

6 September 2017

The Executive Director

Australian Law Reform Commission

GPO Box 3708

Sydney, NSW, 2001

Email: indigenous-incarceration@alrc.gov.au

Dear ALRC,

RE: Submission to the Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples

Thank you for the opportunity to provide a submission to the Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples.

The ADC

The Northern Territory Anti-Discrimination Commission (NT ADC) administers the *Northern Territory Anti-Discrimination Act*. We are a very small office charged with promoting the recognition of equality of opportunity in the Northern Territory (NT). The Community Visitor Program (CVP) is under the auspices of the NT ADC and a separate submission addressing the Alcohol Mandatory Treatment policy in the NT has been provided under the CVP letter head.

This submission will not address every area covered in the Discussion Paper which does not mean the proposals are not supported just that we do not have additional material to contribute. The comments on matters are from a NT perspective.

Overarching Themes

There are three overarching themes which guide the ADC submission. Firstly the importance of using interpreters, cultural safety and ensuring Aboriginal and Torres Strait Islander people are involved either as employees or stakeholders in all of the parts of the pathway. The programs that are designed and available for Aboriginal people at diversion, pre-sentence, post-sentence, in correctional facilities or whilst on

parole, need to be culturally appropriate, safe, and structured so they can be interpreted into language.

Second, there is a need at this time for a focus on Aboriginal and Torres Strait Islander women. Particularly a recognition of the different needs and requirements of Aboriginal and Torres Strait Islander women to divert them from the criminal justice system, or once involved, to treat them humanely and address the very different reasons why they come in contact with the criminal justice system and their ongoing needs. Also an absolute dire need for targeted and appropriate programs for women who come into contact with the criminal justice system to deal with any underlying issues.

Finally, the potential for unconscious bias training to specifically tackle unconscious bias to reduce the rate of incarceration of Aboriginal and Torres Strait Islander people. People working in the various areas that interact with Aboriginal and Torres Strait Islander peoples in the criminal justice system, in their day to day decision making, exercise a vast array of discretions e.g., Police deciding to arrest or caution a first offender etc. One way to have people reflect on how they exercise their discretion and reduce the impact of unconscious bias potentially leading to discrimination, as is occurring in the employment space and delivery of goods and services, is to raise awareness of unconscious bias, what it is, how it comes about and its impact on daily decision making.

Proposals and Questions

2. Bail and the Remand Population

2.2 Legal representation being available for those who are refused Police bail

On weekends and after hours, people charged with offences and who are refused police bail, are able to call a Local Court Judge and request bail. Those who have legal representation such as provided by Central Australian Aboriginal Legal Aid Service's (CAALAS) after hours service, are able to articulate matters that a Local Court Judge is required to consider in a manner which is more likely to lead to bail being granted. There are inherent difficulties in ascertaining from unrepresented people with English as an additional language, evidence under the criteria in the *Bail Act* to grant bail.

The question is, is this something that could be included in a Custody Notification Service (discussed below under section 11)? Whilst it is a service offered by CAALAS is it a priority for other Aboriginal Legal Aid services?

3. Sentencing and Aboriginality

3.3 Specialist reports for sentencing

There is a need for specialist reports when Courts are sentencing, as the Court time is limited when Courts sit in remote communities and in urban centres. There is also

variable experience and often a high turnover of lawyers appearing before Courts both as prosecutors and defence lawyers.

The issue that requires greater consideration is who prepares these, who has the knowledge, cultural competence, access, and importantly is funded to prepare them so that they are a valuable source of information.

In the NT, correctional officers currently prepare pre-sentence and a number of other Court ordered reports. It is a live question as to whether correctional officers or staff have the right skill set and relationships to collect and analyse the information. In communities that may have Community Corrections staff, they are aware of sentencing options and corrections programs in the community, however obtaining and collating community views and relevant community and individual family background information, less so.

This is an area for consultation with Aboriginal peaks, such as the North Australian Aboriginal Justice Agency (NAAJA) and Central Australian Aboriginal Legal Aid Service (CAALAS). In the past Law and Justice Groups have operated and some continue to operate in some communities and may provide both oral and written material to the Court. In the past they have operated in Wurrumiyanga, Maningrida, Yuendumu and Nhulunbuy. A paper titled “Northern Territory Indigenous community sentencing mechanism: An order for substantive equality” states:¹

“We regard their effectiveness in two respects. First, they improve sentencing outcomes and promote ‘individualised justice’. By informing the court of the subjective circumstances of the local Indigenous offender, including their background, role in the community, risk factors and responsiveness to different types of sentencing orders...”.

