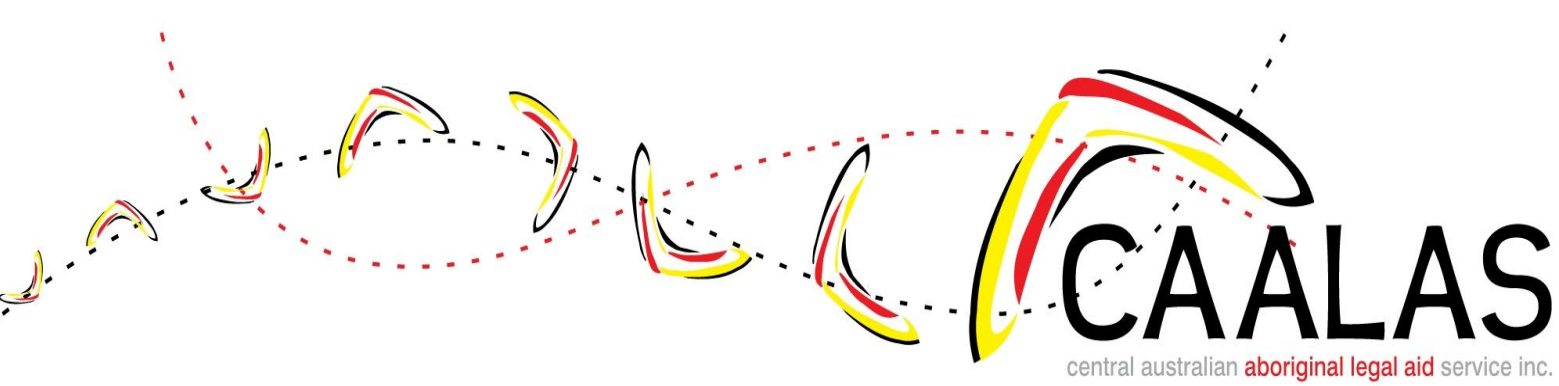

Submission from the Central Australian Aboriginal Legal Aid Service Inc to the Senate Legal and Constitutional Affairs Committee

Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia

March 2013

Contents

1 Introduction and scope of this submission

The Central Australian Aboriginal Legal Aid Service Inc (**CAALAS**) prepared this submission in response to the Senate Legal and Constitutional Affairs Committee Inquiry into Justice Reinvestment in Australia (**'the Inquiry'**).

As discussed at Part 2 below, the core of CAALAS' work involves the provision of legal services in the areas of criminal, civil, family and welfare rights law to Aboriginal[1] people in Central Australia. We also provide support and throughcare services to adults serving custodial sentences and young people in contact with the criminal justice system. We work closely with prisoners and represent the vast majority of defendants before the criminal courts in our service area.

We are therefore acutely aware that the rate of imprisonment in our jurisdiction is well above the national average. The vast over representation of Aboriginal people in places of detention is a matter of grave concern to CAALAS, and we believe that there is a pressing need for the implementation of justice reinvestment strategies in Central Australia. We commend the Senate Committee on Legal and Constitutional Affairs for pursuing this important Inquiry.

CAALAS has contributed to a national response to the Inquiry through a submission of the National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**). We endorse the comments contained in that submission. This response is intended to support the representations made by NATSILS and to highlight the issues most germane to our practice in Central Australia. We have made a series of general recommendations that we believe should inform justice reinvestment strategies in Central Australia.

Justice reinvestment has the potential to produce significant long term benefits for the broader Australian community. Imprisonment rates of Aboriginal people in Central Australia are unacceptably high and continue to rise, imposing steep social and economic costs on the community. At the same time, programs that effectively target the underlying causes of offending behaviour are either severely under-resourced, or altogether absent. We believe that there is a critical need for evidence-based approaches that reduce offending and recidivism in Central Australia. In this context, justice reinvestment strategies have the potential to produce fiscal savings for the government and taxpayers, as well as leading to improved social justice outcomes for Aboriginal people and communities.

We recommend that all Australian Governments adopt policies reflecting the principles of justice reinvestment. We submit that all Australian Governments should commit to investing in strategies that have been shown to work to reduce offending and recidivism, improve community safety and reduce the costs of imprisonment.

There is also a pressing need for strategic leadership on justice reinvestment in Australia. We call on the Federal Government to perform this vital role.

[1] In this submission, 'Aboriginal people' refers to Aboriginal and Torres Strait Islander people.

1.1 Recommended strategies for justice reinvestment in Central Australia

1. Police guidelines should emphasise the application of appropriate discretion, particularly in relation to minor offences and young people.
2. The investment in law enforcement for traffic offences should be redirected to an investment in road safety and services for drivers and vehicles, especially in remote and regional Aboriginal communities.
3. Community concerns about road safety should be addressed through investment in upgrading roads and highways on which fatalities occur.
4. Breach of bail offences should be repealed.
5. Services should be developed that offer diversionary options that meet the specific needs of young people in contact with the criminal justice system.
6. Improved support services should be made available for the families of young people in contact with the criminal justice system.
7. Mandatory sentencing laws should be repealed.
8. Investment should be directed towards community and prison-based rehabilitative programs that address the underlying causes of offending behaviour.
9. All prisoners should have access to appropriate psychological treatment services that address their rehabilitative needs.
10. Investment should be directed towards appropriate diversionary options including meaningful community work and community-based rehabilitative programs, including community-owned and managed programs.
11. Diversionary options should be accessible to individuals from remote and regional communities.
12. Community Corrections policy guidelines should permit the application of appropriate discretion, particularly in relation to conditional breaches of parole.
13. The “street time” provisions of parole law should be repealed.
14. Prisoners should have access to intensive pre-release support to devise achievable post-release plans.
15. Prisoners from remote and regional communities should be provided with transport to their ultimate destination and supported throughout the repatriation process.
16. Investments should be directed towards throughcare programs that assist released prisoners to address the underlying causes of their offending behaviour and successfully avoid reoffending.
17. Government departments should adopt a strong policy requiring interpreter use by all police and corrections workers and explicit guidelines on when interpreters must be used.
18. Culturally appropriate rehabilitation treatment services should be made available in Aboriginal languages inside prisons.

