA/Change the Record submissions, dating back to 2017.<sup>2</sup> Our expectation is that this body will be funded in 5 year-cycles and governed by a board with strong Aboriginal and Torres Strait Islander representation. Our earlier position on the national body has not changed significantly, but we provide some clarification and additional detail below.

Relevant to the discussion below, JRNA identifies two key roles for the body as:

- (a) assisting community-led JR projects to access funding and other resources, including resources that will facilitate local capacity building in communities and provide them with practical support; and
- (b) contributing to systems change within government and other sectors, which may involve policy and legislative reform or reforms in the way government and service providers partner with and service Aboriginal and Torres Strait Islander communities.

In this context we note that this place-based work and more systemic change are both essential for achieving a reduction in contact with the criminal justice system and other positive outcomes for Aboriginal and Torres Strait Islander peoples through JR.

More specifically, we see the national body as being tasked with activities that include the following:

- data collection and analysis both for sites and at a national level, including justice mapping (location-based data analysis at set periods of time to inform establishment of JR initiatives and where redirected funds could best support a community);
- economic cost-benefit analysis;
- assisting in the development of common JR methodologies, including the building of local community partnerships;
- support in creating and sustaining partnerships across corporate, philanthropic and government sectors at a national and State/Territory level
- assisting in the formulation of options for potential JR initiatives for JR projects to consider (to address underlying causes of crime and other important JR objectives);
- education for Federal/State/Territory/Local Governments and the broader non-Indigenous community about JR;

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<sup>2</sup> JRNA submissions are available on our website: <https://justicereinvestment.net.au/resources/justice-reinvestment-in-australia-policy-papers-non-government/>

- elevating local JR experiences and expertise around successful justice program work and their impact to a national or State/Territory level to enable set up of similar programs in different locations;
- operating as and/or setting up and coordinating a ‘JR think tank’ or JR centre of expertise that will communicate progress, success, challenges, evaluation results achieved at different JR sites and facilitate shared learning between and beyond JR sites; and
- other functions identified as priorities by Aboriginal and Torres Strait Islander people during the pre-roll out consultation phase.

An additional role JRNA members wanted to highlight for the body is provision of support to communities to identify and access funding from different sources (academic, private, etc.). A significant barrier to JR progression around Australia has been a lack of and inconsistency in funding for JR projects. Communities are working with JR at present with little or no money and JR work has stalled when funding has run out.<sup>3</sup> Currently, JR peak bodies assist communities to access funding (for e.g. by identifying and preparing applications for various grants). A community engagement and grants officer employed by the national body could provide this type of assistance.

As a further point, JRNA notes that the bulk of Federal funding is presently allocated to community-based JR work and a smaller proportion to the national body. Whilst acknowledging the important role of the national body, in our view this is appropriate. We also note, however, that the national body will need to be adequately resourced to support communities funded through this initiative. This support will be particularly important in jurisdictions without a JR peak body (see further below).

### **3.1.1 Independence of the national JR coordinating body**

We note that the ALP’s pre-election costings for its First Nations Justice Policy refer to funding for a ‘Justice Reinvestment Unit within the Attorney-General’s Department’.<sup>4</sup> The question from the AGD (above) also refers to a ‘justice reinvestment unit’.

JRNA acknowledges the challenges in establishing a new independent body requiring ongoing financial and other commitment from government.<sup>5</sup> We maintain our earlier position, however, that the independence of a national JR coordinating body is important. This is in line with recommendations of the Australian Law Reform Commission (ALRC) in its *Pathways to Justice – An Inquiry into the Incarceration*

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<sup>3</sup> Allison, F and Cunneen, C (2022) Justice Reinvestment in Australia: A review of progress and key issues, Justice Reinvestment Network Australia:

[https://jrna228913579.files.wordpress.com/2022/07/national-report\\_jr.pdf](https://jrna228913579.files.wordpress.com/2022/07/national-report_jr.pdf)

<sup>4</sup> Parliamentary Budget Office (2022) 2022 Election Commitments Report July 2022, Commonwealth of Australia, Australian Labor Party Costings, Appendix F.

<sup>5</sup> Examples of bodies facing similar changes raised by the network include the Officer for Federal Custodial Service or the Commissioner for Children and Young People. These bodies are independent of but funded by government and struggle to achieve the aims or recommendations for which they were initially established.

*Rates of Aboriginal and Torres Strait Islander and Torres Strait Islander Peoples* report (2017), which called for the establishment of an ‘independent justice reinvestment body’.<sup>6</sup>

At this stage, JR peak bodies only exist in Western Australia, South Australia and New South Wales.<sup>7</sup> These bodies currently play a very active role in supporting and partnering with Aboriginal communities exploring and implementing JR. The support offered by these peak bodies will vary to meet the needs of the community they partner with. Typically, however, this support is provided in the initial stages of JR and then over multiple years (with the ultimate goal being to assist communities, as required, to establish the infrastructure, expertise and governance they require to transition to independence).<sup>8</sup> Examples of peak body contributions include assisting communities seeking their advice when considering whether to explore JR and/or during more established exploration/implementation phases. Peak bodies assist communities to access funding too, as above, and also directly fund local and where possible Aboriginal and Torres Strait Islander identified positions in communities to undertake backbone work for JR projects. Projects often need technical support to measure data, document and communicate the evidence of their impact, and to negotiate multi agency partnerships and policies. We have stepped out some examples of what support from a peak body might look like in **Appendix A**.