The potential role of *Gladue* reports as discussed in the Discussion Paper, as prepared in some Canadian provinces would be highly desirable as currently when Aboriginal people move through a criminal justice system they rarely come across people from the same cultural background, so there is little common understanding etc. This could be addressed by comprehensive information in the form of *Gladue* reports.

4. Sentencing Options

All information relevant to the circumstances of an Aboriginal and Torres Strait Islander person should be available to be considered during sentencing. Section 16AA of the *Crimes Act 1914(Cth)* should be repealed, to enable Judges in exercising their sentencing discretion to have all relevant information before them.

Section 16AA of the *Crimes Act 1914(Cth)* specifies that customary law and cultural practices cannot be used to aggravate or mitigate criminal conduct when an offender is sentenced, or an order made in relation to that offender. This provision was

¹ Anthony, T. & Crawford W. (2013/2014). Northern Territory Indigenous community sentencing mechanism: an order for substantive equality, *Australian Indigenous Law Review* 79, 17(2), p87.

brought in as part of the Northern Territory Emergency Response (amended in 2012), which is now over 10 years old, and has no end date. This section needs to be repealed and Sentencing Principles that are applied to everyone else in the community need to be applied to Aboriginal and Torres Strait Islander people in the NT.

4.1 Mandatory Sentencing

The current mandatory sentencing under the *Sentencing Act*, is the second wave of mandatory sentencing in the NT with the first round being in 1997, both under the *Sentencing Act* and the *Juvenile Justice Act*. It related to certain property offences, with mandatory minimum first offence 14 days, second 90 days and third 1 year. It was applied to both adults and children.

This first wave was repealed in 2001 however not before the death of a young person in detention.

It is reported that property crime went up in the Territory under this legislation and went down after it was repealed according to figures for the NT Office of Crime Prevention. The 2003 paper published by the NT Office of Crime Prevention, titled "Mandatory Sentencing for Adult Property Offenders: The Northern Territory Experience" also stated that the data was not conclusive however that it did indicate that policy was not as effective as originally intended. Other relevant conclusions included "Indigenous people were heavily over-represented in the mandatory sentencing regime".²

Further in regard to deterrence "Available data suggests that sentencing policy does not measurably influence levels of recorded property crime."³

The second wave of mandatory sentencing came into force from 1 May 2013, for 'violent offences'.⁴ This is defined as 'the use, or threatened use, of violence'. This includes even common assaults. It is a complicated regimen, categorising offences into 5 different 'levels'. The length of the mandatory sentence depends on the level of the offence and whether the offender has a previous conviction for a violent offence. There is an 'exceptional circumstances' provision that is drafted broadly.

The amended legislation added a broader range of violent offences to those already covered; murder and sexual offences.

² Office of Crime Prevention, Northern Territory Government. (August 2003), Mandatory Sentencing for Adult Property Offenders: The Northern Territory Experience, p13.
http://www.courts.nt.gov.au/justice/policycoord/documents/statistics/mandatory_sentencing_nt_experience_2003_1201.pdf

³ Office of Crime Prevention, Northern Territory Government. (August 2003), Mandatory Sentencing for Adult Property Offenders: The Northern Territory Experience, p13.
http://www.courts.nt.gov.au/justice/policycoord/documents/statistics/mandatory_sentencing_nt_experience_2003_1201.pdf

⁴ *Northern Territory of Australia Sentencing Act*, p21.

The second wave's data was reviewed in 2015, "Review of the Northern Territory *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013*"⁵.

The review looked at data from the justice system for a year after the introduction of the legislation and notes that the impact of mandatory sentencing alone is difficult to ascertain as it coincided with the introduction of the policy initiative referred to as Point of Sale Intervention (or POSI's) in Alice Springs.

As is clear from the recent debate in regard to Mandatory Sentencing for murder in the NT, mandatory sentencing leads to unjust sentences. Others such as the Criminal Lawyers Association of the NT (CLANT) are much better placed to raise the impact on Aboriginal and Torres Strait Islander people.

However it should be noted the NT has a number of other forms of mandatory sentencing such as under the *Traffic Act*, drink driving, driving disqualified (the impact of statutory minimum fine and licence disqualifications on those limited financial means will be discussed under fines), *Misuse of Drugs Act*, and domestic violence etc.

The repeal of mandatory sentencing was a key ask of the NT advocacy group Making Justice Work (MJW) and at the time of writing, this has not been implemented by current NT government. MJW refer to the Department of Correctional Services' Annual Report 2014-15 when they state "Mandatory sentencing does not work to reduce crime or make the community a safer place. Harsher sentences have been shown not to deter offenders".⁶

A key recommendation of the Inquiry should address the repeal of Mandatory Sentencing provisions as they do not make our communities safer and have disproportionate impact on Aboriginal and Torres Strait Islander people.