19. Custodial accommodation options separate from the main prison should be made available to mentally unwell people in Central Australia who are subject to a custodial supervision order.

20. Wherever possible, treatment and support services in Aboriginal communities should be provided Aboriginal owned organisations.

21. Governments should support Aboriginal leadership and ownership of initiatives to reduce the over-representation of Aboriginal people in the criminal justice system.

22. Community-owned projects should be adequately resourced and capacity development should be supported.

23. Existing evidence should be collated and made publicly available by a coordinating national agency.

24. Justice reinvestment strategies should incorporate public education campaigns.

25. Accurate and rigorous data collection should be a key component of justice reinvestment strategies.

26. Where possible, justice data should be disaggregated by regions and communities to allow for the development of targeted responses to needs in specific areas.

27. Governments should implement comprehensive data collection policies in consultation with local service providers.

1.2 Recommendations to the Federal Government

CAALAS, as part of NATSILS, recommends:

1. That the Commonwealth Government work with opposition parties to secure bipartisan support at the federal level for justice reinvestment.
2. That the Commonwealth Government work with the Standing Council on Law and Justice to secure agreement with State and Territory governments to commit to jointly establishing an independent central coordinating agency for justice reinvestment.
3. In securing agreement with State and Territory governments, that the Commonwealth Government consider the potential for attaching relevant conditions to the funding it provides to State and Territory governments.
4. In the event that agreement is not secured, that the Commonwealth Government itself establish an independent central coordinating agency for justice reinvestment.
5. That the central coordinating agency focus on building the evidence base that will inform justice reinvestment initiatives. Such will not only assist in identifying locations for justice reinvestment initiatives but will also provide the necessary data to inform modelling as to the fiscal benefits that could be achieved which could serve to convince any State and Territory governments which have not yet signed on.
6. Given the over-representation of Aboriginal and Torres Strait Islander peoples in Australia's prisons, that the central coordinating agency and any subsequent justice reinvestment initiatives in Aboriginal and Torres Strait Islander communities must have, and insist on, cultural expertise at all stages of project design and implementation. Local and peak Aboriginal and Torres Strait Islander organisations could assist here.
7. That Commonwealth, State and Territory governments progress their previous commitment to introduce justice targets under the Safe Communities Building Block of the Closing the Gap policy initiative. Such targets should be included in a National Partnership Agreement relevant to the Safe Communities Building Block that also makes references to the implementation of justice reinvestment initiatives for Aboriginal and Torres Strait Islander communities.
8. That robust evaluation of initial justice reinvestment trials be completed in order to assess outcomes and provide evidence as to its effectiveness. Such could then be used to secure further buy in from non-participant jurisdictions.

2 About CAALAS

CAALAS is the largest legal service provider in Central Australia and provides high quality, culturally appropriate legal advice and representation to Aboriginal and Torres Strait Islander people living in Central Australia. This year, we will celebrate the 40th anniversary of our founding in 1973. We provide legal advice and representation in the areas of criminal, civil, family and welfare rights law. CAALAS advocates for the rights of Aboriginal people and improved social justice outcomes, and provides community legal education throughout our service area. We also provide support for youth interacting with the criminal justice system and a dedicated prisoner support and throughcare program that assists released prisoners to successfully reintegrate into the community.

CAALAS strives to achieve its vision statement of "Justice, dignity and equal rights and treatment before the law for Aboriginal people in Central Australia" through its service provision across approximately 90,000 square kilometres of the Northern Territory (**NT**). CAALAS is led by a Council of elected Aboriginal representatives and funded solely by the Commonwealth Attorney-General's Department to operate two permanent offices (in Alice Springs and Tennant Creek) and to conduct a range of outreach trips and clinics, and attend bush court circuits.

3 The drivers behind the past 30 years of growth in the Australian imprisonment rate

The Northern Territory continues to have the highest imprisonment rate in Australia, at 826 prisoners per 100,000 adult population compared to a national average of 168 per 100,000. We also recorded the largest percentage increase in the imprisonment rate between 2002 and 30 June 2012, rising 72%.[2] The numbers of inmates in the Northern Territory are projected to rise again in 2012–13.[3]

In our experience, a range of factors have contributed to the striking growth in imprisonment rates, particularly for Aboriginal people in Central Australia. This points to a number of potential strategies for justice reinvestment which are outlined in our recommendations below.

