



25 November 2020

Executive Officer  
Northern Territory Law Reform Committee  
GPO Box 1535  
Darwin NT 0801

**Re: Northern Territory Law Reform Committee regarding Mandatory Sentencing and Community Based Sentencing Options Consultation Paper 2020.**

The Office of the Children's Commissioner (OCC) welcomes the opportunity to provide the Northern Territory Law Reform Committee a response to the Mandatory Sentencing and Community-Based Sentencing Options consultation paper.

Background

The objectives of the OCC, as set out in section 4 of the *Children's Commissioner Act 2013* (NT), is to ensure the safety and wellbeing of vulnerable children and to promote continuous improvement and innovation to related policies, practices and services.<sup>i</sup>

Issues

The OCC in its submission requests the Committee give special consideration to children of parents subject to these provisions. The OCC would like to respond to section 3 (Question 3.4) and 5 (Questions 5.9) of the consultation paper about other issues for consideration. The OCC would like the Committee to consider the following:

- a) Creating space between perpetrators and victims of family and domestic violence

Family and domestic violence rates in the Northern Territory are the highest in Australia.<sup>ii</sup> At least one child experiences domestic and family violence every day in the Northern Territory.<sup>iii</sup> Experiencing, or witnessing, domestic and family violence causes serious and lasting harm to children. Evidence shows children exposed to domestic and family violence suffer from poorer emotional, behavioural, social and cognitive development.<sup>iv</sup> This type of environment increases the risk of children experiencing further abuse or neglect and subsequently increases the likelihood of involvement with child protection and youth offending.<sup>v</sup> Further, family violence in Aboriginal communities occurs at a disproportionately higher rate than the general population and the Northern Territory is no exception.<sup>vi</sup>

The OCC submits that Aboriginal people are over incarcerated in the Northern Territory and that mandatory sentencing provisions contribute to the disproportionately high imprisonment rate of Aboriginal people. The OCC supports the removal of mandatory sentencing provisions.

The United Nations Convention on the Rights of the Child stipulates that measures addressing family and domestic violence, including judicial involvement and treatment for perpetrators, are integrated and comprehensive to ensure there is enforcement, quality and relevance.<sup>vii</sup> There is growing



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understanding about the importance of separating the perpetrator from the victims of family violence to create a safe space for predominantly women and children to heal and access services and programs that are supportive and responsive.<sup>viii</sup>

In the Northern Territory, the vast landscape presents additional challenges for women and children victims of family violence as available, high quality and relevant service responses are limited in remote or very remote areas.<sup>ix</sup> It is critical the Committee discuss the alternatives to detention for offenders, should the legislation repeal mandatory sentencing periods, to ensure women and children are afforded the safe space created by separation from perpetrators in instances of family and domestic violence. The OCC asks the Committee to consider the need to grow the Northern Territory's capacity to provide specialised, locally-based, therapeutic rehabilitative supports for domestic and family violence perpetrators that prioritise the safety of children uniquely from parents (a consideration for community based sentencing options).

The OCC understands the limitations of mandatory sentencing and community based-sentencing options particular to the Northern Territory. It is vital to support any proposed amendments to the legislation with genuine measures, including high quality accessible treatment programs for offenders, that makes sure women and children are safe while keeping the perpetrator in view.<sup>x</sup>

The Royal Commission into Family Violence in Victoria, in its final report, discusses the 'Swift and Certain' approach which aims to enhance the perpetrators understanding of the certainty and legitimacy of the punishment, maximising the behaviour change while minimising the negative impacts of more severe punishment.<sup>xi</sup> The report quotes Judge Eugene Hyman:

'it's extremely, extremely important in domestic violence cases... that the consequences to the extent that there are consequences need to be imposed as quickly as possible, one, for safety reasons, to communicate how important this is, and, two, because if it's not imposed then this allows the offender potentially to perpetrate additional violations on the theory that it's not serious, that the court isn't taking it seriously, probation isn't taking it seriously and then the perpetrator is able to say to the victim, 'See, you made a complaint and nothing happened' ...<sup>xii</sup>

