

29 December 2020

Executive Officer
Northern Territory Law Reform Committee

Lawreformcommittee.DOJ@nt.gov.au

Dear Ms Copelin

SUBMISSION OF COMMUNITY CORRECTIONS IN RESPONSE TO MANDATORY SENTENCING AND COMMUNITY BASED SENTENCING OPTIONS CONSULTATION PAPER.

Community Corrections is the Division of Northern Territory Correctional Services within the Department of Attorney General and Justice responsible for the management of community based sentences. The following tables show the current caseloads and staffing distribution for Community Corrections as at 30 June 2020:

Table 1: Staffing structures and offender numbers by office location

Office location	Regional Manager	Team Leader/OIC	Probation and Parole Officers	Offenders supervised
Alice Springs	1	5	17	215
Casuarina	1	3	11	189
Groote Eylandt	-	1	1	45
Katherine	1	3	9	153
Nhulunbuy	-	1	1	51
Palmerston	1	4	13	244
Tennant Creek	1	1	4	67
Wadeye	-	1	1	62

SUBMISSION OF COMMUNITY CORRECTIONS IN RESPONSE TO MANDATORY SENTENCING AND
COMMUNITY BASED SENTENCING OPTIONS CONSULTATION PAPER.

Table 2: Order types managed by office location (as at 30 June 2020)

Office location	Probation*	Parole	CWO ¹	Bail	CCO ²	HD ³	AHD ⁴
Alice Springs	156	34	11	14	7	7	1
Casuarina	117	21	21	21	0	7	7
Groote Eylandt	36	4	5	0	2	0	0
Katherine	124	17	12	6	2	0	1
Nhulunbuy	38	4	8	0	1	0	0
Palmerston	187	32	0	16	0	4	9
Tennant Creek	50	5	7	4	2	0	0
Wadeye	49	0	8	11	0	0	0

1. Community Work Order, 2. Community Custody Order, 3. Home Detention, 4. Administrative Home Detention

The supervision of offenders subject to community based sentences by Community Corrections is governed by a comprehensive Offender Management Framework.

It is an underpinning belief of Community Corrections that all individuals have the capacity to positively change their behaviour with the right support and interventions. Community Corrections staff at all levels must adopt the least intrusive methods to perform their role and assist offenders to choose law abiding lifestyles enhancing community safety. Community Corrections has adopted a framework to support this approach based on evidence and best practice principles. The fundamental tools for Community Corrections staff are:

- The risk need responsivity model
- Participatory case management
- Strength based approach
- Solution focused interventions
- Motivational Interviewing
- Trauma informed practice
- Working with Communities

The following responses to the Mandatory Sentencing and Community Based Sentencing Options Consultation Paper have been developed in consultation with Community Corrections operational staff.

3.1 Do the mandatory sentencing provisions under the Sentencing Act 1995, the Domestic and Family Violence Act 2007 and the Misuse of Drugs Act 1990 achieve the postulated goals or objectives?

Community Corrections does not wish to contribute to the general debate regarding the efficacy of the mandatory sentencing provisions but will focus on the impact on the Community Corrections caseload and the management of offenders generally.

SUBMISSION OF COMMUNITY CORRECTIONS IN RESPONSE TO MANDATORY SENTENCING AND
COMMUNITY BASED SENTENCING OPTIONS CONSULTATION PAPER.

- 3.2 Are the mandatory sentencing provisions under the Sentencing Act 1995, the Domestic and Family Violence Act 2007 and the Misuse of Drugs Act 1990 principled fair and just?

Community Corrections does not have a view regarding whether the mandatory sentencing provisions are fair and just.

Community Corrections is more concerned regarding the impact of mandatory sentencing on the effective management of offenders subject to community based sentences. There is concern that mandatory sentencing has contributed to an under-utilisation of community based sentencing in the Northern Territory.