3.1 A local political culture dominated by "tough on crime" and "law and order" rhetoric

Successive Northern Territory Governments have emphasised increased policing and tougher sentences as a key policy platform. Unfortunately, there is no demonstrated link between these approaches and improved public safety. On the contrary, although imprisonment rates have continued to increase every year for the past 30 years, there

[2] Australian Bureau of Statistics, *4517.0 - Prisoners in Australia, 2012*: *Imprisonment Rates* (2012). Retrieved from: http://www.abs.gov.au/ausstats/abs@.nsf/Products/35E0B43474FA232FCA257ACB00131595?opendocument

[3] Northern Territory Department of Justice, Annual Report 2011-12 (2012) p 104. Retrieved from: http://www.nt.gov.au/justice/general/documents/annual_report_2011_12/northern_territory_correctional_services.pdf

is no evidence that offending rates have been reduced as a result. While CAALAS believes that community safety is an important goal for Central Australia, there is an urgent need for effective and nuanced approaches that address the underlying issues that lead to offending. “Law and order” policies lead to an increase in the imprisonment rate, but do not produce real results for our communities.

3.2 Approaches to policing following the Federal Government’s interventions in the Northern Territory, including the criminalisation of driving

Federal police were deployed to communities throughout the Northern Territory in 2007, following the announcement of the Northern Territory National Emergency Response (now “Stronger Futures”). The enlarged police presence in many communities led to the effective criminalisation of driving, with police targeting unlicensed drivers and vehicles without registration or insurance. As a result, approximately 25% of the Northern Territory prison population comprises driving offenders, of whom approximately 97% are Aboriginal.[4]

CAALAS serves a large number Aboriginal people facing charges relating to driving offences in Central Australia. In our experience, the greatest issues include the sheer unavailability of licensing authorities, driver education programs and community-based options for compulsory alcohol courses.

In Central Australia, increased policing also tends to target Aboriginal people, contributing to their overrepresentation in places of detention. In our experience, police are especially unlikely to appropriately use their discretion in relation to minor offending by Aboriginal young people.

RECOMMENDATIONS

1. **Police guidelines should emphasise the application of appropriate discretion, particularly in relation to minor offences and young people.**
2. **The investment in law enforcement for traffic offences should be redirected to an investment in road safety and services for drivers and vehicles, especially in remote and regional Aboriginal communities.**
3. **Community concerns about road safety should be addressed through investment in upgrading roads and highways on which fatalities occur.**

[4] Anthony, T and Blagg, H (2012) Addressing the “crime problem” of the Northern Territory Intervention: alternate paths to regulating minor driving offences in remote Indigenous communities, p 18. Retrieved from http://indigenouspeoplesissues.com/attachments/article/16575/ Anthony_Blagg_Driving_Offences_Report_2012-f.pdf

3.3 Adverse bail practices, which have contributed to lengthier sentences and rising numbers of individuals being held on remand

In March 2011, the Northern Territory *Bail Act* was amended to include a new offence for breach of bail (s 37B). Since the introduction of this provision, policing of breaches of bail has been used to target individuals who are perceived by police to be at high risk of offending.

Data obtained from NT Police Fire and Emergency Service's annual reports shows that, in 2003, 230 breaches of bail recorded were recorded in the Northern Territory. In 2010-2011, 1442 breaches were recorded. In 2011-2012, following the introduction of s 37B of the *Bail Act* (NT), 2431 were recorded. This represents a rise of 67% over a single year. This breach of bail offence provision has meant that more people have been serving longer sentences in Central Australia.[5]

Approaches to bail in the Central Australia also tend to impact on the incarceration rate for juveniles, especially vulnerable young Aboriginal people who reside in remote communities or who have unstable family circumstances. The Review of the Northern Territory Youth Justice System found that young people in detention in the Northern Territory are more likely to be on remand than serving sentences, often because suitable accommodation was not available.[6]

Case Study 1: A young Aboriginal child was brought into custody following a series of alleged incidents at a remote community. During a bail application, his usual family residence and family supports were nominated. The Magistrate indicated that these were not appropriate, as he was clearly not being well supervised in his home town. As the 14 year old accused could not identify any realistic alternatives, he was remanded to custody for two weeks.

RECOMMENDATIONS

4. **Breach of bail offences should be repealed.**
5. **Services should be developed that offer diversionary options that meet the specific needs of young people in contact with the criminal justice system.**
6. **Improved support services should be made available for the families of young people in contact with the criminal justice system.**

[5] CAALAS has recently made a submission to the Northern Territory Government calling for the repeal of this provision.

[6] Carney, J. (2011) *Review of the Northern Territory Youth Justice System*: Report, Northern Territory Government, pp. 12, 50. Retrieved from: http://hdl.handle.net/10070/241809.

3.4 Mandatory sentencing laws that remove judicial discretion, which have had a significant impact on the overall imprisonment rate in the Northern Territory

Mandatory sentencing has now been in place in the Northern Territory since 1997. New laws have just been introduced that will significantly expand mandatory and minimum sentencing provisions for violent offenders, including juvenile offenders.[7] The new regime provides for minimum mandatory sentences of up to 12 months (in the case of repeat serious offences), and is expected to lead to a sharp rise in the number of people in detention in Central Australia.

We note that mandatory sentences have been shown to be ineffective in deterring crime, and to disproportionately impact on Aboriginal people. Minimum mandatory sentences disrupt employment and family connections and have no rehabilitative value. These issues are compounded in the Central Australian context, as prisoners at Alice Springs Correctional Centre serving sentences of 12 months or less do not have access to any rehabilitative treatment programs due to staffing shortages. The negative effect of imprisonment combines with the lack of suitable rehabilitation, which may actually increase the risk of reoffending following release.

