Criminal Lawyers Association of the Northern Territory (CLANT)

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ALRC inquiry into incarceration rates of Aboriginal and Torres Strait Islander (ATSI) peoples

Criminal Lawyers Association of the Northern Territory (CLANT) submission in response to Discussion Paper (DP 84)

CLANT

For over 30 years, the Criminal Lawyers Association of the Northern Territory has been an effective and powerful voice for the improvement of the criminal justice system in the Northern Territory, representing both defence lawyers and prosecutors, practitioners from the public sector, the private profession and the independent bar.

Among CLANT's Objects and Purposes are:

- to promote and advance the administration of the criminal justice system and development and improvement of criminal law throughout the Northern Territory
- to actively contribute in public debates in issues relating to the criminal justice system
- to promote and encourage the protection of human rights and compliance with international human rights principles in the Northern Territory

CLANT welcomes the opportunity to contribute to this important ALRC Inquiry.

Bail and the remand population

CLANT supports proposal 2-1 of ALRC Discussion Paper 84 ("DP 84"), which urges states and territories to adopt a standalone provision in their *Bail Act* modelled on the Victorian equivalent that requires the bail authority to consider "any issues that arise due to the person's Aboriginality including cultural background, ties to family and place and cultural obligations".

In 2015 the *Bail Act* (NT) was amended to expand the number of offences that triggered the presumption against bail.[1] While the effect of the presumption against bail laws is not a focus of this enquiry, in CLANT's submission, the significant effect this provision has on increasing the number of ATSI people on remand cannot go unremarked. Ironically, at the same time the presumption against bail was expanded, the legislature introduced a similar provision to s3A of the Victorian *Bail Act* to require the bail authority to take into account, when considering whether to grant bail, "*any needs relating to the person's cultural background, including any ties to extended family or place or any other cultural obligation"*. Its introduction did not receive the fanfare or discussion that the expansion of the presumption of bail did, and it has not been embraced by the profession or the judiciary in the same way[2]. It is not as broad-ranging as the Victoria provision for two reasons. The provision is not a standalone provision. It sits within s24 of the Act which sets out the only considerations that a court is permitted to take into account when determining whether to grant bail. As such it informs the question of whether to grant of bail, not the conditions themselves. The use of the word "needs" rather than "issues" with regard to the applicant would arguably restrict the court from considering systemic issues such as the over-incarceration of ATSI people or other matters raised in the Royal Commission into Aboriginal Deaths in Custody. Unlike in Victoria, the subsection has not been the subject of any judicial interpretation, so the willingness of superior courts to place weight on this consideration is not clear.

It is the experience of CLANT that this provision is under-utilised in the Northern Territory, although it is conceded that even with the standalone provision adopted in Victoria, cultural issues will only have an impact on a decision to grant bail where the considerations are evenly balanced[3]. In the Northern Territory the bail authority hearing the application can inform itself from "any evidence or information" it considers "credible or trustworthy"[4]. However, it is not unusual to encounter skepticism by Local Court Judges to assertions by counsel that the applicant has a funeral to attend to or a ceremonial obligation, without more. The challenge for counsel representing the ATSI applicant is to obtain and put before the court corroborative information from a "credible or trustworthy source". It remains to be seen whether, when properly utilised, the consideration of any needs relating a person's cultural background or obligation will make any difference to over-incarceration of ATSI people in the Northern Territory.

[1] *Bail Amendment Act 2015* (NT)
[2] It was not discussed during the second reading speech for example other than to note its presence
[3] *R v Chafer-Smith* [2014] VDSC 51 at [27]
[4] Section 24(2) *Bail Act* (NT)

Sentencing and Aboriginality

CLANT supports statutory recognition of the principles contained in *Bugmy v The Queen* [2013] HCA 38. This would be best reflected as a sentencing principle. For example, in the *Sentencing Act 1995* (NT), section 5(2)(e) requires a sentencing court to have regard to an offender's character, age and intellectual capacity. Section 6 goes on to provide (non-exhaustively), that a court may consider an offender's prior convictions, general reputation and contributions to the community in determining character. Amongst other things, disadvantage can often be a major influence on a person's character and reputation and whether they develop a history of offending.

Legislative enactment would ensure consideration of such matters occurs on a regular and consistent basis, and would place more of an onus on courts to give them proper weight as a matter of course. This would be particularly important for courts such as those in the Northern Territory, which deal with a high proportion of Aboriginal and Torres Strait Islander offenders and where the circumstances of Indigenous disadvantage are particularly acute and pervasive.

If specific statutory consideration is given to Indigenous disadvantage, necessary amendments will need to be made to other legislation that seeks to regulate how evidence of custom and culture is to be presented. Section 104A of the *Sentencing Act 1995* (NT) requires evidence of Aboriginal customary law or cultural practice to be presented under sworn affidavit and with reasonable notice provided to the opposing party. Section 16AA of the *Crimes Act 1914* (Cth), as it applies to the Northern Territory under the Emergency Response legislative regime, prohibits evidence being adduced about Aboriginal customary law or practice in order to aggravate or mitigate the seriousness of an offence or to inform the culpability of an offender. Authentic consideration of Indigenous disadvantage may well need to incorporate these otherwise prohibited or circumscribed factors.

If legislative enactment were to occur, it is critical that comprehensive and well-considered information is presented in court. Defence counsel often encounter difficulties in sourcing detailed information about a client's background, particularly where it is geographically disparate and involves remote communities and/or where record keeping is poor. In this respect, the Australian equivalent of Canada's Gladue reports would be of assistance. It is understood the ACT is soon due to trial such reports, making it the first such jurisdiction in Australia.

However, for this to work, there must be proper resourcing of specialist sentence reports. In much the same way as pre-sentence reports are ordered by courts and prepared by officers from Community Corrections Departments, specialised sentence reports should be funded by government and Community Corrections officers should consult community elders and representatives as part of their preparation, in addition to the offender him or herself and family and community members. Where applicable, anthropological

information could also be of assistance, and might be sourced from academia, non-government organisations and various Land Councils. It should also be noted that difficulties in obtaining information can also be grounded in cultural reticence on the part of offenders to disclose sensitive topics to those outside their cultural group. In Canada, this problem is addressed by often having Indigenous report writers and caseworkers. This should similarly be promoted in Australia.

Sentencing options

CLANT strongly supports the repealing of mandatory sentencing legislation, noting the disproportionate effect it has on Aboriginal and Torres Strait Islander people.

