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The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

4 September 2017

Dear Commissioners

Thank you for the opportunity to provide feedback on this important issue.

We note the comprehensive research and significant effort of the ALRC in the Discussion Paper in relation to the many and complex matters impacting on Indigenous Incarceration in Australia. While this is a significant issue in Australia, it is a particular concern in the NT and we believe has been at a crisis point for many years.

As the ALRC would be aware, the NT has the highest average daily imprisonment rate of all states and Territories with 921 persons per 100,000 compared with the average daily imprisonment rate of 215 persons per 100,000 and the second highest Aboriginal and Torres Strait Islander prisoner rate at 2,893 per 100,000¹.

In the Ombudsman NT *Investigation Report, Women in Prison II - Alice Springs Women's Correctional Facility* the extent of the general problem was referred to citing the relatively recent comment in the Hamburger Report²:

*"Clearly the Northern Territory imprisonment rate indicates a social, economic, and law and order crisis of devastating proportions for the Territory as a whole and for Indigenous people in particular. It has been a long standing crisis."*³

NTLAC has long held concerns⁴ about prisoner numbers in the NT and that the significant majority of these prisoners are Aboriginal and Torres Strait Islander people.

¹ ABS, Corrections in Australia, March 2017, see appendix A of this paper

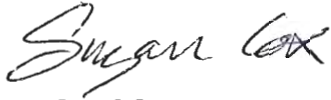
² Hamburger K, Ferris A, Downes L, Hocken J, Ellis-Smith T & McAllister N (2016). *A safer Northern Territory through correctional interventions: Report of the review of the Northern Territory Department of Correctional Services*. BDO. Perth/ Knowledge Consulting. Brisbane, page 6.

³ Ombudsman NT Report at page 3.

⁴ See attached paper by NTLAC Options for Managing Prisoner Growth in the NT, 2006

We welcome steps to address Indigenous incarceration in the NT and Australia. We ask that this Inquiry emphasise that this will require significant changes to funding and to the way that government and non-government agencies operate.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Suzan Cox', with a stylized flourish at the end.

Suzan Cox QC
DIRECTOR



**Northern Territory
Legal Aid Commission**

*Submission to the Australian Law Reform Commission
Inquiry into*

Incarceration Rates of Aboriginal and Torres Strait Islander Peoples

August 2017

1 Introduction

The Northern Territory Legal Aid Commission 'the Commission' aims to ensure that the protection or assertion of the legal rights and interests of people in the Northern Territory are not prejudiced by reason of their inability to:

- Obtain access to independent legal advice;
- Afford the financial cost of appropriate legal representation;
- Obtain access to the Federal or Territory legal systems; or
- Obtain adequate information about access to the law and legal system

1.1 Legal Services

Our service provides legal advice and assistance to people in a range of matters, including:

- Family law;
- Domestic violence;
- Child in need of care;
- Criminal law; and
- Civil law.

We also have a significant Community Legal Education function which aims to deliver information about key legal issues to key sections of the community.

1.2 Community Legal Education

The Commission conducts a range of community legal education projects. We have a variety of resources and publications which are aimed at providing legal information to diverse sections of the community. These resources are in a variety of media, including:

- Personal presentations
- Pamphlets
- Booklets
- Audio CDs in Indigenous languages
- DVDs in Indigenous languages
- Educational resources for service providers

Our resources can be accessed through our website at <https://www.legalaid.nt.gov.au>. Of relevance to the ALRC Discussion Paper are the following:

- *Going to Court* - a guide to court processes and procedures in the NT
- *What Age Can I* - a guide for young people on the law
- *Cop This!* – explaining rights and responsibilities when dealing with police
- *Inside Out* – a guide for prisoners and their families
- *The Law Handbook Online* – a comprehensive publication on laws impacting on residents of the NT: <http://austlii.community/foswiki/NTLawHbk/NTLawHandbook>
- Law Info NT – a multi media legal information platform about key areas of law impacting on people in the NT: <https://www.lawinfo.nt.gov.au/>
- *Community Law Toolkit* – A community legal education resource for services working with Darwin Aboriginal Communities.
- The NTLAC Youtube channel which has a range of resources about the law in Indigenous languages <https://www.youtube.com/user/NTLegalAid/videos>

1.3 Past Submissions

The Commission has made the following submissions, relevant to this inquiry, in recent years:

- Prisoner Growth in the Northern Territory, 2006 (copy attached)
- The Inquiry into the Sexual Abuse of Aboriginal Children in the NT, leading to the *Little Children are Sacred* report.
- Submission to the Review of the NT *Domestic Violence Act*, leading to the now *Domestic and Family Violence Act 2007*
- Submission to the Legal and Constitutional Senate Inquiry on the Intervention
- Submission to the Senate Community Affairs Committee on the further laws relating to the intervention

- Submission to the Senate Select Committee of Regional and Remote Indigenous Communities
- Submission to the Stronger Futures Review Discussion Paper, 2011 (copy attached)
- Submission to the review of the NT Youth Justice System, 2011 (copy attached)
- Submission to the major review of the NT *Care and Protection of Children Act* 2012 (copy attached)
- Submission to the NT *Correctional Services Bill*, 2014
- Submission to the Child Protection Inquiry in the NT, 2010 (copy attached)
- Submission to the Review of the NT *Domestic and Family Violence Act* 2015, (copy attached)
- Submission to the Royal Commission on Youth Detention and Child Protection in the NT, 2017 (copy attached)
- Submission to the NT Alcohol Policies and Legislation Review, 2017 (copy attached)

2 Key Issues

Unfortunately, the Commission does not have the resources to respond comprehensively to the Discussion Paper, and so choose to respond with a focus on key issues and refer the ALRC to previous NTLAC submissions as relevant.

2.1 Youth Justice and Child Protection

The ALRC will be aware that the Royal Commission into the Detention and Protection of Children in the NT has now concluded. Improving outcomes in youth justice and child protection are crucial to the issue of Indigenous incarceration in the NT as the underlying causes of offending and incarceration are intergenerational and must be addressed at the earliest stage. We attach the NTLAC submission to the Royal Commission dated May 2017 and look forward to the findings of this Inquiry and the implementation of its recommendations.

2.2 Alcohol and substance misuse

Alcohol and substance misuse is closely linked to offending and incarceration in the NT and Australia. This is a concern that must be addressed in the mainstream community, not only in relation to Aboriginal and Torres Strait Islander people.

In the NT generally there is a prevalent and socially accepted culture of excessive drinking, which is more likely to lead to alcohol related harm and violence. There are complex historical and social drivers of alcohol consumption and availability in the NT and factors underpinning resistance to change⁵. The ALRC will be aware that there is currently a review into NT Legislation and Policies in relation to Alcohol. We attach:

⁵ D'Abbs, Submission to the NT Alcohol Policies and Legislation Review
https://alcoholreview.nt.gov.au/data/assets/pdf_file/0011/436916/dAbbs,-Peter-Submission.pdf

- the NTLAC submission to the NT Review of Legislation and Policies in relation to Alcohol, 2017
- the NTLAC submission to the Senate Standing Committee on Indigenous Affairs Inquiry into the harmful use of Alcohol in Aboriginal and Torres Strait Islander Communities 2014; and
- the NTLAC submission to the NT Select Committee on Action to Prevent Foetal Alcohol Spectrum Disorder, 2014.

Prior to the introduction of the *NT National Emergency Response Act* ('the NTNER Act') as part of the NT Emergency Response in 2007 there was the ability within Aboriginal communities to have a high degree of control over alcohol use in their communities by deciding which conditions would be placed on the availability of alcohol⁶. The NTNER Act had the sudden impact of imposing a blanket ban on the possession or consumption of Alcohol in 'prescribed' Aboriginal communities, being 73 'townships' in the NT overwhelmingly occupied by Aboriginal people and effectively removed Aboriginal decision making from the process, despite the geographic area in question often being Aboriginal land. There are indications that there were benefits flowing from the NT Emergency Response measures in relation to alcohol such as harm reduction in clubs in communities.⁷

In 2010 the government introduced the concept of Alcohol Management Plans which were ostensibly intended to include Aboriginal people in the decision making process in relation to the conditions upon which alcohol would be available in the community. The Commission provides Outreach legal services to people in remote regions of the NT and advice was regularly sought through these services about the legal restrictions on the possession and consumption of Alcohol and the development of Alcohol Management Plans. In our experience the process introduced to enable Alcohol Management Plans was not supportive of Indigenous participation and the extensive bureaucracy and heavy handedness in the process of developing plans only added to the sense of disempowerment felt by Aboriginal people attempting to engage in the process.

The alcohol restrictions imposed through the NT Intervention was not based on sound evidence and nor was the subsequent frameworks upon which Alcohol Protection Orders and Mandatory Alcohol Treatment were introduced in 2012.

These successive approaches by government were disempowering and in effect re-criminalise drunkenness which, in addition to demonising people experiencing a health issue, leads to an increase in incarceration.

We agree that there has been an approach of 'devising endless attempts to drive binge-drinkers off the streets of towns, in the process further marginalizing people whose drinking is part of their marginalization in the first place'.⁸ This approach needs to be discarded.

⁶ D'Abbs, *ibid*, p 11

⁷ Shaw, Brady, D'Abbs, *Managing Alcohol Consumption – a review on licensed clubs in remote Indigenous communities in the NT*, Bowchung, 2015,

https://justice.nt.gov.au/__data/assets/pdf_file/0011/427538/D2016-0339-LR-Section1.pdf

⁸ D'Abbs, *ibid*, p 2

As can be seen from the our submission to the NT Review of Legislation and Policies in relation to Alcohol, 2017, we support evidence-based whole of community measures to reduce the availability of alcohol, such as, for example restricting trading hours, reduce number of outlets, risk-based licensing system, ban political donations from liquor industry, reintroduce the Banned Drinker Register, floor pricing and volumetric taxation.

We have attached our submission to the NT Parliament Select Committee on Ice in the NT, which outlines concerns about the effectiveness of incarceration as a deterrent to drug misuse. We encourage greater discussion and research towards the decriminalisation of drug and alcohol misuse.

We submit that a sound evidence base, combined with the meaningful participation by Aboriginal people, communities and organisations in the identification and implementation of solutions is crucial to addressing this issue.

