WE SUBMIT…

CLANT contributes to public policy debates on a broad range of criminal justice issues. What follows is a snapshot sample of submissions made by CLANT in the first half of 2016. The full text, including footnotes to referenced material, is on the CLANT website at http://www.clant.org.au, under the "Publications/Submissions" tab.

NT Anti-Corruption Integrity & Misconduct Commission Inquiry

CLANT proposes that a hybrid inhouse/outsource model be developed for the NT, in which functions such as education, acceptance of complaints and preliminary investigations would be undertaken locally; and matters meriting further investigation and inquiry would be referred to an established interstate ICAC.

There should be a single portal through which the public can make complaints to and access the services of the Ombudsman, the Public Interest Disclosure Commissioner, the Information Commissioner, the Health and Community Services Complaints Commissioner – and the Integrity Commissioner. That portal should also be used for the making of complaints against police. The existing powers and functions of the Public Interest Disclosure Commissioner should be subsumed within those of the Integrity Commission.

Without ignoring the need for appropriate measures to protect both the privacy of individuals (particularly those accused of serious impropriety) and the integrity of sensitive investigations, NT Integrity Commission inquiries should generally be conducted in public.

The NT Integrity Commission should be empowered to commence an investigation, whether preliminary or full, where it has a reasonable suspicion of corrupt conduct.

The scope of 'corrupt conduct' as proposed by the Gleeson Panel should be adapted and adopted for the NT Integrity Commission.

The NT Integrity Commission should be empowered to investigate on its own motion complaints it receives of corrupt conduct against Members of the Legislative Assembly, including Ministers; complaints directed at Ministerial advisors and electorate officers; complaints of corrupt conduct by judicial officers; and complaints of police corrupt conduct, with provision made to ensure that investigators in such matters are independent of NT police.

Senate Community Affairs References Committee Inquiry Into The Indefinite Detention Of People With Cognitive And Psychiatric Impairment In Australia

By maintaining indefinite detention as a default setting (rather than a last resort) without a guarantee of periodic reviews, for people with cognitive and psychiatric impairment who have been charged with serious offences, Australia is in breach of its obligations under the Convention on the Rights of People with Disabilities and must report its failures under the Optional Protocol. It is also at risk of individual complaints.

There is an urgent need for appropriate human rights monitoring and evaluation to address these issues in the NT. For the purposes of monitoring human rights abuses in the context of cognitive and psychiatric impairment, we recommend the use of the Human Rights and Care Assessment (ITHACA) Toolkit.

There is an urgent need to provide resources and services to all communities across the NT to properly identify and treat those people with cognitive and psychiatric impairment.

There should be a formalised assessment system at health, education and justice system access points to properly identify and treat those people with cognitive and psychiatric impairment.

There must be a Federal mandatory statutory Code of Practice on detention, treatment and questioning of vulnerable people, such as those with cognitive and psychiatric impairment which should be applied at all stages of the criminal justice system.

There must be a formalised, mandatory and accredited system for all those personnel working in health and justice sectors with vulnerable people such as those with cognitive and psychiatric impairment.

The rules around fitness to plead must change to give primacy to the concept that people with cognitive and psychiatric impairment can have equal access to justice and an opportunity to put forward their case with suitable assistance with communication and appropriate health care treatment.

Post-Release Repatriation of Prisoners

> *"Family, friends and external agencies will be encouraged to assist financially in the repatriation of prisoners who fall outside the revised parameters … Prisoners will now be expected to meet the costs of his/her repatriation"* (Commissioner Middlebrook, 20/10/2015)

Research in Australia and abroad indicates that upon release, ex-prisoners face multiple and significant challenges to social inclusion and to avoid re-offending. One Australian study found that prisoners who were homeless or transient upon release from incarceration were between two and eight times more likely to be reincarcerated.

In *R v Wunungmurra* (21511963) NTSC, 20 November 2015, Mildren A/J acknowledged the problem that the unrepatriated offender faced following his release from prison.

Without the support of Corrections in assisting individuals to return home, many released persons are finding themselves stranded in Darwin or Alice Springs, and many will end up in the long grass, where they will turn again to excessive consumption of alcohol and other drugs, at an elevated risk of reoffending.

Lack of Transport Services to Visit Prisoners at the Darwin Correctional Centre.

Attorney-General Elferink was reported as asserting that "he had not seen any evidence that visits from family members aided rehabilitation, or reduced their chances of recidivism". On the contrary, a recently scholarly review of the extensive corpus of research on this issue concludes that:

> The observed relationship between visitation and recidivism has been accepted for almost a century, and this acceptance has shaped the subsequent development of related criminological research. Long-standing empirical evidence suggests that prison visiting has a positive influence on inmates, improving their likelihood of successful reintegration on release, and thereby reducing their rates of recidivism.

In every other Australian jurisdiction, correctional centres have functioning transport services for visitors. Unsurprisingly, the effect on prison visitation has been dramatic: the new prison has experienced a 35% decline in social visitation rates compared to the previous Berrimah location.

Justice Legislation Amendment (Drug Offences) Bill 2016

CLANT urges that serious consideration be given to a more radical reappraisal of government responses to illicit drug use. Despite the concerted efforts of governments worldwide to prosecute the so-called "war on drugs", there is scant evidence that the zero-tolerance approach has been effective. By contrast, jurisdictions which have adopted policies focused on harm minimization including the decriminalization of illicit drug use (as distinct from manufacture and supply), have shown impressive results, and should be closely examined to see if there are lessons for the Northern Territory. In the meantime, CLANT supports the following measures contained in the Bill:

- Conversion of drug offences to bring them within the principles of criminal responsibility set out in Part IIAA of the *Criminal Code.*
- Consolidation, simplification, modernisation and harmonization of the *Misuse of Drugs Act*.
- Recognition that the commission of drug offences in the presence of a child is an aggravating circumstance.
- Strengthening of provisions designed to protect the integrity and effectiveness of police investigation and surveillance of suspected drug offending.
- Prohibition of the supply of a range of drug paraphernalia, which will help to rectify the long-standing anomaly which has permitted the public display and sale of items obviously intended for the consumption of prohibited drugs.
- Addition of the actual possession of a weapon as an aggravating circumstance for the purpose of s37 of the Act.

CLANT opposes the increases in both financial penalties and penalties of imprisonment contained in the Bill. The proposed change to the *Sentencing Act* is of additional concern because, in a jurisdiction where widely criticized mandatory sentencing laws are already in force, it represents a further attack on the independence of the judiciary, and in particular, the just and proper exercise of judicial discretion.

Bail Amendment Bill

As we go to press, the NT government has announced a Bill – text as yet unpublished – to remove the presumption against bail for "persons that are arrested and have previously been convicted of two or more serious property crimes within the preceding two years". Over the last decade, while the national imprisonment rate increased by 20%, the NT rate increased by 60%. At 885 prisoners per 100,000 adults, our imprisonment rate is now higher by a long shot than any nation on earth (Australia comes in at 97th out of 221 countries). It is possible of course that the rest of the world has got penal policy wrong, and the NT has got it right. However, we submit…

Russell Goldflam

23 May 2016