Mandatory sentencing (with varying exceptional circumstances provisions) applies to a broad range of offences in the Northern Territory, including (in escalating order of seriousness):

- Minimum fines for driving uninsured (s34, *Traffic Act* (NT))
- Minimum disqualification periods for drink driving offences (Part V, *Traffic Act* (NT))
- Minimum seven days imprisonment for repeated breach of domestic violence order (s121, *Domestic and Family Violence Act* (NT))
- Minimum 28 days for selected drug offences (s37, *Misuse of Drugs Act* (NT)); and 70% non-parole period for selected serious drug offences (s55 *Sentencing Act* (NT))
- Various specified minimum terms of imprisonment for selected violent offences (Part 3, Division 6A, *Sentencing Act* (NT))
- Minimum 50% non-parole period for general offences (s54 *Sentencing Act* (NT))
- Imprisonment for sexual offences (Part 3, Division 6B, *Sentencing Act* (NT)); and 70% minimum non-parole periods for sexual intercourse without consent (s55, *Sentencing Act* (NT))
- Mandatory life imprisonment (s157 *Criminal* Code (NT)) with a minimum non-parole period of 20 years (or, in "aggravated" cases, 25 years) for murder (s53A *Sentencing Act* (NT)

Mandatory sentencing is fundamentally and inherently unjust. In *Bradley v Trenerry* (1997) 6 NTLR 175, Mildren J said (Angel J concurring):

> Courts are often described as "Courts of Justice", and Judges are entitled "Justices", because it is fundamental that, above all, they are expected to dispense justice equally to all those who come before them, without fear or favour, and according to law.
>
> It is a principle of law that it is the fundamental duty of sentencing courts when imposing punishment for breaches of the criminal law not to impose a punishment

> which exceeds that which justice demands in all the circumstances. In the *Great Charter of King John* (1215) (*Magna Carta*), it provided:
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> > "Liber homo non amercietur pro parvo delicto, nisi secundum modum delicti; et pro magno delicto, amercietur secundum magnitudinem delicti.." ["A free-man shall not be amerced for a small offence, but only according to the degree of the offence; and for a great delinquency, according to the magnitude of his delinquency .."]
>
> The same principle was recognised in the *Bill of Rights 1688*: *"Excessive baile ought not to be required nor excessive fines imposed nor cruell and unusual punishments inflicted."* S 5(1)(a) of the *Sentencing Act* reflects this principle. I consider it appropriate to regard this duty as carrying with it a corresponding fundamental right enjoyed by every citizen, a right which he may protect by appealing to a higher court if this right is infringed. The same right is enjoyed by the State which is the embodiment of the people, and the Director of Public Prosecutions can also appeal if justice is denied by too lenient a sentence.
>
> Prescribed minimum mandatory sentencing provisions are the very antithesis of just sentences. If a court thinks that a proper just sentence is the prescribed minimum or more, the minimum prescribed penalty is unnecessary. It therefore follows that the sole purpose of a prescribed minimum mandatory sentencing regime is to require sentencers to impose heavier sentences than would be proper according to the justice of the case. [footnotes omitted]

Mandatory sentencing is also ineffective as a deterrent,[5] and inefficient, in that it costs far more to incarcerate offenders than to supervise them in the community.

All of the instances of mandatory sentencing referred to above contribute to the problem of over-incarceration of Aboriginal offenders in the Northern Territory: even the imposition of mandatory fines and disqualification periods can lead indirectly to imprisonment, most commonly by way of incarceration for driving while disqualified.

In the Northern Territory, the *Sentencing Act 1995* mandates that first time offenders of violence that inflict serious harm (akin to grievous harm) must be imprisoned for a minimum of three months. Repeat offenders of serious harm or physical harm interfering with health and involving weapons will receive a minimum of twelve months imprisonment. Repeat violent offenders inflicting less serious injury must serve a minimum of three months imprisonment. These minimums will not be imposed if a court is satisfied “exceptional circumstances” exist. Property offenders, such as those that damage property, must either serve actual imprisonment or be ordered to perform community work.

[5] See, for example, Bagaric, Mirko and Theo, Alexander “(Marginal) general deterrence doesn’t work – and what it means for sentencing” *Criminal law journal*, vol. 35, pp. 269-283

The broad way in which the Northern Territory courts are interpreting "exceptional circumstances" is indicative of the judiciary's attempts to make the mandatory sentencing regime more reflexive and responsive. The judiciary is best placed to determine the particular circumstances of the offending and of the offender, and the reclaiming of judicial discretion is integral to ensuring more just sentencing.

The repeal of such provisions should be immediate. The availability of community-based sentencing options should not be a pre-condition, since such projects are often difficult and time-consuming to resource and implement, particularly in a remote context.

Mandatory sentencing for murder

The issue of mandatory sentencing for murder has received particular scrutiny following recent publicity regarding the sentencing of Zak Grieve by Mildren J in 2013.[6] Grieve was sentenced on the basis that he had planned to assist two co-offenders to kill the victim, but had withdrawn from the enterprise and not been present when the murder was carried out. Nevertheless, he was unable to successfully call in aid the very limited exceptional circumstances provisions of section 53A(7) of the *Sentencing Act*, and was sentenced to a longer non-parole period than the principal offender. Although not as well publicised, the third person convicted of murder in that case, Darren Halfpenny, was unable to obtain a reduction of his sentence for his plea of guilty or his offer to give eyewitness evidence for the Crown. In the circumstances, Mildren J recommended that both Grieve and Halfpenny be considered for conditional release some years before becoming eligible for parole, but that decision will be a matter for the Executive in years to come.

Judges have from time to time vented their frustration at the unfairness of these laws. For example, in imposing a murder sentence in 2001, Bailey J said:

> As things stand, there is no incentive and no reason why anyone accused of murder, in the Northern Territory, would plead guilty. The sentence is the same whether a case goes to trial for days, weeks or months on end, or whether the offender admits his guilt, demonstrates true remorse, and puts forward something which can properly be accepted as mitigation…. Just as a trial is almost inevitable on a charge of murder in this jurisdiction, so is an appeal almost inevitable. A convicted murderer has nothing to lose and everything to gain by appealing.[7]

Despite 2004 reforms[8] which permitted non-parole periods to be imposed, these words ring as true today as they did when they were pronounced.

Extraordinarily, and notwithstanding the compelling logic of these observations by Justice Bailey, at least seven of the offenders sentenced for murder in the Northern Territory did so

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[6] See *Grieve v The Queen* [2014] NTCCA 2
[7] Quo Cheng Lai (Sentencing Remarks, 16 February 2001, Bailey J, Darwin (SCC 9909126))
[8] *Crime of Murder (Sentencing and Parole Reform) Act 2003* (NT)

after entering a plea of guilty. None of them was credited with so much as a day less on either their head sentence or their non-parole period.