RECOMMENDATIONS

7. **Mandatory sentencing laws should be repealed.**
8. **Investment should be directed towards community and prison-based rehabilitative programs that address the underlying causes of offending behaviour.**
9. **All prisoners should have access to appropriate psychological treatment services that address their rehabilitative needs.**

3.5 A severe lack of alternative sentencing options, community services and support for individuals who might otherwise complete periods of supervised release

There is a severe lack of alternative sentencing options in Central Australia. Support services for individuals seeking to successfully complete periods of supervised release in Alice Springs are extremely limited. Over the past six years, the small range of existing services have been placed under greater pressure by increased policing of minor offences.

[7] Minimum sentences may be partially suspended for juvenile offenders, although they must still be sentenced to a term of 'actual imprisonment' if the relevant criteria are met: see Sentencing Amendment (Mandatory Minimum Sentences) Bill 2012 (NT), commencing on 1 July 2013.

The unavailability of services is even more pronounced in remote and regional areas of Central Australia, where there are well recognised deficiencies in infrastructure. Individuals who would otherwise be found suitable for diversionary programs are sentenced to imprisonment as this is considered to be the only available option. In our experience, Aboriginal individuals are frequently sentenced to custodial terms, rather than community based options, due to the unavailability of suitable treatment services in remote and regional communities. Further, we believe that more sentences would be at least partially suspended if such options were available.

Case Study 2: An Aboriginal man from a remote Central Australian Aboriginal community exhibited signs of a mental illness. He committed several offences and was remanded in custody for reports and assessments to be undertaken, the outcome of which recommended that he return to his community after a period of imprisonment and receive treatment for his conditions. The man had community support for his return however there were no regular mental health services that visited his community to provide support. Due to the sporadic access to mental health services he would receive if returned to his community, the man remained in custody.

RECOMMENDATIONS

10. **Investment should be directed towards appropriate diversionary options including meaningful community work and community-based rehabilitative programs, including community-owned and managed programs.**

11. **Diversionary options should be accessible to individuals from remote and regional communities.**

3.6 Adverse parole practices, include strict enforcement approaches and the "street time" provisions of the Northern Territory *Parole of Prisoners Act*

Technical breaches of parole conditions ("conditional breaches") accounted for some 89% of parole revocations in 2011,[8] notwithstanding that many of those breaches involved minor failures to comply with conditions. When parole is revoked, the full term of the sentence outstanding at the time of release on parole must be served, meaning that many individuals lose credit for "street time" expended on a revoked parole order.

Parole is also notoriously difficult to achieve in Central Australia, particularly given that recommended treatment programs are often not available to offenders in Alice Springs Correctional Centre. These issues are compounded by the difficulties many prisoners face making suitable arrangements for accommodation and support upon release.

[8] Parole Board of the Northern Territory, 2011 Annual Report. Retrieved from: http://www.nt.gov.au/justice/documents/depart/annualreports/paroleboard_annualreport_2011.pdf

Case Study 3: An Aboriginal man living near a small regional town was released on a Parole Order requiring that he report to his local police office every week, and submit to random breath testing. His place of residence was 35kms from the police station. He had a mobile phone but it frequently ran out of credit. When the family car broke down, he failed to report in person for two weeks. As a result, his parole was revoked out of session and his first contact with the police occurred when they arrived with a warrant of imprisonment. He had been on parole for six months, and still had six months to go. He therefore returned to prison with another year to serve. Although he was eligible to reapply for parole at any time, he was not recommended due to his previous breach and ultimately served his full term.

Case Study 4: An Aboriginal man was completing an 18 month sentence with a 12 month non-parole period for aggravated assault. He had spent 6 months on remand. When he was sentenced, his rehabilitation needs were assessed by the prison and he was told that he should complete a violent offender treatment program. He put in a request to complete this program and was placed on the waitlist. When his non-parole period was coming up, a Parole Officer came to see him and said he would have to do the program to get parole. He asked when he would be able to do the program and was told, "it's too late now, you can only do that program if you have a year or two left of your sentence". On the suggestion of his Parole Officer, he wrote a letter to the Parole Board saying he would "just do his full time".

Case Study 5: An Aboriginal woman with a history of alcoholism was released on a Parole Order that required her to reside at an outstation approximately 80kms outside Tennant Creek. The prison booked her transport to Tennant Creek and Community Corrections helped confirm that family would collect her on her arrival. The family did not arrive due to an urgent community meeting. While waiting in Tennant Creek, she met extended family who suggested she have a beer to celebrate her release, and she agreed to have one drink. The next morning, her Parole Officer saw her in town and issued a breath test which returned a positive reading. She returned immediately to custody.

RECOMMENDATIONS

12. **Community Corrections policy guidelines should permit the application of appropriate discretion, particularly in relation to conditional breaches of parole.**

13. **The "street time" provisions of parole law should be repealed.**

14. **Prisoners should have access to intensive pre-release support to devise achievable post-release plans.**

15. **Prisoners from remote and regional communities should be provided with transport to their ultimate destination and supported throughout the repatriation process.**

3.7 A lack of support for people leaving prison, and a broad failure to tackle recidivism

The proportion of Aboriginal prisoners who have previously been imprisoned is significantly higher (74%) than the proportion of non-Aboriginal prisoners who have previously been imprisoned (48%).[9] A study conducted by the Australian Institute of Health and Welfare found that 80% of Northern Territory prisoners surveyed had previously served time in prison as an adult, the highest rate in Australia.[10] The Australian Bureau of Statistics reported that the rate of prior imprisonment for all prisoners in the Northern Territory was 68%, which is higher than the national rate of 54.7%.[11]

We believe there is an urgent need to tackle recidivism rates, and that this is a key area for justice reinvestment in Central Australia. As discussed under heading 6 below, throughcare programs have been demonstrated to have a positive effect on recidivism rates and we hope to see greater investment in this area.

