NORTHERN TERRITORY GOVERNMENT

DEPARTMENT OF THE ATTORNEY - GENERAL AND JUSTICE

# Northern Territory Government Submission

## Australian Law Reform Commission Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander Peoples

**Commissioned by Senator the Hon. George Brandis QC, Attorney-General of Australia**

October 2017

# Content

## List of acronyms

| | |
|---|---|
| **ACPO** | Aboriginal Community Police Officers |
| **AGD** | Department of the Attorney-General and Justice |
| **AIS** | Aboriginal Interpreter Service |
| **AJA** | Aboriginal Justice Agreement |
| **AJU** | Aboriginal Justice Unit |
| **ALO** | Aboriginal Liaison Officer |
| **ALRC** | Australian Law Reform Commission |
| **BDR** | Banned Drinkers Register |
| **BIITE** | Batchelor Institute of Indigenous Tertiary Education |
| **CAALAS** | Central Australian Aboriginal Legal Aid Service |
| **CEPO** | Community Engagement Police Officer |
| **CJRSU** | Criminal Justice Research and Statistics Unit |
| **CSAP** | Community Safety Action Plan |
| **DHCD** | Department of Housing and Community Development |
| **DTBI** | Department of Trade, Business and Innovation |
| **DVO** | Domestic Violence Order |
| **EIYBC** | Early Intervention Youth Boot Camp |
| **EVP** | Elders Visiting Program |
| **FRU** | Fines Recovery Unit |
| **NAPLAN** | National Assessment Program Literacy and Numeracy |
| **NAAJA** | North Australian Aboriginal Justice Agency |
| **NPP** | Non-Parole Period |
| **NT** | Northern Territory |
| **NTAIS** | Northern Territory Aboriginal Interpreter Service |
| **NTCC** | Northern Territory Community Corrections |

| | |
|---|---|
| **NTCET** | Northern Territory Certificate of Education and Training |
| **NTG** | Northern Territory Government |
| **NTPFES** | Northern Territory Police, Fire and Emergency Services |
| **PPO** | Parole and Probation Officer |
| **RAGE** | Recognising Anger and Gaining Empowerment |
| **RDH** | Royal Darwin Hospital |
| **RSVP** | Responsibility, Safety, Victims and Plan Program |
| **SEL** | Social Emotional Learning |
| **SHS** | Specialist Homelessness Service |
| **SSS** | Safe Strong Sober |
| **STAJ** | Sentenced to a Job |
| **TOR** | Terms of Reference |
| **YEO** | Youth Engagement Officers |
| **YOREO** | Youth Outreach Engagement Officers |
| **YORET** | Youth Outreach and Re-Engagement Team |

# NTG Submission to the ALRC Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander Peoples

## Part 1 – Introduction

The Northern Territory Government (NTG) commends the Hon. George Brandis QC, Attorney-General of Australia for the commissioning of the Australian Law Reform Commission (ALRC) Inquiry into the over-representation of Aboriginal and Torres Strait Islander[1] peoples in prisons across Australia and thanks the ALRC for the opportunity to make this submission.

This NTG submission responds generally to the ALRC Inquiry Terms of Reference (ToR) and more specifically to each of the proposals and questions outlined in ALRC Discussion Paper 84 "Incarceration Rates of Aboriginal and Torres Strait Islander Peoples" (the discussion paper).

We trust the information provided in this submission will assist the ALRC to conduct its Inquiry.

The Northern Territory (NT) comprises a land area of 1,345,035 km² and a population of 244,307 people (as at 30 June 2015), about 76,000 who live remotely. The NT's small but dispersed population poses significant challenges with respect to economies of scale and resourcing.

Key profile data provides an indication of the primary factors that contribute to the negative contact of Aboriginal Territorians with the NT criminal justice system. These factors are listed as follows[2]:

- Aboriginal people comprise 32 per cent of the population in the NT and this percentage is projected to rise to 41 per cent by 2041.
- The median age of the Aboriginal population in the NT is 23 years old, compared to 34 years old for the rest of the NT population.
- The Aboriginal population in the NT is characterised by low median incomes and high levels of unemployment.
- As at 30 June 2017, the median length of a sentence for an Aboriginal person in the NT is 436 days as opposed to 1,461 days for non-Aboriginal persons.
- As at 2 August 2017, 1,156 Aboriginal adult males were imprisoned, which represented 85 per cent of the total adult male prison population in the NT.
- As at 2 August 2017, 90 Aboriginal adult females were imprisoned, which represented 83 per cent of the total adult female prison population in the NT.
- In the NT in 2016, 84 per cent of the total prisoner population identified as Aboriginal.

---

1 For this submission, the use of the term, 'Aboriginal' is inclusive of both Aboriginal and Torres Strait Islander people in accordance with NTG policy.

2 Provided by the NT Department of Attorney-General and Justice, Criminal Justice Research and Statistics Unit.

- 60.9 per cent of all Aboriginal prisoners return to prison within two years of their release compared to 26.4 per cent of non-Aboriginal prisoners.
- In the March Quarter 2016, Aboriginal people comprised 76.1 per cent of people in community-based corrections in the NT. This is almost four times the national proportion of 19.6 per cent.
- The most serious offence resulting in incarceration for slightly more than half of all Aboriginal offenders in the NT is an 'act with intent to cause injury'.
- Aboriginal people in the NT are charged with an offence at between 15.4 – 17.4 times the rate of non-Aboriginal people.

The incarceration rate of Aboriginal people in the NT is unacceptably high. NTG recognises the need to address the levels of incarceration and is implementing strategies intended to achieve positive results by reducing incarceration rates of Aboriginal people in the NT over the medium and long term.

In demonstrating this commitment, NTG has established an Aboriginal Justice Unit (AJU) within the Department of the Attorney-General and Justice (AGD).

The AJU has the lead role in implementing election commitments regarding Aboriginal engagement on justice-related matters in the following areas:

- Establishing a model to provide options for the role of traditional leadership into the systems of the local court through the introduction of decision making processes that aim to reduce rates of incarceration and recidivism for Aboriginal people in the NT.
- Progressing towards the development of a road map that engages Aboriginal leaders and role models.
- Establishing an NT approach that reasserts local power and recognises Aboriginal cultural authority in legal matters.

As a part of its core business, the AJU is also:

- Reviewing programs, services and legislation to reduce the application of unconscious bias whilst ensuring all NTG service deliverables are developed and implemented within a culturally competent framework. The overall aim is to ensure that agencies do not work in isolation on justice matters that impact on Aboriginal people.
- Ensure Aboriginal people in the NT can navigate through the justice system with the skills necessary to access, use and benefit from all services within the justice portfolio.

The primary focus of the AJU is to improve criminal and social justice outcomes for Aboriginal people in the NT. This will be achieved through the development and implementation of a comprehensive Aboriginal Justice Agreement (AJA).

The targeted outcomes for the AJA are to:

- Deliver on NTG election promises.
- Engage Aboriginal people on law and justice matters in the NT.
- Implement programs and strategies that address the high levels of Aboriginal incarceration whilst reducing recidivism rates for Aboriginal people in the NT.
- Provide Aboriginal people with services in support of basic human rights that strengthens both individual and community resilience.
- Reduce the over-representation of Aboriginal people in the NT criminal justice system.
- Develop a culturally competent framework for justice agencies and Aboriginal communities to work in partnership to address the complex issues that result in the current levels of disadvantage faced by Aboriginal people in the NT.
- Ensure NTG agencies partner with Aboriginal communities to identify opportunities to deliver efficient and effective projects and programs in a collaborative environment.
- Contribute to the development of the whole of government justice reform framework.
- Provide a platform for Aboriginal people to discuss and provide input on justice-related matters.

Broad community consultations have commenced across the NT to empower local Aboriginal communities to inform the content of the AJA.

NTG will also ensure that the AJA complements and re-enforces the NTG's commitment to a 10-year road map for returning local decision making to communities primarily through the justice portfolio.

NTG is cognisant of the need for the AJA to be driven by the NT Aboriginal community, so it is not based on preconceived or political priorities. This will be achieved through culturally appropriate consultations with Aboriginal people across the NT.

The NTG recognises that the primary challenge will be to work with the community to create expert-driven evidence-based strategies that will reduce incarceration and recidivism of Aboriginal offenders in the NT. Noting that this can be achieved by developing specialised justice responses and best-practice diversionary and grassroots rehabilitation programs that focus on breaking the cycle of offending and reducing negative contact with the justice system.

Through these initiatives and significant changes to service delivery across the NT, the NTG will achieve positive outcomes, which in turn will reduce Aboriginal incarceration and recidivism rates.

**NATASHA FYLES**
**Attorney- General and**
**Minister for Justice**

**October 2017**

## Part 2 – Responding to ALRC Terms of Reference

1. In developing its law reform recommendations, the ALRC should have regard to:

   a. Laws and legal frameworks including legal institutions and law enforcement (police, courts, legal assistance services and prisons), that contribute to the incarceration rate of Aboriginal and Torres Strait Islander peoples and inform decisions to hold or keep Aboriginal and Torres Strait Islander peoples in custody, specifically in relation to:
      i. the nature of offences resulting in incarceration,
      ii. cautioning,
      iii. protective custody,
      iv. arrest,
      v. remand and bail,
      vi. diversion,
      vii. sentencing, including mandatory sentencing, and
      viii. parole, parole conditions and community reintegration.

   b. Factors that decision-makers take into account when considering (1)(a)(i-viii), including:

      i. community safety,
      ii. availability of alternatives to incarceration,
      iii. the degree of discretion available to decision- makers,
      iv. incarceration as a last resort, and
      v. incarceration as a deterrent and as a punishment.

   c. Laws that may contribute to the rate of Aboriginal and Torres Strait Islander peoples offending and including, for example, laws that regulate the availability of alcohol, driving offences and unpaid fines.
   d. Aboriginal and Torres Strait Islander women and their rate of incarceration.
   e. Differences in the application of laws across states and territories.
   f. Other access to justice issues including the remoteness of communities, the availability of and access to legal assistance and Aboriginal and Torres Strait Islander language and sign interpreters.

