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Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
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Australia

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15 March 2013

Dear Committee Secretary,

## **Value of a justice reinvestment approach to criminal justice in Australia**

The North Australian Aboriginal Justice Agency (NAAJA) makes this submission to the Senate Legal and Constitutional Affairs Committee to highlight the value that justice reinvestment approaches could have in addressing imprisonment rates in the Northern Territory, and in particular the over-representation of Aboriginal people in custody.

This submission is made in addition to a submission we have made as part of the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) and highlights some specific matters of particular relevance to the Northern Territory.

### Drivers behind the past 30 years of growth in the Australian imprisonment rate

The most recent 'Prisoners in Australia' report by the Australian Bureau of Statistics indicates that between 2002 – 2012, NT prisoner numbers increased by 72% - from 480 people per 100,000 to 826 per 100,000. We currently have 1422 people in our prisons and 57 young people in our detention centres (as at 7 March 2013). We lock up 5 times as much of our population as anywhere else. Last year alone our imprisonment rate grew 12%.

The new Darwin Prison, due to open in 2014, has capacity to house 1000 prisoners, and is being built at a cost of \$495 million. The Commissioner of the Department of Correctional Services, Mr Ken Middlebrook, said at a forum on 22 February 2013 that on current projections, the new prison will be 83 beds short when it opens its doors. He also said that,

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based on current projections, the NT will need another 1000 bed prison by December 2016.

We also **attach** ('Attachment A') a document produced by the Northern Territory Department of Correctional Services (NTDCS). NTDCS have approved us providing this document to the Committee, but have noted that the projections have been made for internal NTDCS purposes only. NTDCS further note that the model is a simplistic one, based on the average growth rate of NT prisoner numbers over the past 3 years and assumes that this growth rate will continue into the future. The model does not take into account increased police numbers, population growth or legislative change or court sentencing practices.

Despite the limitations to the figures behind the graphs, the picture it paints can only be described as alarming and underline the urgency of developing and implementing justice reinvestment strategies in the NT.

There is no single factor that has caused this explosion of prisoner numbers in the NT. We concur with the factors highlighted in the NATSILS submission and wish to specifically raise:

1. The under-investment in alternatives to imprisonment. For example, the NT does not have readily accessible community work or community-based rehabilitative programs. Community work might be available in some urban locations, but is generally not available in others (especially regional and remote areas);
2. The culture of incarceration in the NT, where imprisonment is frequently used for short, sharp sentences, and is not a disposition of last resort. This has several causal factors, such as:
  - (a) mandatory sentencing provisions, which apply across violent, property, drug, sex, and breach domestic violence order offences (and which are soon to be expanded for violent offences),
  - (b) other legislative restrictions that exclude certain types of offenders from being able to be sentenced to particular non-custodial options. For example, violent offenders cannot be sentenced to Community Based Orders or Community Custody Orders;
3. A third factor relates to the post-colonial context in which the NT criminal justice system operates. The justice system is failing Aboriginal people. One of the reasons for this is that many Aboriginal people do not feel that the system reflects their world view, their reality. The 2007 'Little Children are Sacred' report pointed out that:

As well as many Aboriginal people not understanding the "mainstream" world view, it was a common theme of the Inquiry's consultations that many Aboriginal people thought that the "mainstream" world failed to understand their 'world view'.<sup>1</sup>

In 2009, the Commonwealth and all State and Territory governments including the NT government endorsed the National Indigenous Law and Justice Framework

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<sup>1</sup> Pat Anderson & Rex Wild *Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse - AmpeAkeleyernemaneMekemekarle ('Little Children are Sacred')* (2007) 51.

(NILJF)<sup>2</sup>, an attempt by all Australian governments, service providers and other relevant stakeholders to 'close the gap' in relation to law and justice outcomes for Aboriginal people. Four years on, the NILJF remains an excellent, but unimplemented document because there is no positive obligation on states and territories to comply with the framework.

