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# A 'NEW ERA IN CORRECTIONS' FOR THE NORTHERN TERRITORY?

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*by Priscilla Collins and Ruth Barson*

This year marks 20 years since the release of the Royal Commission into Aboriginal Deaths in Custody ('RCIADIC') report. One of the Commission's central findings was the need for governments to take steps to reduce Aboriginal incarceration. Despite this, the Northern Territory ('NT') continues to experience rising Aboriginal incarceration and recidivism rates.

Recent Australian Bureau of Statistics results show that the NT has the highest imprisonment rate in Australia and the third highest in the world. For every three people who go to court, one person goes to jail. This is three and a half times the national average. From 2001 to 2008, the NT saw a 63 per cent increase in Aboriginal incarceration rates.<sup>1</sup> Whilst Aboriginal people comprise 30 per cent of the NT population, they make up 82 per cent of the NT prison population.<sup>2</sup>

The NT has the highest recidivism rate in the country. In 2006/07 nearly half of the prisoners released were back in prison within two years.<sup>3</sup> This is consistent with the RCIADIC conclusion that contact with the criminal justice system often results in entrenchment within it.<sup>4</sup>

In response to the social and economic realities of increasing recidivism and incarceration rates, the NT Government recently announced a 'New Era in Corrections', ('New Era'). The \$68 million package aims to reduce the prison population by 20%, and reduce recidivism rates to the benchmark national average. This is a welcome commitment of funds and a welcome target. But the question is, will the New Era deliver?

This paper examines the New Era proposals, and queries whether they are able to address the NT's epidemic Aboriginal incarceration rates. In particular it questions whether the New Era policies adequately recognise and grapple with the racialised nature of criminal justice and incarceration in the NT. It also questions whether the RCIADIC lessons have been properly considered. The article identifies areas for improvement in the New Era – improvements that recognise the specific experience

of Aboriginal people in the NT and mirror many of the recommendations of the RCIADIC report.

## AN OVERVIEW OF THE NEW ERA

'Rehabilitation, education, reintegration and training'<sup>5</sup> is the catch cry of the New Era. Having seen the damage done by the lock-em-up approach of successive governments, The North Australian Aboriginal Justice Agency ('NAAAJA'),<sup>6</sup> welcomes this approach and hopes to see it guide Corrections, from the policy making level, down to the day-to-day enforcement of supervisory orders.

On the face of it, it seems ironic that a central feature of the New Era is the building of a new Darwin based prison: the Doug Owston Correctional Centre. This will involve an 800-bed prison, and the building of a 36-bed secure mental health facility, the later to be managed by the Department of Health and Families. However, the Government maintains that their ability to launch a New Era is severely limited by the structures and constraints of the existing Darwin Correctional Centre – originally intended to house 110 prisoners, but now with a population of over 600.

In addition to the new prison, the Government has committed to building a 50-bed Work Camp in the Barkly region outside of Tennant Creek, and a 170-bed Prison Farm in the Katherine region.

The New Era package also promises a range of other measures. These include:

- 'Tougher Sentencing Options', which involves the introduction of two new sentencing dispositions - Community Based Orders and Community Custody Orders;
- The use of surveillance methods for people on supervisory orders; and
- An increase in rehabilitation, programs, and post-release supported accommodation.

## ABORIGINAL PEOPLE AND THE NEW ERA

The Government literature relating to the New Era

barely uses the words 'Aboriginal' or 'Indigenous'. This is perhaps surprising given that the proposals will impact most significantly upon Aboriginal people, being over-represented in the criminal justice system.

On the one hand, the appeal to a deracialised 'offender' and 'prisoner' is encouraging, given the historically fraught racial politics of the NT. On the other, however, it is reminiscent of the 'color blindness',<sup>7</sup> about which Patricia Williams has written in the American context. Williams warns against the 'fantasy' of a racially neutral world<sup>8</sup> and argues that 'much is overlooked in the move to undo that which clearly and unfortunately matters'.<sup>9</sup>

