



## North Australian Aboriginal Justice Agency

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20 December 2022

Committee Secretary

Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs

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Parliament House

Canberra ACT 2600

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Dear Joint Standing Committee,

### *Inquiry into community safety, community services and jobs public hearing*

Thank you for your invitation to speak at the public hearings held in Darwin on 7 December 2022 and Alice Springs on 9 December 2022. The North Australian Aboriginal Justice Agency (NAAJA) welcomes the opportunity to discuss our aspirations for a safer future through justice reinvestment.

We also would like to take this opportunity to provide a further written response to the questions taken on notice at the time of these public hearings.

#### Darwin Hearing 7 December 2022:

##### **NAAJA's workforce**

- Given the highly mobile nature of the Northern Territory (NT), our workforce slightly fluctuates on a semi-regular basis, however, currently remains around 200 employees with a 40-45% Aboriginal and Torres Strait Islander (Aboriginal) workforce. This year reaching a 50% Aboriginal workforce for our Throughcare programs and over 50% of the Custody Notification Service employees are Aboriginal. We have three practising Aboriginal lawyers and a number of Aboriginal employees with law qualifications or studying law.
- NAAJA is governed by an Aboriginal board from the Darwin, Katherine, Miwatj, Barkly and Central regions. 5 of our 8 executive leadership roles are held by people who identify as Aboriginal and/or Torres Strait Islander.
- NAAJA continues to strive to strengthen our Aboriginal workforce, which in recent times has included:
  - Reinvigorating our Bilata legal pathways program in partnership with CDU to increase the access and participation of Aboriginal and Torres Strait Islander people in the studies and practice of law. [Bilata Legal Pathways Program | North Australian Aboriginal Justice Agency \(NAAJA\)](#)

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- Creating a number of identified roles, as well as prioritising Aboriginal identifying candidates across all roles and in particular in leadership roles.
- Inclusion of an Aboriginal interview panel member for identified roles and where possible in non-identified roles.
- Developing an Aboriginal Employment Policy and Plan.
- NAAJA continuously works towards strengthening the cultural safety of our service provision and workplace by:
  - Compulsory training for all new staff, including periodical renewal of training for ongoing staff, which includes:
    - Cross-cultural awareness;
    - Anti-discrimination;
    - Culturally safe trauma-informed practise.
- Additionally, NAAJA staff are offered the opportunity to participate in our True Justice: Indigenous Perspectives and Deep Listening On Country program. [Deep Listening On Country | North Australian Aboriginal Justice Agency \(NAAJA\)](#)
- All NAAJA staff have access to and are encouraged to engage in ongoing professional development that will support their current role and future aspirations. In recent months this has included (but not limited to) Kunga Stopping Violence and Throughcare staff attending interstate DFV and International Childhood Trauma conferences, and legal/community justice staff attending the AIJA Youth justice Conference in Sydney and the Children's Court Conference in Alice Springs.

### FASD assessment

- The Department of Territory Families, Housing and Communities (TFHC) states that Foetal Alcohol Spectrum Disorder (FASD) assessments have frequently occurred prior to reception within a detention centre.
- TFHC did not provide the data pertaining to Ms Marion Scrymgour MP question in regard to FASD assessment and recidivism rates.
- In the case where a FASD assessment has not been done it can be requested pursuant to a court order under s67 of the Youth Justice Act (2005) or requested by a service provider, such as NAAJA.
- This work is undertaken in collaboration between the Specialist Assessment and Treatment Service team (SATS), the Primary Health Care Provider and the Case Management team, and is completed within the first few days of arrival, unless in the case of shorter term stays or bail releases etc.
- The primary health providers are the Department of Health (DH) for Don Dale Youth Detention Centre (DDYDC) who use a non-Aboriginal organisation Patches to conduct FASD assessments, and Central Australian Aboriginal Congress (CAAC) for the Alice Springs Youth Detention Centre (ASYDC)
- From NAAJA's experience the FASD assessments conducted by CAAC are very culturally safe and produce reports that far more accurately capture the needs of the young person. This is through the use of interpreters and Aboriginal staff through in person assessments. CAAC also now offer remote services and can conduct assessments on country.
- Non-Aboriginal service providers will often conduct FASD assessments via AVL, which impede the assessment due to language barriers, impacted hearing, cognitive ability impacting accurate speech and comprehension assessment.
- NAAJA has also found if an assessment is not in pursuance of a court order the waiting list can be in excess of 18 months during in which time a child may have left the system.

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- NAAJA strongly advocates for all health (including FASD) assessments to be conducted by the culturally appropriate Aboriginal-led health services, as alternative services do not accurately capture the needs of Aboriginal young people.
- NAAJA acknowledges that in comparison to a few years ago the frequency of FASD assessment in detention has vastly improved and we will continue to work with TFHC to strengthen the ongoing response to all the health needs of our clients.