RECOMMENDATION

16. Investments should be directed towards throughcare programs that assist released prisoners to address the underlying causes of their offending behaviour and successfully avoid reoffending.

4 The economic and social costs of imprisonment

It is well established that the economic cost of imprisonment is extremely high. In the Northern Territory, the cost of imprisonment has been reported as $243.20 per prisoner per day, or $88,768 per prisoner per year.[12] These figures do not incorporate the cost of a new prison that is currently being built in Darwin at an estimated cost of $495 million.

Excluding the cost of the new prison, the daily cost of imprisonment is relatively low compared with other states and territories. However, given that the rate of imprisonment in the Northern Territory is by far the highest in Australia, our prison system places a very real burden on taxpayers. The average cost per person per day ($243.20), multiplied by the average daily imprisonment rate of 826 per 100,000 in the population, produces a daily cost of imprisonment of approximately $2 per adult Territorian per day ($733/year). By contrast,

[9] Australian Bureau of Statistics. (2012) *4517.0 - Prisoners in Australia, 2012*: *Aboriginal and Torres Strait Islander prisoner characteristics: Prior imprisonment.* Retrieved from: http://www.abs.gov.au/ausstats/abs@.nsf/Products/55BCA140C89B9129CA257ACB00131755?opendocument

[10] Australian Institute of Health and Welfare. (2011) *The Health of Australia's Prisoners: 2010*, p 17. Retrieved from: http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737421312&libID=10737421312

[11] Australian Bureau of Statistics. (2012) *4517.0 - Prisoners in Australia, 2012*: *Aboriginal and Torres Strait Islander prisoner characteristics: Prisoner characteristics by state and territory.* Retrieved from: http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02012?OpenDocument

[12] Deloitte Access, Report for the Australian National Council on Drugs, An economic analysis for Aboriginal and Torres Strait Islander offenders: prison v residential treatment (2013), p 46.

the average daily cost of imprisonment ($314.60[13]) multiplied by the Australian average rate of imprisonment (168 per 100,000[14]) produces a national average daily cost of imprisonment of only 52 cents per adult Australian per day ($193/year).

We also note that the comparatively low cost of imprisonment per prisoner in the Northern Territory is at least partially attributable to low capital costs.[15] In our experience this is due to a reliance on very basic infrastructure and communal living arrangements, with large numbers of prisoners residing in dormitory style cell blocks. Inadequate facilities have also impacted on the delivery of rehabilitation programs within the prison, with a lack of meeting space often cited as a constraint on service provision. While these issues will be addressed in part when the new prison becomes operational, they will remain a pressing concern in Central Australia.

The social costs of incarceration are well documented. In Central Australia, a key social cost is the loss of family and cultural connections. This is particularly so for Aboriginal people, given that many come from remote communities and families often do not have the means to travel to visit them in prison. Even family who usually reside in Alice Springs do not have regular access to the prison, which is approximately 20kms outside town. The only access point for many family members is a limited weekend shuttle service operated by the Prison Fellowship of Alice Springs. Prisoners are transferred between Alice Springs and Darwin Correctional Centres on a regular basis, posing a further barrier to family contact and support.

These substantial costs highlight the potential value of justice reinvestment strategies in Central Australia. A strategy to reduce imprisonment rates in Central Australia would clearly produce significant cost savings, and would enhance social welfare outcomes for those in prison and their families and communities.

5 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

The overrepresentation of Aboriginal people in prison is well documented. As at 30 June 2012, the rate of imprisonment for Aboriginal prisoners was 15 times higher than the rate for non-Aboriginal prisoners, an increase from 2011 (when the rate was 14 times higher).[16]

Consistent with the national trend, Aboriginal people in the Northern Territory are grossly over-represented in prison, and the numbers in Northern Territory Correctional Centres continue to rise.[17] As at 30 June 2012, 84% of the Northern Territory prison population

[13] Ibid.
[14] Above n 7, p
[15] Above n 10, p 46.
[16] Australian Bureau of Statistics. (2012) *4517.0 - Prisoners in Australia, 2012*: *Aboriginal and Torres Strait Islander prisoner characteristics - Imprisonment Rates.* Retrieved from: http://www.abs.gov.au/ausstats/abs@.nsf/Products/284EF4DA1F5BD6F5CA257ACB001316D3?opendocument.
[17] Australian Bureau of Statistics, *Corrective Services Australia: September Quarter 2012 - 4512.0*, released 22 November 2012, p 16. Retrieved from

identified as Aboriginal or Torres Strait Islander,[18] representing an increase of about 14% over the preceding 12 month period.[19]

The rate of over-representation is yet more pronounced for Aboriginal children. The national detention rate for Aboriginal youth is 397 per 100,000, which is 28 times higher than the rate for non-Aboriginal juveniles.[20] In the Northern Territory, nearly all of the young people held in juvenile detention centres are Aboriginal youth and male.[21] On an average night during 2007–11, 90% to 100% of youth in detention were Aboriginal.[22] We recently saw record numbers of young Aboriginal people entering juvenile detention in Central Australia during the summer holiday period.