5. Prison Programs, Parole and Unsupervised Release

The key features for prison programs whether delivered internally or by outside providers is that they need to be culturally appropriate in content and delivery, and be evaluated. Also interpreters need to be used and there needs to be a capacity for one on one programs particularly regarding issues such as family violence, sexual assault, respectful relationships etc.

In addition there needs to be programs specifically designed for women that are planned and consistently delivered to deal with issues for women prisoners including respectful relationships, trauma informed, literacy and numeracy and, drugs and alcohol etc.

To address the issue of short sentences and people on remand commencing courses that they do not get to complete in prison, they should be provided by a

⁵NT Criminal Justice Research and Statistics Unit, Review of the Northern Territory *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013*. https://justice.nt.gov.au/_data/assets/pdf_file/0006/269736/Review-of-the-Northern-Territory-Sentencing-Amendment-Mandatory-Minimum-Sentences-Act-2013.pdf

recognised/registered trainer so that modules commenced by a prisoner can be completed in the community, particularly literacy and numeracy programs.

Two prison programs of note in the NT are Throughcare programs run by NAAJA and CAALAS.

NAAJA's Throughcare program at the Darwin Correctional Centre (DCC) has been running since 2009. It has two caseworkers at DCC and four intensive caseworkers based in Palmerston. NAAJA assists people throughout their custodial sentence, helping to prepare them for life outside prison and provide ongoing support and assistance on release. It uses a voluntary agreement model, building relationships with clients, with a high level of cross-cultural expertise. As well as aiming to develop insight into offending and helping people take responsibility and address their offending whilst making positive changes to their lives.

CAALAS runs Kungas Stopping the Violence program which is a Throughcare program for Aboriginal women who have been incarcerated for violent offences. The program is described as working with women while they are in prison and then providing case management and support for the women for 12 months, post release. The women participate in a four week trauma specific violence program while in prison. I have been advised that both programs have been evaluated.

It is recommended that Throughcare programs for Aboriginal and Torres Strait Islander people be provided by Aboriginal and Torres Strait Islander controlled organisations and that they be adequately funded and with good co-ordination and relationships with other services.

5.2 Prison program for women – Move from women prisoners

The Ombudsman NT Investigation Report, "Women in Prison II"⁷ contains two chapters 11 & 12 that discuss programs that have been offered in Alice Springs, both rehabilitative and educational/work based programs. For Alice Springs Women's Correctional Facility (ASWCF) in 2015, the programs offered were not planned or in response to an analysis of the needs of women prisoners but were just what the community sector could provide at the time. Another restrictive factor was that women only had access to the education block which enabled courses to be conducted on one day of the week. The basic infrastructure did not enable programs to be adequately conducted in the women's area of the prison, because of overcrowding and re-purposing of areas.

⁶ Making Justice Work, 2016 NT Election: Six Asks to Make Justice Work for Territorians.

<http://makingjusticework.wixsite.com/website>

⁷ NT Ombudsman Investigation Report, Women in Prison II – Alice Springs Women's Correctional Facility, Volume 2 (May 2017), p39-82.

http://www.ombudsman.nt.gov.au/sites/default/files/downloads/women_in_prison_ii_aswcf_report_vol1-final_26.05.17.pdf

The women prisoners and stakeholders could clearly articulate the programs which were required⁸ from basic literacy and numeracy, to trauma, grief and loss.

The report sets out both the policy and human rights basis that require prisons to offer programs. The Executive summary⁹ states:

“27. Time in custody should be fully utilised to address mental and other health issues, disabilities, alcohol and other drug dependency and a raft of other hurdles that may limit the capacity and willingness of the offender to reintegrate.

28. Again, it must be stressed that this will be in the prisoner’s interest but also very much in the long term interest of the community”

Two of the nine recommendations specifically include programs. The first, at recommendation 6 is a call to “...fundamentally reconsider the approach to custody of female prisoners...”. Which includes ‘...providing an environment that facilitates rehabilitation and reintegration, including viable, well-resourced and timely accommodation and program options’. Further at recommendation 7, calling for a plan to be provided, to address priority areas including what will be done to ensure “...education and rehabilitation programs...”¹⁰.

6. Fines and Driver Licences

As set out in the discussion paper, there is need for fines to be titrated to the financial circumstances of the offender being sentenced or being served with an infringement notice. In the NT whilst fines for the majority of offences take into account the offenders financial circumstances and the burden on the offender¹¹, this not able to be done for when statutory minimum fines are set, for drink driving, unregistered uninsured offences under the *Traffic Act*. The only discretion to be exercised is how much above the statutory minimum to impose.

As driving offences are often one of the pathways into the criminal justice system the lack of discretion and very high minimum fines has ongoing flow on effects.