**2. In conducting its Inquiry, the ALRC should have regard to existing data and research in relation to:**

- **a. best practice laws, legal frameworks that reduce the rate of Aboriginal and Torres Strait Islander incarceration,**
- **b. pathways of Aboriginal and Torres Strait Islander peoples through the criminal justice system, including most frequent offences, relative rates of bail and diversion and progression from juvenile to adult offending,**
- **c. alternatives to custody in reducing Aboriginal and Torres Strait Islander incarceration and/or offending, including rehabilitation, therapeutic alternatives and culturally appropriate community led solutions,**
- **d. the impacts of incarceration on Aboriginal and Torres Strait Islander peoples, including in relation to employment, housing, health, education and families, and**
- **e. the broader contextual factors contributing to Aboriginal and Torres Strait Islander incarceration including:**
  - **i. the characteristics of the Aboriginal and Torres Strait Islander prison population,**
  - **ii. the relationships between Aboriginal and Torres Strait Islander offending and incarceration and inter-generational trauma, loss of culture, poverty, discrimination, alcohol and drug use, experience of violence, including family violence, child abuse and neglect, contact with child protection and welfare systems, educational access and performance, cognitive and psychological factors, housing circumstances and employment, and**
  - **iii. the availability and effectiveness of culturally appropriate programs that intend to reduce Aboriginal; and Torres Strait Islander offending and incarceration.**

# NTG Submission to the ALRC Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander Peoples

**3. In undertaking this Inquiry, the ALRC should identify and consider other reports, inquiries and action plans including but not limited to:**

**a. the Royal Commission into Aboriginal Deaths in Custody,**
**b. the Royal Commission into the Protection and Detention of Children in the Northern Territory (due to report 1 August 2017),**
**c. Senate Standing Committee on Finance and Public Administration's Inquiry into Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services,**
**d. Senate Standing Committee on Community Affairs' inquiry into Indefinite Detention of People with Cognitive and Psychiatric impairment in Australia,**
**e. Senate Standing Committee on Aboriginal Affairs inquiry into Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities,**
**f. reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner,**
**g. the ALRC's inquiries into Family violence and Family violence and Commonwealth laws, and the National Plan to Reduce Violence against Women and their Children 2010-2022.**
**h. the National Plan to Reduce Violence against Women and their Children 2010-2022.**

**The ALRC should also consider the gaps in available data on Aboriginal and Torres Strait Islander incarceration and consider recommendations that might improve data collection.**

# NTG Submission to the ALRC Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander Peoples

NTG is committed to achieving positive outcomes for Aboriginal people in the NT through a reduction of Aboriginal incarceration and recidivism rates. Following the election in 2016, significant steps have been taken to make changes in the criminal justice system, particularly in relation to youth. All work in criminal justice reform to address incarceration and recidivism rates in the NT must be undertaken in consideration of the NT context.

As at 18 August 2017, 1,511 adult prisoners were held in custody in the NT either sentenced or on remand. As at 18 August 2017, 961 prisoners were held in Darwin Correctional Centre, which also includes prisoners housed at a work camps located in the Top End of the NT, near Nhulunbuy and Tennant Creek. Of the 961 prisoners located at Darwin Correctional Centre, 755 prisoners identified as Aboriginal compared with 181 non-Aboriginal prisoners. As at 18 August 2017, 550 prisoners were held in Alice Springs Correctional Centre located in the southern region of the NT. Of the 550 prisoners at Alice Springs Correctional Centre, 510 identified as Aboriginal compared with 37 non-Aboriginal prisoners. This snapshot of the adult prison population in the NT reflects the general trend of the ongoing prison population, acknowledging that the majority are Aboriginal prisoners.

As at 30 June 2017, Aboriginal prisoners represented 84 per cent of the total prison population in the NT. 'Acts intended to cause injury' represented the primary offence for 59 per cent of Aboriginal prisoners and 54 per cent of all sentenced prisoners. Including life and indefinite sentences, the average sentence length in the NT for Aboriginal people is 977 days compared to 1,803 days for non-Aboriginal people. However, Aboriginal persons in the NT are likely to be charged with an offence at between 15.4 – 17.4 times the rate of non-Aboriginal persons.[3]

**Laws and Legislation leading to incarceration**

It is predominantly the following provisions that contribute to the rate of incarceration of Aboriginal people:

- assault (Part VI, Division 5 of the Criminal Code)
- disorderly behaviour in a public place (section 47 of the *Summary Offences Act*)
- disorderly behaviour in a police station, particularly in circumstances where it follows on from a charge of, 'disorderly behaviour in a public place' (section 47 of the *Summary Offences Act*).
- sentencing provisions involving a mandated term of imprisonment (i.e. *Sentencing Act*, Criminal Code, *Misuse of Drugs Act, Domestic and Family Violence Act* and the *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013*) primarily for violent offences, breaches of Domestic Violence Orders,

[3] Provided by the NT Department of Attorney-General and Justice, Criminal Justice Research and Statistics Unit.

drug offences, aggravated property offences, sexual offences and murder.

The principle of ensuring that incarceration is used only as an option of last resort is not specified for adult offenders, however, can be subsumed by the factors listed for consideration as contained within the *Sentencing Act*. The *Sentencing Act* is the primary piece of legislation, which identifies the factors that decision makers may take into account when determining whether an offender can be rehabilitated through a community-based order or whether incarceration is required to address an offender's criminogenic need.

The sentencing guidelines in section 5 of the *Sentencing Act* identifies the purposes of sentencing as follows:

a) to punish the offender to an extent or in a way that is just in all circumstances;

b) to provide conditions in the court's order that will help the offender to be rehabilitated;

c) to discourage the offender or other persons from committing the same or a similar offence;

d) to make it clear that the community, acting through the court, does not approve of the sort of conduct in which the offender was involved;

e) to protect the Territory community from the offender;

f) a combination of two or more of the purposes referred herein.

Section 5 of the *Sentencing Act* also highlights the statutory limitations and the degree of discretion available to decision makers in the fulfilment of their official duties as judicial officers.

Alternative to incarceration mechanisms that exist in the NT for adults offenders are listed as follows:

- Bail conditions (Non-Custodial Supervision Orders)
- Community-based orders
- Community work orders
- Good behaviour orders
- Home detention (partial or fully suspended sentence)
- Parole

The prevalence of forensic mental health orders in the NT is higher than in some other jurisdictions. NTG provided a submission on the 'Inquiry into the Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia' in October 2016. The Submission focuses on persons with cognitive and psychiatric impairment who are subject to Supervision Orders under Part IIA of the Criminal Code. Section 43ZC of

Part IIA of the Criminal Code expressly provides that a Supervision Order is for an indefinite term.

Section 43ZM of the Criminal Code specifically provides that restrictions on a Supervised Person's freedom and autonomy are to be kept to a minimum consistent with maintaining and protecting the safety of the community. The principle is also reflected in various other provisions of Part IIA, including section 43ZA(2), which states that the Court must not make a Custodial Supervision Order committing a person to custody in a Correctional Facility unless the Court is satisfied there is no practicable alternative.

Section 43ZN provides particular criteria which the Court must take into account when making an order under Part IIA, including an order to vary or revoke a supervision order. Those matters include but are not limited to:

- whether the accused person or supervised person is likely to endanger himself or herself or another person because of his or her mental impairment, condition or disability;
- the need to protect people from danger;
- the nature of the mental impairment, condition or disability;
- the relationship between the mental impairment, condition or disability and the offending conduct;
- whether there are adequate resources available for the treatment and support of the supervised person in the community;
- whether the accused person or supervised person is complying or likely to comply with the conditions of the supervision order; and
- any other matters the court considers relevant.

Despite the issues associated with the Territory's geography and demographics, NTG is committed to the care, treatment and management of persons with cognitive and psychiatric impairment. NTG acknowledges that this is a complex area that demands a balance between the needs of individuals and the community. Significant and increasing resources have been dedicated to this area of service and administration since 2002. Whilst there is no 'one size fits all' solution, options for improvement should and will continue to be explored and where practicable implemented.

**NT Police**

NT Police work hard to promote community safety and work closely with community groups and other government agencies to help address issues relating to crime and other anti-social behaviors. An important aspect of community safety is helping to promote a sense of community and safety – at home, in public places, or when

travelling.[4]

Other NT Police programs include the following:

- **Community Engagement Police Officer (CEPO) Program:** promotes crime prevention and community engagement.
- **Aboriginal Community Police Officers (ACPO):** ACPO provide specialised skills in the areas of language, cultural and historical knowledge, relationship building, and participation in the development and implementation of community safety initiatives and policy.
- **Aboriginal Liaison Officer (ALO) Program:** supports policing services in remote communities with employees who have the cultural knowledge to contribute to effective community engagement and crime prevention, whilst also fulfilling the role of assisting in communities where ACPOs are not employed (or where ACPO positions are unable to be filled).
- **Youth Engagement Officers (YEO):** YEO provide proactive policing support and establish positive relationships with students, parents and teachers in order to promote supportive learning environments and safer schools.
- **Family Safety Framework:** This framework, in partnership with key agencies as led by NT Police Domestic Violence Prevention Unit, provides an action-based integrated service response for individuals and families experiencing family or domestic violence, who are at high risk of serious injury or death.

NT Police use a decision making framework when considering how best to respond to an offence. Positive options that are supported include supervised bail support and bail housing options, alternative options to fines (i.e. caution and follow ups through a community policing service model).

Examples of options available either through NT Police (i.e. Police issued bail conditions, or offence management discretion), or through the Courts (i.e. sentencing options) include:

- Supervised bail support;
- Alternative deterrence options (apart from fines);
- Support and education for youth to disrupt the cycle of offending; and
- Strengthened engagement and relationship building in communities.

**Correctional Services**

As of November 2016, Northern Territory Correctional Services (NTCS) has

[4] For further details, visit the Northern Territory Police, Fire and Emergency services website http://www.pfes.nt.gov.au/police.aspx.

implemented 71 of the 339 recommendations from the Royal Commission into Aboriginal Deaths in Custody. These include amendments of a technical nature to the *Coroners Act*, the *Correctional Services Act 2014*, the *Fines and Penalties (Recovery) Act*, the *Youth Justice Act* and the *Sentencing Act* as well as the implementation of additional reporting requirements and directives for culturally appropriate procedures when dealing with the death of an Aboriginal person in custody.

The most significant changes are the amendments made to the *Sentencing Act* that now include additional sentencing options, Community-Custody Orders and Community-Based Orders. Both are considered to be alternatives to prison and provide the courts with further sentencing options.

The *Correctional Services Act* also allows the Commissioner of Correctional Services to make Administrative Home Detention Orders (while not considered a front end option to incarceration rates), which provides the Commissioner with the option of releasing certain open-rated prisoners via the existing permit system but only in the latter part of their sentence and subject to the fulfilment of additional legislative criteria provided for under sections 132 and 133 of the *Correctional Services Act*.

