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15 March 2013

Dear Sir/Madam

CAAFLUAC Submission- Value of a Justice Reinvestment Approach to Criminal Justice in Australia

CAAFLUAC (Central Australian Aboriginal Family Legal Unit Aboriginal Corporation) is a family violence legal prevention service funded by the Commonwealth Attorney – General's Department.

We provide family violence legal and related services to Indigenous victims of family violence in Central Australia at Alice Springs, Ntaria, Papunya, Yuendumu, Tennant Creek and Elliot. We enclose by way of background a copy of our service profile (*).

A Justice Reinvestment Approach to Indigenous Family Violence

This submission will focus on the application of the justice reinvestment approach to the issue of Indigenous family violence in Central Australia. Particular attention will be given to term of reference (d) "the cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures".

CAAFLUAC gives in principle support to a justice reinvestment approach to the criminal justice system. This support is subject to a number of concerns outlined below relating to its application to Indigenous offenders, Indigenous communities and the issue of Indigenous family violence.

We submit that Indigenous family violence is a very significant issue within the criminal justice system in Central Australia and should be a key focus of any justice reinvestment led reforms to the criminal justice system. The Northern Territory has the highest family violence victimisation rates in Australia. Indigenous women are 45 times more likely than non-Indigenous women to be victims of domestic violence and Indigenous family violence is twice as likely to escalate to homicide.¹ In 2009 Indigenous people were 34 times more likely to be hospitalised as a result of spouse or partner violence than non-Indigenous people.²

¹ Australia's Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Chapter 4.11 Family and community violence (<http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009/>).

² Ibid.



The Value of a Justice Reinvestment Approach to Indigenous Family Violence

Justice reinvestment diverts government money that would have been spent on imprisonment to communities that have a high concentration of offenders.³ The money is invested in community based programs and activities that target the underlying causes of crime and recidivism.⁴

We submit that a justice reinvestment approach is particularly suited to tackling the issue of Indigenous family violence because of its focus on (1) community based initiatives, (2) community disadvantage, (3) preventative and therapeutic programs and (4) its potential benefit to victims of family violence.

Given this compatibility, we support the diversion of funds into prevention, early intervention, diversionary and rehabilitation programs that target Indigenous family violence. We note however that, in this cost cutting environment, "generalised statements advocating the need for justice reinvestment" must not become a cover for disinvestment in prison and post-release services.⁵

1. Community-based Initiatives

The Justice Reinvestment approach diverts government money that would have been spent on imprisonment to communities that have a high concentration of offenders.⁶ Many Indigenous communities in Central Australia have a high concentration of offenders. For example, in 2007-08 72 adults from the remote Central Australian community of Papunya were serving time in Northern Territory prisons, of a total population of 379 (where 71 people are under the age of 14).⁷

We submit that justice reinvestment initiatives should be directed towards remote Indigenous communities and locations with high Indigenous populations because of the over-representation of Indigenous people in the criminal justice system.⁸ Such initiatives should include prevention, early intervention, diversionary and rehabilitation programs that are tailored to suit the specific needs of the each community.

The community-based aspect of the justice reinvestment approach is highlighted by Melanie Schwartz who asserts that "justice reinvestment can provide support for remote communities in the development and growth of initiatives that are most relevant to crime reduction in their cultural and geographic context".⁹ We submit that a targeted, community-based approach is well suited to addressing family violence issues in Indigenous communities because it allows for the varying circumstances of disadvantage and unique culture of each community to be taken into account.

³ Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Justice Reinvestment: a new strategy to address family violence', *National Family Violence Prevention Forum AIATSIS and CDFVR*, 19th May 2010; Melanie Schwartz, 'Building Communities, Not Prisons: Justice Reinvestment and Indigenous over-imprisonment', *Australian Indigenous Law Review*, 14(1) 2010, pg 2.

⁴ *Ibid.*

⁵ David Brown, Melanie Schwartz and Laura Boseley, 'The Promise of Justice Reinvestment', *Alternative Law Journal*, 37(2) 2012, pg 101.

⁶ Gooda above n 3; Schwartz above n 3.

⁷ Schwartz above n 3, pg 4.

⁸ Brown above n 5, pg 100.

⁹ Schwartz above n 3, pg 10.

2. Community Disadvantage

According to the justice reinvestment approach, the money that is diverted into communities with high concentration of offenders is invested in community based programs and activities that target the underlying causes of crime and recidivism.¹⁰ Social and economic disadvantage in a community promotes dysfunctional behaviour and is one of the underlying causes of crime and recidivism.

Indigenous people in Central Australia are amongst the most socially and economically disadvantaged in Australia. A persons' housing circumstance is a key determinant of their social, economic and health outcomes. There is a chronic public housing shortage in Central Australia. In Alice Springs the waiting list time for a 1 bedroom house was 55 months as at 12 February 2013.¹¹ In Tennant Creek the waiting list time for a 2 bedroom house was 74 months in November 2012.¹²

We support a justice reinvestment approach that aims to alleviate community disadvantage and strengthen community capacity by investing in housing, education, health services and preventative programs.¹³ The strengthening of a community can prevent offending in the first place and also lessen the chance that an offender will reoffend because they have been released into a supportive community with positive opportunities for the future.¹⁴

3. Preventative and Therapeutic Programs

In the Northern Territory over 99 per cent of incarcerated offenders return to the prison system within 2 years of being released.¹⁵ Punitive measures have proven to be ineffective at rehabilitating offenders or creating safer communities. It is in fact quite the opposite, "incarcerating or otherwise detaining a large proportion of a population weakens the community, and creates the conditions for further crime".¹⁶ The justice reinvestment model moves away from this punitive approach to criminal justice.

