

Criminal Lawyers Association of the Northern Territory (CLANT)

Joint Submission

North Australian Aboriginal Justice Agency (NAAJA)

Central Australian Aboriginal Legal Aid Service (CAALAS)

and Criminal Lawyers Association of the Northern Territory (CLANT)

to

Northern Territory Department of Correctional Services

August 2016

1. Introduction

This submission addresses two related issues: the lack of post-release transport services for prisoners to enable them to return to their home communities; and the lack of transport services for family and friends seeking to visit prisoners at the Darwin Correctional Centre.

The Northern Territory Department of Corrections (NTDCS) 2013-2016 Strategic Intent Plan identified 'enhance repatriation options to improve offender reintegration to community' as one of six measures to achieve the 'strategic theme' of reducing re-offending.¹

However, on 20 October 2015, the Commissioner of Corrections advised that NTDCS would no longer make repatriation arrangements for any prisoner who has been remanded in custody. Further, that prisoners who were not being collected by family, friends or by other arrangement would be taken to the nearest transport terminal or their legal representative's office. On 3 March 2016, a memorandum was issued by the Department advising Darwin Correctional Centre prisoners that these changes to the policy would be effective immediately.

¹ NTDCS Annual Report 2012-2013, available at:

https://www.nt.gov.au/data/assets/pdf_file/0007/166048/annual-report-2012-13.pdf

NAAJA, CAALAS and CLANT deplore the abandonment of the repatriation program.

Prisoner numbers in the Northern Territory have risen substantially with a concomitant increase in numbers of releases. The Territory's high recidivism rates demonstrate that time in custody is not conducive to rehabilitative success for prisoners who are struggling to reintegrate into the community upon release. Research in Australia and abroad indicates that upon release, ex-prisoners face multiple and significant challenges to social inclusion and to avoid re-offending.² With this in mind, it is concerning that the Department has adopted a policy that neglects the acute need for transitional support for ex-prisoners, from when they make first contact with society post-release.

2. The Judicial Response

Concerns that the repatriation policy will have a significant impact upon the chances of released individuals reoffending have been expressed – and in part addressed – by the courts.

In *R v Wunungmurra*, Mildren A/J dealt with an offender from a remote community who had been released from Darwin Correctional Centre and not repatriated. He remained in Darwin, where he re-offended. In his sentencing remarks, Mildren A/J acknowledged the link between repatriation and rehabilitation, as follows:³

[Y]ou must have been released only a matter of a few weeks before you committed the offence with which I am now dealing.

It was put on your behalf that when you were released from prison you were not repatriated to Gapuwiyak but released in Darwin. You had no income. You are not in receipt of Centrelink benefits and you were effectively destitute living in the long grass. It was put on your behalf that you did not have any means to get back to your own community where your previous history showed that you were able to stay out of trouble. By remaining in Darwin you associated with other long grassers and that led to you consuming excessive amounts of alcohol. It was also put that your previous offence was committed at a time when you were also grossly intoxicated.

Gapuwiyak, otherwise called Lake Evella is located in north east Arnhem land about 25 kilometres south of Buckingham Bay and about the same distance south west of Arnhem Bay. It is a considerable distance away from Darwin and I think I can take judicial notice that there would be difficulties accessing the settlement during the wet season, by road. There is however an airstrip there. It is not difficult anyway to see how an Aboriginal person of very limited means, by not being [sic: would not be?] able to return to his community in those circumstances when released from prison.

...it was submitted that your record indicates that if you are living in your community you do not get into trouble and that therefore if you are able to be returned to your community under supervision with conditions which prevent you from leaving your

² Baldry, E & Maplestone, P, "Prisoners' Post-release Homelessness and lack of social integration" *Current issues in Criminology* (2003) 15(2): 155-69

³ *R v Wunungmurra* (21511963) NTSC Sentencing Remarks, 20 November 2015

community for a period of time as well as preventing you from taking alcohol or other drugs that you are not likely to re-offend in the same or similar way.