In response to concerning recidivism trends in the Territory, NTCS has established Aboriginal programs and services, including the expanded Elders Visiting Program (EVP) with representation from the regions and communities of Central Australia, Lajamanu and Ngukurr. The EVP assists Aboriginal Elders to make regular visits to prisoners located in Darwin, Alice Springs, Nhulunbuy and Tennant Creek to discuss ways that prisoners' can take a new direction in their lives and develop plans for their release. Elders are able to advise Correctional Services employees on cultural and community-specific issues, which may affect a prisoner's behaviour or ability to address their criminogenic need. Members of the EVP received training on the Family Violence Program as well as related mediation modules over a three day program during 2015-16.

It is worth noting that the general rate of recidivism in the Territory is only 36 per cent for Sentenced to a Job (STAJ) participants as compared with a rate of 39 per cent for the 'Open Rated' group (prisoners undertaking a similar suite of employment skills programs through Correctional Industries) and 57.5 per cent for the general NT prison population in 2015-16. Current figures indicate that 6 per cent of STAJ participants are apprehended for a new property offence within a year of release, significantly less than the 16 per cent of the matched comparative 'Open Rated' prisoner. NTCS posits that this statistically significant difference reflects that STAJ addresses a prisoner's criminogenic need in relation to economic prosperity, however, it is noted that employment through STAJ does not impact upon factors that contribute to the committing of violence, traffic offences or drug offences.

The STAJ program is only one element of an overall suite of interventions engaged

during the process of rehabilitation for any prisoner. The process of applying educational (numeracy and literacy), behavioural (psycho-educational) and employment skills programs together with transitional and post-release support are critical to reducing the likelihood of recidivism following the release of a prisoner.

NTCS also engages QuickSmart, a program that provides numeracy and literacy education services to prisoners. NTCS has also engaged the Batchelor Institute for Indigenous Tertiary Education (BIITE) to deliver tertiary training to Aboriginal prisoners under a seven year contract.

**Young people**

Territory Families is a new agency that was created following the election in August 2016. This agency is responsible for youth justice and youth detention. Machinery of Government changes are underway to give effect to the transfer of responsibility for youth justice matters through the Youth Justice Legislation Amendment Bill introduced in the Legislative Assembly on 23 August 2017.

Statistics regarding Youth Justice in the NT demonstrates that:

- 94 per cent of the young people in detention in the NT are Aboriginal;
- over 80 per cent of youth detainees are male; and
- 28 per cent are 15 years of age or younger.

An analysis of available data over a ten year period (2006-2016) indicates:

- An increase in the number of young people arrested, charged, sentenced and detained.
- Assault and unlawful entry remain key offence types for youth in detention.
- Of those young people received into detention, the percentage of children between 10-14 years has increased by 133 per cent, for those aged between 15-16 years of age there has been a 99 per cent increase and for those aged between 17-18 years there has been a 25 per cent increase.
- Sentencing occasions resulting in detention have more than doubled in this period.
- In this period the number of young people apprehended for breach of bail has increased by 65 per cent.

NTG acknowledges that there are currently few services or programs available for adolescents who are perpetrating violence, exhibiting violence-supportive attitudes or demonstrating inappropriate sexualised behaviours. Intervention services and youth-specific services must take into account intersections with mental health issues, behavioural issues and substance abuse. Such services need to be made available for young people to divert them away from the criminal system and provide

appropriate supports upon an offender's first encounter with the criminal justice system.

This supports the strategic direction of the Territory Families reform agenda in working with the community to focus on prevention and early intervention to stop young people offending and to divert children and young people away from the formal youth justice system.

The NTG has also made a commitment to comprehensively review the *Youth Justice Act*, guided by the findings of the Royal Commission into the Protection and Detention of Young People in the Northern Territory. The Royal Commission's findings are due to be delivered on 17 November 2017.

In March 2017 the Royal Commission released its Interim Report. This report did not make any specific recommendations, however, it did outline the extent of their consultations as well as issues that had been highlighted and interim observations. These included:

- responding to the issues of remoteness in the NT will be a fundamental consideration for the Commission when making its recommendations.
- that diversion options arise at many stages, from the time a child or young person first comes into contact with the police, through to the courts and sentencing options. Police engagement with 'at risk' children and young people in the NT can involve diverting them away from formal court process.
- that bail conditions in the Territory are regarded by many as too strict, particularly for minor offences that effectively set children and young people up to fail due to breach of bail conditions leading to detention, which suggests that there is a need for a more graduated response to breaches of bail.
- that the Royal Commission consider issues relating to bail, together with the use of specific remand facilities, separate to youth detention centres with fewer restrictions placed on those on remand.

Whilst Territory Families is currently implementing a reform agenda in child protection and youth justice, it is anticipated that the recommendations of the Royal Commission will inform further reform in these areas and within other agencies across the NTG. These reforms will be progressed through consultation across Government, the non-government sector and the community. The reforms will consider the merits of a single piece of legislation, in an Act that covers both child protection and youth justice, and the establishment of a single, specialised court for children and young people. It will also consider how to establish an independent oversight body for youth justice.

On 8 February 2017, the NTG announced an $18.2 million annual investment in the Youth Justice Reform Package, aimed at preventing and breaking the cycle of youth crime, and providing alternatives to detention.

Key elements of this package include a dedicated youth outreach workforce, operating in Darwin and Palmerston, Katherine, Tennant Creek, Alice Springs and Nhulunbuy. The Youth Outreach and Re-Engagement Teams (YORET) aim to reintegrate young people into pro-social activities away from crime. Staff have skills in trauma-informed practice, restorative practice, case management, management of potential and actual aggression, and engagement strategies aimed at building rapport with young people who are at-risk or have come into negative contact with the youth justice system.

YORETs have a strong emphasis on service delivery to young people who have been identified as 'at risk', both in the community and in detention, and are providing case management to those young people as well as those subject to bail, community work orders, suspended sentence orders or those who are remanded in custody.

*Youth Diversion Programs*

Youth Diversion Programs are an early intervention measure that aim to prevent young people aged between 10 and 17 years of age from entering the formal youth justice system. Youth Diversion may involve reparation and/or restitution to the victim and/or the community, as well as reintegration support for young people returning from custody to the community.

The legislative impetus for youth diversion is found in the principles of the *Youth Justice Act*, particularly section 4(c), which provides that custody for a young person should be used as a last resort and for the shortest period possible. Sections 39 and 64 of the *Youth Justice Act* specifically provide for diversion.

In 2015, 576 Aboriginal youths participated in youth diversion. This information is reported every two years in the Overcoming Indigenous Disadvantage report, the most recent of which was published in 2016.[5]

The number of young people that participated in the NTG suite of youth diversion programs during the period 2015-16 was 729.[6]

Funding is provided to non-government service providers to deliver pre-court youth diversion case management service that focuses on identifying appropriate community-based programs offering targeted intervention for individual participants to address their criminogenic need.

A new restorative justice program delivered by Jesuit Social Services providing victim-offender conferencing is also available to youth in the NT. This program can be accessed either through pre-sentence conferencing following adjournment of sentencing under section 84 of the *Youth Justice Act* where a young person has

[5] Details are available at https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016.

[6] However, the data for this cohort is not disaggregated between Aboriginal and non-Aboriginal offenders.

pleaded guilty, or, a young person may also be referred by the Court under section 64 of the *Youth Justice Act* for youth diversion or a Youth Justice Conference.

Other activities that help to prevent young people from entering or progressing in the youth justice system include access to Wilderness Camp Programs and referrals to Road Safety Driver Training. Early Intervention Youth Boot Camp (EIYBC) is a wilderness camp designed for young people who are at risk of future long-term offending. The number of young people who commenced an EIYBC in the NT in 2015-16 was 97 and 89 completed an EIYBC during that same period.

By offering an intensive wilderness experience that builds insight and skill capacity, young people also develop the mindset that they can be an agent of growth or change in their lives. The follow-up and embedded case management program is designed to consolidate this growth and mindset, and coach young people to articulate and action their own pro-social goals with the support of others, in a manner that is integrated in the system to support the young person.

The number of youth offenders that attained adult status (whilst in detention) in 2015-16 included 4 Aboriginal male offenders and 1 non-Aboriginal male offender. However, this is not reflective of the total number of youth offenders that continue to offend once they attain 18 years of age.

NTG suggests that the ALRC consider funding the collection and analysis of data available in the NT in order to develop an understanding of pathways of Aboriginal youth into and through the criminal justice system.

*Bail Support Program*

The NT is the only state or territory in Australia that does not have a program to support young people on bail, which helps young people comply with their bail responsibilities.

In recognition of this deficiency, Territory Families is introducing a service that will provide safe and supportive accommodation for young people while they are on bail that will help ensure bail conditions are complied with (e.g. reporting to police, attending school and making their next court date). The service will help to improve community safety by reducing the risk of young people reoffending while on bail, noting that it is a proven strategy for breaking the cycle of crime.

The Bail Supported Accommodation program will provide an alternative option to detention for young people on remand. On 11 August 2017, Territory Families issued Requests for Proposals for services in Alice Springs and Darwin; and it is intended these services will be operational by 1 December 2017.

This bail support service will accommodate young people from the age of 10 to 17 who are released on bail, and will also be used as part of a through-care support system for young people who are subject to continuing bail conditions.

*Domestic Violence Specialist Children's Service*

Through the Safety is Everyone's Right Northern Territory Domestic and Family Violence Reduction Strategy 2014–2017, Tangentyere Council, as the lead organisation in a consortium with the Alice Springs Women's Shelter and Jesuit Social Services, has established a Domestic Violence Specialist Children's Service in Alice Springs.

The Domestic Violence Specialist Children's Service provides targeted support to Aboriginal youth aged between 12 and 17 years who have been affected by domestic and family violence. Through victim advocacy, case management, targeted support and counselling, the service seeks to break the generational cycle of violence within the next generation of young parents so children are born into families where the safety and respect of all family members is valued. Priority is given to youth identified as being the most vulnerable and at risk of experiencing domestic violence in their relationships, either as a victim or a perpetrator. Identified youth in the juvenile justice system, young mothers and children entering and exiting the child protection system and those referred through the Northern Territory Family Safety Framework, Critical Intervention Outreach Service are prioritised.

*Female youths*

Another area of focus for Territory Families requiring consideration is females in youth detention. There has been an increase in the daily average of Aboriginal female youth in detention in the Northern Territory over the 10 year period 2006 to 2016, with a growth from 3 per cent of the total youth detention population to 10 per cent. The total number of Aboriginal females sentenced in 2015-16 was 267. The total number of Aboriginal females on remand in 2015-16 was 299.

*Education*

The impacts of incarceration on Aboriginal people in terms of education are demonstrated through figures collected during 2015/16. 44.4 per cent of all Government school students were Aboriginal, with this figure dropping to 29.2 per cent in non-Government schools. Average Government school student attendance was 81.2 per cent compared with the average Government school Aboriginal student attendance of 67.4 per cent. The pattern is also reflected in non-Government schools with an average Aboriginal student attendance of 69.9 per cent. This data is critical to support the NT Department of Education placing emphasis on improving Aboriginal children's school attendance. School attendance (or lack thereof) has a direct impact on educational achievement, which has a significant impact on socio-economic status.

