NORTHERN TERRITORY OF AUSTRALIA

CHIEF MAGISTRATE'S CHAMBERS

Our Ref HH:CJT

28 March 2013

Attention: Christine McDonald, Inquiry Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

By email to: legcon.sen@aph.gov.au

Dear Christine McDonald and Whom It May Concern,

Value of a Justice Reinvestment Approach to Criminal Justice in Australia

Please find attached my submission as the Chief Magistrate of the Northern Territory Magistrates Court, in response to the Senate Legal and Constitutional Affairs Committee inquiry into the value of a justice reinvestment approach to criminal justice in Australia.

Yours sincerely

Hilary Hannam
Chief Magistrate

Introduction

1. I make this submission to the Senate Standing Committee on Legal and Constitutional Affairs' inquiry into the value of a justice reinvestment approach to criminal justice in Australia as Chief Magistrate of the Northern Territory ("NT") Magistrates Court ("the Court"). The submission comments on the value of a justice reinvestment approach to criminal justice in the NT based on my experience as Chief Magistrate of the Court.

2. The Government's decision to investigate justice reinvestment and the invitation to make a submission to this inquiry is welcomed. Justice reinvestment represents a significant opportunity to address continued high imprisonment rates in the NT and provides an opportunity for local and community involvement.

The NT Magistrates Court

3. The Court covers a range of jurisdictions presided over by Northern Territory Magistrates. These jurisdictions include the Court of Summary Jurisdiction, Youth Justice, Coroners Court, Mining Wardens Court, Work Health Court and the Local Court. The work of the Magistrates is therefore varied and constitutes approximately 97 per cent of the contact of Northern Territorians with the court system.

4. Magistrates frequently travel within the NT and appreciate many of the issues facing people who reside in both urban and remote communities. The Chief Magistrate and eight Magistrates are based in Darwin, four Magistrates in Alice Springs and one in Katherine. The Chief Magistrate may also direct a Local Court to sit at any place she decides.

5. The submission draws on my experience with offenders as Chief Magistrate of the NT and their interaction with the NT criminal justice system.

Structure of this submission

6. This submissions refers to:

    a. the drivers behind the past 30 years of growth in the imprisonment rate in the NT;

    b. the over-representation of Indigenous people in NT prisons; and

    c. the social costs of imprisonment.

7. To a lesser extent the submission then covers:

    a. alternatives to imprisonment;

    b. methodology and objectives of justice reinvestment; and

    c. the benefits of, and challenges to, implementing a justice reinvestment approach in the NT.

Summary

8. The Court supports justice reinvestment strategies aimed at reducing imprisonment rates through the diversion of government funds from prisons to communities with a high concentration of offenders.

9. To reduce imprisonment rates, justice reinvestment initiatives must address the factors identified as contributing to the growth in the imprisonment rate in the NT. In particular, initiatives should tackle the common charges that result in imprisonment in the NT including assaults, alcohol and domestic violence related offences and driving offences.

10. The difficulty of successful implementation of justice reinvestment may lie in developing methods to deliver responsibility and funding to communities and to ensure community participation.

11. Programs which support alternative and community-based forms of sentencing should be supported. Community leaders should be involved in these programs to the fullest extent possible.

Drivers behind the past 30 years of growth in the NT imprisonment rate

Growth in the NT imprisonment rate

12. In the past 30 years imprisonment rates in the NT have grown at a fairly steady rate. In 1983 the imprisonment rate was 292.2 per 100,000 adult population.[1] This increased to 360.5 by 1993 and at 2003 the imprisonment rate had reached 624.3. As at 30 June 2012, the NT had the highest imprisonment rate in Australia at 826 prisoners per 100,000 adult population.[2]

Major offences of prisoners

13. As at 30 June 2009 the most prevalent charge for NT prisoners were acts with intent to cause injury (38 per cent). Sexual assault charges had the next highest proportion of prisoners at 13.9 per cent.[3]

14. Again, the most common crimes for which offenders were imprisoned in 2011-2012 were for acts intended to cause injury at 46.6 per cent. Many crimes were also related to sexual assault offences (11.6 per cent).

15. There is little available information from experience or statistics regarding the types of crimes leading to imprisonment in 1983, at the beginning of the 30 year period.

