7. NORTHERN TERRITORY

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7.1 Northern Territory Whole-of-Government Strategic Frameworks

7.1.1 Agenda for Action: a whole of government approach to Indigenous Affairs in the Northern Territory 2005-2009

*Agenda for Action: a whole of government approach to Indigenous Affairs in the Northern Territory 2005-2009* (the *Agenda*) was developed by the Northern Territory Government’s Chief Executives’ Taskforce on Indigenous Affairs, and was produced by the Office of Indigenous Policy (Department of the Chief Minister). The *Agenda* outlines six priority areas for Indigenous affairs over four years, which include ensuring that Indigenous people feel safe living and working on their communities. Initiatives to date under this priority area include amending the *Sentencing Act* to ensure Territory courts have access to good evidence about customary law. Current initiatives include running as a trial the Community Court initiative in Darwin and the Elders Visitors Program in correctional centres.


*Closing the Gap of Indigenous Disadvantage – A Generational Plan of Action* (Closing the Gap) is a framework document developed by the Department of the Chief Minister in 2007, designed to enable implementation of a whole-of-government approach to tackling Indigenous disadvantage, negotiation of (complementary) long-term plans with the Commonwealth, and partnerships with Aboriginal people on relevant issues. The strategy seeks to close the gap in outcomes between Indigenous and non-Indigenous Territorians, and its broad vision is to ensure that by 2030…

Indigenous children born in the Territory will be as healthy and live as long as other Territorians. They will have the opportunity to participate fully in the social and economic life of the Territory, while having a strong cultural identity.

*Closing the Gap* is also, in large part, a response to the findings of the *Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse – Ampe Akelyernemane Meke mekarle “Little Children are Sacred”*(2007) (Little Children Are Sacred Inquiry (see below).

In order to achieve its goals, *Closing the Gap* focuses on 7 objectives and action areas. For each of the 7 objectives and action areas, some context is provided in terms of the position of Indigenous people compared to non-Indigenous people; and five, ten and twenty year targets are set. Actions to be taken within the first 5 years are outlined (and will be reviewed over time), as well as Commonwealth initiatives relevant to the particular area and potential issues for negotiation in terms of what the Commonwealth might do to assist. The document stresses that collaboration between Territory, Federal and local Governments is essential in addressing Indigenous disadvantage.

For our purposes, the most relevant action area is ‘Safety’. The objective of this action area is as follows:
To ensure personal and community safety through a strong child protection system, effective alcohol and drug management, adequate policing, youth development and juvenile diversion programs and the engagement of the community in developing local solutions to crime and family violence. ¹

Recent initiatives to achieve the objective include developing integrated community-based family violence programs, expanding rehabilitation programs for sex offenders, the Elders Visiting Program, and establishing ten community courts. * Further new initiatives involve expanding the Indigenous family violence offender program. **

The remainder of the document sets out Government responses to the report of the Little Children are Sacred Inquiry, which contained 97 recommendations across 22 themes. The Board of Inquiry was directed in its terms of reference to examine the extent and nature of, and factors contributing to, child sexual abuse of Aboriginal children and to consider practices and procedures of relevant agencies, and any contribution which these agencies, and the Government more broadly, might make to address the issue of child sexual abuse of Aboriginal children, *inter alia*.

The Closing the Gap framework was formulated as a result of the Board’s report. The Board recommended that leadership by Governments was required, that Aboriginal child sexual abuse ought to be designated as an issue of urgent national significance by the Commonwealth and Northern Territory Governments, and that both Governments work together under an MOU to address this issue, in consultation with Aboriginal people. In response, the Northern Territory Government committed to negotiating a long-term Generational Plan of Action with the Commonwealth, with Closing the Gap detailing the Government’s commitment to the first 5 years of this Plan of Action. The aforementioned initiatives introduced as part of Closing the Gap to achieve the ‘safety’ objective came out of recommendations made by the Board in the Little Children are Sacred report. A number of further relevant recommendations within the latter report, and corresponding responses to those recommendations provided by Government in Closing the Gap are outlined below.

(a) **Bail**

*Recommendation*: Where an offence is sexual in nature, the protection and welfare of the child ought to be taken into account when considering bail.