It is time that we genuinely take on board the primary message of report after report. That is, if we want to address the causes of Aboriginal over-incarceration, Aboriginal people must be front and centre when it comes to developing and implementing solutions. As was pointed out in the Final Report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC):

If there is one lesson we can learn from history, it is that solutions imposed from the outside will only create their own problems. The issue of giving back to Aboriginal people the power to control their own lives is therefore central to any strategies which are designed to address these underlying issues.

If this Committee recommends the development of Justice Reinvestment strategies and policies in the Northern Territory, Aboriginal people in the Northern Territory must be in the driver's seat when it comes to designing and implementing these strategies and policies.

### Justice Reinvestment in the Northern Territory context

NAAJA supports justice reinvestment as an important strategy to address the over-incarceration of Aboriginal people. NAAJA is a member of the 'Making Justice Work' coalition of legal and other organisations. We attach a copy of the Making Justice Work Principles and an opinion piece that we wrote in August 2012 for the information of the Committee.

We also wish to highlight five specific examples of the types of justice reinvestment strategies that are needed in the NT. We wish to emphasise our strong view that for justice reinvestment to be effective, it must embrace the culturally specific needs of Aboriginal people in the local context in which it is implemented.

#### 1. NAAJA's Indigenous Throughcare Project

In February 2010, NAAJA received funding from the Commonwealth Government to commence an Indigenous Throughcare Project. The Project provides intensive pre and post release rehabilitation and reintegration services for Aboriginal prisoners. As an Aboriginal organisation, we place the utmost importance on providing culturally relevant case management services to our clients. We utilise a strength-based approach to assist prisoners to address their diverse transitional needs including rehabilitation, accommodation, employment, education, training, health, life skills, reconnection to family and community and social connectedness.

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<sup>2</sup> See National Indigenous Law and Justice Framework at <[http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(8AB0BDE05570AAD0EF9C283AA8F533E3\)-IPS++National+Indigenous+Law+and+Justice+Framework+-+NILJF+-+FINAL+-+Word+version.DOC/\\$file/IPS+-+National+Indigenous+Law+and+Justice+Framework+-+NILJF+-+FINAL+-+Word+version.DOC](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(8AB0BDE05570AAD0EF9C283AA8F533E3)-IPS++National+Indigenous+Law+and+Justice+Framework+-+NILJF+-+FINAL+-+Word+version.DOC/$file/IPS+-+National+Indigenous+Law+and+Justice+Framework+-+NILJF+-+FINAL+-+Word+version.DOC)>

The goal of the Project is to enable our clients to succeed upon their return to their community and reduce repeat offending. We have four caseworkers, who each have a maximum caseload of 15 clients (less for the Project Coordinator). Small caseloads ensure clients are provided with an appropriate level of support. We find ourselves an integral parts of our client's lives, assisting in family negotiations and support, client/service provider interactions and mentoring roles. Strong relationships of trust mean that where things do go wrong, our clients see us as a safe place to seek help before it's too late.

In 2012, we received a National Certificate of Merit as part of the 2012 National Crime and Violence Prevention Awards.

We were also profiled at page 117 of the Prime Minister's 2013 Closing the Gap report: [http://www.fahcsia.gov.au/sites/default/files/documents/02\\_2013/00313-ctg-report\\_fa1.pdf](http://www.fahcsia.gov.au/sites/default/files/documents/02_2013/00313-ctg-report_fa1.pdf)

It is still very early days to assess the impact of the Project. However initial signs are promising. Between February 2010 and February 2012, only 13% of clients who were being case managed as part of the Project were returned to prison. This is significantly less than recidivism rates in the NT, which are well above 40%.

## 2. Lajamanu

Law and Justice Groups are an example of Aboriginal community-driven responses to justice issues. They empower local community Elders to participate in the criminal justice system, enhance traditional authority structures and work to resolve conflicts that arise in the community.

Law and Justice Groups are not a new concept and were previously funded in three communities by the NT Government. In 2001, a Kurduju Committee comprising representatives from Ali-Curung, Lajamanu and Yuendumu said:

Our message is simple. No fancy programs and no big expenditure items. As we have said throughout this report, the Kardia (non-Aboriginal) way for addressing these issues does not work for us and it is time communities received assistance, encouragement and practical support in developing and implementing community based initiatives.<sup>3</sup>

Sadly, the NT Government de-funded Law and Justice Groups, stifling what had the potential to be an enormously beneficial local justice initiative.