16. The Court has also seen a significant number of alcohol related and domestic violence related offences. In 2011-12, 58 per cent of assault offences involved

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[1] Australian Institute of Criminology, *Prisoners in Australia 1982-1993* (Report No 4517.0); Australian Institute of Criminology, *Prisoners in Australia 1994-1998* (Report No 4517.0).
[2] Australia Bureau of Statistics, *Prisoners in Australia 2012* (Report No 4517.0, 2012).
[3] Ibid.

alcohol, 55.6 per cent involved domestic violence and 36.3 per cent involved both alcohol and domestic violence.[4]

17. Imprisonment for repeat drink driving offences and driving whilst disqualified is also common, particularly in regard to indigenous offenders.[5] Common driving offences before the Court include driving whilst disqualified, registration or roadworthiness offences and drink driving.

18. Initiatives that could address these areas of offending would make significant inroads in to addressing the Territory's high imprisonment rate.

Imprisonment of Indigenous Territorians

19. High imprisonment rates in the NT are linked to the well-documented over representation of Indigenous people in the criminal justice system. Indigenous Territorians made up 83.3 per cent of the prison population as at 30 June 2012 but only 26.8 per cent of the Territory population. [6]

Increased reporting

20. Undoubtedly the transformation of NT society between 1983 and today has affected the rise in imprisonment. The increased reporting of assaults and domestic violence from communities has been facilitated by the increasing availability of technology, in particular mobiles phones, as well as a greater awareness of rights.

21. Additionally mandatory reporting requirements have increased reported incidents of crime in the NT. Section 124A of the *Domestic and Family Violence Act 2007* (NT) provides that all adults in the NT must report abuse that occurs in a domestic relationship and has caused serious physical harm or where there is a serious or imminent threat to the life or safety of a person. There are also mandatory reporting requirements for children in the NT as provided under section 26 of the *Care and Protection of Children Act 2007* (NT). Complimentary provisions under this legislation mandate reporting for sexual activity involving persons under the age of 18.

22. Increased reporting does not alone signify an increase in crimes committed, only crimes recorded. In this sense the growth in imprisonment rates brought about by increased reporting may be a positive change. Additionally, mandatory reporting allows for the community to take responsibility for violence. However, there are also concerns that it may deter victims from seeking medical treatment and whether it has in fact increased rates of reporting.

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[4] Department of the Attorney-General and Justice (NT), 'Northern Territory Annual Crime Statistics, 2011-12' http://www.nt.gov.au/justice (21 March 2013).

[5] See also NT, *Parliamentary Debates*, Legislative Assembly, 5 May 2011 (Malarndirri McCarthy MLA); Collins P and Barson M 'A "New Era in Corrections" for the NT!' (2010) *Indigenous Law Bulletin* 7(22), 23-7.

[6] Australia Bureau of Statistics, *Prisoners in Australia 2012* (Report No 4517.0, 2012).

Costs of imprisonment

23. Clearly higher imprisonment rates result in higher spending on imprisonment. However, I am not in a position to comment on the economic cost of imprisonment to any further extent.

24. With regard to the social costs of growing imprisonment rates we see that imprisonment does not always lead to rehabilitation. Imprisonment is not often a deterrent to potential offenders, particularly those with a mental illness or drug issues, as demonstrated by the number of repeat offenders and the difficulty many offenders have in reintegrating into their community after imprisonment.

25. A compounding issue for some offenders in the NT is that low living standards and poor access to food and housing outside of prison mean that the threat of imprisonment is not always an effective deterrent.

Mandatory sentencing

26. Mandatory sentencing laws were imposed in the Territory in 1997 through amendments to the *Sentencing Act 1995* (NT) and the *Juvenile Justice Act 1993* (NT).

27. Certain property offices were subject to a mandatory minimum term of imprisonment of 14 days for a first offence, 90 days for a second property offence and one year for a third property offence.[7] The *Juvenile Justice Act* provided that a persons aged 15 to 18 convicted for certain property offences, must be detained for at least 28 days.[8]

28. The mandatory sentencing regime was repealed in 2001. Studies have shown that during the mandatory sentencing era imprisonment rates were 50 per cent higher than following the repeal.[9] Non-custodial orders such as home-detention and community work were almost unused for property offences during the mandatory sentencing era.