*Response*: The Bail Act will be amended to reflect this change.

(b) **Offender rehabilitation**

*Recommendation*: More sex offender rehabilitation (including juvenile-offender specific rehabilitation) programs are required, with a preference for community-based rehabilitation where appropriate. Correctional Services must provide ongoing sex offender rehabilitation programs in jail, and for persons on remand, including culturally

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¹ In terms of context, in 2006, approximately 82% of Territory prison inmates and 96% of juveniles in detention were Indigenous. The ten-year target indicates that detention rates for Indigenous and non-Indigenous juveniles should be similar.
appropriate programs. Parole supervision must also include attendance at a rehabilitation program and time back in the community. Government ought to commence meaningful dialogue with Aboriginal communities aimed at developing alternative models of sentencing that incorporate Aboriginal notions of justice and rely less on custodial sentences and more on restoring the wellbeing of victims, offenders, families and communities.

*Response:* The Government will provide more rehabilitation support for adults, and specifically for juveniles, including sex offender rehabilitation programs and some community-based rehabilitation options, and programs for offenders who are also sexual abuse victims. The Department of Justice will expand the Elders Visiting Program. The Department of Justice will also continue to develop and pilot alternative sentencing models for crimes other than child sexual abuse, including by way of expanding the Community Court to the largest communities.

(c) **Community justice**

*Recommendation:* Government should commit to the establishment and ongoing support of Community Justice Groups (CJG) in those communities who wish to participate in such an initiative. The CJG ought to set community rules and sanctions (where consistent with Territory law); present information to courts for sentencing and bail purposes about an accused, and provide information or evidence about Aboriginal law and culture; be involved in diversionary programs and participate in the supervision of offenders; assist in establishing Aboriginal courts and provide a suitable panel from which Elders could be chosen to sit with the Magistrate; and be involved in alternative dispute resolution.

*Response:* Government will expand the use of Community Courts, and community justice programs will be introduced.

(d) **Role of communities**

*Recommendation:* Government ought to encourage, support and resource development of community-based and community-owned Aboriginal family violence intervention and treatment programs.

*Response:* The Government will expand on an Indigenous Family Violence Community Based Program currently delivered on Central Australian communities (including the delivery by local Indigenous facilitators, and involving family violence offenders and victims participating in alternative court sentencing options other than imprisonment).


The Government strategy *Building Safer Communities – A Framework for Crime Prevention and Community Safety (2004-2009)* is the responsibility of the Office of Crime Prevention (Department of Justice). It pre-dates the Government’s *Agenda for Action*. The strategy is not Indigenous-specific. However, it has a number of ‘building blocks’ aimed at creating both safe and secure communities and an effective legal and justice system, which include ‘two way justice – engaging Aboriginal culture and communities’.
The document outlines what has been done, what is being done, and what will be done with regard to this ‘building block’. Current initiatives include developing a framework for community input into court processes and sentencing and implementing the recommendations of the Northern Territory Law Reform Committee’s Report of the Committee of Inquiry into Aboriginal Customary Law (2004). Future initiatives include negotiation of an Indigenous Justice Agreement, provision of community based treatment programs for offenders (particularly for family violence), and extending law and justice planning (focusing on crime prevention and sentencing initiatives).

The document also outlines initiatives in relation to each of the five other ‘building blocks’, and a number of those initiatives are specifically relevant to Indigenous people and over-representation. For our purposes, the only other relevant building block is that of ‘preventing (re)offending and targeting punishment’. A number of initiatives have been introduced in order to prevent (re)offending. Future initiatives include the piloting of Aboriginal Courts in selected communities to allow community input into sentencing.

7.1.4 Department of Justice Strategic Plan 2005-2009 (incorporating Corrective Services)

The Department of Justice has indicated that one of their strategic priorities for 2005-2009 is the implementation of Building Safer Communities – A Framework for Crime Prevention and Community Safety (2004-2009). It will focus, in particular, on the high proportion of Indigenous prisoners. There is also a commitment to ensuring that the correctional system meets the needs of the Territory’s diverse population, including Indigenous people.