The Northern Territory's murder sentencing regime is not only harsh and unfair, it is ruinously expensive and contributes substantially to this jurisdiction's crisis of hyper-incarceration. In 1999, the average period served in Australian prisons by persons convicted of murder before conditional release was around 13 years. The gross disparity between the Northern Territory and the rest of the nation appears to have narrowed somewhat, as interstate politicians have ratcheted up statutory penalties following "my-laws-are-tougher-than-yours" election campaigns. Now, for example, Queensland also has mandatory life imprisonment with a 20 year minimum non-parole period for murder. But the NT is still in a class of its own: our exceptional circumstances provisions for earlier parole release are far more restrictive than those applicable in Queensland, and have only been utilised on two occasions. As in the NT, NSW murderers are now required to serve on average a minimum of 20 years before being able to apply for parole, but in contrast to the NT the average head sentence for murder in NSW is not life, but 25 years.[9] And when the non-parole period expires, it is exceptionally difficult for murderers to get parole in the NT: they can only be conditionally released by a unanimous decision of the Parole Board sitting with a specially augmented quorum.

Since the commencement of the *Criminal Code* in 1984, 63 offenders have been sentenced to life imprisonment for murder in the Northern Territory. Of them, five are currently on parole in the NT, six have died, and ten have been transferred interstate. The remaining 42 are still in an NT prison. At $322 per person per day[10], the cost of incarcerating this cohort of prisoners approaches $5 million per annum. If each serves the mandatory minimum of 20 years and is released, it will have cost $100 million to incarcerate them. In reality though, under the current laws, at a reasonable guess these prisoners, some of whom will never be released, will serve on average 30 years, at a cost of $150 million.

The non-parole period of eight of these NT prisoners has expired or will expire before 2020. A further four will become eligible to apply for parole by 2025. Some, perhaps many, would have a reasonable prospect of living successfully in the community if they could get parole. But after at least 20 years of incarceration, the only responsible way to admit them to parole is after a transitional period of graduated release. As matters stand, however, no prisoner convicted of murder is eligible for work release, which makes it exceptionally difficult to properly ready them for a parole application.

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[9] http://www.bocsar.nsw.gov.au/Documents/BB/bb76.pdf

[10] Australian Productivity Commission, *Report on Government Services 2016*, ("Total net operating expenditure and capital costs per prisoner per day", Table 8A.7) accessed at http://www.pc.gov.au/research/ongoing/report-on-government-services/2016/justice/corrective-services/rogs-2016-volumec-chapter8.pdf

The current arrangements are both unconscionable and unsustainable. Judicial discretion should be restored. As with the 2004 reforms, the most complex challenge will be to fashion practical and fair transitional provisions, because each of the 45 persons in the NT convicted of murder with a non-parole period would need to be re-sentenced.

Prison programs, parole and unsupervised release

CLANT supports Proposals 5-1, 5-2, 5-3 and 5-4 in DP 84.

In a jurisdiction with almost five times the national incarceration rate and the highest recidivism rate in the nation (60% for Indigenous prisoners)[11], it is of serious concern that prison programs are available on only a very limited basis in the Northern Territory. There are two adult prisons, the Darwin Correctional Centre (DCC), with a nominal capacity of about 1000, and the Alice Springs Correctional Centre (ASCC), with a nominal capacity of about 500. Both facilities regularly operate above capacity. There are also two remotely based open security facilities in the NT, the Barkly Work Camp and the Datjala Work Camp, each of which has a capacity of no more than 50.

Lack of access to effective prison programs is exemplified by the following matters:

- Less than 7% of in excess of 150 sentenced sex offenders in the NT are assessed as suitable to participate in an available sex offenders program. A lower number completed such a program in 2015/16.[12]
- Less than 5% of in excess of 700 sentenced violent offenders in the NT completed a violent offender treatment program in 2015/16.[13]
- 95% of NT prisoners have not been able to participate in the heavily promoted Sentenced to a Job program.[14]
- In mid-2016, 18 months after the opening of the DCC, 50% of its inmates were not engaged in either education or employment programs.[15]
- Violence and sex offender programs, among others, were withdrawn from the ASCC in 2015.
- "In 2015 a change management process resulted in the loss of several positions [from ASCC] including the music teacher, the art teacher, the literacy teacher and the Principal Psychologist."[16]

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[11] Northern Territory Department of Correctional Services Annual Report 2015-2016, p 41, accessed at https://correctionalservices.nt.gov.au/__data/assets/pdf_file/0007/379771/Corrections-Annual-Report-2015-16.pdf

[12] Hamburger, K and others, *A Safer Northern Territory through Correctional Interventions: Report of the review of the Northern Territory Department of Correctional Services* (2016), p 98, accessed at https://justice.nt.gov.au/__data/assets/pdf_file/0010/384454/NTDCS-Review-Final-Report-PDF-Redacted-Final.pdf

[13] Supra, n. 12, 100-101

[14] Supra, n. 11, 51: 74 participants in 2014/15

[15] Supra, n. 12, 107

[16] Northern Territory Ombudsman, *Women in Prison II – Alice Springs Women's Correctional Facility*, Vol. 2, p56, accessed at

- “In the DCS Organisational Chart for 31 December 2015 [for ASCC] notes appear against the Senior Education Officer, Prison Lecturer (VOC Ed) Auto and Prison Lecturer (Weld) indicating that these positions will not be filled.”[17]
- Access to participate in meaningful educational, rehabilitation and work programs is particularly limited for female prisoners.
- There are significant concerns regarding the effectiveness of the available violent offender treatment, sexual offender treatment and substance abuse programs.[18]

Most Northern Territory prison inmates are either on remand (30%) or serving sentences of less than twelve months (40%)[19], and accordingly, their access to participation in programs is extremely limited. Even for short-term prisoners and remandees, however, there are significant rehabilitation opportunities. Firstly, the QuickSmart program, which recruits literate prisoners to provide unaccredited literacy and numeracy training to fellow-inmates, is inexpensive, practical and has the potential to be highly beneficial to both tutors and students. In DCC, however, only about 5% of prisoners participated in this program in 2016. In ASCC, by contrast, about 40% of inmates participated.[20] The obstacles and opportunities to expand QuickSmart should be explored. Secondly, traffic offenders should be given the opportunity to regain their licence while in prison, and, moreover, be permitted to drive on their release, a measure that would requires statutory reform. It is not unusual for Indigenous offenders to be serving short periods of imprisonment after having been convicted of driving while disqualified (and often, with a prescribed concentration of alcohol) for the fifteenth or twentieth time. Getting a licence would assist them to break this depressing cycle.