The Australian Bureau of Statistics, Corrective Services Australia, June Quarter 2020, 4512ODO001 Report shows the NT had 1,202 sentenced persons in full time custody and 1,246 persons in community-based Corrections. Nearly as many persons serving custodial sentences as there are on community based sentences.

- 3.3 Should the Northern Territory's mandatory sentencing provisions under the Sentencing Act 1995, the Domestic and Family Violence Act 2007 and the Misuse of Drugs Act 1990 be maintained or repealed.

Community Corrections support the repeal of the mandatory sentencing provisions as this will allow for more effective sentencing of offenders and appropriate use of community based sentences. Ultimately, this will enhance community safety in the NT.

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

Community Corrections does not hold a view regarding whether mandatory sentencing provisions should be abolished.

However, there are a number of strategies available now that can enhance community safety during a period of community supervision. This includes electronic monitoring, alcohol and other drug testing and enhanced case management support. These measures may support a greater portion of sentence being served within the community where emphasis can be placed on reintegration and rehabilitation activities.

- 4.3 Should a judge, in appropriate circumstances, have the power to exempt a person from the requirements of the Child Protection (Offender Reporting and Registration) Act 2004?

Community Corrections does not hold a view as to whether, in appropriate circumstances, a judge should have the power to exempt a person from these requirements.

Community Corrections notes the primary purpose of reporting conditions is risk management and to reduce the likelihood of further offending. Community Corrections maintains a close working relationship with Police in relation to offenders who are both supervised by Community Corrections and subject to reporting requirements under the Act.

- 4.4 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.

SUBMISSION OF COMMUNITY CORRECTIONS IN RESPONSE TO MANDATORY SENTENCING AND COMMUNITY BASED SENTENCING OPTIONS CONSULTATION PAPER.

Community Corrections does not hold a view in relation to this but again refers to strategies that now exist to facilitate the management of offenders in the community.

5.1 Does the Northern Territory sentencing regime currently have the right mix of community based sentencing options?

Community Corrections would support any reform aimed at simplifying the mix of community based sentences, whilst maintaining as much flexibility as possible to support the sentencing process as well as the management of offenders subject to supervision.

It is possible that one community supervision order could be sufficiently broad to support a number of current sentencing options. For example, community service work or conditions similar to home detention could be achieved as conditions of a standard community supervision order. The current Bonds, Community Based Order, Community Custody Order and Home Detention Order could all be incorporated into one Community Supervision Order.

Having one standard community supervision order, with the flexibility to attach any conditions appropriate in the circumstances, could also standardise the breach process and consequence. Rather than numerous Order types, all with different procedures and penalties applying to breach, there can be one clear process.

A standard community supervision order could provide greater flexibility to the sentencing authority in dealing with a breach or variation of the order. As breach or variation can occur sometimes several months or even years after the initial sentencing, it makes sense to provide as much flexibility as possible for the sentencing authority to respond to the circumstances that present at the time it is dealing with the application.

Suspended Sentences of Imprisonment are an integral component of the current sentencing regime and are the primary option used by the courts to impose probation supervision. Whilst there is some support for the removing this option in favour of a regime that clearly differentiates between custodial and community based sentences, whether the NT community is ready to accept this would be a matter of political judgement. A compromise position could be that sentences of imprisonment could be suspended subject to a standard community supervision order with appropriate conditions.

A community supervision order could also provide greater discretion to Community Corrections in determining the appropriate conditions to support case management of an offender. Currently the conditions of a suspended sentence order are set at the time of sentencing and this may be several months or years before the offender is released to supervision. Allowing the conditions to be determined at the commencement of the supervision period may enhance the case management of offenders.

5.2 Are all types of community-based sentencing options being used effectively in the Northern Territory?

Community Based Orders are not well used and may be too complex and prescriptive for the Northern Territory environment. Community Custody Orders could be more widely used if restrictions were removed.

Overall, the ratio of custodial sentences to community based sentences indicates community based sentencing options may be underutilised in the Northern territory in comparison to other Australian jurisdictions. However, this may be attributable to the impact as mandatory sentencing rather than the mix of options available.