I have received a report from the Department of Correctional Services which confirms that you are suitable for supervision under the terms of a suspended sentence. It also confirms that you would be repatriated to Gapuwiyak on your release. This is most important because if you were to be released in Darwin there is a strong risk that you would return to living in the long grass and consume alcohol and drugs which could lead to further offending.

Accordingly, a partially suspended sentence was imposed, including repatriation conditions.

In *R v Wunungmurra*, Mildren A/J acknowledged the problem that the unrepatriated offender faced following his release from prison. The capacity of a judge to address the issue is however limited. In this case the judge enlisted the co-operation of Community Corrections to facilitate the repatriation of the offender. However, that course will not always be available. Furthermore, had this offender been repatriated in the first place on his release, he would not have had the opportunity to resume drinking and commit the offence for which he subsequently came before Mildren A/J.

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.

3. An unfair burden

“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”⁴

The revised NTDCS policy will further add to the problems stemming from the Territory’s indigenous over-incarceration crisis.

The effect of the new policy will be felt overwhelmingly by those prisoners who come from regions outside of Darwin and Alice Springs – where the Correctional Centres are located. As close to 60% of the 4,000 plus receptions into NT corrections institutions come from these areas, this is a substantial issue.⁵ These remote areas of the Northern Territory are the most economically disadvantaged in the nation, with almost all communities outside of the major centres falling within the lowest percentile for relative socioeconomic advantage and disadvantage in Australia.⁶

⁴ Letter from Ken Middlebrook, Commissioner NTDCS, 20 October 2015.

⁵ Northern Territory Government, *NTDCS Annual Statistics 2014 - 2015*, page 5.

⁶ Australian Bureau of Statistics, *Socio-Economic Indexes for Areas (SAFIA) 2011: Index of Relative Socio-economic Advantage and Disadvantage, 2011*, accessed at <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2033.0.55.001~2011~Main%20Features~Main%20Page~1>.

Furthermore, with an indigenous prison population approaching 85%, not only will this policy disproportionately affect those coming from remote areas, but it will particularly affect Aboriginal and Torres Strait Islander people.⁷

Many prisoners will have no capacity or opportunity to meet their repatriation costs: firstly, a person's Centrelink benefits are cancelled when they go to prison;⁸ and secondly, remand prisoners are unable to earn money as they are ineligible for prison work.

It is particularly unfair that remand prisoners who are ultimately discharged without having been found guilty of an offence should be required to facilitate their own transport home at their own cost. It is noted that the Office of Courts Administration operates a limited repatriation assistance scheme, but not all prisoners released at court are eligible for that assistance.

The cessation of the prisoners repatriation service is all the more unfair in the wake of the recent closure in of Larrakia Nation's *Return to Country Program* after its funding had been cut in April 2014. The program had worked to facilitate flights and accommodation for Aboriginal people unable to pay upfront for transport back to remote areas, and recouped the cost over time through Centrelink repayments. In 2014, the program arranged for 3700 Territorians to travel home to communities from Darwin.⁹

Although the scheme was primarily designed to accommodate Indigenous people in the wider community, and not specifically for people upon release from incarceration, even if the service had still been in place, it could not have been expected to meet the demand of an unprecedented increase arising from released prisoners.

4. The Consequences of Abandonment

Homelessness exacerbates the distress that can accompany re-integration upon release. In one Australian study, researchers found that prisoners who were homeless or transient upon release from incarceration, were between two and eight times more likely to be reincarcerated.¹⁰ Depositing prisoners at a bus stop with no means to return home is highly conducive to homelessness, temporary or otherwise, and, it follows, to recidivism.

Other jurisdictions have recognised the risk of recidivism associated with unavoidable homelessness immediately following release. In Victoria, repatriation is fully funded by Corrections along with

⁷ Australia Bureau of Statistics, *Prisoners in Australia: Prisoners, State/Territory by selected characteristics, 2005-2015*, accessed at <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2015~Main%20Features~Imprisonment%20rates~14>

⁸ Prisoners may be eligible for a Centrelink crisis payment on release, but often this is less than the cost of repatriation.

