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File reference: 61:F2020/7679

Ms Eilish Copelin  
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Northern Territory Law Reform Committee  
GPO Box 1535  
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Via email: [lawreformcommittee.doj@nt.gov.au](mailto:lawreformcommittee.doj@nt.gov.au)

Dear Ms Copelin *Eilish,*

**RE: NORTHERN TERRITORY LAW REFORM COUNCIL CONSULTATION PAPER: MANDATORY SENTENCING AND COMMUNITY-BASED SENTENCING OPTIONS**

Thank you for your correspondence of 2 October 2020 regarding the Consultation Paper on Mandatory Sentencing and Community-Based Sentencing Options.

I appreciate the opportunity to provide a response to this important piece of work. Enclosed is the Department of Territory Families, Housing and Communities Submission (Attachment A refers) for consideration.

I look forward to seeing the outcome of the Committee's consultation and the positive outcomes for our community members as a result.

Thank you for contacting me regarding this matter.

Yours sincerely



Ken Davies PSM  
Chief Executive Officer

15 December 2020

## Submission to the Northern Territory Law Reform Committee

### Mandatory Sentencing and Community-Based Sentencing Options

#### Introduction

The Department of Territory Families, Housing and Communities (the Department) welcomes the opportunity to provide this submission to the Northern Territory Law Reform Committee (NTLRC) regarding Mandatory Sentencing and Community-Based Sentencing Options.

We respectfully acknowledge Aboriginal and Torres Strait Islander peoples (Aboriginal Peoples) as the Traditional Owners of the land on which we work and live in the Northern Territory (NT). We recognise the continuing connection of Aboriginal peoples to the land we are on today, their waters and their culture. We pay our respect to Aboriginal Elders past, present and emerging.

The rationale behind sentencing of offenders is based on deterrence, reprisal, incapacitation and denunciation as a means of achieving justice and crime prevention.

The impact of crime on victims, specifically violent crime, is traumatic and can be long lasting and cause physical pain and suffering, and often psychological distress and a reduced quality of life. Children and young people who are exposed to criminal behaviour and violence can experience a wide range of detrimental impacts on their overall development, mental and physical health, housing situations and general wellbeing. This is exacerbated with repeated exposure.

There is a requirement to ensure community safety through suitable sentencing options, and the Department is supportive of improved positive outcomes for the community that change behaviour and reduce criminal activity based on individualised and evidence based approaches to sentencing. Finding solutions that target behaviours rather than imposing one-size-fits all approaches that do not create lasting and sustainable change for our community is the preferred approach, while ensuring victims' needs and safety and unintended impacts on victims of repealing mandatory sentencing are carefully considered.

#### Sentencing Options for Young People

Under the Youth Justice Act mandatory sentencing does not apply to children and young people in the NT, however if a young person is sentenced under the *Sentencing Act 1995*, mandatory sentencing can apply.

The NT Youth Justice system promotes community safety by preventing and addressing offending behaviour. The system has been designed to rehabilitate and reintegrate young people who have offended by supporting them to take responsibility for their actions and takes a holistic account of offending.

The NT Government has made significant investments to transform the youth justice system to provide early intervention and targeted youth programs and services that contribute to community safety and reduce offending and re-offending by young people. In stark difference to the youth justice system in 2016-17, there is now significant investment in programs and services designed to address offending behaviour. Through our programs we intervene early, have effective community outreach and prevention services and partner with community agencies to provide supported accommodation that assists young people to comply with bail and court orders, and fund intensive, targeted programs that provide the court with a structured alternative to detention where experts work with offenders to change their behaviour. Through an interconnected series of system consequences and program responses, the NTs Youth Justice System diverts young people away from crime and into support that empowers a young person to change path. The Youth justice programs include:

- the Back on Track program is a sentencing option available to the Courts. It provides the Courts with another option to direct young people (10 to 17 years) to an alternative to detention. NT Police,

government agencies and non-government agencies are also able to refer young people, including those under the age of criminal responsibility (eight to nine years) to the program. Existing options such as bail support services, community work orders, good behaviour orders, suspended sentences and alternative detention orders also remain.