*Alcohol misuse*

Research and anecdotal information suggests that a significant proportion of young people in detention have misused alcohol (and/or other substances) either through

their own use or their experiences of growing up in a family where alcohol misuse has occurred. For example, a study conducted in 2005 by the Australian Institute of Criminology found that 71 per cent of youths used one type of substance regularly, and 29 per cent used more than one type regularly in the six months prior to entering detention. In terms of the types of substances regularly used, 46 per cent used alcohol.

Currently there is no data readily available in the NT that can identify whether the misuse of alcohol or other substances led directly to the offending behaviour that resulted in the detention of a young person. However, it is acknowledged that some factors are more likely to result in negative contact with the legal system such as social disadvantage and substance misuse.

**Factors influencing over-representation**

The prevalence of violence, excessive use of alcohol and underlying mental health issues play a major role in the over-representation of Aboriginal people in all of Australia's prisons. These factors are interrelated. In addition, many Aboriginal offenders tend to have less formal education, impaired English language comprehension skills (English usually being a second, third or even fourth language for Aboriginal people in the NT), are less likely to be employed, have difficulty obtaining accommodation and are generally not in a position of financial stability.

Issues that play a major role in the over-representation of Aboriginal people in prisons across Australia are exacerbated further for Aboriginal people who have been impacted by previous government policies that resulted in the Stolen Generation. From a statistical perspective, Aboriginal people from the Stolen Generation are twice as likely to be arrested compared to their non-Aboriginal peers.[7] Some courts are not considering the historically significant effect that intergenerational trauma has when sentencing Aboriginal offenders.

Complying with stringent bail, probation or parole conditions can be very difficult for Aboriginal people in remote settings particularly when there is a lack of employment or out-of-community placements to achieve financial stability or at the very least economic viability. Further challenges associated with living in a remote community include:

- accessing appropriate care and medical services;
- finding safe housing;
- trying to reunite with families and children;
- learning or relearning parenting and other relationship skills; and
- recovering from addictions.

[7] ABS National Aboriginal and Torres Strait Islander Survey 1994 – Detailed Findings (1994) ABS Catalogue No. 4190.0.

When bail requirements are set regardless of family responsibilities, it can be more difficult for some women to meet bail commitments due to their potentially overall lower socioeconomic status, poverty and/or homelessness. This is particularly evident when women in the most vulnerable and at risk cohorts are often caught up in the justice system as non-violent offenders, and incarcerated because they could not pay bail for misdemeanours.

Women offenders are more likely than men to be primary carers and are greatly influenced by their responsibilities and concerns for their dependent children. Therefore women respond best to prison conditions through relationship-focused and holistic programs and approaches that address a number of their needs simultaneously.

NTG acknowledges that all of these issues listed cumulatively contribute to a cycle of disadvantage, which if not resolved will continue to see over-representation of Aboriginal people in the judicial system. There is clear evidence that demonstrates where confounding issues, such as those listed in TOR 2e (II), are not tackled as part of any preventative, remediation, or rehabilitative program, then recidivism is highly likely.

*Economic and Employment connections*

Considering the criminal justice system generally and the unacceptably high incarceration rates of Aboriginal people, it is recognised there is an important correlation between Aboriginal incarceration and business, employment and economic development.

Unemployment is one of the many socio-economic risk factor behind higher Aboriginal incarceration rates.[8] It is important that both the government and private sectors work together to up-skill Aboriginal employees and increase workforce participation through the provision of appropriate employment and training initiatives both before, during and transitioning from incarceration back to community.

In relation to laws and legal frameworks outlined in terms of reference 1.1, consideration should be given to their impact on an Aboriginal person's current or future ability to engage with the workforce or participate in appropriate skilling activities. Incarceration and alternative sentencing presents opportunities for the offender to avoid re-offending through the introduction of appropriate foundation skills, training, up-skilling or engagement opportunities.

The NTG Aboriginal and Torres Strait Islander Special Measures Plan also continues to be used across NTG agencies in an effort to address employment inequities for Aboriginal people in the NT. This initiative has resulted in 11.7 per cent of all

[8] Medical Journal of Australia 2006; 184 (10): 534-536. https://www.mja.com.au/journal/2006/184/10/aboriginal-incarceration-health-and-social-impacts.

successful applicants identifying as Aboriginal. Within NTPFES there are currently 129 members employed that identify as Aboriginal from a total of 1,473 sworn members. NT Police, Fire and Emergency Services (NTPFES) overall Aboriginal workforce has increased to 8.28 per cent which surpasses the NTPFES target of 8.1 per cent for the 2016-17 year. In the Department of Health, there are currently 616 employees that identify as Aboriginal out of a total of 7,805 employees.

*Homelessness, incarceration and recidivism*

NTG recognises that access to safe, secure, appropriate and affordable housing is a fundamental part of promoting individual, family and community wellbeing and prosperity. Aboriginal people are significantly more likely to be homeless than the general population as well as being over-represented in both the national homeless population and as users of specialist homelessness services. According to the 2011 ABS Census, 25 per cent of people who were counted as homeless across Australia identified as Aboriginal. In the NT, this figure was much higher, at 90 per cent.

In addition to the detrimental impact that homelessness has on the lives of the people who experience it, the flow-on effects of homelessness are felt by families and the wider community, and this come at great human and economic cost.

In 2015-16, 24 per cent of people supported through the Specialist Homelessness Services (SHS) system nationally identified as Aboriginal. In the NT, 79 per cent of SHS clients were Aboriginal. Research consistently supports that people who are homeless use a wide range of mainstream government services significantly more than the general population, particularly in health, policing, justice and correctional services. The cost of homelessness amongst Aboriginal people and the population more broadly is reflected across the human services system; such as in hospitals, children's services[9] and the justice system specifically in regards to contact with police, courts and correctional services in the form of arrests, court proceedings and incarceration.[10]

Homelessness is an important indicator of social disadvantage and a factor that can influence an individual to engage in criminal activity.[11] Having safe, stable and affordable housing positively impacts upon an offender's criminogenic needs and reduces their likelihood of engaging in recidivistic behaviours.[12]

Numerous studies have illustrated a link between homelessness and increased rates of incarceration and recidivism.[13] For example, an international survey in the UK on

---

9 ARHUI, 2016, *Effectiveness of the Homelessness Service System.*

10 ARHUI, 2016, *Effectiveness of the Homelessness Service System.*

11 Australian Institute of Criminology, 2015, *Homelessness and housing stress among police detainees: results from the DUMA Program* Agnew 2006.

12 Australian Institute of Criminology, 2015, *Promoting Integration: the Provision of Prisoner Post-release Services.*

13 Baldry E, McDonnell D, Maplestone P and Peeters M, 2003, *Australian Prisoners' Post-release Housing*

reoffending found that rates were lower amongst prisoners who had stable housing upon release, compared to 79 per cent for those who were exited into homelessness.[14]

There is also a link between the number of times a person has been incarcerated and the likelihood of the offender having been homeless upon arrest.[15] Short incarceration periods are considered to have a significant impact on the risk of homelessness. Without sufficient material and social support upon release, the cycle of recidivism can become increasingly difficult to break.[16]

A 2015 study by the Australian Institute of Criminology examined primary, secondary and tertiary homelessness prevalence among detainees in Australia. The study found that 22 per cent of prisoners interviewed were living in temporary or unstable accommodation for most of the 30 days preceding their imprisonment.[17] Another study that tracked people after their release from prison, found that 61 per cent of individuals released to homelessness returned to prison, compared to 35 per cent of people released to adequate housing arrangements.[18] Ensuring integrated through-care and case management of prisoners, including the provision of housing and support is therefore essential to enable effective reintegration back into the community. This is a particular challenge for the NT, especially for prisoners from remote areas where there are limited housing options and support services for people once they leave prison.

Exiting correctional facilities is a key transition point at which people are at increased risk of homelessness. This is particularly the case for young people who have also been in the child protection system due to their high level of vulnerability. People can experience high levels of social isolation and exclusion when they leave prison which increases their risk both of reoffending and of becoming homeless.

Ensuring the provision of appropriate and ongoing housing and wrap-around support to people exiting correctional facilities, can help to significantly reduce the risk of re-incarceration, reconnect with their community and help people to experience greater levels of social inclusion more broadly.

Incarceration has a disruptive effect on people's housing circumstances and can severely limit a person's ability to sustain their tenancy. Aboriginal clients are overrepresented in the public housing population in the NT. Seventy-two percent of

---

14 The Conversation, 2015, *Homelessness causes offenders to end up back in prison – here's how to break the cycle.*

15 Baldry et al, 2003, *Australian Prisoners' Post-release Housing.*

16 Australian Institute of Criminology, 2015, *Promoting Integration: the Provision of Prisoner Post-release Services.*

17 Australian Institute of Criminology, 2015, *Homelessness and housing stress among police detainees: results from the DUMA Program.*

18 AHURI, 2003, *Ex-prisoners and accommodation: what bearing do different forms of housing have in social reintegration?*

all public housing clients identify as Aboriginal.[19] For people who are living in public housing, incarceration of the primary tenant can have an adverse impact of the living circumstances of other people in the household, particularly in single parent households where children are required to be placed in alternative care arrangements.

The Department of Housing and Community Development has an Extended Absences and Caretaker Arrangements Policy that allows for a person who is incarcerated to leave their dwelling under certain caretaker arrangements for up to three months. This can help to prevent homelessness where a period of incarceration is less than three months.

However, where a primary tenant has left their house under a caretaker arrangement, they may be held responsible for damages caused while they are absent due to their incarceration. This can result in a debt they are unable to repay, and can proceed to subsequent eviction.

Accumulated debt also plays a major role in a person's ability to gain or maintain public housing upon being released from prison. Where a person is evicted from public housing due to debt or for other reasons, they are required to wait for a lengthy period before they are able to reapply for housing. This can leave the person with very limited housing options upon release from prison.

When seeking housing in the private rental market, people who have been incarcerated often experience discrimination, leaving social housing as the primary option when they are released. In addition, limited finances upon release from prison can impact a person's ability to secure housing in the private rental market, due to the inability to provide bond payments up front.

Periods of incarceration can be disruptive to a tenancy and impede a person from being able to sustain housing. Where a person living in private rental accommodation becomes incarcerated, this can lead to eviction and even result in the person being placed on the rental "blacklist", precluding them from being able to secure other private rental housing for many years. This leaves the person reliant on the support of crisis accommodation services and social housing providers, which often have long waiting lists due to high demand.