29. However, in 2008 section 78BA (1)(a) of the *Sentencing Act 1995* (NT) was amended. The amendment introduced mandatory sentencing for first-time assault offenders where the injury interferes with a person's health and results in 'serious harm'. Mandatory sentencing also exists in the territory under Part 5 of the *Traffic Act* (NT) for drink driving and drug driving offences, and for breaches of Domestic Violence Orders under sections 121 and 121 of the *Domestic and Family Violence Act 2007* (NT).

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[7] *Sentencing Act 1995* (NT), s 78A.

[8] *Juvenile Justice Act 1993* (NT), s 53AE.

[9] Stephen Jackson and Fiona Hardy, Department of Justice NT, 'The Impact of Mandatory Sentencing on Indigenous Offenders' (Paper presented at the Sentencing , Canberra, 6 & 7 February 2010); Office of Crime Prevention NT, *Mandatory Sentencing for Adult Property Offences – The NT Experience*, (August 2003) Office of Crime Prevention NT <http://www.nt.gov.au/justice/policycoord/documents/statistics/mandatory_sentencing_nt_experience_20031201.pdf>.

30. As acts intended to cause injury in the Northern Territory account for a significant number of matters before the Court this could significantly affect the imprisonment rates.

31. Additionally the *Sentencing Amendment (Mandatory Minimum Sentences) Bill 2012* (NT) passed on 14 February this year provides for mandatory imprisonment periods for serious assaults and repeat offenders.

32. The likely result of this amendment, like mandatory sentence provisions generally, is significantly increased imprisonment rates particularly in regards to Aboriginal offenders.

Value of justice reinvestment

33. To be effective in the NT, a justice reinvestment initiative must address the factors driving growth in imprisonment rates and ensure community programs, whether new or already established, involve community leaders.

34. Justice reinvestment is understood generally as a localised criminal justice response to high imprisonment rates, similar to that which emerged in the United States of America. Under this approach a portion of government funds that would have been spent on covering the costs of imprisonment are diverted to local communities with a high concentration of offenders. The funds are invested in services including community programs which aim to address the underlying causes of crime in those communities.

35. As understood from the approach taken in the United States justice reinvestment involves the following stages:

    a. gathering data on offending and the criminal justice system;

    b. using this information to decipher which areas have the greatest concentration of offenders; and

    c. redirecting funds from corrective services to programs in these targeted location to reduce offending through preventative measures.

36. Listed are suggested considerations for implementing a justice reinvestment approach in the NT. Approaches should be aimed at both crime prevention and rehabilitation to avoid re-offending.

Coordinating body

37. Undoubtedly, a national body or task force, similar in function to the Council of State Governments in the United States, would be imperative to assessing where funds are most needed and ensure initiatives are implemented in a way consistent with the aim of reducing imprisonment. A sub-body coordinating the justice reinvestment approach for the NT could be run by the NT Government or be a joint initiative between Federal and Territory Governments and must ensure the approach is Territory-specific.

38. The coordinating body for the NT must respond to the socio-economic disadvantages which underlie offending. These disadvantages include a lack of education, access to health care, unemployment and poor housing conditions and are extremely prevalent in remote communities. As socio-economic disadvantage increases susceptibility to criminal behaviour addressing high risk areas will impact criminal tendency, especially in the long term. Reducing systematic disadvantage, a wider driver of offending, is a positive step towards reducing imprisonment rates in the NT.

39. A coordinating body should also ensure that a long-term and reliable source of funding, as opposed to a short-lived promise, is available. It is simply not realistic to expect changes in patterns of offending to occur in the short term.

Alternative forms of sentencing

40. Initiatives that encourage alternative forms of sentencing, given the often negligible value of imprisonment, should also be supported by a justice reinvestment approach. The capacity of communities for providing more options for community corrections should be increased.

41. Supervision and reporting requirements in remote communities creates special difficulties due to both the distance involved and the lack of understanding of remote community's practices. Broadened parole options, which enable offenders to meet their reporting requirements in remote communities where appropriate, should be supported.

42. The new sentencing orders should be assisted by the justice reinvestment approach. These options are a Community-Based Order (for low level offenders) or a Community Custody Order (for non-violent offenders with a maximum term of imprisonment of 12 months). Under both orders the Court can direct the offenders to serve their sentence in their community under supervision from Corrections.