- Community Youth Diversion Program Grants that support service providers, including Aboriginal organisations, work in communities to reduce reoffending through behaviour change, improved health and wellbeing, educational and vocational engagement and improved cultural connection. In 2019-20, \$3.16 million in funding was committed and this is the first year of a recurring five-year commitment. Young people can be referred to Community Youth Diversion programs by NT Police or other government agencies and other community groups. Aboriginal organisations are amongst those identified as service providers.
- The Regional Youth Services Program, which supports delivery of core after-hours services including school holiday programs with both day and evening activities, with a focus on engagement and linking those who are most vulnerable to relevant support services.
- A bail support line to ensure enquiries and referrals from the NT Police, Courts and legal service providers can be reached 24 hours a day, 365 days a year.
- Pre-sentence, youth justice conferences that bring those affected by an offence together and provide an opportunity for young people to learn about the impact of their behaviour and to accept responsibility while providing closure to victims.
- On-country camps delivered in partnership with the communities to reduce offending through increased engagement with family and community, and strengthened connection to culture.
- A pilot vocational education and training program led by Aboriginal mentors that teaches young people about the construction industry, provides a trade qualification and prepares young people for entry into the workforce by building accommodation facilities for remote communities.
- The Youth Outreach and Re-Engagement Teams (YORET) also provide voluntary and statutory outreach case management services for young people at risk of, or involved in offending behaviours that may lead them into the youth justice system. There are designated teams for both voluntary and statutory case management, to ensure a young person with a Statutory Order and a young person at risk can be engaged at the same time through different teams. Voluntary referrals for YORET case management can be made by any person concerned for a young person, who they think may be likely to offend.
- The NT Government is building a Barkly Community Youth Justice accommodation facility as an alternative to detention. The facility will include multi-purpose accommodation and facilities to deliver vocational education and training programs that will prepare young people for entry into the workforce.

Positive outcomes from the investment in community youth justice programs include improved compliance with the requirements of supervision and bail, improved school attendance, obtaining employment or participating in training, reduction in the use of drugs or alcohol, and reduction in the frequency and seriousness of recidivism.

## **Domestic, Family and Sexual Violence (DFSV)**

DFSV is a serious, prevalent and life-threatening problem that crosses all ages, cultural, ethnic and socio-economic backgrounds, and the NT has the highest rates of DFSV in Australia. DFV has profound physical, psychological, social and economic effects on victims. These impacts can include serious injury, disability or death, chronic pain and disease, mental health issues, loss of employment, absenteeism and presenteeism, financial insecurity and isolation, and alienation from family and social support. Witnessing DFV causes serious, lasting harm to children. It impacts on attitudes to relationships and violence, as well as behavioural, cognitive and emotional functioning, social development, learning and later job prospects. Exposure to DFV also increases the risk of a child or young person experiencing other forms of abuse or neglect. We know that for children, exposure to DFV is highly correlated with child protection reports and may lead to cycles of youth offending.

Currently and under certain circumstances, if a perpetrator of DFV breaches a Domestic Violence Order (DVO), they can be mandatorily incarcerated for seven days. During those seven days the victim and their children may live free from violence and death from the perpetrator, and they may seek support for the violence they have experienced and make critical life decisions. Enabling the victim to have respite in their chosen location, where the perpetrator is the one moved and detained, should not be undervalued. The interface between adult offenders, specifically in relation to DFV, and removing children from their homes where they are deemed unsafe must also be considered. It is preferable for children to remain at home and have the perpetrator engaged in activities that change behaviour, but striking the balance with child safety remains paramount. It is recognised that persistent disadvantage in childhood, such as the impacts of DFSV, if left unaddressed, have potential for significant and long-lasting impacts on individuals, families and communities, and that prevention and early intervention to support positive child and family outcomes is more impactful and cost effective than remedial responses.