Imprisonment can have a devastating impact on family life and can become inter-generational. Young people whose parents have been imprisoned are more likely to enter the juvenile justice system; one analysis of young people within the juvenile justice environment identified that nearly half of the young people in custody had parents who had been in prison.[20]

While data on the propensity for and the drivers of criminal offending behaviour

[19] Department of Housing 2015-16 Annual Report.

[20] NSW Homelessness Community Alliance policy statement, 2011, *Homelessness and the justice system*

amongst young people is limited, research has indicated that homeless young people are significantly more likely to offend than the general youth population, and far more likely to be incarcerated.[21] This can quickly become a vicious cycle that can be difficult to overcome as the young person enters adulthood.

*Services in the NT*

There is a recognised need to provide greater support for prisoners exiting correctional facilities to access stable housing and support services, to break the cycle of both homelessness and offending. The Department of Housing and Community Development is currently developing a Homelessness Strategy. This includes working with key human services agencies across the NT Government to identify opportunities for improved pre and post release services and case management that includes a focus on preventing homelessness.

There are a number of programs and services focused on reducing reoffending in the NT. These are targeted and include youth diversion, case management, community legal education, behavioural change and drug and alcohol services. An example of a targeted program in the NT includes the Northern Australian Aboriginal Justice Agency (NAAJA) through-care program, a culturally-relevant service that supports prisoner and juvenile detainees throughout their interaction with the criminal justice system. The program begins with a prisoner's initial contact with correctional services and continues until the offender has successfully reintegrated back into the community.

The program has resulted in less instances of reoffending through practical and individualised support, which includes developing insights into an individual's offending; getting them back to their homes and community and assisting them to comply with any court orders. The program also assists clients with their mental and physical health.

The Department of Housing and Community development through the Industry Housing Assistance scheme has provided several houses to non-government organisations for the purpose of operating post-release accommodation and support programs. There is also a program that has provided practical skills development through the renovation and restoration of dwellings by prisoners. Once completed, these dwellings are occupied by recently released prisoners. Support is provided during this time to build the skills, independence and resilience of the ex-prisoners, which allows the ex-prisoners to more effectively break the cycle of offending and move on to stable housing arrangements.

*Education*

Activity in this area is addressed under the 'A Share in the Future - Indigenous

[21] Flatau P, Mackenzie D and Steen A, 2016, *The Cost of Youth Homelessness in Australia*

Education Strategy'. The Pathways and Engagement elements of the strategy directly relate to reducing disengagement from the education system with Aboriginal young people. The element 'Provide Transition Support' is for students looking to undertake boarding opportunities, which provides a complete transition service to schools, parents and students, to maximise opportunities for a successful educational experience as students move from their home communities to residential boarding.

This approach to valuing education is being implemented through:

a) establishment of 'on the ground' transition teams servicing Alice Springs, Katherine, Nhulunbuy and Darwin who work with families, schools and students in Years 6 and 7 to ensure students are prepared for, and enrolled in, appropriate schooling options in the secondary years. This element of the service commenced in 2015.

b) establishment of a case management team that supports all Aboriginal students who have transitioned to boarding schools by connecting boarding schools, families and students. This element commenced in 2015 and is being scaled up in line with numbers of students who are boarding.

c) a rapid response 'at risk' service for remote children in boarding schools. This service comprises a team of two officers with dedicated responsibility to support schools when a student is identified by the school as being 'at risk' of disengagement, or where they have already disengaged. The officers engage with the student and their families and develop a plan to keep the student engaged with their education.

d) access to an excellence scholarship process for high achieving students who wish to transition to some of Australia's leading boarding schools. This element commenced in 2015 with one officer and operates in partnership with the Australian Aboriginal Education Foundation.

e) investigation of a transition program for students in Years 11 and 12 in boarding schools to facilitate seamless transition to further study or work. This service is not expected to commence until a critical mass of Year 11 and 12 students is reached.

Additionally, positive school environments when linked with effective instructional (teaching) strategies, contribute to improved educational outcomes for all students. A contributor to a positive school environment is the use of a Social Emotional Learning (SEL) curriculum that has the effect of enhancing a student's social, emotional and intercultural skills. These skills are precursors to student wellbeing, and are known predictors of lifelong success. The Department of Education has been trialling the SEL curriculum in select schools and is aiming for system-wide availability by 2018.

*Health*

The Primary Health Care team within the prison provide daily services and support visiting specialist services. The multidisciplinary team includes Primary Health Care nurses, Aboriginal Health Practitioners, Rural Medical Practitioners, pharmacists, Psychologists and Pharmacy Technicians. Visiting specialist services include Optometry, Australian Hearing, Dental services, Royal Darwin Hospital (RDH) Radiologists, Diabetes Educators, Podiatrists and a Tuberculosis Clinic. Other services that connect via telehealth include liver, pre-hospital admission, renal and diabetes clinics.

Monthly statistics in the last 3 months show an average of 4,500 consultations per month have been conducted by the health team onsite. Consultations include new receptions to prison, return to prison health checks, day five health screen, drug withdrawal health checks, acute care episodes and chronic condition management. These consultations do not reflect the dispensing of medication which requires five health professionals twice a day to undertake medication rounds throughout the prison, to dispense both acute and chronic medications.

All prisoners in prison are placed on chronic conditions care plans if they have a diagnosed chronic condition or on a two yearly Adult Health Check if they have no major health conditions.

Health data for the Darwin Correctional Centre identified high rates of Aboriginal prisoners with chronic conditions within the prison (particularly with diabetes) with a recent report identifying 147 diabetics in NT prisons, the majority of whom were Aboriginal.

Similar to the national prison health data published in 2015, NT prisoners have high levels of mental health problems and upon entry many clients are withdrawing from alcohol and other drug consumption, chronic conditions and communicable diseases than the general population.[22]

Aboriginal people living in the NT continue to experience higher avoidable mortality than other Australians. According to the most recent report published in 2009 by Australian Journal of Public Health, the age-adjusted avoidable mortality rate from treatable conditions is 2.9 times higher for Aboriginal Territorians as compared with non-Aboriginal Territorians and 3.8 times higher compared with the Australian average. In the past two decades, age adjusted avoidable mortality rates fell 20 per cent in NT Aboriginal population, whereas in non-Aboriginal NT population it fell 60 per cent. Over this period, there has been a significant increase in the prevalence of cardiovascular disease, kidney disease and diabetes for Aboriginal people, which

[22] AIHW 2013.

comprise the majority of avoidable mortality from treatable conditions.[23] The results call for more improvements in health services for the Aboriginal population and for further improvements to be made to remove the poor social determinants that generally underlie poor health status.[24]

Assault-related hospitalisation rates were 12-19 times greater among Aboriginal patients compared to non-Aboriginal in 2011, representing a 29 per cent increase from 2001. In 2011, a female Aboriginal person was almost 70 times more likely to be hospitalised due to an assault than a non-Aboriginal female, compared to Aboriginal males, which was 7.7 times higher than non-Aboriginal males.

Self-harm was the second leading cause of injury-related deaths next to transport accidents among Aboriginal people in the NT (28 per 100,000 Aboriginal vs 17 per 100,000 non-Aboriginal population). Noting that recent data shows that the Aboriginal death rate due to self-harm has increased, whereas it decreased for the non-Aboriginal population.

**Gaps in available data**

With respect to gaps in available Aboriginal related data, improved data collection and analysis is a matter already under consideration by law enforcement agencies in the NT. This is driven through issues with existing legacy systems across multiple jurisdictions and the changes in information and privacy legislation. A commitment is already in place to improve data protection and record keeping, including improved opportunities for evidence based (de-identified) information to be extracted.

[23] Zhao et al (2010): Living longer with a greater health burden – changes in the burden of disease and injury in the Northern Territory Indigenous population between 1994-1998 and 1999-2003; Vol.34 S96 (Table 4).

[24] Li et al (2009): Avoidable mortality trends in Aboriginal and non-Aboriginal populations in the Northern Territory, 1985-2004. Australian and New Zealand Journal of Public Health; 33:544-550.

# Part 3 – NTG Response to ALRC Discussion Paper 84

The responses provided below broadly reflect the considerations for the justice system in the NT, however, it should be noted that specific policy direction relative to legislative and service system reform for youth justice matters will be informed by the findings and recommendations of the Royal Commission into the Protection and Detention of Children. Therefore, specific policy direction and responses that are contingent on findings and recommendations by the Royal Commission report have not been reflected below, although many of the general principles outlined below apply to the youth justice system.

## 2. Bail and the Remand Population

**Proposal 2–1**

The *Bail Act 1977* (Vic) has a standalone provision that requires bail authorities to consider any 'issues that arise due to the person's Aboriginality', including cultural background, ties to family and place, and cultural obligations. This consideration is in addition to any other requirements of the *Bail Act*.

Other state and territory bail legislation should adopt similar provisions. As with all other bail considerations, the requirement to consider issues that arise due to the person's Aboriginality would not supersede considerations of community safety.

### NTG Response to Proposal 2-1

The *Bail Act* is administered by the Department of the Attorney-General and Justice. Part 5 applies to both police and Court bail and sets out the criteria that must be considered in bail applications under section 24 of the *Bail Act*.

In making a determination to grant bail, an authorised member or Court must consider a number of factors that include a person's community ties, residence, employment, family situation, health, and other needs relating to a person's cultural background.

Section 24(1)(b) of the *Bail Act* sets out the interests of the person that must be considered. Section 24(1)(b) was amended in 2015 to provide additional interests for consideration in a bail application so a bail authority can take into account matters relevant to the applicant for bail. Section 24(1)(b)(iiic) requires bail authorities to consider the interests of the accused, having regard to 'any needs relating to the person's cultural background, including any ties to extended family or place, or any other cultural obligation'.

While the provision does not specifically identify Aboriginality like the Victorian provision, it does enable consideration of similar needs including cultural background, ties to family and place, and cultural obligations.

Additionally, the NT *Bail Act* is constrained in consideration of cultural practice or customary law in bail hearings through application of section 15AB(1)(b) of the *Crimes Act 1914* (Cth). This section of the *Crimes Act* states that cultural practice or customary law cannot be taken into account in bail hearings as a reason excusing, justifying, authorising, requiring or lessening the seriousness of the alleged criminal behaviour to which the alleged offence relates, or the criminal behaviour to which the offence relates. The *Crimes Act* specifically precludes customary law and cultural practice being used in the prescribed manner for bail matters in the Northern Territory.