7.2 Annual Reports

7.2.1 Department of Justice

2002-2003: Work began on the development of an Indigenous justice agreement between the Government and peak Indigenous organisations (such as ATSIC and NAJAC). The Agreement’s Principles Statement will underpin a series of action plans developed in conjunction with government agencies. The target for the completion of the Agreement is for it to be signed in mid 2003-04. Community participation in the justice system, including Indigenous communities becoming involved in the sentencing process, is a major strategy for the upcoming year, and the NT Law Reform Commission will look at Aboriginal customary law.

2003-2004: Major achievements in this year included expansion of video conferencing facilities to remote communities, and a major project team was established to work towards the development of community justice, reintegration and diversion programs, including with Central Australian communities. A review of the justice and social benefits to be gained by the use of video conferencing facilities in regional and remote communities was undertaken. It was found that the greatest benefits were in relation to prisoner contact with families, court appearances of witnesses and defendants in custody,
and bail applications from remote areas. The recommendations will be considered and implemented, where appropriate, over coming years. The majority of the recommendations of the Inquiry into Customary Law were accepted by Government, upon submission of the Commission’s relevant report.

2004-2005: Major achievements in this year included the introduction of the Elders Program at Darwin and Alice Springs Correctional Centres, aimed at setting up a meaningful interface between offenders and communities with the ultimate aim of reintegrating offenders into their communities on release from prison. An Indigenous Family Violence Program, delivered by Tangentyere Council at Alice Springs Correctional Centre and by Community Corrections staff at four Aboriginal communities was also established. The Community Court was trialed at Nhulunbuy and Darwin.

2005-2006: Major achievements for this year include the expansion of the prison and community based Indigenous Family Violence Offender Program to further communities. The Program is successful, and re-offending numbers remain low. Further work includes the continuation of the Elders Program, and the introduction of the first Aboriginal Interpreters Course to prisoners in partnership with Bachelor Institute and the NT Aboriginal Interpreter Service. Further courses included an Indigenous Tertiary Preparation Course and a Crocodile Handling and Farming Course (to increase employment on Indigenous communities, and to give Indigenous men skills and the capacity to develop related enterprises on their communities).

2006-2007: Future challenges and directions are identified as the implementation of initiatives in Closing the Gap, including an expansion of the Community Court program, additional Community Corrections officers, expansion of the Alcohol Court program, expansion of the Elders Visiting Program, expansion of sex offender treatment programs, expansion of the Indigenous Family Violence Offender Program, and reform of laws relating to bail and evidence and reform of the committal system. In this year, the Community Court was expanded to further communities.

2007-2008: Community Courts and the Elders Visiting Program were expanded, and an Indigenous family violence offender program continued to be delivered on a number of communities. Additional Community Probation and Parole positions were created to operate in remote areas for better supervision of offenders on community based court orders. A sex offender treatment program was delivered at Alice Springs Correctional Centre and plans were made for the expansion of the existing program at Darwin Correctional Centre, as well as programs for juveniles in detention, juveniles and adult offenders under supervision in the community and services for convicted offenders who were victims of sexual abuse. The Alcohol Court (which commenced in Darwin and Alice Springs as a Closing the Gap initiative in 2006) was also expanded. A ‘sorry camp’ was introduced at Alice Springs Correctional Centre to allow for funeral services to be held there with the aim of reducing ‘payback’ issues. Prisoners of all classifications and their families are able to attend funeral services there.

7.3 Other Relevant Policy Initiatives/Documents

Recommendations include establishing alternative sentencing options with more community involvement and taking better account of customary law. There has been no formal government response to this Report.

7.3.2 Managing Prisoner Growth in the NT – Options Paper (2006)

The NTLAC has collaborated with Aboriginal Legal Service providers and the Offender Aid and Rehabilitation Service (OARS) in the document Managing Prisoner Growth in the NT – Options Paper (2006). NTLAC expresses concern at the rising rates of incarceration in the NT (the highest nationally, and one of the highest internationally, with Indigenous people disproportionately represented), requiring a shift in focus. This is due, perhaps, in part to a greater tendency to imprison Aboriginal people, a lack of available community-based sentencing options, and mandatory sentencing legislation for assaults and breaches of domestic violence orders.