The Commission is referred to the comprehensive but disturbing Report published in August 2017 by the Northern Territory Ombudsman, *Women in Prison II – Alice Springs Women’s Correctional Facility*,[21] and in particular to the discussion and recommendations regarding the *Women of Worth* program,[22] and the detailed description of rehabilitation programs available (and unavailable), in Chapter 11.

Given the high incidence of a history of trauma amongst female prisoners, it is essential that rehabilitation programs for women be designed and delivered using a trauma-informed approach.

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http://www.ombudsman.nt.gov.au/sites/default/files/downloads/women_in_prison_ii_aswcf_report_vol2-_final_26.05.17.pdf

[17] Ibid

[18] Supra, n. 12, 96 - 103

[19] Supra n. 12, 196

[20] Supra, n. 11, 89

[21] See Vol 1 pp 43, 59, 61, accessed at http://www.ombudsman.nt.gov.au/sites/default/files/downloads/women_in_prison_ii_aswcf_report_vol1-_final_26.05.17.pdf; and Vol 2, Chapters 11, 12, accessed at http://www.ombudsman.nt.gov.au/sites/default/files/downloads/women_in_prison_ii_aswcf_report_vol2-_final_26.05.17.pdf

[22] Supra n. 21, Vol 1 pp 61, 66-68

In the Northern Territory, not only is all parole discretionary, but there are mandatory minimum non-parole periods for all offences, and uniquely stringent provisions regarding the exercise of the parole discretion in relation to the release of offenders serving life sentences for murder (which are themselves mandatory) (ss3EB(1), 3F, 4B *Parole Act* (NT)). These offenders can only be released by a unanimous decision of the Parole Board sitting with a specially augmented quorum, and if the Board considers that the offender has co-operated satisfactorily with policy to identify the location of the victim. Of the 63 offenders convicted of murder since 1 January 1984 (when the *Criminal Code* (NT) commenced), 5 are currently on parole.

In 2015, 80% of initial NT parole applications were either deferred, refused or withdrawn; and 60% of subsequent parole applications were deferred, refused or withdrawn. Between 2005 to 2015, prison numbers increased by about 100%, as did applications for parole, but the number of people granted parole increased by only about 20%.[23] It follows that there has either been a large decrease in the proportion of prisoners who apply for parole, or a large decrease in the proportion of grants of parole to applicants, or both. This is of serious concern, and should be addressed by way of legislative reform.

CLANT submits that there should be automatic parole on the expiry of a non-parole period, subject to a decision by the Parole Board to revoke parole at the request of the prisoner, where the Parole Board considers that a person is unable to adapt to community life, or where the Parole Board determines that satisfactory post-release plans cannot be made. This scheme should be supported by appropriate statutory provisions, as in NSW. It is noted that the parole system is already supplemented by so-called "civil commitment" schemes in the NT that provide for the indefinite detention of serious violent and sexual offenders for the protection of the community.

CLANT submits that one reason many offenders eligible to apply for parole in the NT decline to do so is that they are reluctant to submit to the stringent conditions of parole in the knowledge that a breach at any time during the parole period may result in them being returned to prison for the full balance of their sentence. It is anticipated that the severity of this regime will be mitigated for some NT prisoners when the *Parole Amendment Act 2017* (NT), which was assented to on 30 August 2017, comes into force. This Act introduces a version of the COMMIT sentencing program (which itself is based on Hawaii's HOPE program).[24]

Section 11 of the *Parole* Act (NT) should be amended in accordance with ALRC proposal 5–4.

[23] Parole Board of the Northern Territory *Annual Report* 2015, pp22, 33, accessed at http://www.paroleboard.nt.gov.au/Publications/Documents/DCS-PB-AnnualReport2015-Web.pdf
[24] See "Breaking the Cycle of Crime – Parole Amendment Bill Passed" (Media Release) accessed at http://www.newsroom.nt.gov.au/mediaRelease/23579

Fines and driver licences

Monetary penalties issued under infringement notices provide general deterrence to the general population. This effect may be impacted if the penalties are reduced or limited.

It would be better to abolish provisions in fine enforcement statutes providing for imprisonment in lieu of unpaid fines.

Further, something like the Work and Development Orders as proposed in Proposal 6-2 would better alleviate the burden of fines on the most vulnerable without losing the effect of general deterrence.

Offensive language should not remain a criminal offence. What constitutes "offensive language" is highly subjective, and difficult for a police officer to determine. The conduct causes minimal harm.

In NT, offensive language may constitute an offence under s47(a) of the *Summary Offences Act* (using obscene language) and also s53(7) (using profane, indecent or obscene language).

Research in other states has found that ATSI people are disproportionately impacted by the operation of this offence.[25]

No records have been kept in the Northern Territory relating to the ATSI status of people charged with using offensive language, but it is conceded that massive over-representation of ATSI people is likely.[26] Northern Territory Aboriginal legal services confirm that ATSI people in NT are disproportionately charged with offensive language.[27]

The use of offensive language could be taken into account as part of the facts and circumstances of a more serious offence, if charged.

Many offensive language matters are dealt with by way of infringement notice in NT.[28] It is possible that if such matters need to go to court that police may charge less. However, there may nonetheless be an increase in the workload of the court.

Alternative penalties to court ordered fines should be an option when it is apparent that a person has no capacity to pay the fines.

State and territory governments should introduce work and development orders based on the NSW Work and Development Orders model. Although immediate cost of supervising these work and development orders will be significant, there will be net benefits in keeping people out of custody.

As per question 6-2, drivers licence suspension arguably provides an incentive to the general population to pay their fines.

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[25] E.g. see Julia Quilter and Luke McNamara, 'Time to define 'The Cornerstone of Public Order Legislation': The Elements of Offensive Conduct and Language under the Summary Offences Act 1988 (NSW), (2013) 36(2) *University of NSW Law Journal*, 543.

[26] Northern Territory Department of the Attorney-General and Justice, *Issues Paper: Review of Summary Offences Act* (2013), p14.

[27] Submission form the Central Australian Aboriginal Legal Service Inc and the North Australian Aboriginal Justice Agency in relation to the Final Report on the Review of the Summary Offences Act (2013), 8.

[28] Northern Territory Department of the Attorney-General and Justice, *Issues Paper: Review of Summary Offences Act* (2013), p14.

Rather than a blanket amendment, it would be better to put in place safeguards so that vulnerable people with no capacity to pay a fine have other alternatives (e.g. as per Proposal 6-2).