In Central Australia, these figures are clearly linked to broad issues of social and economic disadvantage. In its 2011 report on Aboriginal and Torres Strait Islander youth in the Criminal Justice System, *Doing Time – Time for Doing*, the Standing Committee on Aboriginal and Torres Strait Islander Affairs referred to research indicating that "the risk of Indigenous people being charged or imprisoned increased if the respondent was experiencing financial stress, lived in a crowded household, or had been taken away from their natural family".[23] It is clear that these factors are relevant for many individuals in Central Australia, and we note that housing pressures are a particular concern in our service area.

In addition, many Aboriginal people in Central Australia speak English as a third or fourth language, and struggle to maintain an equal footing in communications with police, the courts, and parole officers. In our experience, interpreters are rarely used, and language barriers frequently go unrecognised by workers in the criminal justice system.

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http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/911CBE22BB953781CA257ABD001019C4/$File/45120_september%20quarter%202012.pdf.

[18] Australian Bureau of Statistics. (2012) *4517.0 - Prisoners in Australia, 2012*: *Aboriginal and Torres Strait Islander prisoner characteristics.* Retrieved from: http://www.abs.gov.au/ausstats/abs@.nsf/Products/F1D32866F5634F83CA257ACB001316BA?opendocument

[19] Ibid.

[20] House of Representatives, Standing Committee on Aboriginal and Torres Strait Islander Affairs. (2011) *Doing Time – Time for Doing*, Commonwealth Parliament of Australia, p 8. Retrieved from http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=atsia/sentencing/report.htm.

[21] Office of the Northern Territory Coordinator-General for Remote Services. (2012) *Office of the Northern-Territory Coordinator-General for Remote Services Report: June 2011 to August 2012*, p 161. Retrieved from: http://servicedelivery.fahcsia.gov.au/2012/09/26/office-of-the-northern-territory-coordinator-general-for-remote-services-report-june-2011-to-august-2012/

[22] AIHW. (2012) 'Juvenile detention population in Australia 2011', February 2012, p 48; Office of the Northern Territory Coordinator-General for Remote Services. (2012) *Office of the Northern-Territory Coordinator-General for Remote Services Report: June 2011 to August 2012*, p 158. Retrieved from: http://servicedelivery.fahcsia.gov.au/2012/09/26/office-of-the-northern-territory-coordinator-general-for-remote-services-report-june-2011-to-august-2012/

[23] House of Representative, Standing Committee on Aboriginal and Torres Strait Islander Affairs. (2011) *Doing Time – Time for Doing*, Commonwealth Parliament of Australia, p 12. Retrieved from http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=atsia/sentencing/report.htm.

Case Study 5: A young Aboriginal man with limited English skills was found guilty of manslaughter following a fight that resulted in the tragic death of his 17 year old brother. Because the victim was under 18, the offender was placed on the Australian National Child Offender Registry (ANCOR) and was therefore subject to ongoing ANCOR reporting obligations on his release. These obligations were explained to him by his Parole Officer on one occasion approximately 6 months prior to his release, without the use of an interpreter. When released, he did not comply with the ANCOR obligations as he did not understand what they meant. As a result, his was arrested and returned to custody.

RECOMMENDATION

17. Government departments should adopt a strong policy requiring interpreter use by all police and corrections workers and explicit guidelines on when interpreters must be used.

In our view, the figures are also linked to the following factors, many of which are discussed in greater detail under heading 3 above:

- The over-policing of Aboriginal people, particularly in the Northern Territory following the Federal Government's interventions in 2007. As discussed above at point 3.2, policing issues include a trend towards the criminalisation of driving, and a general failure of police to appropriately use their discretion in relation to minor offending by Aboriginal young people in Central Australia;

- Mandatory sentencing laws that disproportionately effect Aboriginal people;

- Breach of bail offences that disproportionately effect to Aboriginal people;

- Significant numbers of Aboriginal people from remote and regional areas being held on remand or sentenced to imprisonment unnecessarily due to perceived instability in these areas, a general lack of service provision, and a lack of access to non-custodial sentencing options in those areas;

- A severe shortage of places on existing rehabilitation programs, compounded by an absence of services with the capacity to deliver culturally and linguistically appropriate support to Aboriginal people. Almost all of the few available treatment programs are delivered in the English language and often assume a strong level of literacy; and

- Parole practices that lead to a disproportionate number of Aboriginal people failing to achieve parole, or facing parole revocation.

RECOMMENDATION

18. Culturally appropriate rehabilitation treatment services should be made available in Aboriginal languages inside prisons.

Aboriginal people with mental ill-health, cognitive disabilities (including foetal alcohol spectrum disorder) and/or hearing loss are additionally vulnerable in this system. In our experience, although these difficulties are relatively prevalent in Central Australia, they are rarely identified, given the relative lack of appropriate health services. When these issues are identified, they are frequently correlated with longer sentences and more frequent contact with the criminal justice system.

In addition, we note that mentally unwell Central Australian individuals made subject to a custodial supervision order under Part IIA of the Criminal Code are also detained in prison due to the lack of alternative placement options.

Case Study 6: A 19 year old Aboriginal man who was based in Alice Springs was charged with an assault. The man was diagnosed with an organic brain injury and alcohol dependence. Questions of the man's fitness to plead were raised by prosecutions and conceded. At special hearing, the man was found not guilty of the offences by reason of mental impairment and the Court ordered a custodial supervision order. In the absence of an alternative, appropriate place in which the man could be supervised in custody, he was committed to the Alice Springs Correctional Centre (**ASCC**). Due to the lack of alternate facilities in which he may be supervised in custody, there is still a great deal of uncertainty about when or if an appropriate community setting may be available to him.