A response tailored to the illusive 'Territorian' risks failing to realise the deeply racialised nature of the criminal justice system, the fraught relationship many Aboriginal people have with the criminal justice system, and therefore also risks failing to meaningfully engage with the issue of Aboriginal over-incarceration and recidivism. Importantly, not specifically including Aboriginal people in discussions of a revamped correctional system potentially ignores the fundamental principle of the RCIADIC recommendations: that any meaningful response must come from a collaboration of Aboriginal and Government voices.<sup>10</sup>

Empowerment and self determination are a crucial theme underpinning the RCIADIC recommendations.<sup>11</sup> The RCIADIC discussed in depth the importance of consulting Aboriginal peoples and communities when implementing a policy directly impacting them.<sup>12</sup> We are concerned, therefore, that the New Era shows no evidence of this. Rather, the New Era announcement appears suggestive of 'colour blind' policy which aims to reduce Aboriginal incarceration and recidivism rates, without adequately considering the Aboriginal context.

Confronted with the devastating realities of Aboriginal over-incarceration, the RCIADIC went to great lengths to discuss the importance of the link between historical and contemporary colonisation and dispossession, Aboriginal disadvantage, and Aboriginal offending.<sup>13</sup> The New Era literature makes no mention of this.

The discussion conducted by the RCIADIC report is important because it explicitly engages with the Aboriginal context. This discussion acknowledges the profound intrusion Commonwealth and Territory policy, particularly criminal justice policy, has had, and continues to have, on Aboriginal life in the NT. It also tells an important story about the reasons behind the current situation. If the Government genuinely plans to 'turn

that story around'<sup>14</sup>, then, similar to the RCIADIC, it must more meaningfully engage with the uncomfortable realities of race in the NT.

#### NEW PRISONS: A 'KEY PLANK'<sup>15</sup> OF THE NEW ERA

The building of new custodial precincts is at the core of the New Era. The New Era announcements explicitly say that the new Darwin prison '... is not, and should not be some kind of retreat'.<sup>16</sup> Rather, the prison is framed as a Correctional facility focussed on rehabilitation, education and reintegration.<sup>17</sup> NAAJA wholeheartedly supports this focus. Likewise, we support the building of a custodial mental health facility. However we are concerned that funding for Corrective Services is at the expense of funding for Community Corrections.

In NAAJA's view, the strategy of successive governments to rely on prison sentences and funding the construction and operation of detention facilities has not improved community safety, but rather contributed to the exponential increase in Aboriginal incarceration. A greater focus of the New Era in Corrections should therefore be on investing in Community Corrections and non-custodial sentencing alternatives. This should be coupled with an emphasis on resourcing rehabilitation, reintegration and education programs that occur predominantly in a community, rather than custodial, setting.

Recommendation 92 of the RCIADIC states that prison should be a disposition of last resort.<sup>18</sup> It should not operate as a quasi-rehabilitation service. This is because the prison experience is inherently isolating and anti-social. It institutionalises offenders into an artificial environment, and it can not replace the pro-social benefits of an offender receiving rehabilitation within a functional community environment. Building a new prison does not address the fundamental concern raised in the RCIADIC report, that '[t]oo many Aboriginal people are in prison too often'.<sup>19</sup>

#### THE DETAILS OF THE NEW ERA

The New Era introduces Intensive Corrections Orders and Community Based Orders into the sentencing pot which judges and magistrates can choose from. Both dispositions provide for more expansive community based sentencing options, which we applaud. However, it is intended that violent offenders be excluded from these dispositions.

Violent offenders constitute a significant proportion of the offending and prison populations. NAAJA considers that violent offenders are precisely the category of people

who would benefit from the intensive community based rehabilitation offered by these dispositions. Essentially, by excluding violent offenders from this form of intervention, the Government is excluding a very large proportion of the offending population. It is worth noting that if this disposition were available to all offenders, it is highly likely that only first or minor violent offenders would be considered by the courts as suitable, given the courts are likely to deal with repeat violent offenders by way of an actual term of imprisonment.

In our view, first time or minor violent offenders are most suitable to community-based intensive intervention. Failing to treat this group of offenders within the community is detrimental to promoting rehabilitation and reducing recidivism.

Compounding this issue is the unwillingness of some Darwin based rehabilitation services to accept people charged with violence related offending. This exclusion further isolates this category of offender who are most in need of therapeutic intervention.