The OCC acknowledges the Northern Territory Government's progress in this space with the Domestic, Family and Sexual Violence Reduction Framework 2018-2028 and Priority Actions 2020-2021.<sup>xiii</sup> However, a more therapeutic approach to sentencing needs to be adopted by ensuring more community corrections options, including greater investment in rehabilitative interventions and perpetrator programs, in order to keep women and children safe throughout and beyond the legal processes. Children as victims of family and domestic violence must have their right to be safe enshrined in legislation to assist them reach their full potential.

a) Balancing children's rights in relation to incarceration of a parent(s)

The OCC submits the Committee consider the affects faced by children whose parent(s) is subject to mandatory sentencing or community based sentencing options.

The United Nations Convention on the Rights of the Child states that a child should not be separated from their family against their will (other than when authorities find that separation is in the child's best interests).<sup>xiv</sup> A child's right to development can be affected by both living in a prison environment and also when separated from a parent. Research findings demonstrate that separation from parents between birth and age two causes severe socio-emotional development problems in children.<sup>xv</sup> Premature separation of a baby from its mother can cause severe damage to the child in terms of neurological disorders, mental health problems, cognitive development and overall health. Further

research explicitly links early separation with insecure/disorganised attachment and subsequent mental health problems.<sup>xvi</sup>

Numerous studies show that parental presence is more important than the surrounding environment for the emotional well-being of an infant or a very young child. Repeated exchanges that take place between babies and their primary caregivers shapes the social-emotional development in infancy. Any serious and prolonged disruption of parental care, especially in infants and very young children, alters how the young brain develops.<sup>xvii</sup>

Half of the women imprisoned in Australia are mothers, and 5-10% are pregnant.<sup>xviii</sup> In the Northern Territory, Aboriginal women are imprisoned 14 times the rate of the non-Aboriginal female population.<sup>xix</sup> It is necessary the proposed amendments recognise the importance of the first 1000 days between mother and infant to reduce potential harm caused from separation.<sup>xx</sup>

The OCC submits the Committee consider associated challenges regarding the incarceration of mothers with babies such as breastfeeding.<sup>xxi</sup> Research shows that fit-for-purpose prison nursery programs can prevent serious trauma caused to both baby and mother, and even reduce the likelihood of the mother returning to prison in the future.<sup>xxii</sup> Sudden interruptions to breastfeeding at an early age can have serious ramifications for children, with evidence showing negative health effects and increased probability of neural developmental disorders.<sup>xxiii</sup>

The Northern Territory's draft strategy Aim One to Reduce Reoffending and Imprisonment Rates of Aboriginal Territorians highlights 'aboriginal people under court-ordered DVOs often find the conditions of orders difficult to comprehend, and may breach these conditions because they are or have been a couple, generally with child-rearing responsibilities'<sup>xxiv</sup> Studies show that mothers may be considerably more motivated to succeed in rehabilitation if engaged in their role as primary caregivers.<sup>xxv</sup>

The OCC asks the Committee to allow for measures that promote the best interests and welfare of a child whose primary care giver is subject to mandatory sentencing and community sentencing options.

The OCC submits that the Committee adopt a child rights lens to consider the concerns outlined above so that amendments to the legislation do not negatively affect children's development.

Thank you for considering this submission. Please do not hesitate to contact Clare Patterson, Strategy Officer on telephone 08 8999 6074 or via email at [occ@nt.gov.au](mailto:occ@nt.gov.au) if you have any queries regarding this matter.

Yours sincerely



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25 November 2020

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<sup>i</sup> Children's Commissioner Act 2013 (NT) s 4.

