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Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system

Executive Officer
Northern Territory Law Reform Committee
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Dear Committee Members

Sisters Inside Inc. exists to advocate for the human rights of criminalised women, girls and their children at a local, national and international level. We also respond to gaps in services available to this cohort throughout Queensland, and support emerging organisations driven by criminalised women nationally. This submission draws on Sisters Inside's 25+ years of experience in responding to family needs, and our outstanding success in reducing prison return rates - a success that is only possible due to the powerful role of Aboriginal and Torres Strait Islander women with lived experience at all levels of our organisation.

We acknowledge the consistent frontline labour undertaken by First Nations families who have had family members die in custody, as well as those with lived prison experience who continue to show up to demand justice, and speak up with determination that no other individual or family should endure the violence and deadly consequences of the criminal punishment system in this country.

We acknowledge that First Nations people, like all people in this country, have a right to equality before the law, individualised justice, due process before the law and freedom from discrimination of any kind, in particular that based on their Aboriginal and/or Torres Strait Islander origin or identity.

We acknowledge and support the role of First Nations community-controlled organisations in the provision of programs and in addressing the persistent criminalisation and imprisonment of Aboriginal and Torres Strait Islander people in their own country.

Please note that Sisters Inside has not consulted directly with families affected by mandatory sentencing, people with lived prison experience or First Nations people more widely in the Northern Territory, in developing this submission. However, we do draw on the accumulated feedback of stakeholders, nationally and internationally, over many years.

Our submission

Sisters Inside argues very strongly that the imposition of mandatory sentences is both cruel and ineffective, and results in chronic, grave and at times deadly injustices to the most marginalised groups within our country. This is consistent with the evidence against mandatory sentencing, detailed in the Consultation Paper (3.2.2). Mandatory sentencing is a system that leads to disproportional and anomalous outcomes and

affects our most marginalised and vulnerable communities. In the case of Northern Territory, relevant legislation largely affects First Nations peoples.

While we argue that mandatory sentencing results in systemic issues and negative social and economic consequences, Sisters Inside is most concerned with the fact that mandatory sentences leads to sentences which are more often than not greatly disproportionate to the severity of the offence; and limit the law from taking a more nuanced view of harm. This in itself means that the focus on particular kinds of offences has tended to have a major negative impact upon certain categories of people who are deemed to have offended, and specifically, particular social and cultural groups.

It is the firm position of Sisters Inside that no one should be imprisoned in this country. The evidence demonstrates that imprisonment is not particularly effective as a general deterrent, nor even as a deterrent for specific people who offend. Locking people in cages is expensive and we are unaware of any evidence that mandatory sentencing reduces crime. In fact, in the United States of America from whence Australia imported these policies, empirical data has demonstrated that such laws do not succeed in protecting the community. It is now widely accepted that these laws were disastrous, having a discriminatory impact on people of colour and contributing to the US crisis of mass incarceration. We argue that the same elements apply here: the expansion of the NT's mandatory sentencing regime has crept inexorably outwards and now encompasses a whole array of serious and non-serious offences, contributing to the over incarceration of First Nations peoples.

Police and prison budgets have grown exponentially over recent years: over the same period funding to community-driven services has been decimated. This has facilitated racially-based targeting, over-policing and mass imprisonment of First Nations people. Sisters Inside advocates for the redirection of funding from policing and prisons, to programs and services that cultivate the safety and wellbeing of communities – particularly First Nations communities. This is not a radical proposal. It builds on existing models – wealthy suburbs with lower rates of policing and greater access to social and community services already have lower crime rates. This Inquiry should not be asking: *What other community-based sentencing options could be used?* Nor should it be limiting its scope to mere sentencing reforms. Rather, it should be focused on transformative justice models which allow for the redirection of funds from prison and policing, to community capacity building and localised responses to harm. It should be considering programs and projects run *by community for community*, based on models of mutual aid, reciprocity and accountability.

Sisters Inside encourages the NT Government to develop comprehensive, targeted policies to address the relevant underlying social problems, including the ongoing devastating impacts of colonisation, before criminalisation occurs. Community-based sentencing options do nothing more than expand the carceral net and further increase surveillance in communities already vulnerable to over-policing and criminalisation. Surely, we can be more creative than this. We call on the NT Government think beyond reframing failed models of the past which reinforce and perpetuate crime; to think proactively and expansively, and generate new approaches to crime prevention.

Sisters Inside also argues that mandatory sentencing endangers the fundamental human rights of people living in Australia, and as such is an abrogation of the State's responsibility to keep all its citizens safe. This failure diminishes us all. The NT Government cannot claim ignorance of these human rights breaches: these were highlighted by the United Nations Human Rights Committee in 2000, which found that the NT's mandatory sentencing laws were incompatible with Australia's obligations under international law. Similar concerns have also been raised several times by the Australian Law Reform Commission.