8. Alcohol

The overarching submission is that alcohol misuse must be addressed as a social and health issue rather than criminalised as has previously occurred in the NT. On repeated occasions, we have seen the failure to address misuse of alcohol in this way, lead to incarceration of Aboriginal people.

⁸ NT Ombudsman Investigation Report, Women in Prison II – Alice Springs Women’s Correctional Facility, Volume 2 (May 2017), paragraph 222, p41.

⁹ NT Ombudsman Investigation Report, Women in Prison II – Alice Springs Women’s Correctional Facility, Volume 1 (May 2017), p4.

¹⁰ NT Ombudsman Investigation Report, Women in Prison II – Alice Springs Women’s Correctional Facility, Volume 1 (May 2017), p7-8.

http://www.ombudsman.nt.gov.au/sites/default/files/downloads/women_in_prison_ii_aswcf_report_vol1-final_26.05.17.pdf

¹¹ Section 17, *Sentencing Act*.

Also policies such as Point of Sale Intervention (POSI's), which have been in place in a number of different iterations since 2013, (that is police outside takeaway alcohol outlets) are of real concern and from the information provided to ADC, not all people are asked for identification or to substantiate where they will drink. Police exercise a discretion and material provided to ADC is that this discretion it is not evenly applied, it is disproportionately and discriminatorily applied to Aboriginal people. Requests are made of Aboriginal people, to the extent that in some places we have been told of lines of Aboriginal people waiting to proceed past police and non-Aboriginal people walking straight in to buy alcohol. These concerns and those of Aboriginal people have been raised with NT Police in the past.

In the last four years, only a handful of individual formal complaints from those directly affected have been lodged with the ADC, most have been resolved in confidential conciliations. We have received more phone calls and inquiries particularly from interstate visitors questioning and raising the issue with NT ADC.

8.2 Alcohol Mandatory Treatment

The CVP has submitted a separate submission.

9. Female Offenders (Women Prisoners in the NT)

Like the national trend there has been a huge increase in the last 10 years in women being incarcerated in the NT. There are two sources I would refer to the Inquiry. The first one being the recently released Ombudsman NT Investigation Report, "Women in Prison II - Alice Springs Women's Correctional Facility" and the other, a paper by Carly Ingles, a former NT Legal Aid Commission (NTLAC) Lawyer and member of CLANT titled "Overflow: Why so many Women in NT Prisons?"¹²

The Ombudsman NT Investigation reports on the increase in women prisoners in Alice Springs, and apart from a very small number, the women are all Aboriginal women.

The investigation was necessary as there were disturbing stakeholder stories of ongoing overcrowding, substandard facilities, lack of programs etc. and these areas and others are discussed in the Report.

The typical women prisoner in Alice Springs, as described in the Executive Summary:

"...is young Indigenous women, around 30 years old. They are likely to be in prison for less than one year. Many have caring responsibilities for children or relatives. Many face problems with alcohol and other drug misuse. Many have mental health or other health issues".¹³

¹² Carly Ingles, "Overflow: Why so many Women in NT Prisons?" Full reports is published on the CLANT website <http://www.clant.org.au/images/images/the-bali-conference/2015/InglesPaper.pdf>

¹³ NT Ombudsman Investigation Report, Women in Prison II – Alice Springs Women's Correctional Facility, Volume 1 (May 2017), p1.

The report deals with both the infrastructure that is needed if women are to be imprisoned but also the need for rehabilitation to address (and not contribute to) the factors that result in some Aboriginal women being on a pathway to contact with the criminal justice system.

Ms Ingles in her paper states¹⁴ “Perhaps the most obvious way to address increasing offending, by women will be to address male violence against women and children, particularly in a family and domestic violence context”.

Further on page 3, she sets out seven potential factors when women become involved with the criminal justice system (research from 1 January 2010 to 30 June 2015, looking at sentencing remarks in the NT Supreme Court). This includes victimisation rates, 51% of female offenders before the Supreme Court were recorded as having a background of victimisation, whether as a child, adult or both, (and hypothesises that this is an underreported). Also raised is the high rates of mental illness and disturbance and intellectual or cognitive impairments present in offenders.

Ms Ingles final point is “Aboriginal women are particularly vulnerable to injustices and failure of the individualised justice in the Northern Territory by virtue of gender, language and cultural differences between themselves and their legal practitioners and the judiciary. This must be carefully considered and addressed at all parts of the criminal justice system, from policing, to sentencing, to post-sentencing”.