### Alice Springs Hearing 9 December 2022:

#### **Alcohol related offending data**

- Since taking this question on notice we have worked closely with our Data Analyst Officer to try and provide the data requested. Unfortunately, we were not able to gain any further insights to what was offered at the public hearings due to the following:
  - NAAJA's data is geared towards our funding requirements and collecting data on alcohol related offenses is not a reporting expectation.
  - NAAJA has very limited resources to be able to adequately collect, extract and analyse data in comparison to government agencies.
  - We are limited to our client data only, which does not paint a full picture of all Aboriginal defendants
  - As intoxication is not a criminal offence nor a legislated aggravating circumstance it does not appear as a charge in client data.
- NAAJA would like to reiterate that due to a multitude of other contributing factors, such as changes to legislation and socio-economic factors mentioned in our additional questions response below, comparing data of alcohol related offending from before and after the sunseting of the Stronger Futures legislation would not ascertain the direct impacts the sunseting has had on alcohol related offending.
- NAAJA would like to refer the committee to page 11 of the attached criminal courts data for assistance with this question, noting that the 2021-22 and 2022-23 spike is not the largest NT has seen and other contributing factors, as mentioned above, must be taken into consideration when reading this data.
- NAAJA would like to refer you to our submission into inquiry into community safety, community services and jobs public hearing, in regard to our recommendations relating to the importance of Data sovereignty to drive evidence-based initiatives.

#### **Stronger Futures legislation advocacy**

- NAAJA CEO, Priscilla Atkins, has been an active member of the People's Alcohol Action Coalition, and was a joint signatory on the submission made to the Joint Standing Committee, a letter to Minister Burney on 9 June 2022 and the media release published in May 2022 (see attached).
- NAAJA's position on the sunseting of the Stronger Futures legislation remains that any major changes impacting Aboriginal communities must be done in close and genuine consultation with the community it is going to impact.
- NAAJA does not support disempowering and paternalistic legislation, which was evident with the enactment of the Northern Territory Emergency Response (NTER). The impact in our experience has always been an increase in the criminalisation and incarceration rates of Aboriginal people, in particular

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our most vulnerable community members, such as victim-survivors of DFSV, people experiencing homelessness or unstable housing, and people living with disabilities.

We would like to further take this opportunity to address the additional questions sent by the Joint Standing Committee to our representatives on Friday 9 December 2022.

### 1. What, in your experience working with clients, are the key factors contributing to high incarceration rates of First Nations people in the NT?

Since the NTER, the NT has seen a suite of discriminatory legislative regimes that have vastly contributed to the rapidly increasing rates of Aboriginal people in incarceration. These include:

- Mandatory sentencing,
- Amendments to the *Bail Act* and *Youth Justice Act 2021*,
- Amendments to sentencing provisions under the Sentencing Act, (pertaining to increased length of maximum sentence for spitting at a first responder from 5-10 years).

Additionally, there is a huge gap in service provision, especially appropriate resourcing for Aboriginal Community Controlled Organisations (ACCOs) to provide culturally safe services such as;

- treatment intervention/reintegrative planning;
- parole and bail support;
- Domestic, family and sexual violence programs, including men's behavioural change;
- Safe and transitional housing;
- Post release holistic case management support, including trauma counselling;
- Alcohol and other drugs support and rehabilitation;
- Primary health and disability screening and support.

NAAJA would like to recommend the Committee to review the attached: 2020 ANROWS Report "[Kungas' Trauma Experiences and Effects on Behaviour in Central Australia](#)" by M. Bevis, J. Atkinson, L. McCarthy and M. Sweet, as a thorough resource addressing this topic.

In addition, some key cost saving initiatives have adversely impacted upon the cycle of recidivism. For example, the cessation of repatriation directly from the prison to home communities mean people are released with no money, no identification, no housing and no ability to return home.

### 2. Are these factors currently being addressed appropriately? How and by whom are they being addressed?

The current Northern Territory Government (NTG) have taken some steps to reduce incarceration rates of Aboriginal people through reforming some mandatory sentencing provisions and raising the minimum age of criminal responsibility to 12. However, there have also been a number of concerning legislative reforms made under the same government that threaten to counteract this positive legislative reform, such as the 2021 amendments to the *Bail Act* and *Youth Justice Act* and the increase of maximum sentence for spitting at a first responder from 5 to 10 years.

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Legislative reform won't be an immediate fix. There appears to be a culture of imprisonment within the judicial system. As above viable alternatives to custody need to be available.

**3. What impact, if any, do you think the sunseting of the Stronger Futures legislation will have on incarceration rates in First Nations communities?**

Given it has been less than six months since the sunseting of the Stronger Futures legislation it is extremely hard to determine the impact it may or may not have on incarceration rates of Aboriginal communities. Additionally, it is impossible to draw a comparative conclusion as to the before and after impacts as too many other contributing factors have come into play within the time the legislation came into effect that has or will have both positive and negative impacts on incarceration rates. To highlight some of these examples, the discriminatory bail amendments made in 2021 (negative), raising the age of criminal responsibility was positive, mandatory sentencing negative and the recent repeal of some provisions (positive). Due to so many other contributing factors, down to the impacts of COVID-19, the housing crisis, and external global considerations, data from before and after would never paint an accurate picture of what are the causes of incarceration rates are in relation to the sunseting of the Stronger Futures legislation.