SUBMISSION OF COMMUNITY CORRECTIONS IN RESPONSE TO MANDATORY SENTENCING AND COMMUNITY BASED SENTENCING OPTIONS CONSULTATION PAPER.

5.3 Should greater use be made of community based sentencing options and, if so, how might this be facilitated.

Removing mandatory sentencing provisions would extend the opportunity the Courts have to utilise community based sentences.

Greater flexibility within the mix of community-based sentences would allow the sentencing authority to construct a sentence appropriate to the services and circumstances existing in the local environment. This can only be facilitated by maintaining as much flexibility as possible and ensuring the Courts have access to comprehensive assessments in relation to services and supports available to assist in the management of each offender.

5.4 Is the current process of assessing and reporting on suitability for and conditions of a community-based sentence working effectively? If not, how might the process be improved?

The current process is effective. Community Corrections provide assessments as requested by the Court. This can include assessment for supervision, assessment for Home Detention, assessment for Community Work and a comprehensive Pre-Sentence Report. Community Corrections has developed the capacity to respond effectively to this requirement.

One concern is the process whereby conditions of conditional release orders may be set at the time of sentence several months or years prior to release to supervision. This could be addressed by a process of returning a matter to Court immediately prior to release to have the conditions of supervision set by the Court at a time when there is greater clarity regarding the circumstances the offender will be released to.

5.5 Why are community based sentences so infrequently used?

The Options Paper provided a table showing the rates of community based sentencing within the Northern Territory population is significantly higher than any other Australian jurisdiction. Hence community-based sentences are not "infrequently used". The concern is the ratio of community-based sentences to custodial sentences and in the Northern Territory this is close to 50:50. Other jurisdictions enjoy ratios closer to 70 community based sentences for every 30 custodial sentences. Mandatory sentencing is seen as a significant contributor to this over-use of custodial sentencing.

There does not appear to be any reticence to the use of community based sentences by the Courts.

5.6 Should fully or partially suspended sentences be retained as a sentencing option? If not, are there any pre-requisites to their abolition.

Community Corrections acknowledges there is some support for removing suspended sentences of imprisonment in favour of a system that clearly differentiates between custodial and community based sentencing options. However, Suspended Sentences of Imprisonment are an entrenched and integral component of the current sentencing process. Suspended Sentences are the primary option utilised by the courts to facilitate a period of supervision in the community.

Abolishing suspended sentences of imprisonment would remove the statutory framework for the operation of the COMMIT supervision program. This program's continuation would require some provision for the Court to issue sanctions of imprisonment for violating a community supervision order.

5.7 Does the current regime of non-custodial and custodial sentencing options available in the Northern Territory adequately meet the needs of Indigenous Territorians, and in particular, Indigenous Territorians living in rural and remote communities? If not, what more can be done to ensure that Indigenous Territorians are able to take advantage of community-based sentencing options?

SUBMISSION OF COMMUNITY CORRECTIONS IN RESPONSE TO MANDATORY SENTENCING AND
COMMUNITY BASED SENTENCING OPTIONS CONSULTATION PAPER.

Simplifying the regime of community based sentences into one broad community supervision order, which can be tailored to particular circumstances, would assist Aboriginal offenders to understand the sentencing process.

5.8 Is a different approach to community-based sentencing, such as that in place in New South Wales or Victoria, preferable to the regime currently in place in the Northern Territory?

Flexibility and the ability to adapt to local regional and/ or remote conditions as well as simplicity or ease of explanation are the major factors that could impact offender management.

Introducing sentencing options based on the NSW or Victorian models would represent significant reform. However, it has been suggested that proceeding to introduce such options whilst maintaining the existing Suspended Sentence Orders may have a similarly limited impact as the introduction of Community Based Orders and Community Custody Orders in 2012.

Yours sincerely



Tracy Luke
Assistant Commissioner Community Corrections
NT Correctional Services