Justice procedure offences – breach of community-based sentences

CLANT strongly supports the ALRC proposal 2-2 and 7-1 which require state and territory governments to work with peak ATSI organisations to identify service gaps and develop infrastructure required for culturally appropriate supports for those on community based orders, and for community based programs to be used as diversion, bail and sentencing options. It is imperative that any funding for infrastructure or programs must be guaranteed for 3 to 5 year periods, to allow for better staff retention, development of expertise by those running the program, and to enable those programs to earn the trust of the ATSI community.

It is regularly the case that those participating in community based programs will cease to engage for short periods of time. This may be due to a lack of motivation, but it can also be due to a conflict between participants' legal and cultural obligations, such as a requirement to attend a funeral or ceremony. Frequently breakdowns in communication occur at this point between the participant and the supervising agency. Engagement of an Aboriginal Liaison Officer who takes the time to go to the participant's house or speak with the participant's family and to discuss with them their options would be highly desirable and would, in our submission, result in fewer breaches of orders. In Katherine at least, Corrections staff who encounter participants showing signs of a lack of engagement will often notify the client service officer employed by the local Aboriginal legal service. The client service officer will approach the participant directly, or their family, and remind them of their obligations and discuss what barriers might have arisen to complying with their conditions and ways around those barriers, such as seeking a variation from the court, or communicating the participant's concerns to the Corrections staff. Corrections staff often have very high case loads and will not have the time to engage with the participant in this manner. To ensure this type of support is given to those on community based orders the supervisory agencies requires staff dedicated to liaising with the participants and their families and not merely enforcing, strictly, the conditions of a community based order. Ideally these staff would be Indigenous and trauma-informed, and should come from the supervisory agency itself, or from a separate organisation whose role is to offer support to those on community based orders rather than an Aboriginal legal aid agency that is not funded to perform such a role.

Additional support for participants with complex needs such as cognitive impairment or mental illness on community based orders would also be highly desirable, as they are the ones who are most likely to breach their community based orders through minor breaches.

Another way to reduce the number of breaches of community based orders and expand the reach of community based orders into remote communities is for the participant to be supervised by members of their own community. This is particularly desirable and appropriate in remote communities where a supervisory agency will not have the ability to supervise the participant. However, this requires a level of organisation within the community to ensure appropriate supervision accountability. It is timely that Community Corrections in the Northern Territory are trialling a project in Lajamanu, a remote community in the Katherine region, where the participants will be supervised by the community. Minor breaches of their order will be dealt with by the community rather than involving the court, saving the expense of having to transport the participant, in custody from a remote community, to the nearest court, and reducing the amount of time the participant spends in custody. Still in its early stages, the project is made possible because of the presence of a successful Law and Justice Group of elders called the Kurdiji[29].

Alcohol

The Northern Territory Alcohol Policies and Legislation Review, led by the Hon. Trevor Riley QC ("the Riley Review"), is currently underway, and will present a final report with recommendations to the Northern Territory Government by 30 September 2017. It is respectfully submitted that this ALRC Inquiry may be assisted by the findings and recommendations of the Riley Review.

CLANT members have participated in the preparation of submissions by various agencies to the Riley Review, and CLANT makes the following general observations:

- The level of alcohol-related harm in the Northern Territory is unacceptably high, and closely associated with catastrophic levels of domestic and family violence, particularly in Indigenous communities: for example, in Alice Springs, the offender in 90% of assaults committed against an intimate partner is drunk, and the victim in 90% of those assaults is an Indigenous woman. In most of those cases, she is drunk too.[30]
- Harmful alcohol consumption is a leading cause of violent and traffic offending in the Northern Territory, and measures that reduce harmful drinking will reduce levels of offending and, consequently, levels of incarceration.
- The most effective means of reducing alcohol-related harm is to use a harm minimisation model, involving a combination of measures aimed at reducing supply, demand and harm.
- Harmful use of alcohol is a health problem and should not itself be criminalised. Measures that either directly or indirectly result in the criminalisation of drinking should be discontinued. These include the Alcohol Mandatory Treatment program and making breaches of Alcohol Protection Orders an offence, both of which have

[29] See for example - http://www.clc.org.au/files/pdf/KurdijiNEbook-6.pdf
[30] Kerr, J, "A descriptive analysis of the characteristics, seriousness and frequency of Aboriginal intimate partner violence in the Northern Territory, Australia: a strategy for targeting high harm cases", (Unpublished thesis, 2016), p 78

recently been discontinued; and "protective custody" (Part VII, Division 4, *Police Administration Act* (NT)) and "paperless arrests" (Part VII, Division 4AA, *Police Administration Act* (NT)), both of which remain in force.

CLANT commends the submission to the Riley Review by the Alice Springs based People's Alcohol Action Coalition,[31] which makes the following Recommendations, all of which directly or indirectly address elements of Question 8 of DP 84:

Strategy 1: Reducing alcohol availability

Introduce a minimum price for alcohol

- Amend the *Liquor Act* to allow Licensing NT to set the price of alcohol.
- Licensing NT then to introduce a Minimum Unit Price for take-away alcohol products equivalent to the existing price of take-away full-strength beer, currently at approximately $1.50 per standard drink.

Reduce the number of liquor outlets

- Introduce a moratorium on new, transferred and reactivated liquor licences for all licensed premises, with no exemptions.
- Introduce a buy-back scheme for liquor licences in the Northern Territory, with a focus on licences that are causing the most harm, particularly take-away licences at roadhouses and petrol stations**;** alternatively, for roadhouses, introduce residence-based ID scanning.

Review trading hours

- Introduce 12am last drinks and 1am closing time for late night on-premises licensed venues across the Northern Territory.
- Introduce mandatory licence conditions for the responsible service of alcohol at all licensed venues in the Northern Territory. This should include restrictions on alcoholic drinks such as on the sale of 'shots' and ready-to-drink beverages with more than five per cent alcohol content; time limitations on sales; and no drink stockpiling by patrons.
- Introduce a take-away sales free day each week in locations where a need is identified.

Strategy 2: Targeted supply reduction
Licensed clubs in Aboriginal communities

- Implement the recommendations of the Bowchung review of licensed clubs in remote Aboriginal communities in the Northern Territory.[32]
- Continue the Australian Government's restrictions on the operations of licensed clubs in remote communities, and impose similar restrictions on any proposed new clubs, along with any additional requirements under locally developed Alcohol Management Plans.