Our position is that in those jurisdictions without a peak body the national body would step in and provide support to communities. JRNA believes that this support is best provided by an independent, non-government organisation/body (like the JR peak bodies) rather than by staff from a unit established within government. This independence aids in restoring or building trust between Aboriginal and Torres Strait Islander people and government, whilst also ensuring effective advocacy around the needs and interests of JR communities to government.

On the latter point, JR peak bodies play an important role in advocating for structural reforms at a jurisdictional or national level in a JR context, with this advocacy occurring alongside and directly informed by communities working with JR. This reform, as above, may involve policy and legislative reform or reforms to ways of working within government. We believe that an independent body is likely to be in a better position to hold government to account in this way. It will arguably have greater capacity to identify and seek a constructive response from government to blocks and barriers within government that impede achievement by communities of their respective goals and outcomes.

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<sup>6</sup> Australian Law Reform Commission (2017) *Pathways to Justice – An Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander and Torres Strait Islander Peoples*

<sup>7</sup> These bodies are Just Reinvest NSW (JRNSW), Justice Reinvestment South Australia (JRSA) and WA Social Reinvestment (SRWA)

<sup>8</sup> Allison and Cunneen, n. 3

### 3.1.2 Self-determination and governance

In line with our earlier position on the national body, JRNA stresses the importance of Aboriginal and Torres Strait Islander leadership and expertise to the body's function, structure and scope. Government should not be leading or making decisions related to this national initiative without a high level of input and participation from Aboriginal and Torres Strait Islander peoples. This is in keeping with the principle of self-determination, a key underpinning principle of JR. The importance of self-determination is also relevant to our discussion above about the independence of the body. JRNA queries how this body will be self-determining if established as a unit within government?

Self-determination should be reflected in all governance and other structures and mechanisms established as part of or that will work with the national JR body. Aboriginal and Torres Strait Islander people should be recruited to key decision-making and other roles within the body, as stated in our earlier submissions. Any governance, advisory or other structures and mechanisms established to support and work alongside the body ought also to incorporate Aboriginal and Torres Strait Islander-led decision-making.

The AGD has asked for input on whether ANROWS is an example of an appropriate model of governance for the body. JRNA is still considering optimal governance structure options for the body but at this stage note that ANROWS was established as an independent company limited by guarantee, with its company members being the Commonwealth, States and Territories. JRNA does not believe that this type of arrangement is appropriate for a national JR coordinating body, given that its governance ought to reflect and reinforce the principle of self-determination.

JRNA suggests that a potential model for an appropriate governance structure that might facilitate shared decision-making is the Children and Families Tripartite Forum in the Northern Territory. This body has representatives from the Northern Territory and Commonwealth Governments and from Aboriginal Peak Organisations NT (APONT), NT Council of Social Services (NTCOSS) and North Australian Aboriginal Justice Agency (NAAJA). These representatives oversee work in the child protection and youth justice space. We can't speak to the effectiveness of this particular structure but suggest that this type of model may work for the national body. In this context, the structure could have representation from JR and other peak bodies from different jurisdictions, including Aboriginal Community-Controlled Organisations.<sup>9</sup>

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<sup>9</sup> Information is available at: <https://rmo.nt.gov.au/tripartite-forum>

## 3.2 Funding decisions

The AGD has asked for input around how to strategically step out and sequence the roll out of the Federal Government's commitment to JR and in this context, suggestions for investments that might be made in the short-term. Whilst noting the importance of a community-led approach, the AGD has also asked what the Federal Government's role might be where there is data identifying high need/high rates of incarceration in a particular local area, but perhaps not yet the pre-conditions around community leadership ideally in place to make a JR approach successful.

We respond to this question below in a discussion of funding issues in general. In this discussion we make two key points about the Federal funding: that it ought to be available for a range of JR activities *and* for communities at different stages of progression of JR. We also stress at the outset that Aboriginal and Torres Strait Islander people and communities must be key participants in *all* decision-making - at place-based (community level), State/Territory and national levels. This includes decisions relating to funding: about what is funded where, under what conditions and for how long, as well as outcomes and targets tied to funding.

Additionally, a key objective of JR is to build local capacity to create change and this needs to frame all decision-making processes. Funding decisions should be guided by the question: how are we building the capacity of local people to lead solutions through this funding?

### 3.2.1 Types of funding

JRNA asserts that at a community level, Federal JR funding could be provided for a broad range of local or place-based activities, as determined by individual communities. Some examples of these activities include:

- data collection processes;
- collaboration and co-design processes;
- identification, development, implementation, evaluation, expansion of discrete initiatives within a JR project;
- work of community-led governing bodies and other activities designed to strengthen local leadership and governance and increase community cohesion around a shared agenda for change;
- communication about JR and JR programs with/to communities/ communities and otherwise;
- work undertaken to identify alternative or additional funding sources; and
- other priority activities as determined by individual communities.