Since 2010, NAAJA has been supporting the Lajamanu Community to re-establish their Law and Justice Group (Kurdiji). We have been doing this with no external funding. The Kurdiji have predominantly been engaged in pre-court conferencing, preparing letters to the court in relation to individual defendants as part of sentencing, and assisting with community legal education.

The letters inform the court of the surrounding family, background, work, contributions to the community, cultural issues for those defendants, as well as providing the community's views on what may be an appropriate punishment.

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<sup>3</sup> The Combined Communities of Ali-Curung, Lajamanu and Yuendumu Law and Justice Committees, *Kurduju Committee Report*, Volume 1, December 2001, Chairperson's Foreword.

NAAJA has also partnered with the NT Community Justice Centre (CJC), who previously delivered mediation training to Lajamanu Elders. We are now helping these Elders towards national mediation accreditation. It is hoped that in the future, Elders will be able to accept referrals to undertake local mediation sessions, court-ordered mediation, family group conferences and youth justice conferences. Kurdiji could also have an expanded role that could include conflict resolution but also community-based supervision to help get offenders back on the right track.

The Kurdiji has enormous potential to unlock justice reinvestment outcomes in Lajamanu. It is only when Elders and community leaders have a meaningful stake in justice processes that responses to get to the underlying causes of offending will be possible.

As a first step, dedicated resources must be made available to support the operation of Law and Justice Groups such as the Kurdiji.

### 3. Tiwi Islands

In 2009, NAAJA ran a 12-month project with the NT CJC to enhance the skills of local Tiwi Island mediators. It was hoped that the project would improve access to mediation in the Tiwi Islands by creating the framework for a sustainable local mediation service.

The model seeks to unify traditional Tiwi dispute resolution processes with contemporary Western mediation practices. The most notable feature of the Ponki (Peace in Tiwi) Mediation approach is the emphasis placed on skin groups. The Ponki mediators include representatives from all of the four Tiwi skin groups. The appropriate mediators in a particular matter will vary according to the skin groups of the parties to a particular dispute. The skin group approach to mediation in the Tiwi Islands enables the Ponki (Peace in Tiwi) Mediation to work in a culturally safe, culturally relevant process consistent with traditional Tiwi dispute resolution practices.

Since 2009, mediators have received ongoing training and support from the CJC. They currently mediate local disputes as well as in the CJC's Correctional Centre conferencing program, where families of a victim and offender are provided with an opportunity to attend mediation with the offender at Darwin Correctional Centre prior to their release<sup>4</sup>.

NAAJA has also been working with the Tiwi Ponki mediators to write reference letters for the Court. In a recent sentencing matter on 9 January 2013 (sentencing transcript can be provided upon request), Supreme Court Justice Mildren highlighted the importance of the letters in terms of putting relevant cultural background information before the court:

Actually, you can convey to them that I was impressed by the way in which the report has been written in a number of respects, Firstly, it is informative, it is concise and to the point... I think it is a very impressive effort.

We need to turn the power dynamics of the justice system on its head and put Aboriginal people front and centre when it comes to developing and implementing solutions. At

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<sup>4</sup> See also Radio National Law Report 19 July 2011, 'Ponki Mediation' (last accessed 12 March 2013): <http://www.abc.net.au/radionational/programs/lawreport/ponki-mediation/2924532>

present the Ponki mediators are reliant on the in-kind support of agencies such as the CJC and NAAJA.

If justice reinvestment is to be considered in the Tiwi Islands context, the justice system needs to create the space for the Ponki mediators to design interventions that will benefit Tiwi Islands people. Reference letters and mediations are examples of the exciting bi-cultural responses that are possible.

#### 4. Gunbalanya

In 2012, NAAJA and the CJC received funding from the Healing Foundation to deliver mediation training in several NT locations, including the remote community, Gunbalanya. Training focussed on preparing for, and how to conduct mediations. Participants considered who the right people to come to mediation were, who the right mediators for a dispute were and what would be a suitable neutral place for a mediation to be held.