[31] Accessed at https://alcoholreview.nt.gov.au/__data/assets/pdf_file/0019/440632/Peoples-Alcohol-Action-Coalition-Submission.pdf
[32] Accessed at https://justice.nt.gov.au/attorney-general-and-justice/law/managing-alcohol-consumption

The Banned Drinkers Register and Point of Sale Interventions

- Retain Point of Sale Interventions (POSIs) (previously known as Temporary Beat Locations or TBLs) as needed, up until and after the Banned Drinkers' Register is reinstated and until it can be demonstrated that they are no longer required.
- Re-introduce the Alcohol and other Drug Tribunal and therapeutic specialist courts for problem drinkers who commit offences.
- Collect and regularly publish comprehensive consumption, criminal justice, hospital and health data.
- Commission expert independent evaluations of the Banned Drinkers' Register and other initiatives to reduce alcohol-related harm such as POSIs, and publicly report on their effectiveness.

Strategy 3: An effective licensing system
Introduce a risk-based licensing system

- Introduce a risk-based liquor licensing scheme in the Northern Territory which includes:
    - establishing three-year liquor licences;
    - differentiated fees for all licence types commensurate with the risk of alcohol-related harm; and
    - annual indexation of all licence fees.

Increase community involvement in liquor licence regulation

- Reinstate the Northern Territory Licensing Commission and its full functions and powers as it operated under the *Northern Territory Licensing Commission Act*.
- Major decisions and determinations must be made by the Commission, with hearings conducted by a panel of members selected by the Chairperson of the Northern Territory Licensing Commission to ensure transparency.
- Provide $2 million over four years to develop and fund a Northern Territory Community Defender's office based on the successful New South Wales 'Alcohol Community Action Project' pilot.

Public interest in decision-making

- Amend the Northern Territory *Liquor Act* to more effectively protect the public interest, by placing the onus of proof on applicants for new or significantly varied liquor licences to establish the merit of their application, and to satisfy the licensing authority that granting the application is in the public interest.
- Amend the Northern Territory Liquor Act to allow police to order liquor sales to cease, premises to be closed and or to determine the types and volume of liquor that may be sold, for reasons of public safety, for a specified period or until the threat has abated.

Strategy 4: Increase treatment services capacity

- Fund additional voluntary, evidence-based, culturally suitable alcohol treatment and rehabilitation services, including aftercare, across all regions in the Northern Territory.

- Ensure adequate and appropriate alcohol diversion programs are available across the Northern Territory to address the over-representation of Aboriginal and Torres Strait Islander people in the Northern Territory's criminal justice system.

Strategy 5: Supporting healthy public policy

- Ban political donations in the Northern Territory from the alcohol industry and its representatives.

Strategy 6: Early Childhood Development

- Provide long-term and sustained investment in evidence-based early childhood development programs throughout the Northern Territory as a key strategy for the prevention of alcohol-related harm, and to end the inter-generational cycle of the harmful use of alcohol.

In addition to the measures identified above in Strategy 1, the Commonwealth should, as recommended by the Henry Tax Review (2009), replace the current anomalous, unfair, ineffective and complex scheme for the taxation of alcohol with a tax "levied on a common volumetric basis across all forms of alcohol, regardless of place, method or scale of production".[33] One beneficial effect of this would be to increase the price of "goonbags" – cask wine – by far the cheapest form of alcohol available in Australia, and the beverage which predominates in the vast majority of cases of violent crime in the Northern Territory.

CLANT responds in more detail to Question 8–2 as follows.

Alcohol mandatory treatment:

CLANT endorses the findings and recommendations of the PWC Indigenous Consulting /Menzies School of Health Research *Evaluation of the Alcohol Mandatory Treatment Program* (2017).[34] The program has now been abolished. In 2014, CLANT, which had been opposed to the program since its inception,[35] contributed to a limited Review of the program in which we drew attention to numerous serious shortcomings with the program and the *Alcohol Mandatory Treatment Act* (NT) as then in force.[36] In summary, CLANT submitted:

1. The AMT Act review process, being conducted by the Department of Health, is not independent and lacks transparency.
2. Persons being brought into the rehabilitation scheme are subject to powers which can be exercised arbitrarily and effectively in an unfettered and regulated fashion.

[33] *Australia's Future Tax System*, Recommendation E5, accessed at http://taxreview.treasury.gov.au/content/FinalReport.aspx?doc=html/Publications/Papers/Final_Report_Part_2/Chapter_e5.htm

[34] Accessed at http://digitallibrary.health.nt.gov.au/prodjspui/bitstream/10137/1226/1/Alcohol%20Mandatory%20Treatment%20Evaluation%20Report.pdf

[35] "Alcohol Mandatory Treatment Bill: legal services respond" (28 May 2013), accessed at http://clant.org.au/index.php/news/59-alcohol-mandatory-treatment-bill-legal-services-respond

[36] http://clant.org.au/images/images/AMT_submission_Feb_2014.pdf

3. The assessment process is a vehicle for injustice and can result in a person being deprived of their liberty with no effective judicial oversight.
4. Persons are appearing before the Tribunal without representation and are being denied natural justice and therefore unable to participate fully in the decision making process which can deprive them of their liberty.
5. Criminal sanctions attaching to the program operate counter-therapeutically and serve to undermine the purposes of the AMT Act.

The *Alcohol Mandatory Treatment Act* (NT) operated for four years. It was an expensive failure. As the Evaluation found:

> there was no statistically significant difference between people who had had a Mandatory Residential Treatment Order and no treatment in terms of Emergency Department presentations and hospital admissions. Most were re-apprehended by NT Police multiple times, entering custody from homelessness and ending up homeless again.[37]

The Evaluation found that the average cost per client in administering the program was $53,915, more than three times the cost of comparable voluntary treatment.[38]

The program expressly excluded persons charged with an offence from participating. It was not a diversionary program designed to keep offenders out of custody, but a "civil commitment" program designed to keep *non*-offenders *in* custody (albeit, for their own good). Accordingly, it is questionable whether it was effective in reducing alcohol-related offending. Participants were incapacitated from such offending while being detained for treatment, but following treatment they generally returned home and resumed their drinking: "The Evaluation Team found that a high percentage of participants cycle in and out of the AMT system."[39]

Based on the experience of the *Alcohol Mandatory Treatment Act* (NT), CLANT is opposed to alcohol mandatory treatment, which has not been shown to contribute to a reduction of alcohol-related offending.

