

# A prison system in crisis

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With the fourteenth biennial CLANT conference around the corner, it's time for some shameless self-promotion by way of a sneak preview of the line-up. As this edition of *Balance* goes to press, there may still be a few places left for late registrants. If you feel the urge to join us at the gracious Bali Hyatt on Sanur beach for the last week of June, we're only a click away, at [www.clant.org.au](http://www.clant.org.au).

In keeping with tradition, the Conference will be opened by the Attorney-General. On this occasion, the Territory's first law officer will be succeeded by the Territory's first judicial officer, our first Keynote Speaker. Neither the Hon John Elferink MLA nor the Hon Chief Justice Trevor Riley is known for diffidently beating around the bush.

Our second Keynote Speaker was chosen in part because her recent extraordinary experiences epitomise our Conference theme, "Victims of the System". Melinda Taylor is a defence counsel with the International Criminal Court in The Hague. In 2012 she travelled to Libya to obtain instructions from her client, Saif al-Islam Gaddafi, who is being prosecuted for crimes against humanity. Mr Gaddafi was at the time detained by the Libyan government which had assumed power following the overthrow and killing of his father, Muammar Gaddafi. What Melinda did not foresee was that she too would be detained by the Libyan authorities, on vague accusations of grave offences. Not only were

those accusations and associated allegations of professional misconduct unfounded, but since her release, Melinda and her team have successfully resisted the Libyan government's repeated applications to the ICC to remove them as Mr Gaddafi's defence counsel.

The remaining sessions of the conference will be divided into five sub-themes: women as victims, prisoners as victims, people from across the seas as victims, young people as victims, and lawyers as victims. Peppered through the program there will also be a sprinkling of black letter papers by an impressive assortment of judges, barristers and academics. Among our presenters will be four of CLANT's life members, Dean Mildren, Jenny Blokland, Suzan Cox and Colin McDonald (speaking on the Titus Ani case, which CLANT has strongly supported); and a fifth, Rex Wild, will be back with the Bali Players to present "The Murder in Gun Alley; the wrongful conviction of Colin Ross".

There will also be some most welcome new faces on the program this year, including Northern Territory Children's Commissioner, Howard Bath; SA District Court Judge, Sydney Tilmouth (author of "Australian Criminal Trial Directions"); New South Wales Public Defender, Dina Yehia, and many others. Check our website for details.

CLANT recently made a submission to the government's

review of the *Bail Act*, in which we focussed on the following fundamental principles:

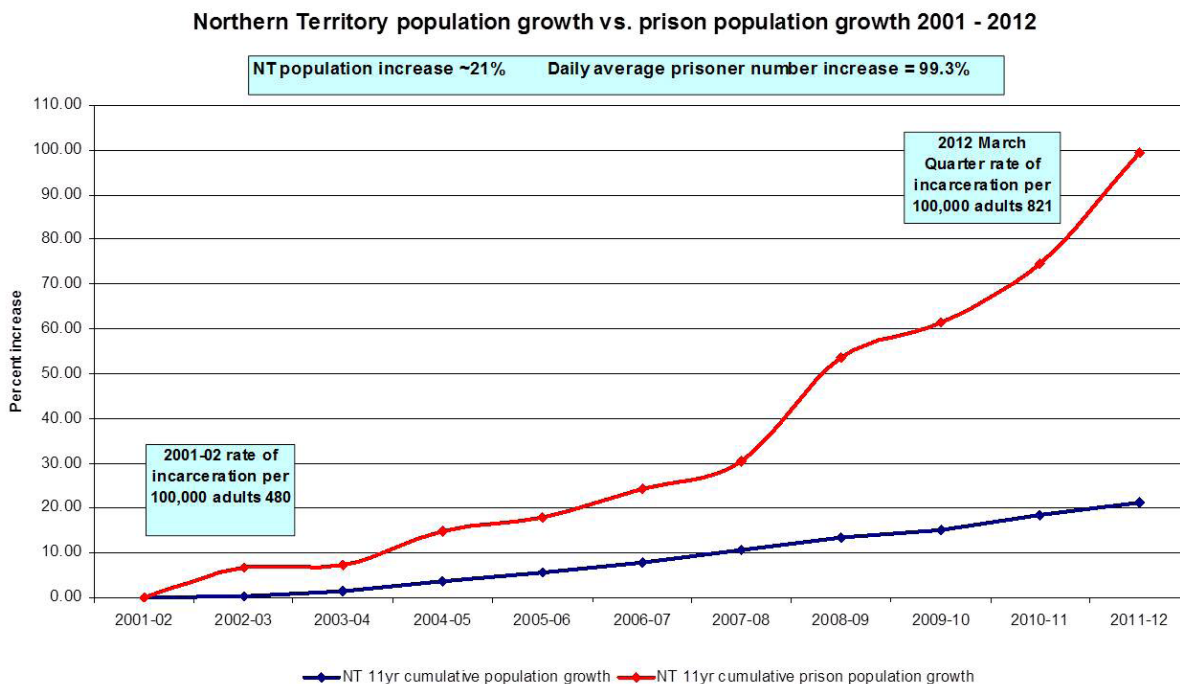
1. Simplicity
2. Judicial discretion
3. The presumption of innocence
4. Incarceration is a last resort

In accordance with these principles (and with the recent recommendations of the New South Wales Law Reform Commission), CLANT supports a uniform presumption in favour of bail for defendants. CLANT also supports the abolition of the offence of breaching bail, which serves no useful purpose, and is inimical to the efficient administration of the criminal justice system. Breach of bail already carries its own significant penalties, namely forfeiture of (a) recognizances and sureties; and (b) the defendant's liberty.

This review is timely because the Northern Territory prison system is in a state of chronic crisis caused by ever-increasing incarceration rates. Over the last decade, whereas the population of the Territory has increased by about 20%, the population of our prisons has risen by almost 100%. On current projections, it will double again in the next six years. Obviously, this is unsustainable, and every effort must be made to reverse this alarming trend.

The trend is even more ominous when considered in the context of recent policy initiatives which

Figure 1 supplied by the Department of Correctional Services



widen the net of incarceration by way of a range of punitive measures masquerading as civil procedures. The *Serious Sex Offenders Act 2013* provides for indefinite detention of offenders after they have completed their prison sentences. The Alcohol Mandatory Treatment Tribunal is being established to order hundreds of problem drinkers into 'secure' residential treatment. If they try to leave or run away, they can be apprehended and

detained. Meanwhile, unfit and/or mentally impaired persons subject to Custodial Supervision Orders made under Part IIA of the *Criminal Code* languish in prison cells, while state of the art purpose-built 'secure care facilities' built at great public expense remain largely uninhabited, gathering cobwebs.

This brings me back to that other category of incarcerated people who have not been sentenced to imprisonment – defendants on

remand. They are not 'prisoners'. They do however spend 17 hours every day in a prison cell, in a prison, being guarded by prison officers (although, unlike many prisoners, they are not permitted to engage in meaningful employment or education).

The last thing we need would be to amend the *Bail Act* by further restricting access to bail. ●

Figure 2 supplied by the Department of Correctional Services