Our trainers sought to ensure that the training recognised the value of local knowledge and ways of responding to conflict. The involvement of three senior Elders was essential to this. The senior women were regularly consulted about the proper Bininj ways of sorting out disputes. One participant observed after the training, 'I learnt both ways – Bininj and Balanda [non-Aboriginal people]. I learnt how Balanda mediate their way and how Bininj mediate our way.'

During the training, participants from one family made reference to an ongoing inter-community dispute. There had last been a violent confrontation between two young men from two of the communities over 12 months ago. This dispute has resulted in members of one of the families directly involved having to leave their community and live at their outstation. The dispute is well known to local police and other organisations.

By the end of the training, participants had begun to formulate a plan of how this mediation could be designed. This included identifying senior people who could play a neutral role and bring the families to together to discuss the dispute; determining the order to speak to the different families involved and who should speak with them; and using discussions about mediation as a way of getting the families think about how to resolve their own dispute. In the words of one of the participants, 'we can talk to them about what we have been doing and what we have learnt and then this might give them ideas for what to do.'

Participants also spoke about forming a mediation group. Participants expressed the strong desire to resolve disputes between Bininj people, without having to resort to police or other non-Aboriginal outsiders.

From a justice reinvestment point of view, a Gunbalanya mediation group has enormous potential as a culturally responsive, early intervention justice strategy. With the right senior people mediating disputes, external agencies such as police would not need to be involved and problems dealt with before they escalate. What is again needed is the resources and commitment to support local initiatives such as this to develop in the way that the Elders and their community see as appropriate.

#### 5. Bail Support

On 31 January 2013, 42 of 65 juvenile detainees in the Northern Territory were on remand. Of the total number in custody, 62 were Aboriginal.<sup>5</sup> On 7 March 2013, 21 of the 39 young people in Don Dale Detention Centre were on remand. This is over 50%. In relation to adults, approximately one quarter of 1500 people in custody are on remand.

As a justice reinvestment strategy, more must be done to reduce the number of Aboriginal people, especially young people remanded in custody. Exposing defendants to the negative impacts of incarceration should be done only when all other alternatives have been exhausted. In the NT, however the courts are frequently put in the situation where they have no alternatives to custody, because there are so few community-based bail options.

The WA Supervised Bail Program is an example of a justice reinvestment approach to bail and remand. The WA Department of Corrective Services employs bail coordinators at the Children's Court and Rangeview Remand Centre to help locate responsible adults, and those who can also act as a responsible adult when no one else can be found. They provide specialist workers to supervise a young person on bail.

Similar approaches are also operating in regional and remote areas of Western Australia. At the behest of the Geraldton community, in 2007 the Western Australian Government redirected funding earmarked for the construction and operation of a youth remand centre to a range of alternative approaches to dealing with young offenders.

A regional adaptation of the Supervised Bail Program was amongst the alternative approaches adopted, along with an extended hours family support services, emergency short stay accommodation for young people granted bail and expanded juvenile justice teams, skilled in family conferencing and other early intervention strategies.

The Geraldton Regional Youth Justice Service is supported and monitored by a local community reference group made up of people from youth serving agencies as well as local residents and business people.

In 2010-11, 53 young people from the Geraldton area accessed the Youth Bail Options service, spending an average of four days in supported accommodation. Of these young people, approximately 90% were indigenous. The Youth Bail Options Programs operating in Armadale and Kalgoorlie report similar rates of Indigenous participation.

Across Western Australia, more than 600 young people are diverted from custody each year as a result of these bail initiatives. A similar program is urgently needed across a range of locations in the Northern Territory.

Thank you for the opportunity to make this submission and please do not hesitate to contact me should you require any further information.

Yours faithfully,

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<sup>5</sup> Statistics were provided by Margaret Anderson, Executive Director of the NT Youth Justice Unit at a consultation on 22 February 2013.

**Priscilla Collins**  
**Chief Executive Officer**