⁹ "Funding cuts finally kill 'Return to Country' program", NT News 14 November 2014, <http://www.ntnews.com.au/news/northern-territory/funding-cuts-finally-kill-return-to-country-program/news-story/e158032a043db970508c17a54dd6bc>

¹⁰ Baldry, Eileen, et al. "Ex-prisoners, homelessness and the state in Australia" *Australian and New Zealand Journal of Criminology* April 2006 39: 20-33, accessed at <http://anj.sagepub.com/content/39/1/20.abstract>

range of throughcare services.¹¹ NSW also offers a range of transitional throughcare schemes and if prisoners are unable to be collected by family or they do not have financial means to return home, they are issued with travel vouchers in advance.¹² WA Corrections have a Transport Options Program and a range of throughcare services.¹³ In South Australia, the Corrections Department coordinates a Transitional Release Program whereby volunteers work with Corrections to assist with the transition and transport back into the community.¹⁴

We acknowledge that a small proportion of prisoners can fund their own repatriation using savings accumulated through participation in the Sentenced to a Job program (or otherwise), and that prisoners released on parole or supervision conditions continue to be assisted by NTDCS to repatriate. We also acknowledge that some discharged prisoners simply choose not to return to their home communities. Our concern, however, is with those who do not fall into any of these categories. At the very least, we urge NTDCS to agree to give consideration to repatriation assistance on a case by case basis.

5. Lack of Transport Services to DCC

The lack of public transport to the prison is also of serious concern, and also contributes to recidivism.

Despite the construction of a \$40,000 bus stop outside the prison, Attorney-General Elferink confirmed that no bus service will be provided, and was reported as asserting that “he had not seen any evidence that visits from family members aided rehabilitation, or reduced their chances of recidivism”.¹⁵ On the contrary, a recent review of research over the last 25 years into the effects of prison visits by family members on prisoners’ well-being, conduct and recidivism confirms that studies have consistently reported positive effects, including on recidivism, of prisoners receiving visits.¹⁶

Another scholar, Dominique Moran, has also recently reviewed the extensive corpus of research on this issue, and concludes that:

¹¹ Corrections Victoria Housing Program, Remand Release Assistance program, ReConnect, accessed at <http://www.corrections.vic.gov.au/home/release/transition+programs/>

¹² <http://www.correctiveservices.justice.nsw.gov.au/Documents/families-hbk-ch13-gettingout.pdf> See also <http://www.crcnsw.org.au/>

¹³ Transport Options Program (TOP) provides transport to prisoners from remote locations who have difficulty returning to their homes when they are released from prison or a work camp. TOP operates in the Pilbara, East Kimberley, West Kimberley, Murchison, Gascoyne and Goldfields regions. Other services include: Re-entry link Program and supported accommodation services and other support services: <http://www.correctiveservices.wa.gov.au/prisons/getting-out.aspx>

¹⁴ <http://www.corrections.sa.gov.au/community/volunteering>

¹⁵ “Lack of bus services at remote Darwin prison hampering prisoners' rehabilitation, lawyer says”, ABC News on-line, 5 March 2016, accessed at <http://www.abc.net.au/news/2016-03-05/no-bus-service-to-darwin-prison-despite-bus-stop-and-assurances/7223796>; “John Elferink squashes hope of bus to Darwin 'superjail' 30 km outside CBD”, ABC News on-line 16 March 2016, accessed at <http://www.abc.net.au/news/2016-03-16/elferink-squashes-hope-of-bus-to-darwin-prison-at-holtze/7249502>

¹⁶ De Claire, Karen and Dixon, Louise, “The Effects of Prison Visits From Family Members on Prisoners’ Well-Being, Prison Rule Breaking, and Recidivism: A Review of Research Since 1991” (2015) *Trauma, Violence, & Abuse* 1-15, accessed at <http://tva.sagepub.com/content/early/2015/08/31/1524838015603209.abstract>

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.