RECOMMENDATION

19. Custodial accommodation options separate from the main prison should be made available to mentally unwell people in Central Australia who are subject to a custodial supervision order.

The disproportionate number of Aboriginal people in prison in Central Australia represents another important opportunity to implement justice reinvestment strategies that would have significant value to the community. While we acknowledge that there are challenges in deploying a full suite of rehabilitative programs across the 90,000 square kilometre area of Central Australia, our experience suggests that Aboriginal communities are eager to develop appropriate programs for their members.

Community-owned programs tend to be cost-effective and are most likely to deliver genuinely culturally and linguistically appropriate services to community members. By

resourcing and supporting such initiatives, governments have a key opportunity to enhance service delivery in Central Australia, while also contributing to community development and supporting Aboriginal leadership.

RECOMMENDATIONS

20. **Wherever possible, treatment and support services in Aboriginal communities should be provided by Aboriginal owned organisations.**

21. **Governments should support Aboriginal leadership and ownership of initiatives to reduce the over-representation of Aboriginal people in the criminal justice system.**

22. **Community-owned projects should be adequately resourced and capacity development should be supported.**

6 The cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures

6.1 Prevention

We submit that throughcare programs that support prisoners pre- and post-release are a key preventative strategy, particularly in the Northern Territory, where released prisoners face a number of complex barriers to successful reintegration. Promising results are already available. As noted in the NATSILS submission, the North Australian Aboriginal Justice Agency's Indigenous Throughcare Project has demonstrated striking success in reducing recidivism among its client group.

CAALAS currently delivers two programs targeted at Aboriginal people in contact with the criminal justice system. Our Youth Justice Advocacy Project (**YJAP**) supports young people in contact with the criminal justice system to access diversionary programs and provides a limited case management service to support young people on supervised orders. Our Prison Support Program (**PSP**) provides pre- and post-release case management services to sentenced prisoners.

It is currently proposed that both projects will be moved towards a throughcare model of service delivery, focusing on intensive case management of individuals with identified high needs and at risk of reoffending. Preliminary results from our pilot post-release program are extremely encouraging. 100% of our post-release clients have successfully avoided reoffending following a period of detention, and we are currently seeking funding to extend the program significantly. The proposed extended program would provide intensive case management services to up to 60 adults and 30 children, with an annual budget less than the cost of imprisonment for 4 adult and 3 juvenile offenders.

6.2 Rehabilitation

It is widely acknowledged that the cost of delivering prevention, early intervention, diversionary and rehabilitation programs is generally significantly lower than the cost of imprisonment. For example, the Australian National Council on Drugs recently released a report examining the cost of prison compared with the cost of residential treatment programs,[24] and found that the total financial savings associated with diversion to community based residential rehabilitation amounted to $111,458 per offender.[25]

Unfortunately, very few spaces in residential programs are currently available in Central Australia, and there is a notable lack of culturally and linguistically appropriate services, as discussed above.

6.3 Early intervention and diversion

There is a severe lack of early intervention and diversionary programs in Central Australia, although we believe there would be significant value in making such programs available, as discussed above.

7 The benefits of, and challenges to, implementing a justice reinvestment approach in Australia

Many of the benefits of implementing a justice reinvestment approach in Australia are discussed above, and in the NATSILS submission. By way of summary, CAALAS believes that the key benefits include:

- Improved community safety through reduced offending;
- Improved community well-being through the delivery of programs targeted at addressing the circumstances in an offender's community which relate to offending;
- Economic savings and value for money in justice expenditure, with flow on benefits for other budget areas including education, health and infrastructure;
- Improved outcomes for families and children through long term disruption of the intergenerational cycle of offending;
- Reducing disadvantage in Aboriginal communities by reducing the over-representation of Aboriginal people in the criminal justice system, which is a particularly urgent need in Central Australia;
- Improving outcomes for vulnerable people with mental illness, cognitive/intellectual disabilities and hearing loss in the criminal justice system.

[24] Australian National Council on Drugs (2012) *An Economic Analysis for Aboriginal and Torres Strait Islander Offenders: Prison vs Residential Treatment*, retrieved from: https://www.deloitteaccesseconomics.com.au/uploads/File/NIDAC_Deloitte%20Access%20Economics%20Report(1).pdf

[25] Ibid p xi.

Key challenges to implementing justice reinvestment approaches include:

- Educating the community about the benefits of adopting a justice reinvestment given the highly charged nature of many discussions around crime and criminal justice;
- Obtaining bipartisan support for justice reinvestment in context marked by polarised attitudes towards crime;
- In the Northern Territory, overcoming a political culture that implicitly assumes that "tough on crime" approaches can be effective in addressing perceived problems in Aboriginal communities, despite significant evidence to the contrary;
- Coordination between State and Territory governments, the Commonwealth government, and other stakeholders in justice reinvestment initiatives; and
- Developing a sophisticated, evidence-based approach to justice reinvestment without comprehensive and longitudinal data (see further discussion under heading 8 below).

Despite these challenges, we believe that justice reinvestment is worthy of bipartisan support. The potential cost savings and social benefits would be of real value to the Australian community as a whole.

RECOMMENDATIONS

23. Existing evidence should be collated and made publicly available by a coordinating national agency.

24. Justice reinvestment strategies should incorporate public education campaigns.

8 The collection, availability and sharing of data necessary to implement a justice reinvestment approach

As detailed in the NATSILS submission, a range of data is needed to underpin the development and implementation of justice reinvestment.