2.3 Mandatory Sentencing

We thank the ALRC for raising this issue in the Discussion Paper and the particular concerns in the NT. Mandatory sentencing has had a long and unfortunate history in the NT. Mandatory sentencing enables the blunt instrument of legislation to override judicial discretion in sentencing. We submit that mandatory sentences are unjust as they require courts to sentence on a basis regardless of nature of the crime and the particular circumstances of the offender. We agree with the description of prescribed mandatory minimum sentences by Justice Mildren in *Trenerry v Bradley* (1997) 115 NTR 1, as ‘the very antithesis of just sentences’. We share the concerns raised by stakeholders in the Discussion Paper and the reasons outlined to repeal mandatory sentencing. We also agree that mandatory sentencing provisions disproportionately affect Aboriginal and Torres Strait Islander offenders.

In answer to Question 4-1

Mandatory minimum sentences in the NT should be repealed in their entirety. This includes mandatory minimum non-parole periods.

2.4 Crimes Act (Cth)

The *Crimes Act 1914* (Cth)⁹, specifically limits the circumstances in which criminal courts can take into account customary laws and cultural practice in bail and sentencing determinations. The Commission has long held concerns about the discriminatory effect of this provision and raised these concerns in successive reviews of the NT Emergency Response and Stronger Futures, including in a 2011 submission to the Stronger Futures Review Discussion Paper (copy provided).

Section 15AB (1)(b), provides that in determining whether to grant bail, or the conditions to be placed on a grant of bail, a court:

⁹ Sections 15AB (1)(b), 16A(2A) and 16AA(1)

must not take into consideration any form of customary law or cultural practice as a reason for:

- (i) excusing, justifying, authorising, requiring or lessening the seriousness of the alleged criminal behaviour to which the alleged offence relates, or the criminal behaviour to which the offence relates; or
- (ii) aggravating the seriousness of the alleged criminal behaviour to which the alleged offence relates, or the criminal behaviour to which the offence relates.

Sections 16A(2A) and 16AA(1) constrain the court's discretion to take into account customary law and cultural practice in sentencing.

These provisions do not refer to Aboriginal and Torres Strait Islander people and purport to apply equally to all defendants. However, the restrictions were introduced as part of the NT Emergency Response and in the political context surrounding this initiative it is clear that the provisions were aimed at Aboriginal defendants.

In its submission to the Council of Australian Governments (COAG) meeting in July 2006, the Law Council of Australia strongly opposed the proposed provisions submitting:

The consequence of preventing a court from considering "cultural background" will be that a person (usually white Anglo-Saxon) whose "culture" accords with mainstream beliefs and values will be at an advantage when compared with a person who has lived their entire life according to a different culture, with different values and beliefs.¹⁰

In *R v Wunungmurra* [2009] NTSC 24 Southwood J considered ss 15AB(1)(b), 16A(2A) and 16AA(1) in their previous manifestation, s 91 of the *NTNER Act*. His Honour explained:

At the time the *Emergency Response Act* was assented to by the Australian Parliament sentencing courts in the Northern Territory, in appropriate cases, took traditional Aboriginal law and cultural practices into account when such laws or cultural practices were relevant in determining the objective seriousness of an offence or the level of moral culpability of an offender and on occasion sentencing courts held that the moral culpability of an offender was lessened because he or she had acted in accordance with traditional Aboriginal law or cultural practices. Such matters were taken into account in accordance with established sentencing principles and the sentencing purposes and guidelines contained in the *Sentencing Act* (NT)¹¹.

His Honour found that s 91 was clear in its terms and the Court was bound by the restrictions imposed, notwithstanding that it might preclude:

¹⁰ Law Council of Australia, "Recognition of Cultural Factors in Sentencing" (Submission to Council of Australian Governments, 10 July 2006)

¹¹ At 17

‘..an Aboriginal offender who has acted in accordance with traditional Aboriginal law or cultural practice from having his or case considered individually on the basis of all relevant facts which may be applicable to an important aspect of the sentencing process, distorts well established sentencing principle of proportionality, and may result in the imposition of what may be considered to be disproportionate sentences’¹².

Unfortunately, the above provisions also contributed to the suspension of the NT Community Courts in the NT. These Courts were a fledgling process facilitating the inclusion of community leaders and elders views in sentencing considerations, particularly in remote courts in the NT, by enabling them to advise the sitting Magistrate in relation to sentencing and post sentencing and adopt a practical reintegrative shaming approach to reducing recidivism.¹³

We recommend that sections 15AB (1)(b), 16A(2A) and 16AA of the *Crimes Act 1914* (Cth) be repealed and Community Courts be re-introduced in the NT.

2.5 Sentencing women – the Convention on the Rights of the Child

We have particular concerns regarding the sentencing of women with young children to sentences of actual imprisonment when a suspended sentence or home detention is a suitable and viable alternative. There is in the NT a resistance by Judges to impose suspended sentences or home detention rather than imprisonment (see *Rv Duncan 2015 NTCCA2*). Although hardship on young children is only taken into account generally when the circumstances are exceptional, it is our view that actual imprisonment of the mother of a young child is predominantly not in the best interests of that child and that sentencers should, in such circumstances, be required to take the effect of imprisonment on the young child into account. Further, that if home detention is a safe and available option to the female defendant, it should take precedence over imprisonment.

2.6 Gladue Reports

The 2015 ACT Inquiry into Sentencing¹⁴ recommended that the ACT Government create a specific mechanism for the creation of reports similar to *Gladue* reports in Canada, informing courts of any relationship between an accused’s offending and his or her Indigenous status. The reports aim to acknowledge and tackle the intergenerational disadvantage that leads to offending.

¹² At 25

¹³ Anthony & Crawford, Northern Territory Indigenous Community Sentencing Mechanisms: An Order for Substantive Equality Vol 17 No 2, 2013/2014 <http://www5.austlii.edu.au/au/journals/UTSLRS/2013/12.pdf>

¹⁴ Report No 4, Recommendation 20, https://www.parliament.act.gov.au/__data/assets/pdf_file/0019/707212/JACS-Ctee-report-for-Inquiry-into-Sentencing-FINAL.pdf

In Canada, the reports are prepared by specialist caseworkers who can make recommendations to the court about an appropriate sentence after taking into account information about the offender's background, including interactions with child protection, physical or sexual abuse, developmental or health issues, and history of substance abuse.

The ACT government will trial specialised sentencing reports, based on *Gladue* Reports, for Aboriginal and Torres Strait Islander offenders in a bid to reduce incarceration rates and increase rehabilitation prospects¹⁵.

We recommend that this approach be adopted in all jurisdictions.

2.7 Underlying Issues

It is well known and accepted as a result of the *Royal Commission into Aboriginal Deaths in Custody* and other inquiries considered by the ALRC that there is a fundamental relationship between Aboriginal and Torres Strait Islander offending and incarceration and colonisation, dispossession, intergenerational trauma and poor socio-economic indicators.

We note the recognition of the broader contextual factors contributing to Aboriginal and Torres Strait Islander offending and incarceration at paragraph 1.9 of the report. These issues must be addressed to attack the fundamental cause of offending and incarceration.

We also support the ALRC's findings that Aboriginal Justice Agreements are an important initiative which facilitates collaborative, culturally appropriate and effective criminal justice responses. We note that an Aboriginal Justice Agreement is being developed in the NT and we submit that the allocation of significant resources, strong governance and evaluation processes are critical to their success.

As is the case in Australia generally, many Aboriginal people in the NT already feel that they are not part of 'mainstream' society. In the NT this is particularly pertinent. In the NT many Aboriginal people have the right of exclusive possession to their native lands and live in remote communities while speaking one or more Indigenous languages and maintaining a strong connection to their land and vibrant culture. Aboriginal people have experienced intergenerational trauma as a result of laws and policies applied between 1911 and the 1970s during which children were forcibly removed from their families and institutionalised. Discrimination is a live issue in the NT particularly following the suspension of the *Racial Discrimination Act* through the NT Intervention. This, along with income management measures and alcohol restrictions introduced through the Intervention, which almost exclusively impacted on Aboriginal people, reinforced a sense that Aboriginal people in the NT are second class citizens¹⁶. Ten years after the Intervention, Aboriginal leaders in the NT have affirmed that 'the racist and patronizing attitudes that drove the Intervention continue

¹⁵ *Sentencing Reform to Target Recidivism*

https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2017/sentencing-reform-to-target-recidivism

¹⁶ *3 Years on, NT Intervention still sparks anger*, ABC News 21 June 2010, <http://www.abc.net.au/news/2010-06-21/3-years-on-nt-intervention-still-sparks-anger/874870?pfmredir=sm> (accessed 25 August 2017)

undiminished' and have renewed calls for the 'repeal of racist Intervention and Stronger Futures laws'.¹⁷

We welcome the many positive intentions that are often expressed to address these underlying issues however in the Northern Territory crucial indicators of Aboriginal and Torres Strait Islander people, including offending, detention and incarceration, and also physical and mental health and wellbeing, adequate housing supply, employment and education attainment, have fallen behind even the poor outcomes in other jurisdictions¹⁸. The investment and commitment required to address these matters is often underestimated and so the outcomes desired are not achieved. While this submission has been critical of many aspects of the NT Intervention, there were positive aspects to it, in particular it did include a major commitment to housing and infrastructure.

Key measures are required to address these underlying causes in the NT:

- Recognition that Aboriginal and Torres Strait Islander participation is essential to resolving issues^{19 20};
- Acceptance by all governments that a continued significant and long term commitment is required to develop the infrastructure and make the required resources available, supported by effectively planned and managed services to deliver real outcomes to communities; and
- Justice targets for the Closing the Gap reporting by the Department of Prime Minister and Cabinet.

3 Conclusion

The NTLAC appreciates the ALRC's consultation with us and the opportunity to provide our feedback on key issues. We feel that we have been making our submissions to Governments and various Inquiries for many years without seeing any improvement in the reduction in the rates of incarceration of Aboriginal and Torres Strait Islander people. We are firmly of the view that the underlying causes of disadvantage and substance abuse needs to be addressed by the NT and Commonwealth Governments within a justice reinvestment framework as well as the abolition of mandatory sentencing laws and an emphasis on alternative, community based sentencing options. Finally, it is our submission

¹⁷ *Aboriginal Peoples of the Northern Territory Response to the Northern Territory Intervention*. Melbourne, 29 June 2017, <https://rollbacktheintervention.wordpress.com/> (accessed 25 August 2017)

¹⁸ Australian Government, *Closing the Gap: Prime Minister's Report 2017* <http://closingthegap.pmc.gov.au/sites/default/files/ctg-report-2017.pdf> (accessed 25 August 2017)

¹⁹ The statement *Aboriginal Peoples of the Northern Territory Response to the Northern Territory Intervention*, *ibid*, calls for 'the return of self-determination and the rights for our peoples to create their own distinctive pathways'.

