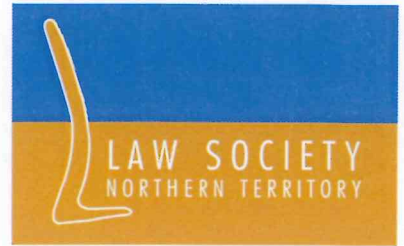


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24 March 2013

Senate Standing Committee on Legal and Constitutional Affairs  
Parliament House  
Canberra ACT 2600

Via email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Committee,

**Inquiry into the value of a justice reinvestment approach to criminal justice in Australia**

The Law Society Northern Territory (the Society) represents approximately 550 lawyers in the Northern Territory including Government and private lawyers and is the regulator of the legal profession of the Northern Territory. The mission of the Society is to enhance access to justice, improve the law and maintain individual rights. Importantly the Society is charged with considering proposed changes in the law and aiding such amendments and reforms thereof that are likely to benefit the public. In doing this the Society focuses on evidence based interventions and ensuring legal needs are addressed.

The Society welcomes the opportunity to comment on the Inquiry into the value of a justice reinvestment approach to criminal justice in Australia. The Society is constituent member of the Law Council of Australia and endorses the LCA submissions to this inquiry.

In summary the Society supports a justice reinvestment approach to criminal justice in Australia and believes that in the Northern Territory this approach is long overdue.

In developing this response the Society has conducted consultations with its Social Justice Committee which include representatives from Aboriginal and Torres Strait Islander Legal Services, Northern Territory Legal Aid Commission and the Criminal Lawyers Association of the Northern Territory.

The Society notes that this inquiry seeks to explore the following key issues:

- (a) the reasons behind the past 30 years of growth in the Australian imprisonment rate;
- (b) the economic and social costs of imprisonment;

- (c) the over-representation of disadvantaged groups within Australian prisons, including Aboriginal and Torres Strait Islander peoples and people experiencing mental ill-health, cognitive disability and hearing loss;
- (d) the cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures;
- (e) the methodology and objectives of justice reinvestment;
- (f) the benefits of, and challenges to, implementing a justice reinvestment approach in Australia;
- (g) the collection, availability and sharing of data necessary to implement a justice reinvestment approach;
- (h) the implementation and effectiveness of justice reinvestment in other countries, including the United States of America;
- (i) the scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments; and
- (j) any other related matters.

Not all of these issues will be addressed in this submission. This submission will focus on the Northern Territory experience of an incarceration explosion and the recently abolished SMART Court and if there are any lessons to be learned.

### **Definition Justice Reinvestment**

The Society fully supports a justice reinvestment approach to criminal justice in Australia. The Society understands that justice reinvestment is “an emerging approach to over-imprisonment that diverts a proportion of corrections budgets to communities within the jurisdiction, that have high rates of offending, giving those communities capacity to invest in programs that will reduce criminal behaviour and the rate of recidivism” (Melanie Schwartz<sup>1</sup>).

In other words justice reinvestment is a pre-emptive approach which aims to spend money now on dealing with the causes of crime to save money in future on dealing with the outcomes of crime.

### **Problem 1: the terminology**

In essence it is the emerging nature of the approach to offending that poses a significant challenge to its adoption. In advocating for justice reinvestment the Society’s experience has been that it is ill defined and poorly understood by legislators and the general public. Recent experiences of the SMART court in the NT resulted in derisive characterisations of the SMART Court as a soft responses to apparently increasing criminality.

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<sup>1</sup> Schwartz, Melanie (2010): *Building Communities, Not Prisons: Justice Reinvestment and Indigenous Over-representation*, 14(1) Australian Indigenous Law Review, 2-17.



The 2012 campaign “Making Justice work” supported by the Northern Territory legal sector and non government organisations alike is an example of avoiding the poorly understood nomenclature.<sup>2</sup> This campaign focuses on addressing the reasons for offending and is targeted at education of the public and the elected representatives about these issues, through media and other avenues.

### **Problem 2: Shortage of programs in the NT**

Justice reinvestment is about providing measures and strategies that will prevent offending behavior in the first place by investing in community programs, services and activities that are aimed at addressing the underlying causes of crime in those communities. Importantly for a sparsely populated jurisdiction such as the Northern Territory this includes remote communities not simply in urban centers.

There is a chronic shortage of programs in the NT that reduce criminal behaviour, particularly in remote Aboriginal communities. This includes pre-offending whilst in custody and post release. The Society would encourage significant increases in spending on services that target rehabilitation of specific offending behaviour (for example family violence, sexual assault, alcohol and drug abuse) as well as preventive programs such as early childhood intervention, school attendance programs and programs for youth.

Programs on offer to incarcerated sex offenders are a primary example of this issue. There is only very limited access particularly to one-on-one counselling and there is a significant waitlist. The Society understands that many prefer one-on-one counselling.