The disempowerment caused by the NTER and its subsequent legislative reforms, such as the Stronger Futures legislation, has had an extremely disproportionately negative impact on Aboriginal communities, which in turn vastly increased the rates of Aboriginal incarceration. NAAJA does not support such paternalistic approaches to addressing issues concerning Aboriginal communities. NAAJA's advocacy in this space, has and always will be, that massive changes to legislation must always be performed in close and genuine consultation with the communities it will affect.

**4. In your experience on the ground, what linkage is there between the so-called child protection system and incarceration?**

We refer to Volume 3A of the *Royal Commission into the Protection and Detention of Children in the Northern Territory* for <https://www.royalcommission.gov.au/child-detention> for evidence regarding the linkage between the child protection system and incarceration. The evidence is there and its critical that this report is adequately referred to with respects to the child protection system and incarceration.

**5. What has your experience been with the Don Dale Youth Detention centre? Would you recommend its closure?**

NAAJA's experience of Don Dale Youth Detention Centre has been outlined in the *Royal Commission into the Protection and Detention of Children in the Northern Territory* and we support the recommendations laid out in the final report, including the closure of the current Don Dale Youth Detention Centre, which does not meet the rehabilitative and therapeutic needs of Aboriginal children and young people engaged in the justice system.

**6. NAAJA's submission expresses support for justice reinvestment initiatives. What kind of initiatives work best and are most needed?**

- a. Is your organisation providing such programs?
- b. What results have these justice reinvestment initiatives had on incarceration rates and crime prevention?

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As prescribed by the justice reinvestment (JR) principles, JR initiatives must empower communities to self-determine and drive place-based initiatives based on evidence extracted by the community, about the community and for the community, which includes returning the sovereignty of data to that community. It is hard to define what initiatives work best, as this will look differently for each community, whether that be a learn to drive program, cultural youth camps, mediation, restorative justice, DFSV trauma healing and/or behavioural change (this list is by no means exhaustive):

- a. NAAJA is in the process of establishing four Community Justice Groups (CJGs) in Gunbalanya, Lajamanu, Ngukurr and Wurrumiyanga. The CJGs are place-based, self-determined, cultural authorities that address issues foundational to contact with the justice system.
  - b. NAAJA has been an active member of the Katherine Youth Justice Reinvestment Group since its inception in 2016 and continues to work on a voluntary basis to get the initiative off the ground.
  - c. NAAJA is in the process of establishing a NT Justice Policy Partnership to drive policy and advocacy in line with Targets 10 and 11 of the National Closing the Gap Agreement.
- a. These three programs are not currently funded to be able to complete the work required to have a significant impact on incarceration rates and crime prevention, however we would like to draw your attention to two reports highlighted by NAAJA in the Darwin public hearing that outline the positive results such initiatives can have for a community:
- i. [Australian Red Cross' Katherine Youth Justice Reinvestment Final Report](#)
  - ii. [KPMG Maranguka Justice Reinvestment Project Impact Statement](#)

**7. Your submission mentions the importance of self-determination and community-driven approaches to justice reinvestment. What would that look like?**

Consistent with NAAJA's submission one priority would be to transition and embed NAAJA's existing co-designed, localised, self-determining, and culturally empowering CJGs to include sitting fees, a local community specified justice office per community, and scaffolding structures to ensure two-way learnings and hard listening with specialist law and justice support and mentoring to reduce justice system and incarceration contacts. The CJGs are a perfect example of JR requirements for readiness, localised self-determination, promoting and strengthening cultural authority, addressing issues foundational to contact with the legal system and recidivism (directly and indirectly, proactively and reactively), and permitting innovation. Self-determination and community-driven approaches would entail implementation to be grown by the community not imposed and any partnership would be relational and not transactional with a deep listening from our government partners.

**8. In its recent budget announcements, the Australian government has committed to support 30 justice reinvestment initiatives. Are you or are you planning to engage with the government on this?**

NAAJA will be engaging with the government to support the Katherine Youth Justice Reinvestment Project and the four Community Justice Groups in Gunbalanya, Lajamanu, Ngukurr and Wurrumiyanga as part of the 30 place-based initiatives committed to in the 2022-2023 Federal budget. We will also be requesting funding support for the expansion of our Community Justice Programs, such as Throughcare and the Kunga's Stopping Violence Program.

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NAAJA is grateful for the opportunity to provide written and verbal feedback in the Inquiry into community safety, community services and jobs and we welcome any further clarification regarding our responses in the submission, public hearing or follow-up questions outlined in this letter.

Kind regards,

  
**Philip Brown**

Acting Chief Executive Officer

North Australian Aboriginal Justice Agency

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