²⁰ A best practice example of indigenous participation in relation to youth diversion, which is conducted by the Tiwi Island Youth Diversion Unit and has been documented in the chapter *No Stick No Stone* of the report *Solid Work You Mob Are Doing* The Federal Court of Australia's Indigenous Dispute Resolution & Conflict Management Case Study Project, (2009) <https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/solid-work-you-mob-are-doing.pdf>

that the detention of children must be reduced as this is the first step on the pathway to adult imprisonment.

Appendix A

AVERAGE DAILY IMPRISONMENT RATE(a), By states & territories, Mar 2016 & Mar

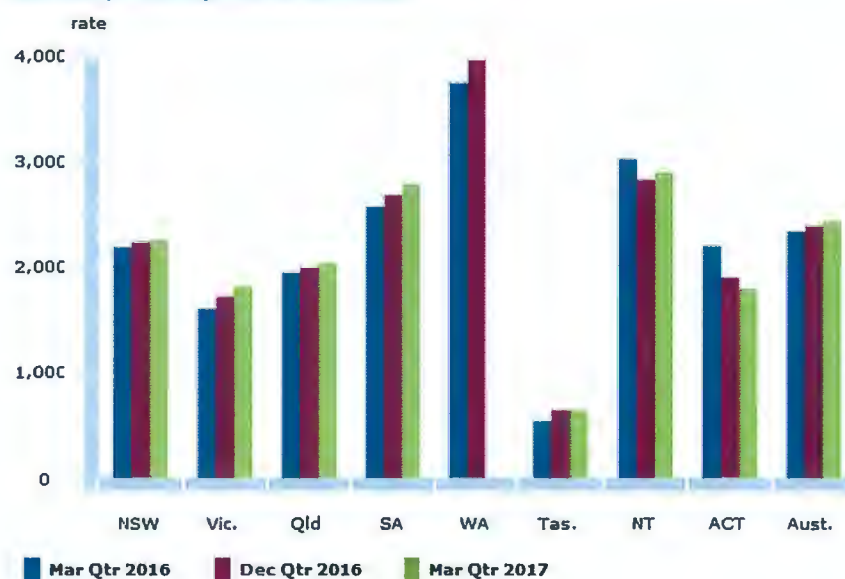


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Australian Bureau of Statistics

© Commonwealth of Australia 2017.

ABORIGINAL AND TORRES STRAIT ISLANDER IMPRISONMENT RATE(a), By states & territories, Mar 2016, Dec 2016 & Mar 2017



Save Chart Imag

Australian Bureau of Statistics

© Commonwealth of Australia 2017.

Options for
Managing Prisoner Growth in the NT

NT Legal Aid Commission
January 2006

Summary

The Northern Territory imprisonment rate is the highest in Australia and is more than 3 times the national rate. If prisoner numbers continue to grow at the existing rate there will be 433 more prisoners by 2010. Due to the unique social, demographic and policy influences in the Northern Territory, the growth rate is likely to be far greater. The future cost implications of this growth for the Northern Territory are great. The available statistics demonstrate that there are areas where action is needed:

- The cost of incarceration is \$179 per prisoner per day, compared with \$16.50 per day for offenders supervised by community corrections.
- 79% of prisoners are Indigenous.
- The most common offences which people are gaoled for in the NT are assaults (36%) and driving (29%).
- In 2003-04 130,000 bed days can be attributed to persons serving time for assaults, assuming that the full sentence was served. This amounts to \$23,270,000 in housing prisoners for this offence alone.
- In 2003-04 driving related offences consumed 46,000 bed days, assuming the full sentence was served. This amounts to a cost of \$8,234,000 to house prisoners for this category of offence in a single year.
- More than 80% of prisoners in the NT have been to gaol previously.
- The recidivism rate for Indigenous prisoners three times the recidivism rate for non-Indigenous prisoners;
- 77% of Indigenous recidivists are under 35 years old.

Making changes now will require additional resources, but other jurisdictions have seen the long term savings that can be made by the allocation of resources to support a change in focus.

The focus needs to shift to address re-offending. A reduction in re-offending is the key to managing prisoner growth.

This focus shift needs to occur both inside and outside the gaol. The capacity of community corrections and community based organisations needs to be enhanced to assist and support prisoners post release to return to their home and have the best chance at turning their life around. At the same time the Department needs to realise its own limitations and engage in partnerships with other government and non-government agencies that have a responsibility and role in the provision of a continuity of services to the community in relation to the prevention of offending behaviour and the rehabilitation and reintegration of offenders. The strategies suggested are summarised in the following recommendations.

Recommendations

1. An interagency and interdepartmental strategy to address the issue of incarceration growth in a coordinated way, including an expansion of the collection and monitoring of data, analysis of the data and the development of strategies for improvement.
2. Legislation enshrining the principle that imprisonment is a sanction of last resort.
3. The finalisation of the NT Indigenous Justice Agreement.
4. The establishment of at least two bail hostels for low-risk remandees.
5. Expand the role and capacity of Community Corrections to have a greater focus on rehabilitation and reintegration.
6. Reform of the Mandatory Disqualification Provisions under the *Traffic Act*.
7. The establishment of separate and targeted detention for driving offences, based in the Alice Springs region, with the facility for prisoners to leave gaol with a drivers licence.
8. The continuation of the NT's interagency committee on Indigenous driving issues with a focus on collaboration between government and communities, particularly communities in Central Australia.
9. The expansion of rehabilitation facilities to receive these offenders through the proposed Alcohol Court.
10. Implement a receptions procedure whereby prisoner are assessed for rehabilitation programs and education at the time of reception (including reception into remand) and are case managed throughout their remand period or prison sentence.
11. Review the current access which prisoners sentenced to less than six months have to rehabilitation and education programs; and develop strategies to increase access or to divert prisoners to community based programs.

12. Expand the Sex offender Program to the Darwin Correctional Centre as a matter of urgency.
13. Secure the adequate funding of OARS NT a three year period.
14. OARS NT is fully supported in the establishment of a halfway house for prisoners leaving gaol and, consideration is given to establishing a similar facility in Central Australia and other key areas.
15. Corrections is involved as a key stakeholder in the implementation of the Alcohol Framework.

Introduction

The NT Legal Aid Commission represents a large number of stakeholders in Correctional Services. The Commission is increasingly concerned at the growth in prisoner numbers in the NT. This paper has been developed in consultation with other concerned agencies such as NAALAS, KRALAS, AJAC and OARS NT. It is intended to outline these concerns and put forward some options for consideration aimed at a long term reduction in the current and predicted prisoner growth rates. While these concerns and suggestions are focussed on particular issues, it is clear that they are interrelated and that an overall strategy is needed to address incarceration growth.¹

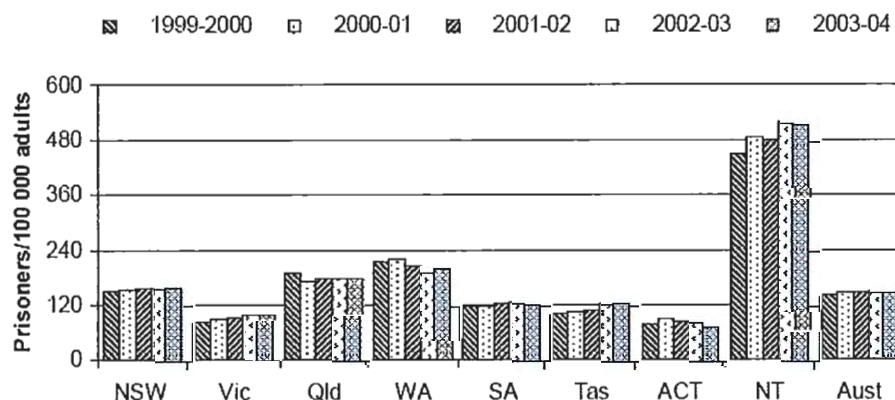
The underlying theme arising from the information which has been gathered is that a reduction in re-offending is the key to managing prisoner growth.

Imprisonment Rates

In 2004 the Northern Territory recorded the highest imprisonment rate of 513 prisoners per 100,000 adult population, representing three times the national rate.² This is one of the highest imprisonment rates in the world. The rate in the NT is far higher than the 58% of countries which have rate below 150 per 100,000. The Territory rate is higher than Cuba, which is 487 per 100,000 and South Africa which is 413 per 100,000³.

The graph below illustrates the difference between the Northern Territory and other jurisdictions in 2003-04.⁴

Figure 7.2 Imprisonment rates^{a, b}



^a Based on the daily average prisoner population numbers supplied by States and Territories, calculated against adult population estimates (ABS data supplied by the National Centre for Crime and Justice Statistics).

^b ACT rates include prisoners held in the ACT and ACT prisoners held in NSW prisons. NSW rates exclude ACT prisoners held in NSW prisons as of 2002-03.

Source: State and Territory governments (unpublished); table 7A.5.