The most significant barrier to the effectiveness of these programs is that interpreters are not used. So even if these prisoners are able to access programs, the impact is limited. This substantially limits access to rehabilitation for remote Aboriginal prisoners, as well as seriously curtails the effectiveness of this counselling as communication is attempted purely in English.

Legal service providers have reported that their clients get sentenced, miss out on programs in custody, do not get parole, get released without supervision or support and re-offend in a similar way. It is a dereliction of duty to not provide accessible, culturally relevant sex offender treatment programs. The *Serious Sex Offenders Bill* 2013 which proposes indefinite detention is not an appropriate response to this shortcoming.

The Society highlights the success of the North Australian Aboriginal Justice Agency “throughcare program” which has been nationally recognised through the 2012 Australian Crime and Violence Prevention Award.

“The program provides case management and referral services for individual prisoners to help them access opportunities during their time in custody, and upon release. This includes helping them address a diverse range of transitional needs

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<sup>2</sup> Contact Priscilla Collins, CEO North Australian Aboriginal Justice Agency

including rehabilitation, accommodation, employment, education, training, health, life skills, reconnection to family and community and social connectedness.”<sup>3</sup>

**Problem 3: Community aversion to buy now pay-off later and lack of data**

In essence the cost of incarceration are hidden from the general community. The costs of preventative measures are “up-front.” The costs of preventative programs are of themselves significant and payable now. It is difficult to illustrate the “saving” or “pay-off” of avoiding years in prison when presently the offender may not yet have entered the cycle of offending. How does one demonstrate the absence of future offending?

Keeping someone in jail cost \$210 per day, or \$76,650 per prisoner per year.<sup>4</sup> However, the true economic and in particular social costs of imprisonment far exceed the per-day costs of housing an inmate in a correctional facility. Imprisonment often results in the loss of employment and income, loss of housing and damage to the lives of family members.

The Society is concerned about the impact of prison on physical and mental health as well as the high rate of re-offending. These factors are causing significant additional costs to the criminal justice system and the society as a whole.

Additionally there is a growing community resistance to the concept of investing in future savings encouraged by the continued focus on the “deficit budget” bogey man and the need for fiscal restraint.

Despite high incarceration rates the Northern Territory Government has abolished important prevention initiatives such as the Banned Drinking Register, Substance Misuse Assessment and Referral for Treatment (SMART) Court and the Alcohol and Other Drugs Tribunal (AODT). The principal policy rationale has been that these initiatives were too costly and were not working.

The challenge has been that information, particularly solid data has not been readily available. It is claimed that since its inception only 55 participants engaged in the SMART Court program in the first year and the estimated cost per year was in excess of \$4.5 Million.

The Society understands that the current government proposes a number of initiatives including a pre-release program. Information on these programs is difficult to obtain.

In order to establish the value, in dollar terms, it is essential that these programs are externally assessed by reputable research/ economic agencies. The Society strongly encourages legislative imperatives for independent evaluation of these measures as well ensuring agencies are adequately resourced to collect the data necessary to enable meaningful review. Ensuring there are resources applied to

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<sup>3</sup> Media Release: NAAJA thrilled to receive 2012 Australian Crime and Violence Prevention Award 1 Nov 2012

<sup>4</sup> Productivity Commission (2010), Report on Government Services, 8.24, [http://www.pc.gov.au/data/assets/pdf\\_file/0005/93902/rogs-2010-volume1.pdf](http://www.pc.gov.au/data/assets/pdf_file/0005/93902/rogs-2010-volume1.pdf)



building the evidence the “pay-off” is essential to the success of a justice reinvestment approach.

#### **Problem 4: Unbalanced expenditure on the pipeline**

The Territory’s prison population has grown steadily over the last 20 years. According to the Australian Bureau of Statistics, the Northern Territory has by far the highest incarceration rate in the country, at more than four times the national average and increasing faster than any other jurisdiction<sup>5</sup>. Nationally, the September quarter 2012 average daily imprisonment rate was 168 prisoners per 100,000 adult population, an increase of 1% from the September quarter 2011. The Northern Territory had the highest imprisonment rate (822 prisoners per 100,000 adult population).

The Society submits that this is due in part to:

- erosion of judicial discretion and growth of mandatory minimum sentences
- increasing number of offences
- increasing police numbers
- failure to offer effective rehabilitation
- failure to establish alternatives to incarceration
- Demographic change: the Northern Territory has the youngest population of any Australian jurisdiction, with an ever-increasing cohort of people becoming old enough to commit offences
- Criminogenic conditions: a substantial portion of the Northern Territory population live in remote communities and town camps in a state of chronic poverty, with poor housing, health, employment and education.