There are two women specific programs that I draw to the Inquiries attention as they have been evaluated. Firstly the Top End program called Women of Worth which is co-ordinated through the YWCA, at the time of writing, the initial evaluation for a 6 month period was available. However a more fulsome evaluation is expected to be completed over the coming months. It is described in the evaluation as:

“The Women of Worth (WoW) program aims to empower women involved in the justice system to implement positive lifestyle changes. The program uses a holistic and varied approach to equip women for reintegration back into their communities. WoW focuses on providing women with strength-based case management support, learning opportunities to develop skills and capacity to reduce reoffending as well as practical assistance to reengage with the community. WoW works alongside clients cultivating, wherever possible, a respect for clients’ autonomy and self-determination. WoW offer group learning sessions on a range of topics addressing social skills, personal development, parenting skills and life skills as well as case management support from 6 months pre-release and up to one year post-release.”¹⁵

In Central Australia the Kunga Stopping Violence program (which is discussed above) is a prisoner Throughcare program in Alice Springs run by Central Australian Aboriginal Legal Aid after initially being run by the Central Australian Women’s Legal

http://www.ombudsman.nt.gov.au/sites/default/files/downloads/women_in_prison_ii_aswcf_report_vol1-final_26.05.17.pdf

¹⁴ Carly Ingles, “Overflow: Why so many Women in NT Prisons?” pg. 2. Full reports is published on the CLANT website <http://www.clant.org.au/images/images/the-bali-conference/2015/InglesPaper.pdf>

¹⁵ YWCA Darwin, Women of Worth: 6 Monthly Report January – June 2017.

Service. I am aware an evaluation was conducted by Northern Institute, however have not been able to source public version of this evaluation.

The strengths of both programs is that they have evolved to respond to the needs of women prisoners and that they are run by the community for the community.

However it would appear that ongoing funding to continue the program is still under renegotiation. Tim Fairfax Family Foundation has previously funded it. The transitory nature of funding of such programs is an ongoing problem.

As referred to in the NT Ombudsman's Investigation report there is a need for ongoing commitment by government to halt this spiralling incarceration rate of Aboriginal women in the NT, and Australia.

There is a need for programs like those mentioned above to come from the community for women to return and to be part of their communities. Also crucial is that the different pathways into the criminal justice system and the different impacts of incarceration on women, is recognised and acknowledged so that programs and resources are appropriately targeted and do not just replicate the approaches to the offending, rehabilitation and inclusion back into the community of men.

10. Aboriginal Justice Agreements

There is a crucial role for Aboriginal Justice Agreements (AJA) in reducing Aboriginal and Torres Strait Islander people's incarceration rate.

Whilst Victoria, as set out in the discussion paper, has the most sustained and long standing model, each jurisdiction will have a unique demographic, geography, profile of Aboriginal communities and history of that jurisdiction. In the NT the Aboriginal Justice Unit in the Department of Attorney General and Justice has commenced twelve months of consultation with Aboriginal Territorians about what is to be included in the NT AJA. The very diverse Aboriginal communities across the NT all need to be consulted and their views collated and analysed.

Key areas to directly address over incarceration may include, consultation on the process to negotiate remote and regional community based diversion programs, community based options for sentenced offenders and assistance in combatting non-compliance with community orders etc.

10.1 Criminal Justice Targets

A general comment for this section is that outcomes which are measured enable facts to be known and progress to be monitored. Like many social changes, what gets measured gets done. It would also ensure accountability for all States and Territories.

11. Access to Justice Issues

Importance of Interpreter Use

It is important to note that in the NT, the majority of Aboriginal people speak an Aboriginal language as their primary language. Proficiency in English varies and is often limited. In particular, people who are able to communicate in English about basic everyday tasks do not necessarily have the proficiency to communicate in stressful situations involving complex legal terms and concepts.

The NT has an established Aboriginal Interpreter Service (AIS) which has been in place since 2000. Providing interpreters for 104 language groups with 30 interpreters on staff and 400 casual interpreters¹⁶.

There are also protocols in place in key areas in the Justice system, which mandate the use of interpreters:

- the NT Supreme Court Interpreter Protocols (2012)
- the NT Magistrates Court Interpreter Protocol¹⁷
- NT Law Society Indigenous Protocols (2015)
- NT Police General Order on Interpreters and Translators (2012).

Interpreter use is also referred to in various pieces of NT legislation where people may be detained including *Mental Health and Related Service Act* and the repealed *Alcohol Mandatory Treatment Act*.

However what is currently missing is the collection of data by various agencies, Police, Legal Aid services, Courts on Aboriginal Interpreter use, or the setting of targets to ensure widespread use.

Communication issues arise at a number of places in the criminal justice process:

1. Victims reporting crimes and giving statements to police.
2. Police collecting evidence and taking witness statements.
3. Police communicating with a suspect at the time of arrest (poor communication can lead to escalation with the suspect and family members).
4. Communication to an arrested person's family about the location of the suspect.
5. Lack of ability or willingness to engage in youth diversion programs where the youth or family members speak a non-English language as their primary language.
6. Suspects understanding and exercising the right to silence, right to a support person, right to an interpreter, and the right to a lawyer.