¹ See, for example the Kimberley Custodial Plan,

http://www.justice.wa.gov.au/portal/server.pt/gateway/PTARGS_0_2_323_201_0_43/http%3B/justicecontent.extranet.justice.wa.gov.au/content/files/Kimberley_Cust_Plan_recommend.pdf

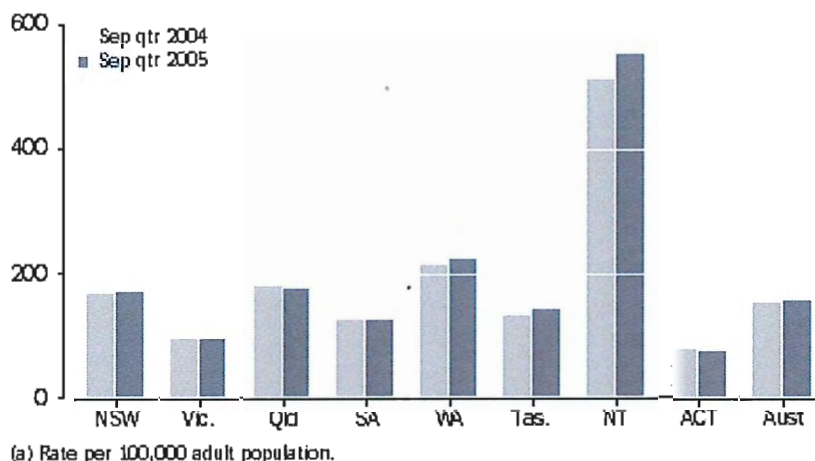
² ABS, Prisoners in Australia, Ausstats, 2004

<http://www.abs.gov.au/Ausstats/abs@.nsf/0e5fa1cc95cd093c4a2568110007852b/8d5807d8074a7a5bca256a6800811054!OpenDocument>

³ Kings College London, International Centre for Prison Studies, World Prison Population List, 6th Edition, 2005 <http://www.prisonstudies.org/>

⁴ Australian Productivity Commission, Report on Government Services 2005, Corrective Services, p 5

This rate has grown in 2005 to 550 per 100,000. The NT has had an 8% proportional increase in imprisonment rates since the September quarter 2004, which was one of the highest nationally.⁵



Growth Areas

Although the crime rate has continued to drop in recent years, incarceration levels have continued to rise. There appears to be little data or research investigating the reasons for this.

Some possibilities are:

- An increase in policing, therefore an improvement in the 'clear up' rate;
- Human 'warehousing', whereby the small number of people committing a large number of offences are incarcerated, with little or no rehabilitation;
- Mandatory sentencing legislation for assaults and breached domestic violence orders;
- Inaccessibility of community based sentencing options in remote areas due to the inability of corrections to supervise orders such as home detention and community work orders;
- An increase in sentence length in key areas (see data below); and
- A greater tendency by the Courts to sentence Aboriginal people to terms of imprisonment.

In relation to the last point, this conclusion was made in *Sentencing Aboriginal people in the Northern Territory: A Statistical Analysis*⁶:

'The evidence demonstrates that the courts are using gaol more frequently and at an earlier stage of offending history for Aboriginal offenders. They are also applying shorter sentences.'

⁵ ABS, Corrective Services Australia, 451.20, Dec 05
<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/9B3F80C43A73AF6CCA2568B7001B4595>

⁶ Luke & Cuneen, 1998, (Unpublished) Chapter 4

This report raised a number of theories for this conclusion, including questioning the availability and suitability of non-custodial sentencing-options for Aboriginal people. The report recommended that this issue be monitored on an ongoing basis and that further research was necessary to investigate the reasons for these sentencing patterns.

Data Available

Information in relation to the distribution of offences and average sentence lengths is helpful in providing an evidence base for ascertaining target groups for managing the growth in prisoners.

The Correctional Services data⁷ demonstrates some key changes in average sentence lengths, which are summarised as follows:

- An overall increase from 236 days in 2000-2001 to 323 days in 2003-04;
- A decrease for assault from 289 days in 2000-2001 to 263 days in 2003-04
- An increase for property offences from 166 days in 2000-2001 to 298 days in 2003-04;
- A decrease for driving offences from 175 days in 2000-2001 to 113 in 2003-04.

The data also illustrates some changes in the number of people in gaol for certain offences:

- 36% of prisoners were serving time for assault in 2003-04, compared with 21% of prisoners in 2000-2001;
- 14% of prisoners were in prison for property offences in 2003-04, compared with 32% in 2000-01; and
- 29% of prisoners were incarcerated for driving offences in 2003-04, compared with 18% in 2000-2001.

Again, the reasons for these changes are not apparent.

The Commission agrees that there needs to be a sound understanding of sentencing patterns to ensure that the responses of police, courts and corrections respond fairly and appropriately to offending behaviour. We acknowledge the important work of the Office of Crime Prevention in collection, publication and explanation of data. While this data is helpful, it is not sufficiently analytical to enable the development of a policy and law reform response. We support the ongoing collection and publication of such data, and encourage an expansion of this role to include analysis and proposals for improvement.

Returning to Prison

Information in relation to prior terms of imprisonment in the Northern Territory provides a helpful indication of some of the reasons for the high levels of incarceration and of the groups to be targeted in responding.

⁷NT Correctional Services Annual Report 2000-2001 and Northern Territory Department of Justice *Correctional Services Statistical Summary – 2003-2004*, respectively (see annexures A and B)

More than 80% of prisoners in the NT on 30 June 2004 were known to have prior adult imprisonment.⁸ This demonstrates that a focus on breaking the cycle of re-offending will have an impact on the number of people in gaol.

Unfortunately, there is limited detailed information available in relation to re-offending, with the most comprehensive data being provided through the Office of Crime Prevention ('OCP') in the publication, *Recidivism in the Northern Territory: Adult Prisoners Released in 2001-02*. It should be noted that the definition of recidivism is narrower than that used by the ABS for prior adult imprisonment.

The OCP report also supports a focus on recidivists when developing a response to the growth in incarceration.

The findings of the report include:

- The recidivism rate for Indigenous prisoners three times the recidivism rate for non-Indigenous prisoners;
- 77% of Indigenous recidivists were under 35 years old;
- Prisoners with prior imprisonment returned at higher rates than those without prior imprisonment;
- The highest rates of return by offending behaviour are assault (31%), Drink driving (13%), Break and Enter (15%) and Driving Offences (17%).⁹

The report concludes, that '[t]he data confirm that once an offender gets into an offending cycle, it is difficult to break'.¹⁰ This is of concern to the Commission and we seek to put forward suggestions and options to break this cycle.

Indigenous prisoners

In the Northern Territory the proportion of Indigenous prisoners continues to increase. The Indigenous prisoner population has grown from 63% of the prisoner population in 2000 to 79% in July 2005. This figure is disproportionate to the 28% of Indigenous people living in the Territory.¹¹ Given the projected growth in the Indigenous population in the Northern Territory, an increase in the incarceration levels of this group is a particular concern.

Projected figures

In 1995 the daily number of adult prisoners was 464¹². This increased to 820 in June 2005¹³. If prisoner numbers continue to grow at the same rate, projections indicate a further increase of 433 prisoners and a prison population of 1285 by 2010, as indicated by the graph below.

⁸ ABS, Auststats: 45160, Prisoners in Australia, All Prisoners 2004

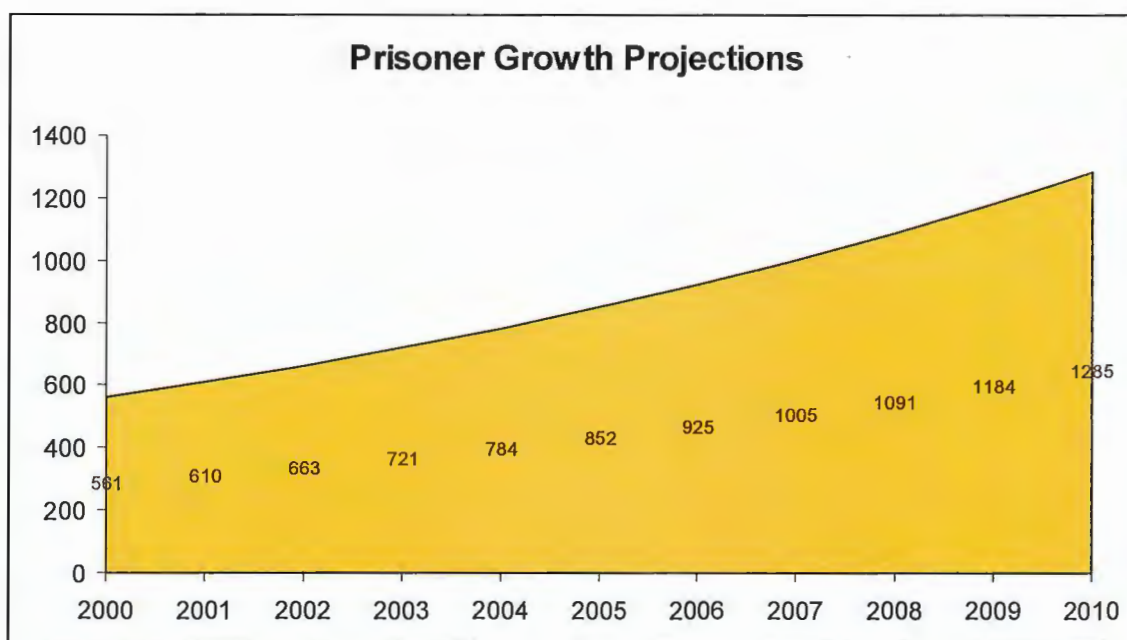
⁹ Recidivism in the Northern Territory: Adult Prisoners Released in 2001-02, NT Office of Crime Prevention, 2 Aug 2005, 6

¹⁰ Ibid, 3

¹¹ A Statistical Overview of Aboriginal and Torres Strait Islander peoples in Australia – Human Rights and Equal Opportunities Commission Website - May 2005 http://www.humanrights.gov.au/social_justice/statistics/index.html

¹² Northern Territory Correctional Services Annual Report 2000–2001, p 66

¹³ Office of Crime Prevention, Quarterly Crime and Justice Stats June 2005, p 80



Factors Impacting on the Prisoner Growth Rate

The projections demonstrated in the above graph provide an indication of future trends if prisoner numbers continue to grow at the same rate. However, there are factors unique to the Northern Territory which may result in far greater growth rate and therefore a much larger future prison population.

These factors include: demographic change; socio-economic factors; and legislative change.

Demographic Change

Indigenous prisoners represented 79% of the daily average prisoner population in June 2005. The current and future Indigenous population demographics will impact on incarceration numbers.

The Indigenous population in the NT is young and rapidly growing. The 2001 census recorded the NT's Indigenous population with a median age of 21, approximately ten years younger than that for the non-Indigenous population, at 34. Nearly 36% of the NT's Indigenous population were aged under 15 at the last Census, compared to 20% for the non-Indigenous population. The Indigenous population will continue to grow as Indigenous women in the Northern Territory experience the highest fertility in Australia.¹⁴

This profile will result in rapid changes in the age structure of the Indigenous population over the next two decades. The Indigenous population of 'imprisonable age' will remain disproportionately higher than the non-indigenous population and is predicted to increase the number of Indigenous people in gaol.