Recommendations include the following:

• **Finalisation of an Indigenous Justice Agreement**
  The Northern Territory negotiated an Agreement with ATSIC in 2002 and 2004, but the agreement was never signed. The Agreement is an ‘important first step in formally including Indigenous people in dialogue and decision making in relation to justice issues’, and such Agreements in other jurisdictions have managed to reduce incarceration and improve rehabilitation.

• **Legislation enshrining the principle that imprisonment is a sanction of last resort**
  As recommended by the RCIADIC, there ought to be legislation enshrining this principle in the Territory. The Sentencing Act must be amended to explicitly direct the court to consider community–based correctional options, and establish criteria for imposing a term of imprisonment.

• **Increase community-based rehabilitation programs, and expand of the role and capacity of Community Corrections to focus on rehabilitation and reintegration**
  Corrections must be expanded to enable them to shift their focus. An example of the work they have done is the Family Violence Perpetrator Program on four Indigenous communities throughout 2005. It is noted that diversion of low risk, non-violent offenders from custody to community-based orders has been effective in other jurisdictions in reducing incarceration rates (in Victoria, Queensland and Western Australia). This might be done by further developing programs targeting high re-offending areas such as driving related offences and assault, and an extension of the CREDIT Court (Court Referral and Evaluation for Drug Intervention and Treatment). Further community-based post-release support is necessary. The successful Elders Visiting Program could be extended to become a Mentoring Program post-release.
7.3.3 Community Court Guidelines

The purpose of the Community Court Guidelines is to establish procedures for the Magistrates Court of the Northern Territory when it sits with community members participating in Community Court. The concept of such a court grew out of discussions between the Yilli Rreung Council in 2004, but Community Court is not restricted to Indigenous defendants. It is noted that variations of Aboriginal Community Courts have been operational, with some success, in other jurisdictions, although the Territory did lead the way with community forums and additional court advisers (assisting the court in understanding the particular problems of indigenous communities) in the 1980s. The Court is to operate in Darwin, but offenders from outside Darwin, or from circuit courts, may apply to be heard at the Court. The Court aims to provide more effective, meaningful and culturally relevant sentencing options, increase community safety, decrease rates of offending, and reduce repeat offending and breaches of court orders. From a community perspective, it aims to:

- increase community participation in the administration of the law and sentencing process
- increase community knowledge and confidence in the sentencing process
- increase the accountability of the community, families, and offenders
- provide support to victims and enhance the rights and place of victims in the sentencing process
- enhance the offender’s prospects of rehabilitation and reparation to the community

Whilst the Magistrate has ultimate responsibility for sentencing, community representatives will sit with the Magistrate and discuss background of the offender, how the offence has breached the community code of conduct, and aspects of the actual offence, and will also consider an appropriate sentence. All offences, other than sexual assaults, may be dealt with at the Court, and the process is open to adults and juveniles. The Guidelines set out the relevant procedure of the Court, and possible outcomes (including new or different types of supervisory orders monitored by correctional services and/or community members or family).

7.3.4 Community Courts

In terms of community courts, the Nhulunbuy (North East Arnhem Land) Community Court commenced in 2003/2004, and similar courts now sit as Courts of Summary Jurisdiction in a number of locations (including Darwin). The Courts appear to have been largely successful to date, although in the context of having dealt with only a very small percentage of criminal matters. The pilot programme of Community Courts in Darwin and the Tiwi Islands was the subject of an interim evaluation in August 2006. This review noted that 60% of respondents felt that the Court had increased community participation in sentencing, an important achievement. The role of Elders was also seen to provide valuable assistance within the court process; and to provide a sense of
community responsibility and accountability for the joint decisions made by the Court. The majority of matters dealt with have involved alleged offences of aggravated assault, and referral to the Community Corrections operated Indigenous Family Violence Program has often been utilised as part of the court process.