The New Era proposes an additional five alcohol and drug treatment beds for the Top End region. Whilst this is welcome, it does very little to meet the critical need for rehabilitation services in the Top End. It also does very little to address the rehabilitative needs of a large proportion of the NT's offending population.

The Government has made more substantial commitments as part of its New Era package in other parts of the Territory. A Supported Accommodation and Treatment Centre will be built next door to Alice Springs jail. This will provide a remand diversion program whereby people on remand will be eligible to participate in rehabilitation programs whilst awaiting their court day. It will also provide an Intensive Driver Offender program.

The introduction of an Intensive Driver Offender program recognises the enormity of traffic related offending in the NT. In the NT, 20% of jail terms imposed by the courts in 2006/07 were for offences under the *Road Traffic Act* (NT). Of those 372 sentences, 359 were imposed on Aboriginal people.

NAAJA considers the Supported Accommodation and Treatment Centre a welcome step towards reducing incarceration rates. We are, however, concerned that people in the Darwin region will not have access to these new initiatives. For violent offenders in the Top End,

this means they are excluded from both community based rehabilitation services, new community based dispositions, and in-custody rehabilitation programs.

On close examination, the New Era proposals do very little to meet the rehabilitation needs of the Top End's offending population. The inherently alienating prison experience will not disappear with a revamped prison complex, even if this complex focuses on offender rehabilitation and reintegration. Funded community based rehabilitation initiatives, available to all offenders, should be the focus of the New Era.

#### NAAJA'S VISION FOR A NEW ERA

NAAJA has provided the Minister with a detailed submission that identifies what additional measures should be included in the New Era. Unsurprisingly, these suggested measures mirror in essence many of the recommendations made twenty years ago by the RCIADIC report. NAAJA's submission includes the following recommendations:

##### 1. COMMUNITY INITIATED AND OPERATED JUSTICE INITIATIVES SHOULD BE FUNDED

NAAJA recommends that the New Era in Corrections embrace Justice Reinvestment as a guiding practice. Justice Reinvestment diverts a portion of the funds spent on imprisonment to local communities where there is a high concentration of offenders. The funds are invested in community initiated and operated programs aimed at addressing underlying causes of crime. A component of Justice Reinvestment should be the funding and supporting of local Law and Justice Groups.

Law and Justice Groups have multiple functions including: sitting as Elders in Community Courts, conducting culturally relevant community mediations, assisting with the prison based Visiting Elders Program, and working closely with Community Corrections officers when community members are subject to supervisory offers.

Funding Law and Justice Groups empowers Elders to take ownership of community justice issues and play an early intervention and support role in community. NAAJA considers Law and Justice Groups to be essential in promoting reintegration and community safety.

##### 2. COMMUNITY CORRECTIONS SHOULD ADOPT A CULTURALLY RESPONSIVE APPROACH TO SUPERVISING ABORIGINAL OFFENDERS: THE ROLE OF COMMUNITY CORRECTIONS

### OFFICERS SHOULD BE REDEFINED SO THAT THEY OPERATE MORE AS MENTORS, RATHER THAN STATUTORY COMPLIANCE OFFICERS

NAAJA endorses the recent comments of the New Zealand Chief Justice, Sean Elias, who noted the current over-emphasis on compliance, policing and risk assessment by Corrections Officers. She rather suggested that '...the functions of advising, assisting and befriending ought to be reinstated'.<sup>20</sup>

A compliance based approach results in many Aboriginal people having their supervisory orders breached. Many Aboriginal people do not have consistent access to telephones or appropriate housing. Many Aboriginal people may struggle to balance their cultural obligations with the conditions of their Corrections order. While NAAJA recognises that offenders cannot be permitted to flout conditions of an order, it is important that orders and the manner in which they are enforced are responsive to the cultural and social context of offenders.

### 3. AN ADULT DIVERSION SYSTEM SHOULD BE INTRODUCED

NAAJA considers diversion to be a crucial aspect of any strategy to reduce incarceration rates. We endorse early intervention and diversionary schemes as a necessary response to the over-representation of Aboriginal people in the criminal justice system.