¹⁴ ABS, 3301.01, Births, Australia,
<http://www.abs.gov.au/Ausstats/abs@.nsf/0e5fa1cc95cd093c4a2568110007852b/ff9e15176d6887d8ca2568a9001393b2!OpenDocument>

Socio Economic

Other factors likely to effect the projected prisoner populations are the particular socio economic characteristics of the Northern Territory. There are recognised links between unemployment and/or low educational outcomes and crime¹⁵. Again, these characteristics are disproportionately experienced by the Indigenous population.

Because of these particular age and socio economic characteristics, it is likely that the above projections are conservative and the rate of prisoner growth is likely to increase over the next two decades.

Legislative and Policy Change

A number of recent and proposed changes to legislation have the potential to impact directly on the prisoner numbers.

- Amendment to the *Bail Act*, extending the presumption against bail;
- Amendment to the *Domestic Violence Act*, extending the power to make restraining orders to police;
- Amendment to the *Criminal Code* repealing the offence of dangerous act; and
- Introduction of legislation in relation to anti-social conduct.

In addition, the pursuit of a 'tough on crime' law and order policy by government may also impact on incarceration levels. In particular, the cessation of funding to the community patrols and the allocation of some of these functions to police will increase the contact which Indigenous people have with police and therefore increase the chances of incarceration.

Economic Implications

Measures which reduce the rate of incarceration in the Northern Territory will clearly result in long term cost savings. According to the Australian Productivity Commission, it costs the Northern Territory \$174 per prisoner per day to house prisoners¹⁶. This compares with a cost of \$16.50 per day for offenders in community corrections.¹⁷ It is encouraging that the Northern Territory Correctional Services caseload contains a large proportion (63%) of community based clients.¹⁸

This figure represents a low operational cost for the prison compared with other jurisdictions. However, it has been argued that this is not necessarily a positive indicator, as it may defer costs until the prisoner is released. For example, in 2003-4, the NT reported the lowest (8.9 hours per day) 'Out-of-cell hours' for open custody.¹⁹ This figure may indicate a cost saving which is detrimental to prisoner rehabilitation.

¹⁵ Walker, J & McDonald, D 'The Over-Representation of Indigenous people in Custody in Australia', Australian Institute of Criminology, 1995

¹⁶ Australian Productivity Commission, Steering Committee for the Review of Government Service Provision, Report on Government Services 2005, *Corrective Services*, <http://www.pc.gov.au/gsp/reports/rogs/2005/chapter07.pdf>, p 26

¹⁷ Australian Productivity Commission, Steering Committee for the Review of Government Services 2005, *Corrective Services*, p 28

¹⁸ Northern Territory Department of Justice, *Correctional Services Statistical Summary – 2003 – 2004*, p 1

¹⁹ Australian Productivity Commission, Steering Committee for the Review of Government Services 2005, *Corrective Services*, p 17

This view has been expressed by the Steering Committee for the Review of Government Service Provision:

A low unit cost suggests better performance towards achieving efficient resource management; however, efficiency indicators are difficult to interpret in isolation and need to be considered in conjunction with effectiveness indicators. A low cost per prisoner, for example, may reflect lesser emphasis on providing prisoner programs to address the risk of re-offending.²⁰

If insufficient resources are allocated to rehabilitation, the cost burden will be shifted to other agencies through the continuation of criminal activity. This was confirmed in the Review of Corrections:

While the low cost could be seen as an advantage initially for the taxpayer, the reality is that for a small marginal cost, that would bring the system in line with other jurisdictions, considerable economic savings to the Territory, through reduced crime and reduced numbers of people incarcerated, would more than pay for the investment.²¹

Although the cost of housing prisoners in the Northern Territory is low compared with other jurisdictions, the small population of the Northern Territory means that there is a disproportionate cost burden on Territory taxpayers. In the Northern Territory, it costs \$243 per annum per person in the population to house prisoners, compared to a cost of \$62 for every person living in Victoria.²²

In addition to this existing cost, correctional facilities in the Northern Territory have reached capacity²³ and a growth in the prisoner population will require an expansion in facilities. An expansion in facilities will have both capital and operational cost implications in the short and long term.

The growth in incarceration has been identified as a future cost burden by the Northern Territory.

Law and Justice costs are expected to increase as a consequence of changes in the Territory's future population composition as the population ages. This comes about because, in the Territory, criminal activity is disproportionately associated with young adult Indigenous people. These people will represent an increasing proportion of the Territory's population as the Territory ages over coming decades. This will lead to increased costs across the full range of law and justice activities.²⁴

²⁰ Australian Productivity Commission, *Steering Committee on Report on Government Services 2005, Corrective Services*, <http://www.pc.gov.au/gsp/reports/rogs/2005/chapter07.pdf>, p 26

²¹ CAYA, *A Review of Northern Territory Correctional Services*, March 2004, http://www.nt.gov.au/justice/docs/corrsevs/news_events/caya_good_corrections.pdf 44

²² Australian Productivity Commission, *Report on Government Services 2005, Corrective Services*, <http://www.pc.gov.au/gsp/reports/rogs/2005/chapter07.pdf> 3

²³ Australian Productivity Commission *Report on Government Services 2005, Corrective Services*, p 45

²⁴ Northern Territory Treasury Response to the Productivity Commission's Draft Report on the Economic Implications of an Ageing Australia, November 2004, <http://www.pc.gov.au/study/ageing/subs/subdr058.pdf>, p 5

Options for Managing Growth

The NT Legal Aid Commission requests that the NT consider the following recommendations:

1. Legislation requiring imprisonment is a sanction of last resort.

The Royal Commission into Aboriginal Deaths in Custody recommended that imprisonment was a sanction only of last resort.²⁵ The aim of this recommendation was to divert Aboriginal people from prison by changing sentencing legislation and practices and for the provision of non-custodial alternatives in sentencing. There is no legislation which enshrines this principle in the NT. It has been argued that this principle is implicit in sentencing legislation, however this is disputed by those who argue that rehabilitation of offenders is given no greater priority than other sentencing principles.²⁶

Amendments to the *Sentencing Act* are required which direct the court to consider community based correctional options and establish a criteria for imposing a term of imprisonment.

2. Indigenous Justice Agreement

An Indigenous Justice Agreement is an accord between the Indigenous people and the government which sets out the issues which face Indigenous people in the justice system and an action plan for dealing with these issues. The Northern Territory negotiated an agreement with ATSIC in 2002 and 2003 but the agreement was never signed.

The agreement is an important first step in formally including Indigenous people in dialogue and decision making in relation to justice issues.

In other jurisdictions, such as WA, Qld and Victoria, the agreements have led to the development and establishment of programs which have reduced incarceration and improved rehabilitation. Similarly, in the Northern Territory, the Agreement could be an important tool for action.

3. Alternatives to Remand

The *Revised Standard Guidelines for Corrections in Australia* state that:

The treatment of remand prisoners should not be less favourable than that of sentenced prisoners.²⁷

The current remand facilities are overcrowded and therefore far less favourable than that of sentenced prisoners.

A large number of people remanded in custody are there because they do not have a fixed address. To alleviate the pressure on the current facility, there is a need for the establishment of at least two (Top End and Centre) bail hostels for low-risk remandees, with a focus on offering programs and case management at the 'front end' to facilitate rehabilitation.

²⁵ Recommendation 92

²⁶ Keeping Aboriginal and Torres Strait Islander People out of Custody, 1997, Chapter 10, http://svc003.wic001g.server-web.com/issues/law_and_justice/rciadic/keeping_atsi_people_out_of_custody/chapter10.asp

²⁷ http://www.nt.gov.au/justice/docs/corrsevs/Standard_Guidelines_2004.pdf, p 13

This would complement the proposed laws in relation to anti-social behaviour, the expansion of the CREDIT NT program to include non-illicit substance abuse (such as alcohol and sniffing) and driver education, which is outlined in more detail below.

The system operating in other jurisdictions is that residence in the hostel is voluntary but is set as a condition of bail. This alleviates the need for bail hostels to be secured but allows an intervention for breach of bail for leaving the residence.

The diversion of potential inmates to such a facility would have a number of benefits:

- save funds in the short term because of the reduced cost of housing persons in alternative facilities is cheaper;
- attract funds from other programs such as Commonwealth Family and Community Services for supported accommodation funding and Attorney-General's for prisoner rehabilitation; and
- long term saving because of the reduction in re-offending.

4. Expand the role of Community Corrections

An increase in case management role and capacity of community corrections will enable an increased focus on rehabilitation and reintegration.²⁸ This will require additional resources, however as pointed out above the allocation of resources in this area in the short term is likely to result in long term savings.

5. Expansion of community based options.

The diversion of low risk non-violent offenders from custody to community based orders is proving an effective mechanism for managing prisoner growth in jurisdictions such as Victoria, Queensland and Western Australia.²⁹

For the Northern Territory, short term measures which direct resources to the expansion of community based options are likely to result in cost savings by preventing a growth in the numbers of offenders incarcerated. Some recommendations on how this might be achieved are outlined below:

6. Programs Targeting High Re/Offending areas

6.1. Assault

Available figures do not indicate the number of persons imprisoned for assaults against family members, however police and legal service records indicate that the number is significant and growing.³⁰ In 2003-04 130,000 bed days can be attributed to persons serving time for assaults, assuming that the full sentence was served. This amounts to \$23,270,000 in housing prisoners for this offence alone.

²⁸ One example of this role is the Indigenous Family Violence Perpetrator Program which has been conducted by Community Corrections in 4 remote Indigenous communities in 2005.

²⁹ www.dcs.qld.gov.au/.../The_Department/Key_Initiatives/PRHOPM/docs/presentations/1PaperManagingGrowthQLD.doc - http://www.justice.wa.gov.au/portal/server.pt/gateway/PTARGS_0_2_323_201_0_43/http%3B/justicecontent.extranet.justice.wa.gov.au/content/files/raj_report.pdf

³⁰ NAALAS, Report in Increased Aboriginal Imprisonment 2000-2004

While recorded assault offences and victims have fallen in 2003-04, apprehensions are increasing.³¹ Some other key figures provide an indication of the areas which need addressing if there is to be a targeted response to reducing re-offending:

- The proportion of domestic violence related assaults increased from 29% to 42% over two years prior to 2003-04;
- Alcohol was involved in over 50% of assaults; and
- 80% of persons apprehended for assault are Indigenous

An increased of programs across the Territory to assist people with drinking and address family violence is likely to decrease the numbers of people incarcerated for such offences. The Indigenous Family Violence Perpetrator Program is an example of the model which could be used. The Community Based Indigenous Family Violence Perpetrator Program was funded through ATISC in 2003 to enable NT Community Corrections to deliver a rehabilitation program to perpetrators of family violence in a community environment.

