

Submission to the Northern Territory Law Reform Committee inquiry into mandatory sentencing and community-based sentencing options

My name is Glenice Grieve. I am a Jingili/Mudburra woman and the mother of Zak Grieve, who was incarcerated for life in 2011 because of mandatory sentencing.

Zak was jailed over a murder but even the judge believed he wasn't there when it took place. He didn't do it.

Instead, my son was jailed because he failed to notify the authorities of what might happen. Even though other people were aware of the same thing, the same happenings, my son was the only one who was convicted. Under mandatory sentencing, he was given 20 years to life, because he didn't make a phone call.

What I want to say to the government is that you've destroyed lives with mandatory sentencing. Zak was a young Indigenous person, aged just 19, not an adult, and when I heard the judge say he had to give him a life sentence, my heart sank. He was my son but I couldn't show my baby any tears. I couldn't show him how I was feeling inside. I couldn't. I just had to have a straight face, to show him that I was strong and I am there for him, no matter what. I am crying as I say this now.

Afterwards, I said to Zak 'I'm sorry. It's because you have a black mother that you are going in there.' Mandatory sentencing means so many people with my skin colour are in prison. You know they make up most of the Northern Territory's prison population, especially among the young people. Today, I work in security in the Katherine courthouse, where I live and where Zak was first in court after being arrested. I see so many Aboriginal people come into court for mandatory sentencing offences. I had a young lawyer come in recently and say to me 'Glenice, where are all the white people?' I said 'Sorry, mandatory sentencing is only for Aboriginal people.'

You've destroyed lives. I blamed myself when Zak went into prison. He was so young, so green and naïve and the prison was full of all those hardcore murderers. I've seen so many of my countrymen and family members who have had things like this happen. I know they hit the alcohol, they hit the drugs.

This is what the politicians need to understand: if they don't do something and abolish this mandatory sentencing, then it might not affect them, they might be in power right now, but when their children grow up and their grandchildren and great-grandchildren, if this law is still there, then they won't be in power then, and won't be able to protect them.

You asked if the mandatory sentencing laws achieve their goals and objectives? You ask if they are principled, fair and just? My answer is no. The judge who jailed Zak said he did not want to do it. He said the mandatory sentencing laws 'inevitably bring about injustice.'

After a decade in prison, the NT Administrator used his Prerogative of Mercy to reduce Zak's non-parole period to 12 years, not 20. Twelve years is still too long, but this decision showed the laws do not work in every case. And it happened only after we campaigned and only after journalists used Zak's case to show how the Northern Territory's laws were broken.

You asked some other questions:

Does mandatory sentencing act as an effective deterrent?

No, because we have a revolving door. Mandatory sentencing means Aboriginal people are going into the system for petty crimes and come out knowing how to commit bigger ones.

Sadly, in the prisons there are few programs and the programs they do have, like numeracy and literacy, people have been lost along the way, because many of them cannot read and write. When people come out, they are not able to go straight, so they fall back into crimes because there is no support. Some of them don't even have their identity documents and don't have the know-how to go about getting them.

Working at the courthouse, I see people coming in and they are told to read this or fill that out.

When I hear that, I direct them to Catholic Care, across the road. I say to them, 'Go across to Catholic Care and ask them to help you to fill this form out or possibly to come across with you.' But they are not aware of this, they don't know this can help them. So these people don't know how to go straight. They need some help. Mandatory sentencing does not stop them committing crimes.

Going into prison means that when they come out, then they commit more and worse ones.

Does mandatory sentencing serve the denunciatory purpose of the sentencing?

No, because it doesn't work. We need to be like the rest of Australia, where judges give people sentences that fit the crimes. Under mandatory sentencing, the judges cannot say 'I'm giving you this sentence because what you did was wrong'. They have to say 'I'm giving you this sentence because this is the sentence I have to give you'.

In the courthouse I hear it all the time. I hear the prosecution lawyers and I hear the defence lawyers, and their hands are tied. The defence lawyers virtually have to give their clients to the prosecution to jail them.

Does mandatory sentencing ensure the appropriate punishment of offenders?

No, it doesn't. In the Northern Territory, we used to have mandatory sentencing for property offences. So a little kid could go and steal a biscuit because he was hungry and he'd be put in jail. Or a 15-year-old Aboriginal boy who stole some stationary ended up being put away and he killed himself. Now, do you think that's right? Do you think that's fair?

Working in the courthouse, I see how mandatory sentencing also doesn't really mean that everybody gets the same punishment for the same offences. We now have mandatory sentencing for traffic offences, drug crimes and domestic violence as well as murder. But I see the white people come into the courthouse and they still don't seem to get the same punishment as the black people. They get bonds. Or a little tag around their ankles. They get to go home, they don't go to prison.