Banned Drinkers Register:

There is as yet little direct evidence that the Northern Territory Banned Drinkers Register reduced alcohol-related offending, because the 2011 Register (BDR1) was abolished after 12 months immediately following the NT election in September 2012. No evaluation of BDR1 was conducted. CLANT welcomes the announcement by the NT Government on 26 August 2017 that BDR2 will be evaluated.[40] However, there is indirect evidence that BDR1 was effective in reducing alcohol-related offending. When it was abolished, monthly alcohol-attributed ED presentations to the Alice Springs Hospital more than doubled over the next

[37] Supra, n. 34, p iii. See also p 47ff
[38] Supra, n. 34, pp 68-69
[39] Supra, n. 34, p iii
[40] Natasha Fyles, Minister for Health, "Making Our Community Safer: BDR Evaluation" (26 August 2017), accessed at http://newsroom.nt.gov.au/mediaRelease/23595

six months, from 160 to over 360.[41] CLANT members in Alice Springs reported a disturbing spike in offences of serious violence during this period. For example, in one such matter, four Aboriginal men were each sentenced to 16 years imprisonment for a manslaughter they had jointly committed on 18 February 2013 in Alice Springs.[42] The prosecution brief contained statutory declarations from 28 civilian witnesses, each of whom described purchasing and drinking copious quantities of takeaway alcohol on the day of the homicide.

This spate of alcohol-fuelled violence was only stemmed when, in about May 2013, police stepped up TBLs, the effect of which was to prevent or at least seriously limit access to takeaway alcohol to drinkers who had previously been on the BDR, and indeed, to the bulk of drinkers who either lived in town camps or were visiting Alice Springs from bush communities.

Insofar as TBLs are concerned, CLANT's *Submission to House of Representatives Standing Committee on Indigenous Affairs Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities* included the following observations:

> [TBLs are] the ubiquitous and conspicuous police patrols outside takeaway outlets, tasked to enforce the prescribed patchwork of restrictions which blanket, in a specially measured way, Aboriginal drinkers. Police are entitled, and indeed required, to enforce this discriminatory prohibition regime. Their presence at bottle shops is no doubt expensive, and by many resented, but it seems to have been effective: the apparent increase in drinking levels immediately following the abolition of the BDR on 1 September 2012 was succeeded by a modest but welcome reduction in consumption, particularly in Alice, Tennant and Katherine, as compared to Darwin and Palmerston, where the bottle shop patrols… do not operate.
>
> In this jurisdiction, where the havoc wreaked by alcohol is so appalling, there is at least a prima facie case to support any measure which brings drinking down. But even if it is ultimately shown to be effective, CLANT questions whether this sort of racially discriminatory approach (assuming it can be justified as a special measure) is really in the best interest of our community as a whole, and whether it can really be characterised as "best practice".
>
> The TBLs appear to be founded on a broad construction by police of their powers conferred by the *Liquor Act* (NT) under the following provisions:
>
> - s95 (in relation to general restricted areas)
> - s101AB (in relation to public restricted areas)
> - s101M (in relation to restricted premises)
> - s101AN (in relation to special restricted areas)
> - s101Y (in relation to a regulated place)

[41] Russell Goldflam, "Alcohol Regulation and Crime, Family Violence" (Conference paper, 2016), *Australian Institute for Judicial Administration*, p 8, accessed at https://aija.org.au/wp-content/uploads/2017/06/Goldflam.pdf

[42] *R v Kasman Andy, Lawrence Collin, Christopher Daniel and Mervyn Wilson* (Southwood J, Sentencing remarks in Supreme Court Northern Territory at Alice Springs, 20 March 2015)

Between them, the above categories incorporate:

- o town camps
- o public places in Alice Springs and other declared "dry towns"
- o private homes which have been declared "dry"

The powers conferred by each of these provisions is expressed in similar terms, along the following lines:

> If a police officer believes on reasonable grounds that a relevant offence has been, is being, or is likely to be, committed by a person in a [insert the type of restricted area], the officer may, without a warrant, search the person and seize any opened or unopened container in the area that the officer has reason to believe contains liquor. A police officer who seizes a container may immediately empty the container if it is opened or destroy the container (including the liquor in it) if it is unopened.

Police are certainly entitled to ask people entering or leaving licensed premises where they are planning to take and drink the alcohol they are intending to buy or have bought. Indeed, anyone has the right to make such an inquiry. On the other hand, no-one is by law obliged to respond to such an inquiry. However, it is highly likely just about everyone who is asked does give an answer, and that answer may in turn give rise to a reasonable suspicion that an offence is likely to be committed, which in turn provides a trigger for the exercise of the search and seizure powers referred to above. [Footnotes and citations omitted][43]

With the commencement of BDR2 on 1 September 2017, CLANT looks forward to the phasing out of TBLs (or, as they are now known, POSIs), but only if and when it can be demonstrated that BDR2 has become truly effective in restricting harmful drinkers from accessing takeaway alcohol.

POSIs could be modified to retain their effectiveness while addressing the concerns outlined above by adopting the following measures:

- Amend the *Liquor Act* (NT) to provide a secure legal footing for the conduct of POSIs by Liquor Inspectors
- Assign the task of conducting POSIs to Liquor Inspectors instead of police
- When conducting POSIs, challenge all customers, in a non-racially discriminatory manner
- Increase liquor licensing fees to fully fund the operation of POSIs

[43] Accessed at http://clant.org.au/images/images/APH_submission_April_2014.pdf and downloadable from http://www.aph.gov.au/Parliamentary_Business/Committees/House/Indigenous_Affairs/Alcohol/Submissions

Female offenders

Although statistics continually show that the overwhelming majority of perpetrators of violence are male, the proportion of female defendants is also not insignificant, particularly where it involves ATSI women. Indeed, in 2010 the Australian Institute of Criminology analysed 2005 data from Western Australia and found that Indigenous females were at least 35 times more likely than non-Indigenous women to be charged with a violent offence (predominantly being assault offences). This can be juxtaposed with Indigenous males being 17 times more likely of being charged with violent offences compared to non-Indigenous males. Furthermore, the rate for Indigenous females was five times higher than for non-Indigenous males. Although this was Western Australian data, other studies from other jurisdictions show similar patterns of imbalance across the country.

The number of Indigenous female offenders and defendants is growing. However, the infrastructure of the criminal justice system is ill-equipped to deal with this. It is an established fact, and commented upon by the judiciary, that there is acute overcrowding in the female sections of the Northern Territory jails, particularly Alice Springs. This has compromised the availability of education programs due to lack of space. It has also led to unrest within the prison population, including recent reports of women inmates fighting over scarce basic necessities such as undergarments.