This program was based on the existing prison-based program and follows a 'train the trainer' model, whereby local community members work with facilitators and receive training to deliver the program.

The program has been delivered in 2005 in a number of communities and will be extended this year. Community feedback suggests that the program has been well received and widely supported.³²

Some unexpected benefits of the program have included the willingness of family members to participate in the program and their enthusiasm to expand their knowledge of issues surrounding anger management and emotional wellbeing.

The Commission welcomes the announcement in December 2005 for the continuation and expansion of this program across communities in the Territory.

6.2. Driving Related Offences

In 2003-04 driving related offences consumed 46,000 bed days, assuming the full sentence was served. This amounts to a cost of \$8,234,000 to house prisoners for this category of offence in a single year.

The Northern Territory statistics on aggregate sentences (below) reveal that there are a large number of prisoners sentenced to periods of less than 6 months for driving offences.

When broken down, the 2003-04 data reveals that the overwhelming majority (278) of prisoners were incarcerated for driving a motor vehicle while disqualified and the next highest category (76) was for driving with an alcohol level of 150 mg or more.

³¹ Office of Crime Prevention, *the Nature of Assaults Reported to NT Police*, Crime Prevention Forum NT 2004

http://www.nt.gov.au/justice/ocp/graphpages/forums/rv_forum/presentation/assaults_reported.shtml,

³² ABC News, 14 November 2005, <http://www.abc.net.au/news/newsitems/200511/s1504572.htm>

Sentenced Commenced by Most Serious Offence – driving Combined 2003 - 04

	1 Month	1-3 Months	3-6 Months	6-12 Months	1-2 Years	5 Years or more	Total
DRIVE UNLICENSED	1	0	0	0	0	0	1
DRIVE WHILE DISQUALIFIED	1	1	0	1	0	0	3
DRIVE WHILE NOT LICENSED	0	1	0	0	0	0	1
Drive CAB 80mg/100ml - 150mg or more	9	24	23	18	2	0	76
Drive CAB 80mg/100ml - under 150mg	9	7	5	0	1	0	22
Drive a motor vehicle while disqualified	64	96	83	32	3	0	278
Drive a motor vehicle while unlicensed	1	3	0	1	0	0	5
Drive at a speed and in manner dangerous	1	0	0	0	0	0	1
Drive in NT - disqualified interstate	1	0	0	0	0	0	1
Drive under influence of intox. liquor	3	4	1	1	1	0	10
Drive unregistered vehicle	1	0	1	0	0	0	2
Drive vehicle in a manner dangerous	0	2	0	0	0	0	2
Drive with 50mg/100ml alcohol in blood	3	0	0	0	0	0	3
Exceed speed limit, 15- 30km/h over limit	0	0	0	1	0	0	1
FAIL GIVE WAY 'T' INT- SECT FROM TERM ROA	0	0	1	0	0	0	1
Fail stop vehicle - heavy vehicle only	0	1	0	0	0	0	1
RIDE MOTOR CYCLE - NO HELMET	0	0	0	0	1	0	1
Total	94	139	114	54	8	0	409

Source : Derived from NTCS Statistical Summary 2003-04

The *Traffic Act* provides that a person who is found guilty of two serious drink driving offences within 3 years must have their license cancelled for a minimum of 5 years.³³

In sentencing the Court has consistently stated that persons who are found guilty of driving after being ordered not to will be sentenced to a term of imprisonment unless the most exceptional circumstances apply:

Since at least 1976, Territory Judges have consistently maintained that the usual disposition of an offender who drives whilst disqualified is by way of a sentence to imprisonment, even for a first offence. I need not go into detail, the authorities are usefully collected by Mildren J in *Oldfield v Chute* (1992)

³³ Section 39 (1)

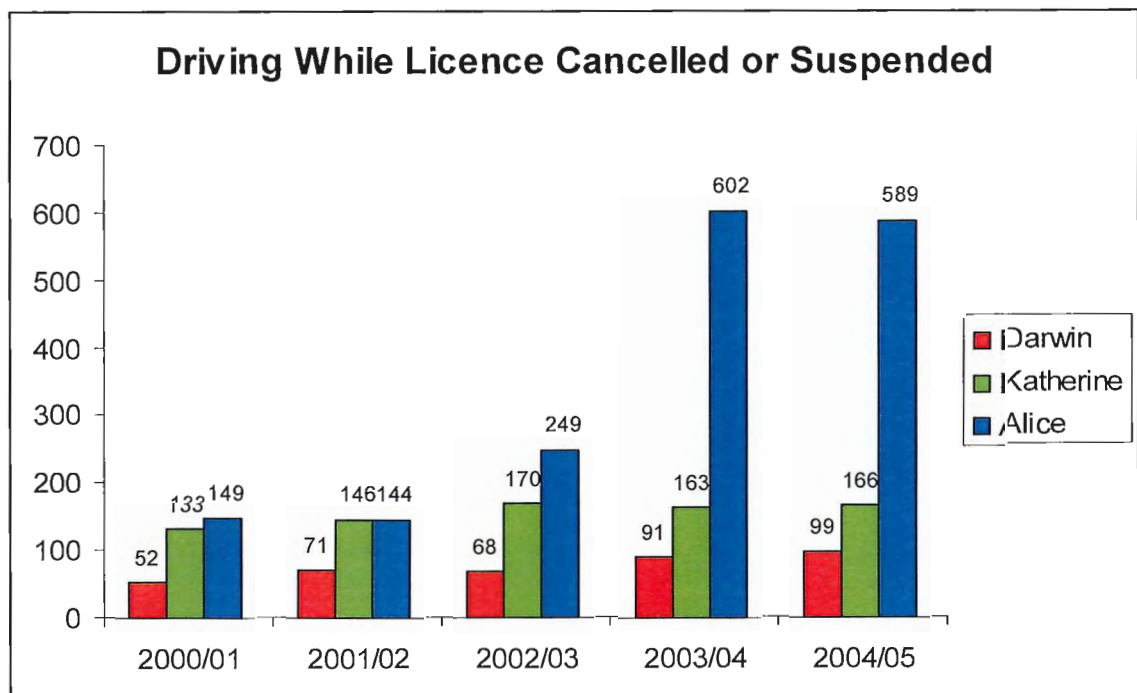
107 FLR 413, affirmed later by his Honour as recently as in *Arnold v Trenerry* (1997) 118 NTR 1 at p 7.³⁴

Unfortunately the prospect of gaol does not appear to act as a deterrent nor, going by the recidivism levels, does a past term of imprisonment.

Any response must consider the reasons that people are driving while disqualified, and the most obvious indicator in relation to this are cultural and geographic.

The rate that Indigenous people are incarcerated for driving offences is overwhelmingly disproportionate to non-Indigenous people. In 2003-4, 112 of the 114 people who served an aggregate sentence length of 1 – 6 months for driving offences were Indigenous. This gross overrepresentation requires a specific response directed to Indigenous offenders.

While data gathered by corrections is insufficiently detailed to enable an understanding of the home community of persons imprisoned, the police data is helpful, particularly given the likelihood of imprisonment for such offences³⁵.



The incarceration numbers have been acknowledged by the Northern Territory who recently developed responses to address this.³⁶ The Commission supports the actions of corrections in addressing need of prisoners to obtain licenses as soon as possible to prevent further re-offending. This measure will address the needs of some of the prisoners who are eligible to obtain their licence. Unfortunately prisoners are unlikely to access to programs if they are sentenced to less than six

³⁴ *Hales v Garbe* (No. 2) JA 1 of 2000 delivered [30 June] 2000 per Martin CJ

³⁵ Police, Fire and Emergency Services Annual Reports 2001, 2003 & 2005

³⁶ NT Crime Prevention, *Recidivism in the Northern Territory: Adult Prisoners Released in 2001-2002*, p 9

months. There are concerns that the large number of prisoners who are sentenced to less than six months will still slip through the gaps and not have access to such programs.

However, the current measures do not address the incarceration rates of people who are imprisoned for driving while disqualified. These people will be ineligible to obtain their license. The solution for them can only come after their period of disqualification has ended.

It is inappropriate and a waste of resources to incarcerate persons committing driving offences in the same institution as other offenders. Alternative sentencing and community based options need to be developed which specifically target the rehabilitation needs of offenders serving less than six months for driving offences.

Consideration should be given to the reform of the mandatory disqualification provisions. These provisions require a disqualification for five years if a person has committed two serious drink driving offences within three years. A five year disqualification almost inevitably results in a subsequent drive disqualified charge.

The Commission recommends the establishment of alternative semi-remote driver education and training facilities to house prisoners. Given the geographic indicators, the best location for this would be in Central Australia. Applying a therapeutic justice approach, it is proposed that persons who would normally be sentenced to short terms of imprisonment for driving related offences (other than minimum sentences for DUI), would be given a suspended sentence conditional on them attending and completing driver education and training.

Such a facility could be low security and focus on the needs of offenders to complete drink driver education and/or driver training. Legislative changes to the *Traffic Act* would need to be made to enable them to leave the facility with the required licence. This mechanism is one way to prevent the 'revolving door' syndrome whereby the same people are charged with driving related offences after they have been released from gaol.

From the limited information available, it seems that more could be done through a targeted preventative approach. Such a campaign would be aimed at having a long term impact on the number of people incarcerated for driving offences. It is also apparent that corrections hold just a part of the responsibility for addressing this issue, with the primary responsibility being held by other Agencies and Departments such as the Department of Health and Community Services, Department of Education, Employment and Training, Police, Birth, Deaths and Marriages and the Motor Vehicle Registry. This has recently been recognised by the Department of Justice and an intergovernmental working party has been formed to address this. It is also vital that the community sector is invited to contribute to this group, particularly in Central Australia.