As this list illustrates, the scope of work of JR projects is wide-ranging. It is also long-term. As such, JR is not a program and ought not to be funded by the Federal Government as such.

Our strong position is that individual communities should self-determine their funding needs and, to which government should respond in terms of the amount of funding provided and for what purpose and period of time. Outcomes and targets tied to funding provided ought also to be negotiated by communities and government. In this same context there must be flexibility across place in terms of funding that is provided. JR might look different in WA compared to QLD, for instance, or in different parts of WA.

### 3.2.2 Selecting communities for funding

Community readiness for JR is a critical precondition for its success. Although local incarceration and other data may indicate that a community could potentially benefit from a JR approach, data gathered by communities on their readiness to work with JR is a highly relevant consideration in selection of sites for funding.

JRNA stresses that for the most part it is up to individual communities to self-determine their readiness for JR, rather than government. For those communities interested in exploring JR (rather than being ready to implement it) this is an essential preliminary process. Below are the stages of exploration and implementation of JR detailed by Just Reinvest NSW.



As an example of how this exploration process might work, the JR peak body in WA, Social Reinvestment WA, has developed questions a community might draw on to self-reflect on their readiness for JR (see **Appendix B** for a summary). These questions are concerned with:

- the extent to which there is a sense of urgency for change in community;
- the community's capacity to work on and deliver change;
- the level of community buy-in to working with and leading JR; and
- the community's access to resources.

It would be useful, perhaps critical, to bring others with expertise in JR and other Aboriginal and Torres Strait Islander experts into discussion of how readiness for JR might be assessed for the purpose of funding decision-making, given the complexity of this issue.

As the above suggests, JRNA believes that funding should be available through the Federal initiative for new JR sites, including for early-stage community-led processes aimed at determining JR readiness. In this context, JRNA is concerned that government funding may be withdrawn if outcomes achieved during this early stage of work are not those government expects. Outcomes at this early stage will generally look quite different to those of a more established JR project. It may be useful to establish a separate stream of ‘seed funding’ or similar for funding of this early stage of work, tied to outcomes that are more typical for such stages (and that should be agreed between communities and government, as above).

We note that JR will generally aim to build on whatever pre-conditions of JR success are already in place in a community at the start of its implementation of JR. The range of activities relevant to this work (including those listed above that aim to strengthen local leadership and community cohesion around a shared agenda for change) should also be eligible for Federal funding.

In terms of new sites, JRNA has considered whether communities could self-nominate for funding and if so, how this might occur. We considered whether there could be an outreach strategy to identify interest/encourage opting-in from communities and how this could be funded. JRNA submits that at first instance communities could be selected for funding from those already working with or expressing an interest in JR. Over time, more communities are likely to come forward to express interest in JR and in being funded. On this note, the AGD has asked JRNA to provide a list of sites interested in and already working with JR. This has been provided to the AGD but is also attached as **Appendix C**. This document also identifies initiatives that don’t refer to their work as JR but that share similar principles, methods and objectives to JR. We note that the list provided is not intended to be exhaustive.

### **3.3 Role of Federal Government - beyond funding**

The AGD has asked for feedback on what key roles and leadership the Federal Government might have in the JR space nationally. We confirm the following as relevant roles (as previously suggested by JRNA members in discussion with the AGD):

- promoting a strong justice reinvestment narrative nationally (including by aligning the message of JR with the Priority Reforms of Closing the Gap);
- highlighting the positive message of JR around shifting money from prisons to creating safer communities; and
- facilitating positive and constructive state and territory involvement in JR around Australia.



Additionally, the role of the Federal - and of State and Territory governments - is not just to fund JR sites. It is much broader than this.<sup>10</sup> The Federal Government needs to lead, enable and actively participate in delivery of systems change that will support community-led efforts to improve outcomes for Aboriginal and Torres Strait Islander people. This is crucial as levers of change are not solely in the control of the community. Governments also have responsibilities and accountabilities to contribute to change.

This requires Federal Government leadership, enabling and participation in cross-government facilitation and authorisation of place-based JR work, which generally needs input from a range of government agencies and departments as well as the philanthropic, corporate and service sectors.

The Federal Government can also provide national leadership in advocating for and incentivising States and Territories to enact and can itself enact policy and law reforms relevant in a JR context. These might encompass bail & sentencing law reform, including abolition of mandatory minimum sentencing; raising the age of criminal responsibility to at least 14; and decriminalising homelessness, poverty, alcohol and other drug dependence and petty offences, for instance. The Federal Government should also be providing and advocating for the expansion of material support to reduce socio-economic drivers and consequences of incarceration, and taking broader action to reduce poverty, including through self-determined economic development, and to end homelessness, housing poverty and housing precarity.

At all stages and in all contexts the Federal Government's leadership, enabling and participation role needs to be informed by and accountable to Aboriginal and Torres Strait Islander communities.

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<sup>10</sup> See discussion, for example, of how WA Government might help to lead JR work in WA in Appendix A