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Dear Josephine, Marcia and Aaron,

**REVIEW OF INDIGENOUS INCARCERATION MATTERS IN NORTHERN TERRITORY,  
PHASE 1, 26 JANUARY 2016**

Thank you for your brief meeting with the Northern Territory Legal Assistance Forum (NTLAF) representatives on Monday 18 April 2016 regarding the draft review of Indigenous Incarceration Matters in Northern Territory (the draft report).

**About NTLAF**

The NTLAF is comprised of legal assistance and related services in the NT and meets quarterly to discuss legal assistance issues in a cooperative way, undertake strategic planning for legal aid service delivery and to make coordinated recommendations where possible. NTLAF is the regional iteration of the Australian Legal Assistance Forum (ALAF) which is comprised of legal aid services and the Law Council of Australia and was established to enable member organisations to consider and address Australian legal assistance issues in a cooperative way and to make recommendations on those issues in a coordinated fashion.

In accordance with the previous and current *National Partnership Agreement on Legal Service Delivery* which is signed by the Chief Minister and the Prime Minister, NTLAF members meet with representatives of the NT Department of Attorney-General and Justice and the Commonwealth Attorney-General's Department each 6 months to discuss current issues and initiatives in the jurisdiction and joint approaches to addressing them, including through service planning.

The NTLAF welcomes the Aboriginal Justice Targets. The legal assistance sector has long held concerns about the staggering rates of incarceration in the Northern Territory and enormous cost to the Northern Territory community.

Many recent policy initiatives have only served to inflate the rate of incarceration and the data outlined in your report and experience of NTLAF members supports this. The NTLAF looks forward to future policy initiatives being evaluated on the basis of their impact on the targets.

## **Feedback on the draft report**

The draft report covers a wide range of complex issues. Some of the proposals in the draft report are very broad and in the absence of detail it is not possible to assess how effective they would be. Accordingly, providing a detailed response to the draft report is simply not possible in the short timeframe that we have been given and that is available to the authors. NTLAF would welcome continued engagement with the NT Government in the subsequent stages of this review so that further input can be provided.

Although the time frame available does not allow us to address the many individual recommendations contained in the draft report, we provide these general observations and hope they will nevertheless be of assistance to you in finalising the report.

### **1. *The need for comprehensive mapping and evaluation***

We acknowledge the limited nature of the report both in timing and scope. Importantly, as a 'desktop study', it is not intended as a comprehensive review of the Northern Territory justice system and there has been limited opportunity to look at the broader Northern Territory context.

We therefore urge that the final report highlights the need for a comprehensive mapping of current Northern Territory programs both within the Courts, Government and the NGO sector. Importantly, a comprehensive mapping of these programs and initiatives should bring together the limited available data, and consideration of these local features will help identify priorities.

It is also critical that there is a commitment to properly evaluating the effectiveness of any new initiatives. It is clear to NTLAF members that committing to ad hoc initiatives without investing in their evaluation over time has hampered the development of good policy.

### **2. *'Quick wins' to reduce Indigenous incarceration***

It is clear that dealing with the underlying causes of offending will take many years and possibly generations. It is also acknowledged that it will involve concerted commitments across government in education, housing, health, early childhood, child protection not merely the justice cohort of corrections and policing. We nevertheless encourage the identification of some 'quick wins' in the legal and justice arena that would allow government to reduce Indigenous incarceration in the short-/mid-term.

Not only will these reverse current trends, but also to free up resources that might be used to address the broader structural issues that your draft report identifies.

Examples of such policies would include the following.

1. Boost funding to existing prisoner 'Throughcare' programs to tackle and reduce high rates of reoffending.
2. Abolish mandatory sentencing - allow the punishment to fit the crime.
3. Abolish Alcohol Protection Orders. These re-criminalise public drunkenness and cause needless interaction with the police and the courts for what is essentially a health issue.
4. Reform bail:
  - reduce the number of offences for which there is a presumption against bail (noting that courts will always consider issues such as public safety and the likelihood of reoffending in any decision to grant bail); and

- decriminalise breaches of bail.
5. Reform the parole system to allow recognition of good behaviour while on parole in the event of later breaches (ie credit for 'street time').
  6. Ensure traffic offences and vehicle regulatory offences do not result in terms of imprisonment.
  7. Review of the *Corrections Act* to ensure the object of rehabilitation is clearly articulated. Place greater emphasis on rehabilitation for those on remand and the many serving short sentences.
  8. Abolish paperless arrest laws.