¹⁶ Aboriginal Interpreter Service NT <https://www.nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service>

¹⁷ Northern Territory Magistrates Court, Interpreter Protocols. <http://www.nt.gov.au/justice/ntmc/documents/MagistratesCourtInterpreterProtocols.pdf>

7. Suspects being able to articulate a reasonable defence or explanation to police (i.e. duress or emergency).
8. Accused understanding (and complying with) bail conditions given by police.
9. Defendants understanding court appearance dates and obligations, resulting in the issuing of warrants and subsequent arrest.
10. Lawyer client instructions; defendants who are not given the opportunity to engage with their lawyer in their best language may not understand the legal advice given, and may not be able to articulate pertinent information such as mitigating factors or legal defences.
11. Ability of defendants to understand court proceedings; in particular to understand bail conditions and sentencing conditions, resulting in non-compliance with court orders (and subsequent breach and arrest).
12. Ability of defendants (and prisoners) to understand and comply with corrections and parole officer directions (leading to breach and arrest).
13. Ability and willingness of Aboriginal people to give evidence in court, as victims, witnesses or defendants. It is generally easier to manipulate or reframe the evidence of someone who is speaking in an additional language.
14. Willingness of defence lawyers to allow Aboriginal clients to take the stand and give evidence because of the linguistic vulnerability of their clients.
15. Jury perceptions of Aboriginal witnesses; cross-cultural differences such as eye contact, gender avoidance, gratuitous concurrence, silence and body language can result in non-Aboriginal jury members drawing negative inferences about the credibility or reliability of Aboriginal witnesses.
16. Eligibility for parole and supervision by corrections. Inmates who are not given access to interpreters may be viewed as uncooperative or lacking sufficient motivation, which excludes them from programs that will facilitate their successful release from prison. Most (if not all) prison programs are English only, which is problematic given that it is likely that over 50% of the NT prison population speaks an Aboriginal language as their primary language.¹⁸

The Community Visitor Program (CVP), which monitors forensic disability clients and those in mental health wards, insist on data being collected by the places they monitor, in practice this includes the first language of a client being recorded in patient or clients records, the use of an interpreter register to record, bookings of interpreters, attendance and use for particular clients of interpreters.

We are also aware that the AIS keeps statistics on bookings and the usage of interpreters, however this cannot and does not cover the number of Aboriginal people who come into contact with the police, either as offenders or the victim of an offence, or Aboriginal people before the Courts.

The aim of data collection is to ensure equal access to justice by Aboriginal people when they come into contact with justice system at any level. Also to ensure that protocols, general orders etc. are being followed to ensure the aims of the protocols are being achieved. A further benefit of collecting data, is to measure the unmet

¹⁸ Acknowledgment to Ben Grimes, BA, LLB, GDLP for his input to this section.

need, and advocate for further funding to ensure independent and accredited interpreters are available to ensure equality of opportunity.

In the NT, a resource was developed over four years ago by AIS and other stakeholders to break the police caution down into its various concepts and to interpret the police caution into 18 Aboriginal languages.¹⁹ These are available to be used by Police on mobile devices and online at NT Government sites.

The resource was completed in 2015 and has two versions for those under arrest or in custody and those not under arrest. However the use of the resource now in existence is not known nor is there data on how many suspects police speak to who are Aboriginal, what proportion of people they use the recordings with, what number of records of interview using the resource have been relied on by prosecution in hearing or Trials in NT Courts, challenges to ROI's and success or otherwise in NT Courts.

It is not enough to have services or resources available (like many other areas of the report), what is required is data to be kept on each part of the process, from the first police contact through to the number of Aboriginal people before Court, the language spoken as well as the interpreter use.

Without data, we are relying on word of mouth. At the moment this word of mouth information includes that in communities where police are stationed, and where most Aboriginal people speak English as an additional language, there are very few requests for interpreters.

In particular, data should be kept on the following issues:

1. The first language of people who appear before the courts as defendants and witnesses. This would allow for a comparison with interpreter booking requests to determine whether interpreters are being used sufficiently in the courts.
2. The first language of Aboriginal people taken into police custody. This would firstly remind police that the person they are interacting with does not speak English as their primary language, and would allow for a comparison of numbers Aboriginal language speakers being taken into custody compared to interpreter use by police. This should extend to recording first language information of suspects who are interviewed by police.
3. The first language of people in prison.
4. The first language of people being supervised by corrections.

Without this basic data, it is nearly impossible to adequately monitor communication and interpreter use within the criminal justice processes.