Whilst section 15AB will not affect bail authorities considering bail applications for Aboriginal defendants to attend funerals or other ceremonies, the Commonwealth legislation does have the effect of disallowing bail authorities to consider relevant customary law and cultural practices, which bail authorities have been able to consider in the past.[25]

**Proposal 2–2**
State and territory governments should work with peak Aboriginal and Torres Strait Islander organisations to identify service gaps and develop the infrastructure required to provide culturally appropriate bail support and diversion options where needed.

## NTG Response to Proposal 2-2

### Youth Bail support

Territory Families' new bail support service will provide safe and supportive accommodation as well as access to services for young people to ensure they comply with their bail conditions while they are on bail. The bail support service will accommodate young people from the age of 10 to 17 who are released on bail, and will also be used as part of a through-care support system for young people who are subject to continuing bail conditions. The Youth Outreach Re-Engagement Officers (YOREOs) employed through Territory Families are part of the support services being provided.

[25] *R v Minor* (1992) 2 NTLR 183 at 195-196; *Barnes v The Queen* (1997) 96 A Crim R 593, *Re Anthony* (2004) 14 NTLR 6*; Munungurr v The Queen* 4 NTLR 63 at 76-77.

**Homelessness and remand**

Being homeless can be a key consideration as to whether a person is granted bail; people who are homeless are often more likely to be remanded in custody.[26] Similarly, convicted offenders may be denied parole if they cannot present a post-release plan that includes accommodation acceptable to the Parole Board. In these cases homelessness and offending behaviour may not be directly related, but a person's homelessness may result in them remaining in custody when they might otherwise have been released into the community.

**Alternative to prison model**

The Department of the Attorney-General and Justice is currently developing Alternative to Prison Models that will include supported bail accommodation and remand options.

Alternative to Prison Models allow for targeted, tailored case management embedded within a culturally competent framework that engages the family unit and those who influence the perpetrators behaviour. This model recognises and enables Aboriginal leadership and cultural authority to be demonstrated in communities by Aboriginal people based on best practice. The model provides saturated intense rehabilitation 'on country' to restore the social fabric within communities and create safer communities. It provides opportunities to broker clients into work arrangements in their own communities. It provides a means of strengthening partnerships with Aboriginal people, non-Aboriginal people, NGO's and Government, especially those NGO service providers with existing or potential contractual arrangements that deliver rehabilitation services and supports. It requires Government agencies to work together to deliver targeted agreed outcomes for clients, the families of those clients and the members of their communities.

The benefits of this approach include:

- safer communities;
- cost savings;
- ensures that the family unit work collectively on behaviours and access to services to address any health issues;
- reduction in recidivism and incarceration rates of Aboriginal people;
- rewarding and allowing Aboriginal communities to demonstrate leadership;
- showcasing strong role models within community that restores respect and cultural authority; and
- improving resilience for all participants (including victims, offenders and family).

[26] Baldry et al, 2003, *Australian Prisoners' Post-release Housing*

## 3. Sentencing and Aboriginality

**Question 3–1**
Noting the decision in *Bugmy v The Queen* [2013] HCA 38, should state and territory governments legislate to expressly require courts to consider the unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples when sentencing Aboriginal and Torres Strait Islander offenders? If so, should this be done as a sentencing principle, a sentencing factor, or in some other way?

### NTG Response to Question 3-1

The *Sentencing Act* (NT) does not specifically require the Court to pay particular attention to the circumstances of Aboriginal offenders.

However, the sentencing principles outlined in section 5 of the *Sentencing Act* allows the Court to take into consideration the offender's character,[27] any mitigating factor concerning the offender[28] and also any other relevant circumstance.[29] This provides the courts with broad discretion to take into account circumstances relevant to an offender including that of an Aboriginal offender.

Additionally, section 104 of the *Sentencing Act* outlines the general procedure for a court to receive 'information' during the sentencing process for any offender, without reference to a particular race. It does not provide any procedural requirements, nor any restriction on information being provided, it simply allows the court to consider material 'as it thinks fit'. Under this section the court may be provided with information in the form of character references, victim impact statements or informal input from other members of the community. There is no requirement that this information be given on oath, in affidavit form or statutory declaration.

In relation to an Aboriginal offender the practice of the Court is to allow information regarding Aboriginal customary law and the views of an Aboriginal community to be informally provided for the purpose of sentencing. Additionally, in practice, authorities in the NT have emphasised 'the need to protect the weaker or more vulnerable members of the community, particularly women and children, from excessive violence' while recognising that due weight need be accorded to any claims of mitigation relevant to the offender's deprived upbringing and subjective circumstances.[30]

---

[27] *Sentencing Act* (NT) s5(2)(e)
[28] *Sentencing Act* (NT) s5(2)(f)
[29] *Sentencing Act* (NT) s5(2)(s)
[30] *R v Wurramara* (1999) 105 *A Crim R* 512, 522 per Riley J; *Spencer v R* [2005] NTCCA 3 at [23] per Riley J

In 2005, section 104A of the *Sentencing Act* was introduced in response to critical comment by the Northern Territory Court of Criminal Appeal in *Munungurr v the Queen*[31] whereby the Court indicated that it was no longer satisfactory for information regarding Aboriginal customary law and the views of an Aboriginal community to be provided informally. In its original form section 104A of the *Sentencing Act* prohibited a court from taking into account any aspect of Aboriginal customary law or the views of members of an Aboriginal community when sentencing an offender, unless certain procedural requirements were met.

Section 104A of the *Sentencing Act* was amended in 2015 following concern regarding racial discrimination to broaden the scope of this section so that the procedural requirements apply to any form of customary law or cultural practice, rather than solely applying to Aboriginal customary law. It was also amended to provide the court with discretion regarding compliance with the procedural requirements, thereby giving the court the option of ordering parties provide evidence on oath, in affidavit form or statutory declaration.

Overriding the elements of the *Sentencing Act* is section 16AA of the *Crimes Act* which, similar to matters of bail considered in accordance with s15AB, provides that a court must not take into account any form of customary law or cultural practice as a reason for excusing, justifying, authorising, requiring or lessening the seriousness of the criminal behaviour or aggravating the seriousness of the criminal behaviour to which the offence relates.

Concerns relating to Aboriginality as a sentencing factor will be considered as part of the AJA. This will provide an avenue for investigating the introduction of a legislative framework to guide the court in considering systemic disadvantage and background factors (and the court has indicated a preference for a legislative framework in *Munungurr*). However, if the intention is to adopt the common law principles established by the court then any legislative provision needs to be clear and not unintentionally constrain or limit those principles, noting it would also need to be considered regarding the application of s16AA of the *Crimes Act*.

[31] (1994) 4 NTLR 63

**Question 3–2**
Where not currently legislated, should state and territory governments provide for reparation or restoration as a sentencing principle? In what ways, if any, would this make the criminal justice system more responsive to Aboriginal and Torres Strait Islander offenders?

## NTG Response to Question 3-2

In the NT, the objects and principles of the *Youth Justice Act* broadly enable the application of reparation and restoration principles not only as a sentencing principle but through the general operations of youth justice.[32] In the youth justice context, diversion of youth may involve convening a youth justice conference which requires a meeting between the youth, the youth's family and the victims of the offending.[33] Prior to sentencing, the courts can also order a pre-sentence conference, which is informed by principles of restorative justice.[34]

In contrast the *Sentencing Act* contains an exhaustive list of sentencing principles and does not make any reference to reparation or restoration.[35]

Outside of the sentencing process, the Northern Territory Community Justice Centre conducts correctional centre conferences on a voluntary basis, which provides a reintegration initiative for offenders returning to their communities following incarceration.[36]

Expanding the sentencing principles in the *Sentencing Act* to include reparation or restorative principles would afford the court additional flexibility in the sentencing of adult offenders and support the inclusion of victims in the process in a similar way to the *Youth Justice Act*.

[32] Objects in section 3(d) and (e) and principles in section 4(e), (k) and (n) of the *Youth Justice Act*.
[33] *Youth Justice Act* s39(2).
[34] *Youth Justice Act* s84.
[35] *Sentencing Act* s5(1).
[36] Australian Institute of Criminology, *Restorative Justice in the Australian Criminal Justice System* (2014) 20.

**Question 3–3**
Do courts sentencing Aboriginal and Torres Strait Islander offenders have sufficient information available about the offender's background, including cultural and historical factors that relate to the offender and their community?

## NTG Response to Question 3-3

A court considering a matter in the NT can be provided with extensive information regarding the offender through verbal or written submissions, pre-sentence reports, affidavits/declarations or by evidence on oath.

In respect of youth found guilty, the court may seek oral or written submissions or reports[37] and where a sentence of detention or imprisonment is considered, the court must then be informed of the youth's circumstances.[38] The information contained in reports is comprehensive and may include information such as education attendance history, summaries of their school behavior/suspensions, assessments such as cognitive, social/ emotional, trauma related factors, academic progress, supports in place, issues in the young person's life (e.g. domestic violence, alcohol and substance abuse). The reports are prepared with information obtained across the various NTG agencies.

Adult offender pre-sentence reports[39] may be required to contain any matter relevant to the sentencing of the offender as directed by the court.[40] Aboriginal offenders represented by an Aboriginal legal service such as NAAJA or the Central Australian Aboriginal Legal Aid Service Ltd (CAALAS) also have relevant factors brought before the court by their representative regarding their background including cultural and community considerations. It is also the practice for Police prosecutions to provide information that includes cultural and community considerations to ensure cases presented to courts are factual and insightful.

The capacity for a court in the NT to receive sufficient information regarding an offender's background can be further demonstrated through the operation of the former community courts between 2003 and 2012. The community courts operated without a statutory framework and enabled elders from the Aboriginal offender's community to 'provide advice to the magistrate with respect to factors relevant to

37 *Youth Justice Act* s 68
38 Youth Justice Act s 69
39 *Sentencing Act* ss105-106.
40 *Sentencing Act* s106(2).

sections 5 and 6 of the *Sentencing Act*, such as the background of the defendant and their views about what would be effective and appropriate sentences.'[41] The operation of the community courts ceased as a result of concern regarding conflict with the provisions of (the now amended) s104A of the *Sentencing Act*. Feedback from the Director of Public Prosecutions suggests that, following the cessation of the community courts, the courts adequately consider the cases that come before them with the information provided by the offender's counsel or through reports prepared for the courts under current provisions of the *Sentencing Act*.

**Question 3–4**
In what ways might specialist sentencing reports assist in providing relevant information to the court that would otherwise be unlikely to be submitted?