In terms of community-based sentencing options for Indigenous women, the options are also limited. Of the two available alcohol residential rehabilitation facilities in Alice Springs, one no longer provides accommodation for females. A special counselling program designed for violent female offenders in Alice Springs, the Kungkas Stopping Violence program, has had success but its funding is uncertain and its scope at this stage is small.

For reform to work in the area of ATSI female offenders in the criminal justice system, CLANT submits there must be recognition that a large majority of these female offenders are themselves victims of crime – predominantly violent and sexual crime. Legal practitioners can attest to this being a common sentencing submission.

The Northern Territory courts have been willing to find “exceptional circumstances” apply to otherwise mandatory sentencing matters where the offender is a female chronic victim of intimate partner violence, particularly where she is to be sentenced for assaulting that same partner. Repeal of mandatory sentencing provisions would obviate the need establish a background of abuse to the high standard of “exceptional circumstances”, but could instead allow for that material to be presented generally as mitigation.

Presently, the Northern Territory contains no diversionary programs for adult offenders. Acknowledgment of the victim status of many female offenders, and identifying potential test case vehicles, could assist in developing a model for diversion that is similar to that

provided for youth diversion (a restorative justice model) but which also focuses on counselling.

Aboriginal justice agreements

CLANT is a member of the Making Justice Work Coalition, which campaigned for the establishment of an Aboriginal Justice Agreement for the NT in the lead-up to the 2016 NT election. CLANT welcomes the establishment by the NT Government of the Aboriginal Justice Unit, and CLANT members have been actively involved in the Northern Territory Aboriginal Justice Committee Reference Committee. Accordingly, CLANT strongly endorses Proposal 10–1 in DP 84.

CLANT is seriously concerned about the Northern Territory's lengthy and egregious history of human rights abuses, as recently exemplified by the matters leading to the establishment of the Royal Commission into the Protection and Detention of Children in the Northern Territory ("RCNT"). Accordingly, CLANT, through its involvement with the development of the NT Aboriginal Justice Agreement, supports a human rights based approach to this project, and has encouraged the Aboriginal Justice Unit to develop a model based on initiatives such as the *Charter of Human Rights and Responsibilities Act* (Vic.).

CLANT President Russell Goldflam called for justice targets as part of Close the Gap in his Statement to the RCNT dated 24 November 2016,[44] and CLANT would welcome this measure, which it is noted has been the subject of extensive consideration and discussion for many years.

In June 2016, the NT Government's Aboriginal Affairs Monitoring, Evaluation and Reporting Framework proposed four justice targets:[45]

1. To reduce incarceration rates of adults by 50 per cent by 2030
2. To reduce the incarceration rate of juveniles by 50 per cent by 2030
3. To reduce prisoner recidivism by 50 per cent by 2030
4. To reduce by 10 per cent per annum victim-based crime offences against the person or property per 100,000 population, respectively

CLANT considers that measures such as these are appropriate, but has serious concerns that the identified targets are unrealistic. Moreover, the NT Office of Aboriginal Affairs, which published the Framework undesignated by either date or author, did not do so in conjunction with a Plan that identified any of the strategies, principles, measures, methods, agencies or resources that would be required to enable these targets to be reached or even approached.

[44] Paragraph 47(m), accessed at http://clant.org.au/images/images/RG_statement_241116.pdf
[45] Pages 6-7, accessed at https://dlgcs.nt.gov.au/interpreting/?a=228592

Given the change of government that has been effected since June 2016, it may well be that the NT Government is no longer committed to the Framework (if indeed it ever was). However, CLANT cautions against the setting of justice targets unless they are supported by appropriate consultation, commitment, planning, resources and funding.

Access to justice issues

Availability and access to Aboriginal and Torres Strait Islander legal services is a perennial issue. The remoteness of many Indigenous communities, which service a large portion of Aboriginal legal aid clients, is a stark factor. Distance to regular legal assistance, the infrequency of circuit courts, the lack of interpreters, the rushed and chaotic nature of circuit court sittings, and the inappropriateness of these settings to deal with serious charges – all compound the disadvantage faced by ATSI people.

The most direct way to address these issues is to provide greater resourcing to Aboriginal Legal Aid services. Doing this would enable, for example, more lawyers to visit remote communities more frequently – outside of court sitting periods so that client instructions and legal advice can be generated at a more considered pace than under the time pressures of a sitting court. This would also allow circuit courts to be run more efficiently, as presently a lot of sitting time is taken up by the court adjourning while duty lawyers rush to get instructions.

Another important initiative would be to further develop interpreter services for Aboriginal and Torres Strait Islander clients. A significant number of interpreters in the Northern Territory are not trained at a high level and have limited superior court experience. Investment in work conditions and remuneration would also improve interpreter numbers and reliability – both of which are traditionally problematic.

Justice reinvestment

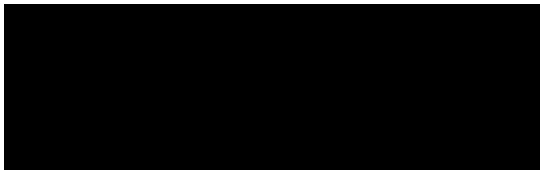
There is no single accepted definition of justice reinvestment. Whilst it is more commonly thought of as a policy of re-directing money from incarceration to prevention strategies and early diversion, it should also be recognized that there is an obvious economic case to be made for more resources to be made available for programs and supports for those offenders eligible for community based orders, either at the bail or sentencing stage, as an alternative to incarceration.

CLANT submits that the *Sentencing Act* (NT) and *Bail Act* (NT) equip judges with the discretion to place participants on community based orders as an alternative to prison (with the obvious exception of mandatory sentencing for violent offences, breaches of domestic

violence orders, property offences and drug offences). It is also CLANT's experience that the judicial appetite exists in the Northern Territory to utilize these programs where available. Some of the existing programs in the NT are very highly regarded.[46] The obstacle in the Northern Territory (in addition to mandatory sentencing and presumption against bail provisions) is the lack of programs.

A justice reinvestment program modelled on the Maranguka Justice Reinvestment Project in Bourke is currently being developed in Katherine. Like the Bourke project, it is being developed by the community for the community. The project will evolve organically from the "bottom up". What it needs, at this early stage, is government funding and support, not laws or legal frameworks. Funding aside, the primary barrier to the project commencing has been an unwillingness by certain Northern Territory government departments to release information for data collection, which is a vital first stage for any justice reinvestment project. Whilst this could be a possible focus for a legal framework, the same result could equally be facilitated by policy directives.

Russell Goldflam



PRESIDENT

On behalf of CLANT Committee members who compiled this Submission

11 September 2017

[46] See for example, Bushmob (http://www.bushmob.com.au)