The Department has recently developed the DFV Risk Assessment Management Framework and Common Risk Assessment Tool, which outline evidenced based practice in DFV risk assessment. This Framework and Tool outline risk factors related to custody, including the practice of imprisoned offenders using family members to coercively control a victim and their children, and the very high risk of domestic homicide once a perpetrator is released from prison.

Any consideration of alternative sentencing options must consider the availability and efficacy of community based programs that work with perpetrators and families to reduce violent behaviours. The existing DFV service system is currently unable to meet the demand for community based initiatives for perpetrators, and perpetrator programs are currently provided in Darwin and Alice Springs, and the No More Campaign (a preventative behaviour change campaign focussed on engaging through football). Further, community based responses for sexual offending are very limited, and consist primarily of ANCOR monitoring and reporting, rather than behaviour modification initiatives.

### **People with a Disability**

There is a significant range of disabilities that can impact people, including physical, sensory, mental and other health conditions that all make up visible and invisible disabilities, all of which may hinder participation in the criminal justice system, as either victims or offenders. There are additional difficulties when people with disability are incarcerated through social and environmental barriers that prisoners without a disability do not experience.

Where an offender has an intellectual disability or cognitive impairment, there is potential for the offender to have little understanding of their incarceration, and potentially may not relate incarceration with the crime committed. Other non-custodial options may be more effective to enable an offender to understand the consequences and impact of their behaviour.

The definition of disability as categorised by the NT *Disability Services Act (1993)* in respect of a person, means a disability:

- a) which is attributable to an intellectual, sensory, physical or psychiatric impairment or a combination of those impairments;
- b) which is permanent or likely to be permanent;
- c) which results in:
  - i. a substantially reduced capacity of the person for communication, learning or mobility; and
  - ii. the need for continuing support services; and
- d) which may or may not be of a chronic episodic nature.

Mandatory sentencing of people with disability fails to recognise the complexities and disadvantages experienced by those with disability in the criminal justice system. People with disability, particularly Aboriginal people with disability, are overrepresented in the criminal justice system in Australia. The Law Council of Australia, Justice Project Report on People with Disability 2018, notes that people with disability

represent approximately 18 per cent of the Australian population, however almost 50 per cent of the adult prison population are people with disability, with cognitive or psychosocial disability common, and most incarcerated Aboriginal people have some degree of cognitive impairment. Additionally, over 90 per cent of Aboriginal people in the NT criminal justice system have significant hearing loss.

At 11 August 2020, there were 41 supervised persons under the care of the Forensic Disability Unit and Top End Forensic Mental Health Service, Department of Health. The Australian Institute of Health and Welfare, Health of Australia's Prisoners 2018 report notes that people with intellectual disabilities are at an increased risk of being disadvantaged in prisons, through social isolation, having difficulty coping with the prison environment and experiencing a higher rate of mental and physical health conditions than those without an intellectual disability.

When mandatory sentencing is enforced on a person with disability, it can give rise to discriminatory practices within the NT, particularly where a lack of cultural awareness, appropriate supports and accommodations may mean a person with disability may not have access to, and participate in a fair process that leads to changed behaviour. Mandatory sentencing also places a restriction on judicial discretion to determine penalties that are appropriate to the individual circumstances of the offender and crime. In addition, it may impact on the principles of sentencing that retribution should be proportionate to the offence, and the concepts of proportionality, parity and parsimony.

Disability is a spectrum and a one-size-fits all approach such as mandatory sentencing does not contribute to creating more sustainable changes for our community, nor does it resolve potential issues around deterrence and retribution. Enabling courts to have flexibility in sentencing with respect to rehabilitation and non-custodial sentences for people with disability should be considered.

The NT is developing a Disability Strategy and the treatment of people with disabilities in the criminal justice system will be considered as part of this work.

## **Conclusion**

The Department is supportive of an individualised approach to sentencing options, which supports reforming behaviours and keeping communities and victims safe. The challenges to ensure effective remote service delivery must also be considered in the context of ensuring the availability and effectiveness of service responses in remote areas.