Issues such as distance, literacy, language, culture and awareness make it difficult for people living in rural and remote communities to access the information, training and services need to obtain and maintain a driver's license. This may contribute to

an attitude that that a licence is irrelevant and/or unnecessary and result in low levels of compliance with other related legislation.

Similar barriers have been identified in NSW as reasons for high numbers of driving offences among Aboriginal people.³⁷ In NSW, measures taken to address this have included access to computerised Driver Knowledge testing and outreach licence testing in Aboriginal Land Councils; as well as driving lessons and literacy and numeracy assistance for licence applicants. The program can also offer driver mentoring, vehicle systems and maintenance training; basic computer training and first aid training.

Mechanisms which could be put in place to prevent the offences being committed include a campaign to increase the education and awareness of the rationale for licensing requirements which is targeted at remote communities through Indigenous media, schools, clinics, local government and land councils; and an increase in access to services such as DTAL and the MVR. The NSW model of outsourcing the licensing responsibility to one or more community based agencies would be an effective way to increase access to licensing, understanding of the reasons for licensing and compliance.

6.3. Extension of CREDIT Court

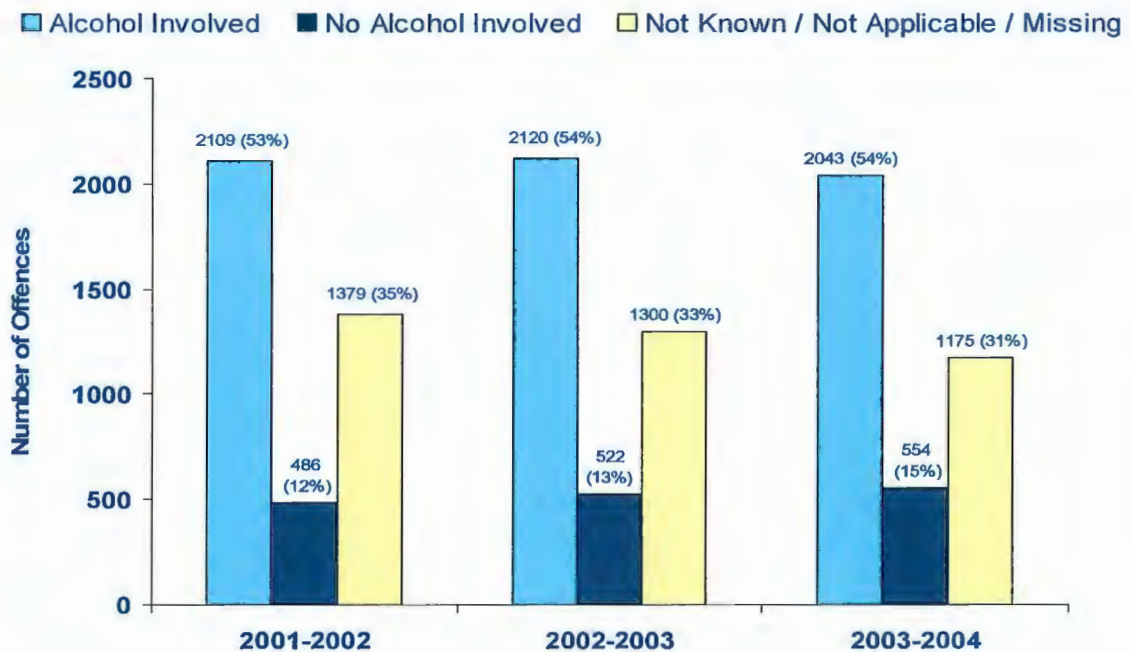
The Court Referral and Evaluation for Drug Intervention and Treatment, Northern Territory (CREDIT NT) aims to divert substance users with drug related offences into treatment through the Court system. CREDIT NT is a 'front end' bail program that takes eligible offenders through a program of rehabilitation, treatment and counselling. To date, CREDIT NT has been restricted to persons using illicit drugs, and it is submitted that the concept should be extended to be available to other substance abusers.

CREDIT NT is a relatively new program and has not been running for long enough to get a clear picture of 'what works', however anecdotal feedback suggests that benefits might be obtained by applying the same principles to alcohol related crime and crimes relating to other 'non illicit' substance abuse such as sniffing and chroming. The program has recently been made available to clients in Alice Springs with alcohol related offences.

It is acknowledged that there may be some movement in this direction as a result of the recently released anti-social package. The philosophy underpinning this movement is welcomed and is well supported by the evidence that alcohol is involved in over 50% of assaults.³⁸

³⁷ NSW Government Crime Prevention Division,
http://www.lawlink.nsw.gov.au/lawlink/cpd/ll_cpd.nsf/pages/CPD_projects#patrols

³⁸ Office of Crime Prevention, *the Nature of Assaults Reported to NT Police*, Crime Prevention Forum NT 2004



We are generally supportive of any measures which attempt to reduce the level of alcohol related crime in the Northern Territory. The pending legislation which establishes the Alcohol Court will present a critical opportunity to address the offending behaviour, thus reducing the re-offending rate and therefore the imprisonment numbers. However there are a number of concerns in relation to the Bill:

- There was no consultation or community input into the bill; and
- There are not sufficient resources accompanying the bill, for example access to the Alcohol Court will not be available outside of Darwin and Alice Springs, and it is only anticipated that 80 people will be able to go through the Court in a year.

The Commission recommends that a process of consultation, particularly with rehabilitation service providers is required prior to the passage of the Alcohol Court Bill and that there is a need for the dedication of adequate resources to meet the rehabilitation needs of offenders across the Territory as well as to monitor and evaluate the impact on sentencing and rehabilitation outcomes. We are concerned that the resources to support this regime are grossly inadequate.

7. Prison Programs

The *Revised Standard Guidelines for Corrections in Australia* are based on the principle that prisoners are:

provided with opportunities to address their offending behaviour and actively encouraged to access evidence-based intervention programmes, education, vocational education and work opportunities.³⁹

Prisoner Education and Rehabilitation Programs are mostly unavailable to prisoners in the remand section or prisoners sentenced to six months or less. Prisoners waiting for the hearing process to complete can spend up to 12 months in remand and have no access to programs or education during this period. Given that the majority of prisoners (917 of 1397 in 2003-04) are serving sentences of less than six months, this means that a great number of prisoners are ineligible for prisoner education or rehabilitation programs of any kind. This group of prisoners are the most likely to respond to rehabilitation. If it is assumed that programs improve rehabilitation prospects, then many in this large target group, are missing out on this opportunity.

There is a need to review this position to provide short term prisoners with greater access to programs which are linked to their offending behaviour, such as driver education for driving offences, anger management for assaults, and alcohol rehabilitation for alcohol related offences. If this is not viable, then greater consideration should be given to a scheme where prisoners should be diverted to community based programs on a bond or suspended sentence.

The commencement of the sex offender treatment program in Alice Springs has been desperately needed for many years. Anecdotal evidence suggests that the currently high incidence of prosecutions of sex offences will result in lengthy prison terms and therefore increase in prisoners who are incarcerated for such offences. There is a need for the Program to be offered as widely as possible and for the Program to be extended to Darwin as soon as possible.

It is heartening that corrections have recently recognised the need for an increase in prison-based programs through their pre-release program. It is important to focus on practical initiatives which link the offender to support services post release and prepare prisoners for their return to the community, such as through relevant training, job placement and housing allocation.

Unfortunately, existing resource levels continue to present an impediment to the implementation of a comprehensive case management model. Prisoner assessment and therefore access programs is more likely to occur following an order of the Court or through self-referral. The current focus is on 'bottom end' case management. In other words the focus is on prisoners who are to be released the soonest. Prisoners need to be fully assessed at the time of reception and case managed throughout their prison terms in relation to educational and program needs. We note that the prison is moving in this direction and support the full implementation of this approach as a matter of priority.

8. Community Based Post-Release Support

The challenges of prisoner re-entry and the need for post release strategies to respond to this are widely acknowledged.⁴⁰ Research in relation to post-release requirements and the connection to re-offending has identified the following risk factors:

³⁹ http://www.nt.gov.au/justice/docs/corrserve/Standard_Guidelines_2004.pdf, p 13

⁴⁰ <http://www.ag.gov.au/agd/WWW/ncphome.nsf/AllDocs/97F159B523B4BA72CA256FF500064FB7?OpenDocument>

- Homelessness;
- Lack of, or poor quality, accommodation support;
- An increase in the severity of alcohol and other drug problems;
- Being an Aboriginal or Torres Strait Islander person.⁴¹

The *Revised Standard Guidelines for Corrections in Australia* are based on the principle that prisoners are:

supervised and managed with an emphasis on their continuing part in the community, not their exclusion from it. ...and programmes should be provided to assist prisoners to re-integrate into the community after release.⁴²

There has been a recent recognition in the Northern Territory of the need for community based support for prisoners leaving the prison. These initiatives are welcomed as they provide will minimise the risk of re-offending. However it is of concern that there are currently no post-release programs for women⁴³ and the pre-release program cannot be delivered to women.

Two recent programs are of note. Firstly, Offenders Aid and Rehabilitation Services NT Incorporated ('OARS NT'), was established in 2003 by a group of professional people, ex-offenders and community members with the prime objective of preventing crime by successfully assisting offenders and those at risk of offending to reintegrate into the community. OARS NT initially received funding from the NT Office of Crime Prevention to operate the Reintegration After prison Program ('RAPP'). Minimal funding in quarterly grants is received from NT correctional Services and future funding beyond 2005 is uncertain.

Significant success in the reduction of re-offending has been demonstrated to date and the demand for assistance far exceeds the capacity of one project officer. RAPP's activities include:

- participation in the pre-release program;
- freecall telephone service located at the Darwin Correctional Centre;
- one on one professional prison visits; and
- provides post-release support and referral.

Secondly, the Elders Visiting Program was implemented in February 2005. This program recognised that cultural contact with the Elders can improve reintegration prospects and maintain links to culture while an offender is in prison. Elders from key communities are able to assist prisoners in achieving a smooth transition from the prison to their home community. This program is consistent with the *Revised Standard Guidelines for Corrections in Australia* that:

⁴¹ E Baldry & M Borzycki, *Promoting Integration: The provision of prisoner post-release services*, AIC trends and issues 262.