<sup>ii</sup> Northern Territory Government, *Domestic, Family & Sexual Violence Reduction Framework 2018-2028: Safe, respected and free from violence* (2018) 12 <[https://territoryfamilies.nt.gov.au/\\_data/assets/pdf\\_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf](https://territoryfamilies.nt.gov.au/_data/assets/pdf_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf)>.

<sup>iii</sup> Northern Territory Government, *Domestic, Family & Sexual Violence Reduction Framework 2018-2028: Safe, respected and free from violence* (2018) 12 <[https://territoryfamilies.nt.gov.au/\\_data/assets/pdf\\_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf](https://territoryfamilies.nt.gov.au/_data/assets/pdf_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf)>.

<sup>iv</sup> Northern Territory Government, *Domestic, Family & Sexual Violence Reduction Framework 2018-2028: Safe, respected and free from violence* (2018) 14 <[https://territoryfamilies.nt.gov.au/\\_data/assets/pdf\\_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf](https://territoryfamilies.nt.gov.au/_data/assets/pdf_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf)>.

<sup>v</sup> Australian Human Rights Commission, *Children's Rights Report 2015* (2015) 124 <<https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2015>>, Victims Commissioner, *Children's experience of domestic abuse and criminality: A literature review* (2020) 8 <<https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2020/03/OVC-Literature-review-2020-1.pdf>>.

<sup>vi</sup> Northern Territory Government, *Domestic, Family & Sexual Violence Reduction Framework 2018-2028: Safe, respected and free from violence* (2018) 13 <[https://territoryfamilies.nt.gov.au/\\_data/assets/pdf\\_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf](https://territoryfamilies.nt.gov.au/_data/assets/pdf_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf)>.

<sup>vii</sup> Australian Human Rights Commission, *Children's Rights Report 2015* (2015) 107 <<https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2015>>.

<sup>viii</sup> Victorian Government, Royal Commission into Family Violence, *Report and recommendations* (2016) vol 4 <[https://apo.org.au/sites/default/files/resource-files/2016-03/apo-nid62334\\_59.pdf](https://apo.org.au/sites/default/files/resource-files/2016-03/apo-nid62334_59.pdf)>.

<sup>ix</sup> Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia* (2018) 88 <<https://www.5050foundation.edu.au/assets/reports/documents/aihw-fdv-02.pdf>>.

<sup>x</sup> Victorian Government, Royal Commission into Family Violence, *Full report* (2016) 144 <[http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf)>.

<sup>xi</sup> Victorian Government, Royal Commission into Family Violence, *Full report* (2016) 217 <[http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf)>.

<sup>xii</sup> Victorian Government, Royal Commission into Family Violence, *Full report* (2016) 218 <[http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf)>.

<sup>xiii</sup> Northern Territory Government, *Domestic, Family and Sexual Violence Reduction Framework 2018-2028* <[https://territoryfamilies.nt.gov.au/\\_data/assets/pdf\\_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf](https://territoryfamilies.nt.gov.au/_data/assets/pdf_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf)>; Northern Territory Government, *Priority Actions 2020-2021* <[https://territoryfamilies.nt.gov.au/\\_data/assets/pdf\\_file/0005/816962/sexual-violence-prevention-response-framework-2020-2028-priority-actions-2020-2021.pdf](https://territoryfamilies.nt.gov.au/_data/assets/pdf_file/0005/816962/sexual-violence-prevention-response-framework-2020-2028-priority-actions-2020-2021.pdf)>.

<sup>xiv</sup> United Nations, *Convention on the Rights of the Child*, GA res 44/25 (entered into force 2 September 1990) art 9 <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>.

<sup>xv</sup> National Health and Medical Research Council, *Promoting social and emotional development and wellbeing infants in pregnancy and the first year of life* (2017) <<https://www.nhmrc.gov.au/about-us/resources/promoting-social-and-emotional-development-and-wellbeing-infants-pregnancy-and-first-year-life>>.