### **3. An Indigenous Justice Agreement**

Progress to reduce Indigenous incarceration cannot be achieved without the advice, support and active involvement of Indigenous Australians. We urge much greater emphasis in the report on the importance of government engaging with NT Aboriginal people and communities in attempting to bring about meaningful and sustainable change.

We draw your attention to the Victorian Aboriginal Justice Agreement as a framework that could underpin the types of changes that your draft report envisages:  
<http://www.justice.vic.gov.au/home/your+rights/aboriginal+justice+agreement/>.

The framework of an Indigenous Justice Agreement should underpin and guide the evaluation of programs and the development of policies and the identification of priority areas for reform to achieve the goal of reducing the incarceration of Aboriginal and Torres Strait Islander people.

In our view, without such an agreement, any government initiatives are unlikely to bring about the sorts of changes that your draft report argues are necessary.

We urge that your final report also emphasises the need for effective consultation before policies are developed. We appreciate such consultation has been beyond the scope of your work, however, in our view, consultation with both Aboriginal people and organisations and justice groups, such as NTLAF members, is critical to developing successful policies. The announcement of justice targets for the Northern Territory is in many ways a watershed moment which has unfortunately been overshadowed by limited engagement in their development.

### **4. Making Justice Work**

We draw your attention to the 'Making Justice Work' group, which brings together a wide range of organisations with a common interest in effective responses to crime in our community. The group has worked to promote evidence-based approaches to 'law and order' and community safety, and its position statement may assist you in identifying what members of that group would identify as law reform priorities in the NT: see  
<http://www.makingjusticework.org.au/>.

### **5. Existing law and justice initiatives**

While we appreciate the limitations placed on the authors of the draft report, the draft is nevertheless significantly incomplete in its consideration of existing initiatives within the area of law and justice and accordingly does not provide an accurate overview of the legal and policy landscape. Recommendations formed without consideration of these existing initiatives have the potential to lack cohesion in practice, and may miss opportunities for collaboration and value-adding from the government sector.

We particularly note that there is little consideration of programs and initiatives occurring at a local level, by both legal and non-legal NGO's in the NT, aimed to reduce incarceration and prevent offending. These include:

- In Central Australia, the Youth Justice Advocacy Program (YJAP), is located within the Central Australian Aboriginal Legal Aid Service (CAALAS). YJAP which supports young people engaging with the criminal justice system, encourages diversionary options, provides holistic proposals for bail and non-custodial outcomes, and seeks to reduce the risk of re-offending through putting young people in touch with support services to address the issues that prompted their engagement with the criminal justice system.
- Another program auspiced by CAALAS is the Kungas Stopping Violence Program. Through this program, women in custody with a history of violent offending can access intensive and holistic case management and behavioural change training, which is available in custody and for 12 months post release. The holistic case management is aimed at addressing the causes of the woman's violent offending and reducing the risk of recidivism.
- The North Australian Aboriginal Justice Agency (NAAJA) has been delivering a successful Indigenous Throughcare project for many years now. The report does not consider that project, how its success could be extended and how it relates to other initiatives such as Sentenced to a Job.
- Many legal assistance providers, including CAALAS, NAAJA, the Central Australian Aboriginal Family Legal Unit (CAAFLU), the Central Australian Women's Legal Service (CAWLS) and the Northern Territory Legal Aid Commission (NTLAC) provide community legal education to empower communities with knowledge about the law and their legal rights, aiming to de-stigmatise the law and reduce cultural barriers to engaging with the legal system.
- In addition to general community legal education, both CAALAS and NAAJA have a dedicated Night Patrol CLE program through which supports Night Patrollers to face the challenges of their role through providing tailored education about specific legal issues that may arise. The role of Night Patrollers is an important Aboriginal community initiative that has been overlooked in the report.
- The report discusses the role of Community Justice Groups but does not consider the work already being done by law and justice groups in the NT such as the Kurdiji (Lajamanu), the Ponki Mediators (Tiwi Islands) and the Yugul Mangi (Ngukurr).
- In Alice Springs, Tangentyere Council has also piloted some innovative community responses to violence, such as the Men's Behavioural Change Program and the Women's Safety Committee. The NPY Women's Council also has a long history of providing domestic violence advocacy and education in the remote NPY region. It is essential that community driven responses such as these are considered when discussing responses to domestic and family violence.
- Whilst the report discusses Boot Camp and the need for more supported bail accommodation options for youth, there is no reference to NGO youth services such as BushMob, who are an invaluable organisation that offers residential rehabilitation to young men and women in Alice Springs.