In Nhulunbuy, the Community Court has incorporated a number of interesting sentencing procedures, including involving public admissions of guilt in relation to offences of family violence before 300 people, with the victim also in attendance; or living on outstations and being counselled by senior clansmen and women. Blokland notes that whilst ‘many of these orders could be made without going through the Community Court process’, when there is ‘family or community support for an order of the court, there is more confidence that the orders might be complied with.’ (Blokland 2007: 15). An evaluation has been completed by the Department of Justice in relation to Nhulunbuy Community Court (unpublished, 2007), and preliminary findings indicate that re-offending rates are better compared to those of regular courts (40% compared to 60%). Further, satisfaction levels were found to be high in terms of the process and outcomes of the Court., and it was seen to have led to an increased use of outstations for probation. ²

7.3.5 Indigenous Family Violence Offender Program

This project was originally introduced in 1999 (as a Partnerships Against Domestic Violence initiative) as a pilot program at Darwin Correctional Centre and Council for Aboriginal Alcohol Programs Unit (CAAPS). The program is still being delivered at Darwin Correctional Centre, but a community-based program is now running on Indigenous communities thorough Community Corrections. Indigenous Facilitators, selected as appropriate by their respective community members and employed by Community Corrections, deliver the program in 3 hour modules over 50 hours. There are male and female offender programs, and male and female victim programs. The program is an alternative sentencing option to imprisonment, and clients are generally referred through the court system (although ‘volunteer’ clients from the community may also participate). A client is assessed as suitable before referral to the program by the court, and a further assessment (upon referral) is made of both the offender and victim in terms of the circumstances of an offence of violence. Assessment is then ongoing, to determine whether the violence has lessened or escalated as a result of participation in the program.

The program is apparently showing ‘remarkable success’, with more than 40 Indigenous men attending and completing the 50-hour work program as at September 2006. The most successful pilot, at Nguiu, is said to be working because of support from the

community, police and courts; commitment of the facilitators; and the fact that the program is individualised to meet the community’s needs. 3

The program has expanded to further communities in 2008-09 when 9 IFVO programs were delivered in Wadeye, Alice Springs, Yuendumu, Hermannsburg and Tennant Creek.

7.3.6 Northern Territory National Emergency Response Act – Bail and Sentencing and Customary Law

Part 6 of the Northern Territory National Emergency Response Act 2007 (Cth), as well as strengthening bail provisions in the Northern Territory to ‘better secure the safety of victims and witnesses in remote communities’, 4 amends Northern Territory law to prohibit the relevant authority, when exercising bail (s 90(1)(b) or sentencing (s 91) discretion in relation to Northern Territory offences, from taking into consideration any form of customary law or cultural practice as a mitigating or aggravating factor. The Explanatory Memorandum of the Northern Territory National Emergency Response Bill 2007 states, with reference to s 90(1)(b), that a bail authority is ‘still be able to consider customary law or cultural practice in deciding whether to grant bail’, but that this amendment ‘makes clear that the decision should not be based on whether the criminal behaviour would be assessed as less, or more serious, due to customary law or cultural practice.’ 5


4 Explanatory Memorandum, Northern Territory National Emergency Response Bill 2007 (Cth), available at:-


5 The Law Council of Australia has argued that Part 6:-

• require(s) courts to treat Aboriginal and Torres Strait Islanders, and those of different ethnic origins, as if they did not belong to a specific cultural group;
• results in more Aboriginal people being incarcerated, for longer periods and with fewer options for rehabilitation within their communities; and
• undermine(s) the positive achievements of Aboriginal courts, which have relied on flexible sentencing and bail options and community involvement to strengthen compliance with the law, Aboriginal communality and leadership and, ultimately, reduce(s) rates of imprisonment and recidivism.

The Council also suggests that these provisions ‘effectively mirror’ the provisions of the Crime Amendment (Bail and Sentencing) Act 2006, introduced by Federal Parliament following the agreement at the Intergovernmental Summit on Violence and Child Abuse in Aboriginal communities that ‘customary law in no way justifies, authorises or requires violence or sexual abuse against women and children’ (see also Explanatory Memorandum, Northern Territory National Emergency Response Bill 2007 – provisions identified as being based on decision at the COAG meeting of 14 July 2006 concerning customary law and practice as mitigating factor in cases of violence and sexual abuse). See Law Council of Australia ‘Submission to the Senate Standing Committee on Legal