The Society submits that the justice system is a pipeline. At one end are the police, diversion programs and remand centers, then matters are before courts where legal services and prosecutors are involved and ultimately corrections or alternatives as the other terminus. Whilst the Society has seen increasing commitment to police, there has not been commensurate investment in remand facilities, court infrastructure, legal services and correctional facilities or incarceration alternatives. There has been a failure to provide effective rehabilitation to offenders as demonstrated above. According to the NT Supreme Court Annual Report 2011-12<sup>6</sup> the Alice Springs Court is at capacity.

In the Society’s view it is imperative that legislators understand and accommodate the fiscal impacts throughout the entire pipeline and include allowance for the legal needs created by their reforms.

#### **Problem 5: Overrepresentation of Indigenous people in the criminal justice system**

The Society is particularly concerned that Indigenous people are substantially over-represented in the criminal justice system. Nationally, Indigenous people make up

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<sup>5</sup> Australian Bureau of Statistics, 4512.0 *Corrective Services in Australia*, September quarter 2012, p 4.

<sup>6</sup> See <http://www.nt.gov.au/justice/dpp/docs/Final%20Annual%20Report%2004.10.11.pdf>

about 2% of the population, but 26% of the prison population.<sup>7</sup> In the Northern Territory, Aboriginal people are about 30% of the population but over 80% of the prison population and 90% of the young people locked up in juvenile detention.<sup>8</sup> Statistics demonstrate that Indigenous people are incarcerated at higher rates than non-Indigenous people<sup>9</sup>. The Northern Territory has experienced a significant increase in this category in the last year. The September quarter 2012 average daily Aboriginal and Torres Strait Islander imprisonment rate was 2,695 Indigenous prisoners per 100,000 adult Indigenous population<sup>10</sup>.

It is also important to acknowledge that Aboriginal people are overrepresented as victims of crime – this is particularly the case for Aboriginal women as victims of violent crime.<sup>11</sup>

The Society has previously called for the Anti-Discrimination Commissioner (NT) to conduct an inquiry pursuant to section 13(1)(f) of the *Anti-Discrimination Act* (NT) into the legislative reforms that continue to have a disproportionate impact on Aboriginal Territorians. This was echoed by the former Northern Territory Anti-Discrimination Commissioner, Eddie Cubillo at the 2012 Racisms in the New World Order conference at James Cook university in August 2012.

In the Society's submission such a rigorous inquiry would assist identify the systemic issues that work to perpetuate rather than abate indigenous disadvantage, particularly in the criminal justice system.

#### **Problem 6: Mandatory Sentencing**

In February 2013 the *Sentencing Amendment (Mandatory Minimum Sentences) Bill 2012* was passed by the Legislative Assembly Northern Territory. In the view of the Society this will have significant financial impacts. We are concerned that these impacts have not been fully costed.

Importantly throughout recent years the inability of legal assistance services such as legal aid to meet the basic needs of the Northern Territory community due to inadequate funding levels has been well documented. It is a fundamental principal of a just society that people have recourse to the Courts, and that legal assistance is available to those most in need. Any law which mandates incarceration expands the need for legal assistance.

Mandated sentencing increases the likelihood of contested hearings, with alleged offenders unwilling or unlikely to plead guilty if this will not reflect in the sentence.

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<sup>7</sup> Ibid.

<sup>8</sup> See Northern Territory Department of the Attorney-general and Justice, Northern Territory Quarterly Crime Statistics, December Quarter 2012, [http://www.nt.gov.au/justice/policycoord/researchstats/researchstats/NT\\_Quarterly\\_crime\\_statistics\\_Dec2012.pdf](http://www.nt.gov.au/justice/policycoord/researchstats/researchstats/NT_Quarterly_crime_statistics_Dec2012.pdf)

<sup>9</sup> Australian Bureau of Statistics, 4512.0 *Corrective Services in Australia*, September quarter 2012, p 7.

<sup>10</sup> Ibid.

<sup>11</sup> Jonathon Hunyor (2012): Aboriginal and Torres Strait Islander. Legal Services and Access to Justice, Balance (2), p 26-29.



Un-represented litigants with educational and language deficits are likely to place more pressure on Courts, which will be reflected in the time taken to hear matters.

Mandated sentencing has been a costly source of litigation, delay and uncertainty as was the experience when the *Sentencing Amendment Act (No. 2) 1996* (and subsequently amended on four separate occasions) was tested in at least 25 different cases.

The Society considers that it is the Court that is best able to determine the appropriate sentence and is able to take into account all relevant factors. At its base the Society is concerned that mandatory sentencing has little impact on crime reduction. Removing that discretion poses risks of ridiculous results, unacceptable to a decent society.

**Problem 7: Capacity of the Federal Government to effect this change**

In the Society's view these issues are appropriate considerations under a National Partnership Agreement.

**Conclusion**

The Society sees a substantial benefit in the justice reinvestment approach to criminal justice in Australia and in particular in the Northern Territory which produces the highest numbers of offenders in the country.

We look forward to contributing further to this process if required.

Yours sincerely

**Megan Lawton**  
Chief Executive Officer