### NTG Response to Question 3-4

It is the usual practice of the court to order a report prior to sentencing Aboriginal offenders and these reports may already contain information in relation to 'the social history and background of the offender' and 'any special needs of the offender'.[42]

However, compared to the Canadian Gladue reports, pre-sentence reports may not include all relevant information that address complex issues of a both a historical and cultural nature, which are unique to an offender's Aboriginality to assist in determining an appropriate sentence. A specific pre-sentence report similar to that of Gladue reports, which includes broader input into the report by NGOs and the engagement by the offender with NGOs, may ensure that a clearer picture is presented to the court for sentencing purposes.

However, as the provisions of the *Sentencing Act* currently stand, in placing information relating to customary law or a cultural practice before the court there is a need to consider the procedural requirements stipulated in s104A of the *Sentencing Act*. In addition, courts are prohibited from taking into account any form of customary law or cultural practice in assessing the objective seriousness of the criminal behaviours as part of the sentencing exercise.[43] Authorities have interpreted this provision narrowly and confirmed that customary law and cultural practice are still relevant for other sentencing principles.[44]

---

41 Thalia Anthony and Will Crawford, 'Northern Territory Aboriginal Community Sentencing Mechanisms: An Order for Substantive Equality' (2014) 17(2) *Australian Aboriginal Law Journal* 79, 80-82.

42 *Sentencing Act* s106(1)(b), (j).

43 *Crimes Act 1914* (Cth) s16AA.

44 *R v Wunungmurra* (2009) 196 A Crim R 166, 172 per Southwood J.

Any consideration of the potential utility of Gladue-type reports in the NT needs to be considered in light of the practical issues that may arise as a result of the current procedural requirements of the *Sentencing Act* and the limitations contained in the *Crimes Act*. NTG acknowledges that the ability to provide the sentencing Judge with as much relevant information as possible is likely to enhance the sentencing process. It may also be beneficial to consider options to revisit a sentence in the event of non-compliance and therapeutic support sentencing options. Note that all these matters will be considered by the AJU for consideration in the AJA

**Question 3–5**
How could the preparation of these reports be facilitated? For example, who should prepare them, and how should they be funded?

### NTG Response to Question 3-5

A pre-sentence report is provided for under sections 103 or 105 of the *Sentencing Act*, and are organized through Correctional Services with information and evidence supplied by agencies and other parties.[45] There needs to be established mechanisms in place to facilitate the preparation of Gladue-type reports. Given the information required in Gladue reports, independent bodies that could include community based Law and Justice groups may be best placed to provide this information. At present, these types of groups are not currently funded or established in many areas across the NT to carry out this function so the possibility of using this type of specialist pre-sentence report in the NT would need further attention and consideration.

[45] *Sentencing Act* s3.

## 4. Sentencing Options

**Question 4–1**
Noting the incarceration rates of Aboriginal and Torres Strait Islander people:
(a) should Commonwealth, state and territory governments review provisions that impose mandatory or presumptive sentences; and
(b) which provisions should be prioritised for review?

### NTG Response to Question 4-1

In the Territory, a number of offences carry mandatory sentencing provisions including murder,[46] violent offences,[47] aggravated property offences,[48] serious sexual offences,[49] repeated breaches of domestic violence orders,[50] and drug offences punishable by 7 years imprisonment or more or accompanied by aggravating circumstances.[51] Except for breaches of domestic violence orders and drugs offences, the mandatory sentencing provisions do not apply to youth offending dealt with before the Youth Justice Court.[52]

At present, NTG is preparing to consider the findings from the Review of the *Sentencing Amendment (Mandatory Minimum Sentences) Act* 2013 (NT), which introduced the latest regime of mandatory sentencing for violent offences. The NT is also considering options to repeal other mandatory sentencing provisions.

**Proposal 4–1**
State and territory governments should work with peak Aboriginal and Torres Strait Islander organisations to ensure that community-based sentences are more readily available, particularly in regional and remote areas.

### NTG Response to Proposal 4-1

NTG is supportive of this proposal and the Department of the Attorney-General and Justice is currently partnering with Aboriginal organisations in the NT to develop a suite of culturally competent community-based alternatives to incarceration to address this issue. It should be noted that there is a range of community based

46 *Sentencing Act* s53A.
47 *Sentencing Act* Part 3 Division 6A.
48 *Sentencing Act* s78B.
49 *Sentencing Act* ss55, 78F.
50 *Domestic and Family Violence Act* ss121 and 122,
51 *Misuse of Drugs Act* s37(2); *Sentencing Act* s55 .
52 *Sentencing Act* s4.

sentencing options available to clients throughout the Territory (Community Work Orders, Home Detention supervised Suspended Sentences, and Community Custody Orders) including prisoners who reside in remote areas. The extensive work of both NAAJA and CAALAS in through-care case management for offenders released back into the community should also be recognised.

**Question 4–2**
Should short sentences of imprisonment be abolished as a sentencing option? Are there any unintended consequences that could result?

### NTG Response to Question 4-2

This proposal should be considered in light of the current mandatory sentencing regime in the NT context.

Whilst a relatively higher proportion of Aboriginal prisoners in the Northern Territory are sentenced to less than one year of imprisonment when compared to other jurisdictions, the effectiveness of the proposal to abolish short sentences of imprisonment should be measured against the availability of non-custodial sentencing options across the Northern Territory.

It is noted that community based sentencing options such as community based orders and community custody orders are currently not available as sentencing options for violent offences.[53]

**Question 4–3**
If short sentences of imprisonment were to be abolished, what should be the threshold (e.g. three months; six months)?

### NTG Response to Question 4-3

This proposal is currently not being considered by the NTG given the concerns raised by the New South Wales Law Reform Commission and Sentencing Council.

There has not been any statistical analysis available to allow us to compare the potential effectiveness of the various thresholds.

[53] *Sentencing Act* ss39A, 48A.

**Question 4–4**
Should there be any pre-conditions for such amendments, for example: that non-custodial alternatives to prison be uniformly available throughout states and territories, including in regional and remote areas?

### NTG Response to Question 4-4

While the proposal to abolish short sentences of imprisonment is not under consideration in the NT, NTG agrees there should be greater community based sentencing options and adequate resourcing for such options to be uniformly available in regional and remote areas. There is a range of community based sentencing options available in remote areas throughout the Territory (including community work orders, home detention orders, supervised suspended sentences and community custody orders). These options could be further expanded with the removal of mandatory sentencing and fewer statutory restrictions on certain offence types (like violent offences).

Other community based alternatives to imprisonment are also being considered as part of the AJA.

**Question 4–5**
Beyond increasing availability of existing community-based sentencing options, is legislative reform required to allow judicial officers greater flexibility to tailor sentences?

### NTG Response to Question 4-5

Given the current mandatory regime in the NT, which applies to various types of offences, legislative reform will be required to increase the flexibility judicial officers possess when handing down a sentence.

However, it is noted that the *Sentencing Act* does in general allow judicial officers to make 'one or more'[54] sentencing orders to tailor individual sentences, including; ancillary additional sentencing orders such as perpetrators' program orders,[55] orders

[54] *Sentencing Act* s7.
[55] *Sentencing Act* s78K.

for restitution and compensation,[56] non-association orders,[57] place restriction orders,[58] cancellation of driver's license,[59] passport orders,[60] and forfeiture of property orders.[61]

## 5. Prison programs, Parole, and Unsupervised release proposal

**Proposal 5-1**
Prison programs should be developed and made available to accused people held on remand and people serving short sentences.

### NTG Response to Proposal 5-1

NTG agrees that it is advantageous to provide programs to people on remand and people serving short sentences. The NT has a range of pro-social/life skills and psych-educational programs that are delivered to remand and short sentenced prisoners through modularisation of the program.

However, as a general consideration, a level of caution is needed to ensure an appropriate assessment process and plan is in place to identify suitable and appropriate programs. Treatment services as they are currently delivered require a reasonable period to engage in the programs, and the engagement or participation can be compromised due to higher priority health issues and treatment or by legal processes (missing sessions to attend Court) for prisoners on remand.

An additional impediment to making programs available to remand prisoners is the program's focus on addressing criminogenic needs, which requires the participant to talk about the offence/offending behaviour. This is seen as potentially compromising the assumption of innocence prior to the matter being considered by the court. Mandatory disclosure laws may further impede a remand prisoner's participation in programs that require them to acknowledge offence/actions.

The NT is developing programs that focus on building a skills learning base rather than an offence analysis base for offenders to address criminogenic need.

---

56 *Sentencing Act* s88.
57 *Sentencing Act* s97A.
58 Ibid.
59 *Sentencing Act* s98.
60 *Sentencing Act* s99.
61 *Sentencing Act* s99A.

Additionally with high incarcerations rates and the number of people serving sentences of less than six months, there would be an additional resource impost to expand the number and range of programs currently provided.

**Question 5-1**
What are the best practice elements of programs that could respond to Aboriginal and Torres Strait Islander peoples held on remand or serving short sentences of imprisonment?

### NTG Response to Question 5-1

In the experience of the NTG, ensuring Aboriginal staff deliver programs in conjunction with appropriate and relatable resources that support the delivery of the program in a range of Aboriginal languages, ensures the delivery of best-practice standards, particularly where levels of English language and cognition are low or poorly developed.

Having community based support to continue and support program learnings to prisoners on return to their community would significantly enhance the outcomes for Aboriginal people who have undertaken programs in the correctional environment.

Linkages with family and community support mechanisms and programs to anchor those on remand and serving sentences of less than six months back to the community, rather than to the correctional centre, for support are also expected to be more effective.

**Proposal 5–2**
There are few prison programs for female prisoners and these may not address the needs of Aboriginal and Torres Strait Islander female prisoners. State and territory corrective services should develop culturally appropriate programs that are readily available to Aboriginal and Torres Strait Islander female prisoners.

### NTG Response to Proposal 5-2

The number of women incarcerated in the NT allows NTG to provide more specialised individual treatment programs that are culturally appropriate or delivered by staff trained and experienced in working with Aboriginal people.

Culture and language also factor strongly in the development and delivery of programs, using Aboriginal staff to deliver programs as well as access and support from visiting Elders. Female specific programs are a priority for the program development agenda.

A range of pro-social and life skills courses/programs are available such as literacy, numeracy, vocational and higher education, as are programs providing employment related skills and experience. Psycho-educational and education programs are also delivered with treatment programs provided to female prisoners sentenced for periods longer than six months.

**Question 5–2**
What are the best practice elements of programs for Aboriginal and Torres Strait Islander female prisoners to address offending behaviour?

### NTG Response to Question 5-2

Building a focus on experiential learning in treatment using creative therapies, sensory stimulation, art and language free approaches (using movement and gestures – kinaesthetic) is thought to be a best practice element of programs for Aboriginal female prisoners who often have limited English language skills and for those who have been exposed to significant trauma.

