

## **JUSTICE IN THE TIME OF CORONA**

We are working through uncertain times: the criminal justice system is having to make significant changes to accommodate social distancing and health and safety restrictions. This is particularly challenging in the NT given the sheer geographical size of our jurisdiction and the many remote communities we service. All stakeholders are working together to try and provide ongoing access to justice for all persons, with a particular focus on those in custody.

Proceeding wherever possible via audio visual links is far from best practice, particularly noting that many persons in custody have issues with hearing and language barriers (that they may not even realise or understand themselves). These impediments are often difficult to identify unless meeting with that person in close quarters and taking detailed instructions and making observations.

The suspension of all jury trials and of Local Court hearings for persons on bail will create an enormous backlog of work to be listed when the COVID 19 restrictions are lifted. The Local Court hearings for persons in custody are proceeding, in principle, however many of those hearings have been or will need to be postponed due to an inability to secure witnesses to give their evidence as a result of the restrictions.

The effect is that justice is delayed. This is particularly devastating for persons on remand in custody who want to defend their charges. At law, a person on remand is presumed innocent. We are reaching a point at which prisoners will either remain in custody for extended periods with no certainty as to when or if they will see their day in court. Alternatively they may be released to the community and still have to wait for months or possibly years to finalise their matters. This is already the case for those on bail.

In other jurisdictions there are, in some cases controversial, changes to the law being made to accommodate the changing criminal justice landscape, to keep the system from coming to a grinding halt. In NSW the Corrections Commissioner has been empowered to grant parole to certain eligible prisoners in an attempt to reduce pressure on the prison system. In the ACT legislation has been passed to compel jury trials to continue with judge alone trials in the absence of a jury.

Proactive and urgent changes need to occur in the Territory.

CLANT would welcome legislative reform that would entitle an accused person in custody to have the option to elect to proceed to trial before a judge alone. Similarly we would welcome reform similar to that in NSW which would empower the parole and also in certain instances early release of prisoners, in circumstances where the safety of the community is not compromised. Amendments to the Bail Act and the Sentencing Act – for instance defining COVID 19 restrictions as an 'exceptional circumstance' – would ease the pressure of unjust mandatory sentencing provisions, which in turn may promote negotiations and early guilty pleas by persons who would otherwise seek to defend their charges.

Around the world we have seen that many countries are releasing low risk prisoners from gaol. As would be expected, the conditions within the NT prisons, much like amongst us in the community, are becoming increasingly restrictive and difficult. There are now fewer opportunities to access education and rehabilitation programs for prisoners. They are no longer able to have any face to face visitors. They are spending longer periods locked in their cells than they ordinarily would. Many of the underlying principles for sentencing persons are undermined in such conditions and it becomes a largely punitive environment.

The time for real action is now. We need changes that both protect the health and safety of our community but also ensure our criminal justice system can continue to function and that timely access to justice is available to all that need it, including victims, witnesses and accused persons.

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