Interpreter use is not just essential to ensure defendants or accused are treated equally before the law, but also to ensure that people who have been the victim or

¹⁹ NT Department of Housing, Aboriginal Interpreter Service, Aboriginal language police cautions. <https://dhcd.nt.gov.au/our-services/aboriginal-language-police-cautions-aboriginal-interpreter-service>

the subject of criminal offences are able to tell their story to the best of their ability. In my time in the NT in the criminal justice system, the ease with which defence lawyers are able to discredit Aboriginal witnesses, as the statements they have been signed up to are prepared by Police in English and do not reflect the events recalled when the person either gives oral evidence in English or more particularly if they give their evidence using an interpreter. Not using interpreters clearly impacts on the rights of suspects but also on the rights of those who witness crimes or who are the victims of crime and the credibility of the justice system as the quality of the evidence is compromised.

The AIS needs to be funded at adequate levels to continue as a professional and highly regarded service. The data collection advocated for above would both monitor current and ongoing access to justice for Aboriginal people but also indicate areas of unmet need.

The material above is also relevant to proposal 12 on police accountability, as police collecting data, will ensure use of interpreters is a priority as well as the use and refinement of the police caution recordings is ongoing.

Further the above, the submissions apply to the use of AUSLAN interpreters for the significant proportion of the Aboriginal and Torres Strait Islander population that have hearing loss or who are Deaf.

The research and statistics in relation to hearing loss that have been provided recently to the Royal Commission into the Protection and Detention of Children in the Northern Territory are astounding. The CVP have on occasions used both AUSLAN and language interpreters for Aboriginal users of the services we monitor and also if available a cultural broker. The communication needs to ensure equal access to justice cannot be underestimated. All agencies involved in the criminal justice system need training to identify the need and receive constant reminders that it is their obligation not the Aboriginal or Torres Strait Island people they are interacting with to ensure that communication is the best it can be, not as we have all done in the past, enough to get by.

11.2 Limiting terms for indefinite detention

An analysis of supervised persons in the NT who have been placed on orders (since the regimen commenced in the early 2000s) and the time period they have remained on Custodial Supervision orders in the NT, makes the case for this recommendation.

However the underlying issues behind this need to be considered and it is largely that there is not sufficient appropriate accommodation options for those with complex cognitive impairments, as they move from NT Prisons, to a limited number of Secure Care options. There are not ready made supported accommodation or step down facilities for those who need support to be housed in the community. Adhoc arrangements, rather than planned arrangements or readymade options have to be put in place for each individual. This is not all negative as it means that the solutions can be individualised, and are not just fitting the person into an institution. The

building an option from the ground up delays people being able to move to a least restrictive option once they have transitioned through more secure options. Discharged Planning of a person's transition as soon as someone enters the criminal justice system on a supervision order as is done or is best practice in health may assist in a timely return to the community.

Further the imperative of a limiting term may focus the attention of all relevant agencies to work together to find the least restrictive option. The issue of transition planning is mentioned in the CVP report.²⁰

11.3 Statutory custody notification services

Whilst police in the NT have advised Aboriginal Legal Aid services of youth in custody it has not been a standard practise for adults. There are many clear advantages of wrap around health and legal service being able to be offered to those taken into custody by police as soon as possible after notification.

If, as set out above, it was also compatible to offer legal representation for out of hours bail hearings, this would be another direct way of reducing those in custody on remand.

12. Police Accountability

Police and other in criminal justice system accountability

NT ADC and other similar Commissions such as Tasmania and Queensland, run and offer understanding unconscious bias workshops, as a way to address the impact of stereotypes etc. on groups in the community. The courses aim to assist people to gain an understanding of unconscious bias and the science behind why we all have unconscious bias as well as offer suggestions to help work around it in the work places, including recruitment, day to day interactions, advancement and retention and also increasingly the impact in the delivery of services and understanding the customer base.

In a recent presentation on unconscious bias, I have been asked to provide statistics and stories specific to potentially vulnerable groups such as those living with disability to give people a greater knowledge and familiarity as placing yourself in someone else's shoes is a suggested approach to make people conscious of their unconscious bias and then assists them to work around their own unconscious biases.

I also recently attended (via a stream) a Diversity Council of Australia event where the work of PWC Indigenous Consulting was presented in a discussion titled "Tackling unconscious bias to progress Indigenous talent"²¹. The CEO, Ms Nareen Young referred to workshops or resource developed by PWC Indigenous Consulting

²⁰ Community Visitor Program Annual Report <https://cvp.nt.gov.au/resources/publications> (The 2016-17 report will be provided to the Minister on 30 September 2017).

specifically addressing unconscious bias in regard to Aboriginal and Torres Strait Islander people. This is an area where specific resources could be designed by Aboriginal or Torres Strait Islander groups specifically for those working in the criminal justice system, Police, Court staff, Judiciary, corrections staff, to combat stereotypes and views that may adversely impact on decisions as Aboriginal and Torres Strait Islander people come in contact with the criminal justice system either as witnesses, victims, defendants, prisoners, supervised people etc.