⁴² http://www.nt.gov.au/justice/docs/corrserve/Standard_Guidelines_2004.pdf, p 12

⁴³ http://www.hreoc.gov.au/social_justice/sjreport04/2WalkingWithTheWomen.html

Indigenous prisoners should be allowed access, where possible, to elders who are recognised as elders or leaders of their community to address the emotional and spiritual needs of indigenous prisoners.⁴⁴

Elders have also provided advice to the prison management on the particular difficulties prisoners will face following release and appropriate rehabilitation strategies that would benefit the prisoner upon arriving back in the community.

It is of concern that the future of these programs is uncertain, with funding due to cease in the next year. There is a need to provide the existing programs with certainty through long term funding and also for an extension of these programs in the form of a halfway house and mentoring program.

8.1. Halfway House

OARS NT statistics from the Reintegration After Prison Program ('RAPP') reveal that more than 50% of pre-release client requests are for accommodation and many return to a state of homelessness on release due to lack of suitable accommodation in the NT.

Suitable accommodation has been shown to have substantive reductions in re-offending particularly when incorporated with counselling and other rehabilitative initiatives.

There is an urgent need for supported accommodation in the form of several suitably located halfway houses as exist in other jurisdictions.

OARS NT has an application with the NT office of Crime Prevention for a small pilot halfway house in Darwin. Should this be successful and the pilot demonstrates positive results, this concept should logically be extended and more facilities provided to enable greater numbers of prisoners to access such a facility.

8.2. Mentoring Program

The link between government and community based services needs to be strengthened, with a greater emphasis on the role of community, through community based organisations, in supporting prisoners upon release and assisting in the reintegration of prisoners into the home and community.

One method of doing this has been proposed through OARS NT through the establishment of a mentoring program. The proposal is an extension of the Elders Program, however as it would be community based it could be managed by a community based organisation. Mentors from targeted communities, would be trained through as mentors through an existing TAFE program. A network of trained mentor volunteers would be established in key communities and provide practical, social and emotional support to prisoners leaving the gaol. As with the Elders Visiting Program, it is envisaged that the mentor/mentee relationship will be initiated prior to release by regular prison visits. This would substantially reduce the feelings of exclusion, isolation and disorientation experienced by the prisoner prior to and upon release and so would aid the rehabilitation prospects.

⁴⁴ http://www.nt.gov.au/justice/docs/corrserve/Standard_Guidelines_2004.pdf, p 19

OARS NT has prepared an application for funding for a mentoring program to the Australian Government's National Crime Prevention Grants Scheme

9. Alcohol and Offending

There is a need for explicit recognition of the link between crimes which attract prison sentences and alcohol abuse. A reduction of crime relating to alcohol abuse will reduce incarceration growth. The NT *Alcohol Framework* was finalised in August 2004 after extensive community consultation. It contains numerous recommendations, including an increase in education of harm minimisation, restriction of liquor licenses and reduced availability of alcohol. The Commission generally supports the *Framework* as a comprehensive and considered plan.

The strategies contained in the Framework fall outside of the responsibility of Corrections, but Corrections is directly impacted by these external factors. Corrections needs to be closely involved in the implementation of the framework through the Office of Alcohol Policy and Coordination to ensure that their input as a key stakeholder is factored into future actions.

Conclusion

The Commission welcomed the Review of Corrections in March 2004. The Review acknowledged the challenges of change management in correctional facilities and the Commission has been heartened by the Government's commitment to this review.

The NT now faces the challenge of addressing increasing prisoner growth rates and the 'revolving door' that prison has become for a large percentage of prisoners.

An analysis of the financial, social and political cost of making changes now, compared with future benefits if prisoner growth is managed effectively, justify the making of substantial changes in the immediate future.

It is suggested that two major changes will make the greatest impact on prisoner growth.

Firstly, there is a need for a shift in focus from punishment to enhancing the rehabilitation prospects of the offender through the delivery of targeted, evidence based rehabilitation programs both inside and outside of gaol.

Secondly, there is a need for greater emphasis on post release support to heighten reintegration prospects.

In each of these areas the vital key to changing offending behaviour is the consultation and active participation of the community, particularly Indigenous communities, as key stakeholders in the process.

ANNEXURE A

SENTENCE LENGTH

Table 16: Sentenced prisoners with sentences commencing during 2000-01.

Offence	Aggregate Sentence Length										Total		
	Months					Years					Average	Median	Total
	<1	1-3	3-5	5-12	1-2	2-5	5-10	10+	life*	Days*	Days**	Days**	
Murder													
All	0	0	0	0	0	0	0	0	1	0	0	0	1
Indigenous	0	0	0	0	0	0	0	0	0	0	0	0	0
Assault													
All	58	42	54	85	8	3	0	0	0	289	211	228	21%
Indigenous	54	39	49	83	8	3	0	0	0	290	213	218	28%
Sex Assault/ Offence													
All	2	1	3	1	1	2	4	0	0	1362	674	14	1%
Indigenous	2	1	1	1	1	1	4	0	0	1342	603	11	1%
Other against the person***													
All	1	1	3	4	1	1	1	0	0	637	451	12	1%
Indigenous	1	1	3	2	1	1	0	0	0	463	309	8	1%
Robbery													
All	0	1	3	3	4	5	1	0	0	1123	1083	17	2%
Indigenous	0	1	1	1	2	1	0	0	0	855	727	6	1%
Property Combined													
All	155	83	64	44	3	5	1	0	0	166	89	366	32%
Indigenous	125	68	46	34	1	4	1	0	0	158	88	278	33%
Fraud and misappropriation													
All	0	2	1	1	1	1	0	0	0	446	210	6	1%
Indigenous	0	0	0	0	1	0	0	0	0	790	790	1	0%
Driving Combined													
All	43	55	51	44	0	0	0	0	0	175	150	189	18%
Indigenous	39	42	42	41	0	0	0	0	0	182	177	164	19%
Drugs													
All	11	1	5	4	2	1	1	0	0	437	121	26	2%
Indigenous	4	0	2	1	0	0	0	0	0	174	60	7	1%
People smuggling													
All	1	1	0	13	46	20	0	0	0	1011	996	76	7%
Indigenous	0	0	0	0	0	0	0	0	0	0	0	0	0%
Other													
All	81	30	32	22	8	4	0	0	0	187	89	176	16%
Indigenous	70	25	29	22	4	3	0	0	0	180	89	159	18%
Total 2000-01													
All	360	217	218	201	68	42	8	0	1	296	160	1101	
Indigenous	296	177	173	186	18	13	6	0	0	226	131	846	
Total 1999-00													
All	238	197	197	187	109	49	8	0	0	238	118		933
Indigenous	199	166	172	105	89	24	4	0	0	194	96		799

* Includes Administrator's Pleasure.

** Does not include indeterminate sentences (Life, Administrator's Pleasure).

*** Includes manslaughter.

ANNEXURE B

Table 20 Adult sentenced episode commencements by aggregate sentence, offence and Indigenous status.

Most Serious Offence	Aggregate Sentence Length										Total				
	Months				Years				Days		2003-04		2002-03		
	0-1	1-3	3-6	6-12	1-2	2-5	5-10	> 10	Life	Mean	Median	Total	%	Total	%
Murder															
All	0	0	0	0	0	0	0	0	1	-	-	1	0%	2	0%
Indigenous	0	0	0	0	0	0	0	0	0	-	-	0	0%	1	0%
Assault															
All	41	116	141	98	24	36	1	0	0	263	159	497	36%	467	37%
Indigenous	39	113	133	91	20	32	1	0	0	259	151	469	38%	447	41%
Sex assault/offences															
All	0	0	2	1	10	11	6	2	0	1421	997	32	2%	24	2%
Indigenous	0	0	1	1	7	6	4	2	0	1514	1095	21	2%	18	2%
Other against the person															
All	0	2	3	3	5	10	5	3	0	1402	1095	31	2%	34	3%
Indigenous	0	2	3	3	3	9	4	3	0	1454	1247	27	2%	29	3%
Robbery															
All	0	0	0	2	1	6	2	1	0	1637	1568	12	1%	14	1%
Indigenous	0	0	0	1	0	2	0	1	0	1961	1568	4	0%	5	0%
Property combined															
All	38	39	41	32	30	19	2	0	0	298	169	201	14%	224	18%
Indigenous	34	32	36	27	22	11	2	0	0	267	150	164	13%	187	17%
Fraud & misappropriation															
All	2	0	1	2	5	1	0	0	0	462	454	11	1%	16	1%
Indigenous	1	0	0	0	1	0	0	0	0	247	247	2	0%	2	0%
Driving combined															
All	94	139	114	54	8	0	0	0	0	113	90	409	29%	295	23%
Indigenous	88	128	112	51	7	0	0	0	0	113	90	386	32%	285	24%
Drugs															
All	0	5	6	7	15	4	0	0	0	488	305	36	3%	36	3%
Indigenous	0	2	3	2	5	1	0	0	0	416	306	13	1%	8	1%
People smuggling															
All	0	0	0	0	0	0	0	0	0	-	-	0	0%	0	0%
Indigenous	0	0	0	0	0	0	0	0	0	-	-	0	0%	0	0%
Other															
All	68	44	22	15	14	2	2	0	0	138	58	167	12%	158	12%
Indigenous	55	35	17	14	10	1	2	0	0	138	59	134	11%	137	12%
Total 2003-04															
All	243	345	329	214	152	89	18	6	1	280	121	1397	100%		
Indigenous	217	312	305	190	115	62	13	6	0	256	120	1220	100%		
Total 2002-03															
All	168	262	282	275	165	69	23	4	2	323	180			1270	100%
Indigenous	149	233	253	242	136	63	17	3	1	297	237			1099	100%

Aggregate sentence – Is determined as the period between the most recent aggregate sentence date (as at 1 July 2004) and the date of reception for the episode.

Most serious offence – As recorded in IJIS.

Months, Years – The range "X-Y" indicates that the aggregate sentence is greater than the lower bound (X) and up to and including the upper bound (Y).

Life – Includes Administrator's Pleasure and indefinite sentence.

Days (Mean, Median) – Does not include indeterminate sentences (Life, Administrator's Pleasure and indefinite sentence).

Other against the person – Includes manslaughter.

Other – Includes prison episodes whose duration largely results from breaches of parole.

Note: Includes all episodes, which commenced as sentenced or changed to a sentenced status during 2003-04.