Drug Court

43. Resources could also be directed at re-establishing the SMART Court, which has recently had funding cuts such that no new orders are able to be made. The SMART Court deals with sentencing of offenders who have a history of serious substance misuse. The Court is a highly appropriate vehicle for justice reinvestment funds as it seeks to address the underlying causes of offending that relate to substance misuse and makes deferred or suspended sentence orders to which reporting obligations attach, before considering imprisonment.

44. All programs established under a justice reinvestment strategy must be outcome-driven and subject to external review to ensure their accountability and effectiveness.

Support existing programs

45. Since the 1991 *Royal Commission into Aboriginal Deaths in Custody*, some awareness has been raised regarding high Indigenous imprisonment rates. Justice reinvestment should work with any existing programs as a more cost-effective manner of providing services.

Community involvement

46. Offenders in the NT come from both urban areas and remote communities. Any justice reinvestment strategy must be relevant to the target group's cultural and geographical context. Consultation with target groups is imperative to ensure the most measures are relevant, realistic and effective.

47. While in some cases characteristics of Indigenous communities may contribute to the Indigenous over-representation in the prison system, they also present strong opportunities for the justice reinvestment.

48. The value of justice reinvestment initiatives will depend upon the support they receive from the community, particularly in regards to remote communities. Preventative and service program operate best in Aboriginal Communities where the community itself is involved in delivering or managing the service.

49. Justice reinvestment initiatives should empower communities to become active participants in the criminal justice system in terms of preventative and diversionary programs. This provides opportunities for communities to take back some control in both the developing of these programs and the prevention of offending.

50. Accordingly, I also recommend a judicial reinvestment approach which affords the most control and discretion as to the spending of funds to the community, whilst maintaining the requisite level of accountability. A community group which decides how funds should be best spent and instructs the relevant authorities accordingly would be appropriate.

Driver awareness

51. The high rate of imprisonment relating to traffic crimes could be curbed by building awareness for these offences. Undoubtedly many more offences are now able to be recorded due to by increased policing in communities in recent years, particularly since the Federal Government's Intervention.

52. By ensuring people are aware of the penalties for driving offences, the rate of imprisonment for these offences would be reduced. Advertising campaigns or community awareness or driver support programs in areas with high driving offences may be appropriate.

53. The Traffic Offender Intervention Program, currently only available by court order, should be made available people at risk of traffic offending. The program then becomes a prevention strategy as well as a diversion program.

54. Ideas such as the recommendation by the House of Representatives Standing Committee on Aboriginal and Torres Straight Islander Affairs[10] of a separate licence for people living in remote communities could be canvassed. This licence is easier to obtain than a full licence and allows people to drive only in their community, the rationale being that there are different driving rules and circumstances in remote communities.[11]

55. From academic commentary[12] and experience, diversionary programs in Indigenous communities are most effective when run by Indigenous people. Programs should assist in ensuring all drivers are licensed and aware of the penalties attaching to certain traffic offences.

Conclusion

56. Implementing a justice reinvestment in the NT may be more costly in comparison to the United Stated of America, primarily due to the remoteness of many areas with high imprisonment rates. If run effectively, the returns of justice reinvestment may also be larger.

57. Consulting and working with a target community to develop a strategy and programs and ensuring their support and involvement will likely be key to the success of a justice reinvestment approach in the NT.

58. Sensible judicial discretion in taking into account circumstances of the offenders and being able to tailor the penalty is important in reducing the NT imprisonment rate. Arguably the true aim and emphasis of our criminal system is crime prevention and community safety, not retribution.

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[10] House of Representatives, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System,* June 2011, recommendation 21.

[11] Dr Thalia Anthony, Dr Harry Blagg, *Addressing the 'crime problem' of the Northern Territory Intervention; alternatives paths to regulating minor driving offences in remote Indigenous* communities (Report to the Criminology Research Advisory Council Grant, CRG 38/09-10) 63.

[12] Ibid 64; Macaulaly J, Thomas R, Mabbott N, Styles T, Edmonston C, Sheehan M and Schonfeld C, *Indigenous Road Safety Report* (ATSB Report RC2321, 2003) Australia Transport Safety Bureau.