...

Writing in the 1970s, Homer was at pains to point out the remarkable convergence of studies on parole and prison visiting: "the consensus of findings should be emphasised. The strong positive relationship between strength of family-social bonds and parole success has held up for more than fifty years, across very diverse offender populations and in different locales. It is doubtful if there is any other research finding in the field of corrections which can come close to this record."

Lower recidivism rates amongst visited prisoners have since been demonstrated across study populations, time periods, and methodologies, and the most compelling evidence is perhaps that there are no published studies showing a negative influence of visiting on post-release behaviour.¹⁷

The current policy is in contravention of the following recommendations of the 1991 Royal Commission into Aboriginal Deaths in Custody:

Recommendation 169:

That where it is found to be impossible to place a prisoner in the prison nearest to his or her family sympathetic consideration should be given to providing financial assistance to the family, to visit the prisoner from time to time.

Recommendation 170:

That all correctional institutions should have adequate facilities for the conduct of visits by friends and family. Such facilities should enable prisoners to enjoy visits in relative privacy and should provide facilities for children that enable relatively normal family interaction to occur. The intervention of correctional officers in the conduct of such visits should be minimal, although these visits should be subject to adequate security arrangements.¹⁸

The current policy is also inconsistent with the Standard Guidelines for Corrections in Australia, endorsed by the NTDCS, which relevantly provide that:

3.20 Contact between prisoners and the community should be encouraged in recognition of the important role families and communities have in assisting the reintegration of prisoners back to the community upon release and the advantages to be gained from reducing the isolation of prisons and prisoners from the community.

¹⁷ Moran, Dominique, "Carceral geography and the spatialities of prison visiting: visitation, recidivism, and hyperincarceration" *Environment and Planning D: Society and Space* 2013, volume 31, pages 174 – 190

¹⁸ Accessed at <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol3/167.html>

3.21 Prisoners should be encouraged and where practicable, assisted to develop and maintain their family ties and relationships through visits to the prisoner by family and friends and through the controlled use of telephones and letters.

3.22 Where possible, prisoners should be permitted a minimum of one visit each week. Where practicable further visits may be permitted.¹⁹

Similarly, the United Nations' *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment* provides:

Article 19: A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.²⁰


In every other Australian jurisdiction, correctional centres have functioning transport services for visitors.

The Queensland government funds free shuttle buses to and from all its correctional centres. All other states and the ACT have regular bus services, some run free by NGOs, others at reasonable costs. The New Zealand government funds some travelling costs of visiting family members. In Canada, bus services for family visits to remote jails are organised and subsidised by various agencies.²¹


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.²²

We welcome the recent announcement by the Salvation Army that it will undertake a trial bus service for visitors to the Darwin Correctional Centre. However, this does not absolve NTDCS from responsibility to assist the prisoners in its custody and care to exercise their rights to receive personal visits. We urge NTDCS to work with non-government organisations to ensure that affordable, regular and secure public transport services are provided and maintained to both the Darwin and Alice Springs Correction Centres.

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¹⁹ Accessed at http://www.aic.gov.au/media_library/aic/research/corrections/standards/aust-stand_2004.pdf

²⁰ A/RES/43/173 General Assembly 76th plenary meeting, 9 December 1988, accessed at <http://www.un.org/documents/ga/res/43/a43r173.htm>

²¹ John Lawrence SC, "The Bus Doesn't Stop Here" *Land Rights News*, January 2016, accessed at https://busfordcc.files.wordpress.com/2016/03/jlarticle_lrn_jan2016.pdf

²² "Family Visits key to prison rehab: lawyer" *SkyNews*, 24 March 2016, accessed at <http://www.skynews.com.au/news/national/nt/2016/03/24/family-visits-key-to-prisoner-rehab-lawyer.html>