We believe that early-stage prevention initiatives and community legal education are better ways of approaching the issue of family violence, and that more resources should be put into these projects. Such initiatives include the Rekindling the Spirit Program, which empowers local community members to facilitate group therapy sessions addressing violent, abusive and negative behaviour, encouraging participants to take responsibility without blaming. The Indigenous Family Violence Offenders Program is a further example of a culturally appropriate response to this behaviour.

4. Beneficial to victims of family violence

It is the view of CAAFLUAC that most clients would not unequivocally want an offender to be incarcerated; rather, that the preference would be for lasting behavioural changes to be made.

¹⁰ Gooda above n 3; Schwartz above n 3, pg 2.

¹¹ Information provided by David Havercroft, Central Australian Police Officer, NT Shelter Inc.

¹² NT Shelter Inc, *Housing Fact Sheets*, February 2013, pg 18.

¹³ Schwartz above n 3, pg 9-10.

¹⁴ Ibid.

¹⁵ Mr Phil Tilbrook, Prison Officers' Association, from 'New program aims to break prison cycle', ABC news, 27 July 2012, (<http://www.abc.net.au/news/2012-07-27/new-program-aims-to-break-prison-cycle/4160682>).

¹⁶ Gooda above n 3.

Melanie Schwartz advocates for this view stating that victims want “intervention strategies that stop violence but leave families intact and promote family and community healing”.¹⁷

A justice reinvestment approach should be used to place a greater emphasis on family violence prevention and early intervention programs. Such programs may include Indigenous healing programs, Indigenous Family Violence Offender Programs, drug and alcohol programs and community legal education programs. Funds should also be diverted to culturally appropriate victim support services for victims of family violence.¹⁸ This approach to the issue of Indigenous family violence would be beneficial to victims because it promotes healing and helps to prevent reoffending.

Concerns: the application of the justice reinvestment approach to Indigenous communities, Indigenous offenders and victims of family violence

1. Cultural appropriateness

We submit that to successfully implement prevention, early intervention, diversionary and rehabilitation programs in Indigenous communities and/or for Indigenous offenders they must be culturally appropriate. The cultural appropriateness of a program needs to be continually assessed throughout all stages of the implementation process. This can be achieved through community consultation, incorporation of Indigenous representation, community participation and the employment of Indigenous staff (all discussed below).

A key aspect of the justice reinvestment approach is the identification of the causes of crime and recidivism. Cultural factors are relevant to the understanding of the causes of crime and recidivism and also influence the effectiveness of possible solutions. If a justice reinvestment initiative is not culturally compatible people may feel excluded from accessing the program. They are also less likely to be willing to participate in a representative capacity or be employed as staff.

A justice reinvestment approach that involves implementing blanket programs across all high offending communities is not compatible with a culturally appropriate implementation process.

2. Community consultation and participation

As discussed above, the justice reinvestment approach has a community-based focus. This gives it the potential to be applied in a way that encourages community ownership of both the underlying problems and possible solutions to crime in their community. For justice reinvestment initiatives to be effective there must be genuine consultation and partnership with Indigenous people. The programs must not be imposed on the people by government or other agencies.¹⁹

Community consultation is crucial for any justice reinvestment initiative to be effective. The consultation process should be inclusive, engaging both men and women, and young and older people. Indigenous people in Central Australia commonly speak English as a second, third or even fourth language. This reality creates particular challenges for the reception and ultimate effectiveness of programs imported into those communities.

¹⁷ Schwartz above n 3, pg 12.

¹⁸ Ibid.

¹⁹ Gooda above n 3.

The key issue is effective communication. This is of fundamental and strategic importance and overarches any other factor in the development and delivery of programs. Skilled interpreters must be engaged from the outset to contextualize and account for the language and social circumstances of a target community or group. Failure to do so risks reduced effectiveness and the failure of initiatives.

3. Specialised Indigenous programs and Indigenous staff

We submit that it is essential to deliver programs that represent and reflect the Indigenous community they operate within. This requires appropriate incorporation of local Indigenous representation. Appropriate local Indigenous representation assists in creating two way communications to improve understandings, disseminate information and inform program implementation.

The employment of local Indigenous people who are appropriate for the position and who are recognised by their community as appropriate for the work duties undertaken is essential for effective implementation of programs. Specialised and local programs with appropriate Indigenous staff are preferred by Indigenous consumers. This is for reasons including receptiveness and responsiveness, cultural competency and more appropriate programs which leads to improved outcomes.

An implementation process that involves community consultation and the inclusion of Indigenous representation and Indigenous staff is consistent with a human rights approach. Article 23 of the *United Nations Declaration on the Rights of Indigenous Peoples* states that "Indigenous peoples have a right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions".

Conclusion

CAAFLUAC supports the implementation of a justice reinvestment approach to the criminal justice system that diverts funds into prevention, early intervention, diversionary and rehabilitation programs that target Indigenous family violence. For such programs to be effective they must:

1. be culturally appropriate, taking into account the unique culture and particular circumstances of disadvantage in each Indigenous community;
2. encourage community ownership through an inclusive community consultation process that engages skilled interpreters;
3. incorporate Indigenous representation and Indigenous staff; and
4. target social and economic disadvantage as an underlying cause of crime and recidivism.

Yours sincerely,
CAAFLUAC

Ms Phynea Clarke
CEO