Other significant initiatives by non-legal service providers aimed at preventing crime and reducing reoffending include:

- The Salvation Army's 'Men Taking Control' Residential Rehabilitation Program;

- Outreach and residential rehabilitation program by the Drug and Alcohol Services Association (DASA);
- Anglicare's Youth Intensive Support Program, and Moving on Program;
- Mission Australia – Personal Helpers and Mentors Program;
- Waltja Reconnect Program;
- The Warlpiri Youth Development Aboriginal Corporation Mt Theo Program;
- Barkly Region Alcohol and Drug Abuse Reference Group – a residential rehabilitation program in Tennant Creek; and
- NAPCAN's respectful relationships school-based programs – LoveBites, Growing Respect, and All Children Being Safe.

## 6. Other important local features

There are a number of other important features of the NT legal and social landscape that should inform the report. These include:

- The high rates of prisoners on remand, especially children, and the reasons for those rates.
- The draft report proposes a 'violent offender register'. While it is not clear exactly what this would entail, the draft report does not note that a proposal for a similar regime in relation to sex offenders has not proceeded in the NT and was met with widespread opposition, including from victims groups. Importantly, Victims of Crime NT expressed its opposition to the sex offender register on the basis that it may identify and shame *victims* and accordingly deter reporting of offences. The report also does not address the significant evidence that 'name and shame' sex offender regimes in other jurisdictions internationally have not been effective in reducing offending or protecting the community.
- The report recommends 'expanding mandatory reporting obligations' to include a wider range of people. In fact, mandatory reporting obligations already apply to all adults in the NT in relation to both child protection and domestic violence matters. It also suggests tightening of regulations against non-compliance. Given that it is already an offence to fail to make a report of family violence or child harm/exploitation, it is not clear what this would entail.
- Although mentioned in the report, homelessness is a critical issue that should require much greater emphasis in dealing with the drivers of criminal offending. The NT has the highest rates of homelessness in Australia. We refer you to the paper by the Honourable Wayne Martin AC, Chief Justice of Western Australia, *The cost of homelessness's – a legal perspective* – which looks at the costs of homelessness, links between homelessness and crime, and the overrepresentation of Aboriginal people in homelessness:  
<http://www.supremecourt.wa.gov.au/files/Homeless%20Persons%20Week%20Conference%202014%20Martin%20CJ%206%20Aug%202014.pdf>
- The report considers the role of the Aboriginal Interpreter Service (AIS), but does not mention the Plain English Legal Dictionary developed by the Aboriginal Resource and Development Services (ARDS), NAAJA and the AIS, which provides a basis for the development of effective communication with Aboriginal people and their engagement in the legal system.
- The draft report contains discussion of Northern Territory Government initiatives such as Sentenced to a Job and youth Boot Camps, but there is no adequate evaluation of their effectiveness or, critically in this context, the extent to which they are effective and accessible for Indigenous people.

- The draft report recommends a Family Responsibilities Commission model with powers of income management. It does not, however, consider the effectiveness of existing regimes for income management in the Northern Territory or explain how an FRC model would link with those regimes.
- The report includes several references to alcohol yet relies on national statistics about the contribution of alcohol to violence in Indigenous communities. It is appropriate that NT specific data be considered on this point.

We hope that this feedback has been of use, and confirm that it has been provided in accordance to capacity and time constraints. This feedback accordingly should not be treated as exhaustive.

We thank you for the opportunity to comment on the report and look forward to our continued engagement with the development of strategies to deliver on the Aboriginal Justice Targets.

Warm Regards



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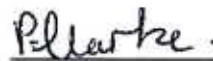
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