### 4. MANDATORY SENTENCING SHOULD BE ABOLISHED

NAAJA maintains its opposition to mandatory sentencing. There is no evidence to suggest that Mandatory Sentencing, despite its significant cost through increased prison numbers, acts as an effective deterrent, or that it reduces offending rates. Mandatory sentencing laws are arbitrary, often disproportionate to the crime and do not allow regard for the full circumstances of the particular offence and offender.

### 5. A YOUTH JUSTICE SYSTEM SHOULD BE ESTABLISHED

NAAJA supports a targeted youth justice system as a key element in addressing the increasing and disproportionate rate of incarceration of Aboriginal young people in the NT. The NT remains the only jurisdiction without a specialist Youth Community Corrections Service.

### 6. A REVIEW OF THE NT PAROLE SYSTEM SHOULD BE UNDERTAKEN

NAAJA considers an accessible parole system is essential in promoting reintegration and reducing recidivism.

Currently very few prisoners in the NT achieve parole. This means that many prisoners are serving their full term in custody, and being released without support or supervision. NAAJA recommends that the exclusion of procedural fairness from Parole Board proceedings be removed. This would have the effect of making Parole Board decisions more accessible, understandable, fairer and transparent.

### CONCLUSION – A NEW ERA?

The twenty year anniversary of the RCIADIC, coupled with the NT Government's commitment to a New Era in Corrections, provides an ideal backdrop for a considered response to the epidemic rates of Aboriginal incarceration in the NT. Whilst NAAJA supports the increased focus upon rehabilitation, education and reintegration, we are concerned that the policies announced fall short of the action required to have a significant impact on Aboriginal incarceration rates.

The NT Government would be wise to closely consider the recommendations contained in the RCIADIC before it proceeds to spend \$68 million on a 'New Era'. It must also confront the racial realities of criminal justice in the NT. It must work more closely with Aboriginal people to find solutions to the causes of their over-representation in the criminal justice system. Too much is missed in a 'color-blind' approach to policy.

*Priscilla Collins is the CEO of the North Australian Aboriginal Justice Agency. Ruth Barson is NAAJA's Advocacy Solicitor.*

- 1 Jacqueline Fitzgerald, *Why are Indigenous Imprisonment Rates Rising?*, (7 October 2009 NSW Bureau of Crime Statistics and Research) <[http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/pages/bocsar\\_mr\\_bb41](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_mr_bb41)> 2.
- 2 Minister Gerry McCarthy, 'Ministerial Statement' (Delivered in Northern Territory Parliament, 30 November 2010).
- 3 The Productivity Commission, *Report on Government Services, 'Justice Preface'* (29 January 2010) <<http://www.pc.gov.au/gsp/reports/rogs/2010>> C11.
- 4 Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 2, 14.4.
- 5 Minister Gerry McCarthy, above n 2.
- 6 Priscilla Collins in the CEO of NAAJA, the Aboriginal Legal Service for the Top End of the Northern Territory. Ruth-Bella Barson is NAAJA's Advocacy Solicitor.
- 7 Patricia Williams, *Seeing a Color-Blind Future: The Paradox of Race* (Farrar, Straus & Giroux, 1998).
- 8 Ibid.
- 9 Ibid.
- 10 Commonwealth, above n 3, vol 2, 20.
- 11 Ibid, vol 1, 1.7.
- 12 Ibid, vol 2, 20.
- 13 Ibid, vol 2, 10.

14 Minister McCarthy, above n 2.

15 Ibid.

16 Ibid.

17 Ibid.

18 Commonwealth, above n 3, vol 5, 92.

19 Ibid, vol 1, 1.3.

20 Sean Ellias CJ, 'Blameless Babes'. (9 July 2009 Annual 2009 Shirley Smith Address ) <<http://www.courtsofnz.govt.nz/speechpapers/Shirley%20Smith%202009%20lecture-Blameless%20Babes-9%20July%202009.pdf>> 12.

**Me, My Country**

Megan Cadd

Acrylic on French linen  
870mm x 1130mm

*Depicted is my relationship with my land, it's a spiritual feeling, a sense of belonging and healing that my land gives me that non-Aboriginal people may not understand. When I am not physically connected to my land I still feel as if I am connected through spirit.*