While data collection has improved in the Northern Territory as a result of Closing The Gap and Stronger Futures initiatives, there are still some noticeable gaps in the data. For example, the Review of the Northern Territory Youth Justice System carried out by the Northern Territory government noted that some critical data relevant to youth offending was not available, including data on youth recidivism and the involvement of children in care in the criminal justice system. It stated:

> "To complement its consultative framework, the Review sought to obtain and analyse all relevant data about youth justice in the Territory. Throughout this process,

however, it became clear that data collection itself was an issue, and a recommendation would be required to improve the collection of all necessary information relating to youth offending."[26]

The Office of Northern Territory Coordinator-General for Remote Services Delivery Report for June 2011 to August 2012 was strongly critical of the manner in which data is collected, collated and disseminated by government agencies operating in the Northern Territory, and called for improvements in data collection to enable effective policy development and program evaluation.[27]

CAALAS faces an additional barrier relating to the lack of community or region specific data. We have strong relationships with the communities we serve, and regularly obtain feedback about concerns and needs in those communities. However, most of the data released by government agencies is Territory-wide, which makes it difficult to provide quantitative evidence on the needs of particular communities and regions. Accordingly, we believe that strategies to collect and maintain accurate and useful data sets are an essential component of a sound justice reinvestment approach.

RECOMMENDATIONS

25. **Accurate and rigorous data collection should be a key component of justice reinvestment strategies.**

26. **Where possible, justice data should be disaggregated by regions and communities to allow for the development of targeted responses to needs in specific areas.**

27. **Governments should implement comprehensive data collection policies in consultation with local service providers.**

9 The implementation and effectiveness of justice reinvestment in other countries, including the United States of America

As outlined in the NATSILS submission, justice reinvestment has been implemented in some form in 27 states in the Unites States, with considerable success. For example, in Texas, a state known for its "tough on crime" approach and high rates of incarceration, justice reinvestment has led to more than $2 billion in cost savings. Texas also experienced 4.5%

[26] Northern Territory Government, *Review of the Youth Justice System: Report* (2011) p 27. Retrieved from: http://hdl.handle.net/10070/241809.

[27] Northern Territory Coordinator-General for Remote Services Report: *Office of the Northern Territory Coordinator-General for Remote Services Report: June 2011 to August 2012*, p 3. Retrieved from: http://www.territorystories.nt.gov.au/bitstream/handle/10070/241806/NTCGRS_fullreport_2012.pdf?sequence=1.

decline in its incarceration rate and saw a 52.9% reduction in the number of youth in state institutions.[28]

A key feature of the justice reinvestment movement in the United States includes Congress' establishment of the Justice Reinvestment Initiative (**JRI**), which sits within a government department and provides technical assistance and competitive financial support to jurisdictions undertaking, or intending to undertake, justice reinvestment work.[29] This project has been highly successful as a result of bipartisan support and the development of clear guidelines and requirements for involvement in the JRI.

10 The scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments

We believe the Federal Government has a key role to play in setting a national strategy for justice reinvestment in Australia. Key limbs of federal government action may include supporting public awareness about the benefits of justice reinvestment initiatives and linking Federal funding to investment in justice reinvestment initiatives.

CAALAS also supports the establishment a central independent body to coordinate justice reinvestment initiatives and provide technical assistance to jurisdictions administering those initiatives.

[28] Information about the success of justice reinvestment in other USA sates can be found at (http://www.rightoncrime.com/reform-in-action/.)
[29] http://www.bja.gov/ProgramDetails.aspx?Program_ID=92.

RECOMMENDATIONS TO THE FEDERAL GOVERNMENT

As stated in the NATSILS submission

1) **That the Commonwealth Government work with opposition parties to secure bipartisan support at the federal level for justice reinvestment.**
2) **That the Commonwealth Government work with the Standing Council on Law and Justice to secure agreement with State and Territory governments to commit to jointly establishing an independent central coordinating agency for justice reinvestment.**
3) **In securing agreement with State and Territory governments, that the Commonwealth Government consider the potential for attaching relevant conditions to the funding it provides to State and Territory governments.**
4) **In the event that agreement is not secured, that the Commonwealth Government itself establish an independent central coordinating agency for justice reinvestment.**
5) **That the central coordinating agency focus on building the evidence base that will inform justice reinvestment initiatives. Such will not only assist in identifying locations for justice reinvestment initiatives but will also provide the necessary data to inform modelling as to the fiscal benefits that could be achieved which could serve to convince any State and Territory governments which have not yet signed on.**
6) **Given the over-representation of Aboriginal and Torres Strait Islander peoples in Australia's prisons, that the central coordinating agency and any subsequent justice reinvestment initiatives in Aboriginal and Torres Strait Islander communities must have, and insist on, cultural expertise at all stages of project design and implementation. Local and peak Aboriginal and Torres Strait Islander organisations could assist here.**
7) **That Commonwealth, State and Territory governments progress their previous commitment to introduce justice targets under the Safe Communities Building Block of the Closing the Gap policy initiative. Such targets should be included in a National Partnership Agreement relevant to the Safe Communities Building Block that also makes references to the implementation of justice reinvestment initiatives for Aboriginal and Torres Strait Islander communities.**
8) **That robust evaluation of initial justice reinvestment trials be completed in order to assess outcomes and provide evidence as to its effectiveness. Such could then be used to secure further buy in from non-participant jurisdictions.**