12.2 Better police responses to communities

I refer to the material above in relation to the importance of interpreter use and police collecting data on the use of interpreters (paragraph 11). Further there is also a role for interpreter use when working with communities to gain a full understanding of the community and for police to be better equipped to respond to the needs of the community.

13. Justice Reinvestment

There are two areas to draw the Inquiries attention to from the NT, one is the success and small amount of money needed for great returns on community lead programs such as Central Australasian Youth Link-up Service. The second is the opportunity to trial Justice Reinvestment for a discrete group of women who come into contact with the criminal justice system in Alice Springs.

A local NT program, Central Australasian Youth Link-up Service (CAYLUS), is a great example of local programs working in remote communities. Whilst it is aimed at youth it provides a great model for other programs to work in the community, it is also a key part of any Justice Reinvestment model for the NT and has recently had its youth programs evaluated in three communities by the Nous group.

A recent presentation at NT Parliament House outlined the methodology of the evaluation reported in the report titled "Investing in the future". The impact of youth programs in remote central Australia Social Return on Investment (SROI) analysis.²²

The three communities evaluated the Utopia region, Hermannsburg (Ntaria) and Yuendumu programs, which have been in existence for different lengths of time and with a variable range of services.

The CAYLUS programs initially focused on addressing petrol sniffing and other forms of youth substance misuse in remote communities in the Central Australian region. The programs both act as a diversion and prevent contact with the criminal justice system and assist in building work place participation skills.

The key feature of all programs evaluation was the continuity and consistency of providing a service day in day out to young people in the community. Using very

²¹ Diversity Council of Australia, PWC Indigenous Consulting. Tackling unconscious bias to progress Indigenous talent. <https://www.dca.org.au/event/29>

²² NT Parliament House, "Investing in the future" <https://www.nousgroup.com/forecasting-return-investment-youth-programs/>

conservative figures for the benefit to the community the Nous report found each program is forecast to generate significant positive returns. To summarise for each dollar invested in programs the study between \$3.28 and \$4.56 of value will be created.²³ The presentation by the Nous representative made the methodology and how this was arrived at, very easy to understand and is highly recommended.

An incredibly important part of the finds is that “Case studies demonstrate that value increases as programs consolidate and can sustain higher levels of investment”.²⁴

The second issue to raise in this space is that in the recent Ombudsman NT Investigation Report²⁵ it referred to justice reinvestment in both its Executive Summary (paragraph 23 & 24) and recommendations (2 & 6) to the need to do something different.

Recommendation 2, “Using justice reinvestment methodology, the NT Government pilot and evaluate local approaches to crime prevention and community safety in disadvantaged communities with the aim of reducing reoffending and increasing community safety”.²⁶

The small cohort of women prisoners in Alice Springs, are an ideal group to trial a different approach. Justice reinvestment, rather than build a new prison, explore the options in and around Alice Springs, for diversion, rehabilitation and, to address issues such as domestic and family violence that have led and lead women coming into contact with the criminal justice system.

Additional Issue

The final area of great concern is that recommendations are made around the commitment to and the monitoring of the implementation of proposals and recommendations that are made by the Inquiry. There is a necessity to include reports on progress and implementation by the Commonwealth, States and Territories.

Please do not hesitate to make contact with ADC to clarify any aspect of our submission.

²³ NT Parliament House, “Investing in the future”, p2 <https://www.nousgroup.com/forecasting-return-investment-youth-programs/>

²⁴ NT Parliament House, “Investing in the future”, p3 <https://www.nousgroup.com/forecasting-return-investment-youth-programs/>

²⁵ NT Ombudsman Investigation Report, Women in Prison II – Alice Springs Women’s Correctional Facility, Volume 1 (May 2017), p4 & p7.
http://www.ombudsman.nt.gov.au/sites/default/files/downloads/women_in_prison_ii_aswcf_report_vol1-final_26.05.17.pdf

²⁶ NT Ombudsman Investigation Report, Women in Prison II – Alice Springs Women’s Correctional Facility, Volume 1 (May 2017), p7.
http://www.ombudsman.nt.gov.au/sites/default/files/downloads/women_in_prison_ii_aswcf_report_vol1-final_26.05.17.pdf

Yours sincerely,



Sally Sievers

Anti-Discrimination Commissioner

Northern Territory Anti-Discrimination Commission