Sisters Inside argues that (consistent with arguments put in the Consultation Paper, 3.2.2) mandatory sentencing laws breach provisions of the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC). Specifically, they breach the right to a fair trial and the requirement that prison sentences be subject to review (Article 14, ICCPR); and key obligations to children (Articles 3, 37 and 40, CRC). The latter include the obligation to ensure that decisions impacting children have their best interests as the primary consideration; and children are only imprisoned as a last resort and for the shortest possible period.

As stated, mandatory sentencing almost invariably exacerbates First Nations incarceration rates. This legislation directly inhibits judges from taking into account mitigating factors or circumstances which have resulted in criminalisation and results in long periods of imprisonment being imposed on First Nations people. This not only affects the individual, who is imprisoned, but also their community and family. It undermines First Nations' ability to build community capacity to respond locally to harm and support everyone involved in incidences of crime: both the victims and the "offender". With increasing numbers of Aboriginal deaths in custody, Sisters Inside implores the NT Government to look at transformative justice models, because we know that the only way to stop deaths in custody is to cease incarcerating people.

Continuing to defend mandatory sentencing regimes is nothing more than penal populism, a wholly political response to perceived community concern that courts are too lenient on "offenders", and that governments should be "tougher on crime". Continuing to defend these regimes ignores the evidence that mandatory sentencing actually does more harm than good, and serves to increase crime. Governments of all persuasions claim that these kinds of laws deter crime, provide consistency in sentencing and address perceived public concerns about leniency within the criminal justice system. In fact, they primarily serve to reinforce social opinions based on ignorance and undermine the community's confidence in the judiciary and the criminal legal system as a whole.

Further, policy makers fail to advise the community of the significant economic costs of mandatory sentencing – costs that are not justifiable given the inefficacy of mandatory penalties in reducing crime. They also make gross assumptions that the community is happy for the judiciary to meter out arbitrary, unduly harsh and disproportionate sentences in the name of justice; or that they would be satisfied that the need for excessive sentences outweighs the devastating discriminatory impacts of this kind of legal policy.

In short, and in response to your Stakeholder Questions (3.1 - 3.4; 4.1 - 4.5 and 5.1 - 5.9), all mandatory sentencing provisions (under the cited and any other Acts), fail to achieve their postulated goals, are not just and fair, and should be repealed. The judiciary should have full authority to determine a situationally-appropriate sentence and non-parole period, and impose (or exempt those being sentenced from) any other conditions. Any recognition of the ineffectiveness of mandatory reporting should not be used as a rationalisation for extending the reach of the carceral system into people's home and communities.

As detailed in the Recommendations below, these and other issues should be addressed by the Committee in their response to the NT Government.

Recommendations

Sisters Inside proposes that the NT Law Reform Committee should:

1. Argue for the repeal of all mandatory sentencing provisions under NT law, since these only serve to perpetuate the social and economic harm of the criminal legal system and reduce judicial capacity to determine just sentences.
2. Argue the need for the NT Government to recognise that extension of community-based sentencing options is by no means a replacement for justice in sentencing.
3. Propose that there be no extension to community-based sentences, since this would only serve to extend the carceral intrusion into First Nations communities and turn communities into defacto prisons.
4. Advocate for the reinvestment of funds currently wasted on imprisonment and policing into community-driven and community-owned initiatives to address the rights and needs of First Nations people living in the NT.

Conclusion

Sisters Inside commends the committee for its' recognition that the NT's mandatory sentencing laws are fundamentally systemically racist – that they contribute to the high imprisonment rate in the NT and, in particular, disproportionately impact First Nations residents. We reinforce our concern that mandatory sentencing is draconian, discriminatory and does nothing more than feed the carceral machine, filling cells with First Nation's peoples who are disproportionately targeted by these retrograde laws.

On the other hand, we are concerned that the Committee seems to have restricted its' deliberations to an 'either/or' approach, rather than exploring the question of whether there is a better way. Sisters Inside believes that the only way to address the human rights violations of people incarcerated or sentenced under these unjust mandatory sentencing laws, is to systematically work to redress all laws, policies and practices which lead to criminalisation and imprisonment.

A progressive NT Government would be steering away from ineffective, outdated sentencing practices of the past which have seen us stuck on the treadmill of 'reform' for the past 200 plus years. A progressive government would be employing transformative approaches to justice and investing in communities.

Yours sincerely



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CEO
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