

The 'New Normal' is a Chance to Correct Our Errors of the Past

COVID19 restrictions have impacted upon the processes and procedures of our criminal jurisdiction in a profound and unprecedented manner. The sector has banded together to continue to deliver, wherever possible, a continuing and functional system of criminal courts and access to justice. Whilst there have been some positive innovations, ultimately we have struggled. It is time for us to take the opportunity of learning from the experience and creating a stronger and fairer justice system moving forward.

The implementation of 'on country' bail applications from remote communities has been a fantastic innovation. Whilst placing a greater burden on some remote police stations and officers, it is pleasing to see that this new initiative is here to stay. Similarly e-filing in the Darwin Local Court and an increase in access to consent orders being made in chambers is a real positive, as has been the ability to have 'in custody prisoners' excused on request from mentions in directions hearings or preliminary examination lists.

It has become evident however that there is a dearth of ready infrastructure and technology to access persons in custody via telephone and audio visual links. The court process and ability to engage in best practice advocacy is compromised when distance is placed between client and practitioner. Any considerations to an increase in such practices should be strongly discouraged. It is simply appalling that court appearances via AVL have become at times the only means of contact between a practitioner and their client, and that otherwise privileged interactions and exchange of information have become a regular occurrence in open court.

The practical implications of lack of access to an interpreter 'in person' to assist with clients who do not have English as a first language, has been on show daily.

The cessation of hearings and trials has been the biggest issue. It is now the time to pass legislation that enables, subject to strict safeguards, the right of an accused to elect to proceed to a judge alone trial in the Supreme Court.¹ Another wave of the coronavirus or any other pandemic, which is contemplated as part of 'the new normal', is all it will take to once again put a brake on our criminal justice system. If that occurs everyone loses including victims of crime, witnesses and their family and friends.

Unfortunately there will always be some crimes of such gravity that the only manner in which to deal with offenders is by lengthy terms of imprisonment, in large part to protect the community. But in the vast majority of cases we need to find a balance, we need to be truly tough on crime by promoting and moving to punishments that are alternative to incarceration.

Our overcapacity prisons have become a warehouse for those from abject dysfunction and disadvantage with ineffectually treated health and addiction issues. The time has come for reform to our parole system that breaks down barriers and promotes

¹ This must be at the election of the accused. CLANT does not support any reform similar to the recent legislation passed in the ACT which allows for judge alone trials without the consent of the accused.

conditional transition to the community. We need to recognise street time, to create transitional housing and employment programs and to consider statutory parole for certain sentences.

The abolition of all forms of mandatory sentencing is paramount.

A reimagining of community based orders, similar to the intensive corrections orders regime in Victoria would be a meaningful step forward. Drug and Alcohol Courts and the decriminalisation of certain drug offences in favour of a therapeutic approach must be properly considered. Investment in residential rehabilitation facilities on country and broader access to community and regional work camps or employment programs is essential.

Continued reform in accordance with the recommendations of the Royal Commission into the Protection and Detention of Youth must return to the agenda. This will give our young people and in turn the adult system, the best chance at breaking the cycle of offending and creating a safer community for all Territorians.

Decarceration and rehabilitation is not only a justice issue it is a health issue.² We know that prisoners in overcrowded environments fall within a cohort of those most at risk of COVID19. We have kept the virus out of our prisons but at a cost to our prisoners' rights and entitlements, and in a manner that has greatly impaired the functioning of our court system.

We would be foolish not to recognise that there have been devastating consequences including rioting and fatalities in many other countries and indeed in prisons in other states within Australia. We have recently seen a major incident here at the Darwin Correctional Centre, although the genesis of that riot is not yet known. If we continue to imprison our offenders, particularly our First Peoples, at our current shameful rates, we will have learnt nothing from this pandemic.

The economic benefits of justice reinvestment and the creation of new infrastructure must also be seen as a positive way forward for the broader community leading to increases in employment, housing and health outcomes. In maintaining the status quo and refusing to acknowledge the lessons we will simply continue to waste hundreds of millions of dollars on an ineffective correctional system, resulting in poorer outcomes and a less safe community.

This difficult time can be a turning point in the way we get tough on crime in the Northern Territory. The ability of the Courts, police, corrections and practitioners to work together is a testament to the fact that change and collaboration is achievable.

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² CLANT has proposed a variety of decarceration measures in its Aboriginal Justice Agreement submission, which can be accessed at <https://clant.org.au/wp-content/uploads/AJA.pdf>.