With domestic violence, mandatory sentencing doesn't mean people get appropriate punishments, because there are no programs, no alcohol rehabilitation or things like that. Instead, with mandatory prison sentences, they are breaking up families. Why can't people be put into alcohol facilities to be rehabilitated rather than have the courts split up families? I'm dead against domestic violence, I remember when my step-father got my mother and smashed her head on the floor and nobody came to help us, but just putting people into prison isn't always helping. Being under the influence of either alcohol or drugs does change people. When they're sober, they are different. I feel for them because when they talk to me, they say, 'I love my wife', or 'I love my husband', but the laws are keeping people away from each other rather than assisting and supporting them with counselling, alcohol rehabilitation and helping them. When the family is broken up, then they don't have an income and it is the children who suffer.

Does mandatory sentencing protect the Territory?

I'm laughing now. Protect us from what? Protect us because these laws get rid of the blackfellas? Because it means almost all our prison population is Aboriginal? I don't understand it. We Aboriginal people have always been loving and accepting and friendly. Why do we deserve this hostility and this treatment of locking us away?

Does mandatory sentencing promote consistency in sentencing outcomes?

No. My son, Zak, is an example. Zak was not there when the murder took place. He backed out. But under mandatory sentencing, he ended up getting a longer non-parole period than Chris, his co-accused, who did commit the murder. So there is no consistency in mandatory sentencing. It could happen again. You could have two more people given the same mandatory sentences who really did different things, just like Zak and Chris, where one committed the murder and the other only knew it might be happening.

Does mandatory sentencing have community support because the public perception is that sentences imposed by courts are too lenient?

No. All the families I've spoken to don't think it does, and we are also part of the community. Mandatory sentencing has changed nothing, it's basically just made our younger ones all angry. They're put in prison with murderers and much rougher people and when they come out of prison who they take it out on is their families.

Should the mandatory sentence for murder be abolished altogether, leaving it to the court to impose an appropriate sentence and non-parole period?

This is exactly what I'm saying. This is what needs to happen. It needs to be abolished.

Should the 'exceptional circumstances specified in s 53A(7) of the *Sentencing Act 1995* for murder be less restrictive, for example, to allow the court to fix a non-parole period of less than 20 years for offending in the low range of objective seriousness or in the circumstances referred to at [4.3] above?

No. You know why? Because this means you would keep mandatory life sentences for murder and I know of other cases like my son's in other parts of Australia where people were out in two to four years, which is nothing like a life sentence. They are mentioned in the Petition for Mercy, which Zak's lawyers sent to the Administrator of the Northern Territory. In one of these cases, *R v Duffy*, in the ACT, a 19-year-old man became involved in a murder plot but he withdrew. He got 2 years and 9 months. In another, *R v XX*, in Victoria, someone was involved in planning the murder before pulling out, like Zak did. He got 3 years, wholly suspended.

Elsewhere in Australia, even where people have been found guilty of being there when the murder was carried, they have got much less time in prison than my son. Zak's lawyers' petition says in New South Wales, *R v Safetli* got 9 years in prison with a non-parole period of 6 and a half years. In *R v Campbell*, the offender got 9 years 7 months in prison with a non-parole period of 5 years 7 months. We all need to be treated equally. There should be no division at all, just because of where you are living. Mandatory sentencing is supposed to mean everyone gets the same result but it doesn't. It is not just and fair. It needs to be abolished.

You talk about newspaper headlines, as if politicians fear they need to be seen as 'tough on crime'. The thing is, it's not about fear, it's about doing the right thing. When you see something is wrong, you say that it is wrong. You don't turn your back. You don't ignore it.

Politicians need to do the right thing and run the Territory but allow the judges to do their job and give the right sentences. The politicians have no right to be there, because they don't have the qualifications, they didn't do the years of training.

You now are in parliament and have power, you want to make everything better, but the thing is with mandatory sentencing, you've crippled us, you've crippled people and their families. I see it at the courthouse. Why do so many of my people have this problem with drinking? Because they are killing themselves. They're like 'If you're just going to lock us up whatever, we'll just drink until we drop, because nobody cares'.

I try to be understanding but seeing Zak jailed for life has been really hard for me to try and live with. I try to have the values of not judging others and forgiveness and the hope that people will see the injustice and the wrong. I hope that, reading this, you will have the strength to do the right thing.

The last thing I want to say is that my son Zak is and was a very caring boy, who worked two jobs, always put others ahead and he did not deserve this. His life sentence was a big blow to all of us, such a huge punch, that I don't think we ever recovered. So we are still walking around punch-drunk today.

Zak is a very strong, courageous man now who hasn't lost his sense of humour and continues to try to help people in prison. He's one young man who's determined to get out and stay out and not go back again. He has written to the Attorney General saying 'I'm the one man that's trying to get out and stay out', but he keeps coming up against brick walls. Prison doesn't make it easy.

Mandatory sentencing means more people in prison, which costs more money and does not work to prevent crimes from happening. It discriminates against and destroys First Nation people's lives. My son was jailed for life over a murder even though he didn't kill the person.

Everyone can see mandatory sentencing is wrong. I believe you can see this. Right the WRONGS of the PAST so we move forward with CHANGE for a better FUTURE.