<sup>xvi</sup> The American Journal of Psychiatry, *Institutional Rearing and Psychiatric Disorders in Romanian preschool Children* (2009) <<https://ajp.psychiatryonline.org/doi/full/10.1176/appi.ajp.2009.08091438>>

<sup>xvii</sup> Megan Gunnar, Camelia Hostinar, Mar Sanchez, Nim Tottenham & Regina Sullivan, *Parental buffering of fear and stress neurobiology: reviewing parallels across rodent, monkey and human models*, *Social Neuroscience Journal* (2015) vol 10 <<https://www.tandfonline.com/doi/full/10.1080/17470919.2015.1070198>>.

<sup>xviii</sup> Australian Institute of Health and Welfare, *The health and welfare of women in Australia's prisons* (2020) 10 <<https://www.aihw.gov.au/getmedia/32d3a8dc-eb84-4a3b-90dc-79a1aba0efc6/aihw-phe-281.pdf.aspx?inline=true>>.

<sup>xix</sup> Northern Territory Government, Northern Territory Aboriginal Justice Agreement, *Aim 1: Reduce reoffending and imprisonment rates of Aboriginal Territorians* (2020) 35 <[https://justice.nt.gov.au/\\_data/assets/pdf\\_file/0010/728164/aim1-Reduce-reoffending-and-imprisonment.pdf](https://justice.nt.gov.au/_data/assets/pdf_file/0010/728164/aim1-Reduce-reoffending-and-imprisonment.pdf)>.

<sup>xx</sup> PricewaterhouseCoopers, *The first thousand days: A case for investment* (2019) 14 <<https://www.pwc.com.au/health/first-1000-days-report-apr19.pdf>>.

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<sup>xxi</sup> Angela Dawson, Debra Jackson, *Children of incarcerated parents: insights to addressing a growing public health concern in Australia*, *Children and Youth Services Journal* (2012) vol 34  
<[https://www.researchgate.net/publication/257042952\\_Children\\_of\\_incarcerated\\_parents\\_Insights\\_to\\_addressing\\_a\\_growing\\_public\\_health\\_concern\\_in\\_Australia](https://www.researchgate.net/publication/257042952_Children_of_incarcerated_parents_Insights_to_addressing_a_growing_public_health_concern_in_Australia)>.

<sup>xxii</sup> Victorian Department of Justice and Regulation, *Literature Review of Prison-based Mothers and Children programs: Final Report* (2016) <[https://assets.justice.vic.gov.au/corrections/resources/b5ef4e77-10e5-4a27-bbfd-9a5c3e9cdb69/mothersandchildren\\_programs.pdf](https://assets.justice.vic.gov.au/corrections/resources/b5ef4e77-10e5-4a27-bbfd-9a5c3e9cdb69/mothersandchildren_programs.pdf)>.

<sup>xxiii</sup> Kathleen Krol, Tobias Grossman, *Psychological effects of breastfeeding on children and mothers*, National Centre for Biotechnology Information (2018) vol 61 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6096620/>>.

<sup>xxiv</sup> Northern Territory Government, Northern Territory Draft Aboriginal Justice Agreement, *Aim 1: Reduce reoffending and imprisonment rates of Aboriginal Territorians* (2020) 43  
<[https://justice.nt.gov.au/data/assets/pdf\\_file/0010/728164/aim1-Reduce-reoffending-and-imprisonment.pdf](https://justice.nt.gov.au/data/assets/pdf_file/0010/728164/aim1-Reduce-reoffending-and-imprisonment.pdf)>.

<sup>xxv</sup> Victorian Department of Justice and Regulation, *Literature Review of Prison-based Mothers and Children programs: Final Report* (2016) <[https://assets.justice.vic.gov.au/corrections/resources/b5ef4e77-10e5-4a27-bbfd-9a5c3e9cdb69/mothersandchildren\\_programs.pdf](https://assets.justice.vic.gov.au/corrections/resources/b5ef4e77-10e5-4a27-bbfd-9a5c3e9cdb69/mothersandchildren_programs.pdf)>.