Other elements considered key for female prisoners include a focus on meta-cognition (understanding thought processes) and the subsequent loss of control over actions, teaching people to recognise their thought patterns, the loss of control and then how to regain it. Programs that recognise the compounding and complex impact of imprisonment for women such as parenting (and loss of contact with children whilst incarcerated), vulnerability (physical, emotional and cultural), the triggers for trauma, guilt, the complexity of victim/perpetrator relationships, victim perpetrators and safety are also key.

Opportunities for those on remand or those serving sentences less than six months to be connected with programs in the community and community support mechanisms enable women to secure relationships with the community rather than the custodial environment, which is advantageous for their re-integration into community. Programs and supports that bridge the custodial and community environments whilst simultaneously supporting women to transition back to a safe place in their community to reconnect with their children/families, are considered invaluable.

**Proposal 5–3**
A statutory regime of automatic court ordered parole should apply in all states and territories.

### NTG Response to Proposal 5-3

Automatic court ordered parole essentially operates in the same way as a supervised suspended sentence which is frequently used by the courts in the NT.

Offenders sentenced with a non-parole period must have a sentence of more than 12 months. This means that the offending is of a more serious nature and that offenders subject to the parole system are generally not lower level offenders.

The current parole system operates effectively and efficiently and allows for extensive investigation into complex issues that need to be considered and addressed for many Aboriginal prisoners on release. Such issues include traditional 'payback' or retribution, victim safety considerations (particularly in small, remote communities), cultural obligations of prisoners and the implications on their management in the community and ultimately community safety, noting the majority of parolees have convictions for serious violence. The Parole Board of the NT consider each case individually, taking into account these complex issues in order to reach a decision.

It is noted that there is a rising number of prisoners declining to take parole as a result of issues that would not be resolved by automatic court ordered parole (such as suitable accommodation or services in remote communities leading to prisoners

declining the opportunity to seek parole or for the Parole Board to deny parole). It is also noted that the Queensland review of parole reported a significantly higher number of breaches for offenders on court ordered parole than those subject to discretionary parole. Prisoners in the NT with a non-parole period begin working with a Probation and Parole Officer months before their earliest possible release date to form solid release plans as well as allow for the canvassing of issues before release and return back to communities.

**Question 5–3**
A statutory regime of automatic court ordered parole applies in NSW, Queensland and SA. What are the best practice elements of such schemes?

### NTG Response to Question 5-3

Given the proposal to introduce automatic court ordered parole is not under consideration in the NT, there has been no need to determine best practice to prevent re-offending.

**Proposal 5–4**
Parole revocation schemes should be amended to abolish requirements for the time spent on parole to be served again in prison if parole is revoked.

### NTG Response to Proposal 5-4

It is acknowledged that there are issues with the current parole revocation scheme in the NT. This has resulted in some recent amendments to the *Parole Act* to provide the Parole Board increased options to deal with non-compliance instead of revocation. The amendments intend to enable swift, certain and proportionate/fair sanctions to be imposed for acts of non-compliance with parole conditions while supporting a parolee through their order and transition into the community.

The amendments stem from the implementation of the COMMIT program and are modelled on the Hawaii Opportunity Parole Enforcement (HOPE) program. The COMMIT Program is based on the principles of 'swift, certain and fair' justice as outlined below:

a) Swift – the offender attends court (or is arrested and brought before the court) as soon as possible (i.e. ideally within 72 hours) after the breach is known and a relatively short sanction is immediately imposed by the court (generally 2 – 7 days in custody).

b) Certain – offenders, probation and parole officers, legal counsel as well as family are aware that a breach will result in a sanction of a pre-determined range. The sanction matrix is communicated at an initial warning hearing in open court at which the judge impresses on each probationer the importance of compliance and the certainty of the consequences for noncompliance, as part of a speech emphasizing personal responsibility, accountability and the hope of all involved that the probationer will succeed.

c) Fair (or Proportionate) – the sanctions are perceived to be fair and reasonable by the offender, the probation and parole officers as well as legal counsel in light of the alternative which may see the sentence restored in its entirety (or alternatively, no sanction at all).

The COMMIT trial, whilst yet to be evaluated has received high level support from stakeholders and approval to extend the trial for a further two years has been granted, to allow collection of data and a formal evaluation.

The amendments to the *Parole Act* are intended to encourage eligible prisoners to apply for parole as the sanctions for acts of non-compliance will be known in advance and proportionate to the breach of conditions. The sanctions will be a short term of imprisonment. After the sanction has been served the parolee will be released so they may continue on the original parole order (subject to any variations) with the expiration date of the parole order remaining the same.

The intention is to assist prisoners to reintegrate into the community with the structure and support of Community Corrections (and other support services including alcohol and other drug rehabilitation providers) rather than forgoing parole because the consequences of a technical breach are uncertain and may result in a loss of street time.

Importantly, any sanction served does not extend the parole order and if a parolee eventually has their parole order fully revoked (i.e. for serious non-compliance or re-offending) then time served on a sanction counts towards time served off the sentence. It is anticipated the amendments will provide greater incentives for prisoners to take parole and also increase the number of parolees successfully completing parole.

## 6. Fines and Driver Licences

**Proposal 6–1**
Fine default should not result in the imprisonment of the defaulter. State and territory governments should abolish provisions in fine enforcement statutes that provide for imprisonment in lieu of unpaid fines.

### NTG Response to Proposal 6-1

Since 2016, the NTG policy is that a warrant of imprisonment is only to be issued as a last resort for fine defaulters. Consequently there has only been 1 warrant issued against a fine defaulter in 2016 and none issued so far in 2017. It should be also noted that a warrant of imprisonment can only be issued if a community work order was revoked due to the fine defaulter not complying or being assessed as suitable for community work order.[62]

In practice, a financial assessment is made of all fine defaulters who are potential community work order candidates to ascertain whether they have the ability to pay off their debts in instalments before a community work order is made. This has resulted in most fine defaulters either successfully completing community work or starting to pay off the debts in instalments.

The other means used in response to unpaid fine debts include the suspension of driving licenses,[63] suspension of vehicle registration,[64] immobilisation of a motor vehicle,[65] publishing of the fine defaulter's details on the NTG website,[66] seizing personal property,[67] garnishing debts, wages or salary of fine defaulter,[68] or registering a statutory charge on land owned by fine defaulter.[69]

62 *Fines and Penalties (Recovery) Act* ss84 and 86(1).
63 *Fines and Penalties (Recovery) Act* s60.
64 *Fines and Penalties (Recovery) Act* s61.
65 *Fines and Penalties (Recovery) Act* s66C.
66 *Fines and Penalties (Recovery) Act* s66M.
67 *Fines and Penalties (Recovery) Act* s70.
68 *Fines and Penalties (Recovery) Act* s72.
69 *Fines and Penalties (Recovery) Act* s73.

**Question 6–1**
Should lower level penalties be introduced, such as suspended infringement notices or written cautions?

### NTG Response to Question 6-1

NT Police can issue cautions in certain circumstances. Police are able to use cautions in either a written or verbal format. However the use of cautions is not recorded in a way that would make the information retrievable. For example, a Police officer may make a notification via an individual case file, notebook or running sheet where a verbal caution was provided in lieu of the issuing of an infringement notice or an arrest. NT Police do not record this in a separate format for the purposes of data extraction. Due to this process data is unable to be captured to indicate how many cautions are issued to Aboriginal people by NT Police annually.

NTG is currently considering alternative options to infringements, however, any consideration of suspended infringement notices would involve determining the impact on administrative operations (for NT Police and the courts) .

**Proposal 6–2**
Work and Development Orders were introduced in NSW in 2009. They enable a person who cannot pay fines due to hardship, illness, addiction, or homelessness to discharge their debt through:

- community work;
- program attendance;
- medical treatment;
- counselling; or
- education (including driving lessons).

State and territory governments should introduce work and development orders based on this model.

### NTG Response to Proposal 6-2

NTG is supportive of this proposal in principle and is considering alternative options to fines. As noted in proposal 6-1, the capacity already exists for community work

orders to be undertaken in lieu of payment of fines. The other means used in response to unpaid fine debts are listed as follows;

- suspension of driving licenses,[70]
- suspension of vehicle registration,[71]
- immobilisation of a motor vehicle,[72]
- publishing of the fine defaulter's details on the NTG website,[73]
- seizing personal property[74], garnishing debts, wages or salary of fine defaulter,[75] or
- registering a statutory charge on land owned by fine defaulter.[76]

Introducing work and development orders similar to NSW would require additional resources and the ability for NTG to ensure service delivery, however, it is noted that investment in alternative programs such as Financial Literacy and Driving Lessons would assist in reducing the number of young people in positions of financial hardship.

**Question 6–2**
Should monetary penalties received under infringement notices be reduced or limited to a certain amount? If so, how?

### NTG Response to Question 6-2

NTG shares the concerns raised by the New South Wales Law Reform Commission in that a concession infringement notices scheme can be overly burdensome to administer and has the potential to further complicate the existing infringement regime.

Any proposal to reduce monetary penalties or set a maximum amount for infringement penalties would also need to take into account the minimum monetary penalty for certain offences in the *Traffic Act*. Although the minimum monetary penalty does not apply to youths,[77] courts are obliged to impose the minimum mandatory fines for adults who are found guilty of driving an uninsured vehicle unless certain exceptions apply. [78]

---

70 *Fines and Penalties (Recovery) Act* s60.
71 *Fines and Penalties (Recovery) Act* s61.
72 *Fines and Penalties (Recovery) Act* s66C.
73 *Fines and Penalties (Recovery) Act* s66M.
74 *Fines and Penalties (Recovery) Act* s70.
75 *Fines and Penalties (Recovery) Act* s72.
76 *Fines and Penalties (Recovery) Act* s73.
77 *Abbott v Wilson* [2017] NTSC 50 at [34].
78 *Traffic Act* s34; Traffic Regulations (NT) r88.

**Question 6–3**
Should the number of infringement notices able to be issued in one transaction be limited?

### NTG Response to Question 6-3

NT Police would not recommend limiting the number of infringement notices that can be issued in one transaction as this discretion should be based on the offences under consideration. Noting that NT Police currently consider a person's capacity to pay and whether the fine is creating further hardship.

**Question 6–4**
Should offensive language remain a criminal offence? If so, in what circumstances?

### NTG Response to Question 6-4

Unlike jurisdictions such as ACT and Tasmania, the current legislation in the NT allows police members to issue an infringement notice to a person for offensive behaviour or obscene language in public.[79] Accordingly, offenders are not required to be charged with the offence and subsequently are not dealt with by courts.

A person's right to feel safe in the community should not be compromised, and the lessening of community value standards through abolition of such offences could contribute to decreased social amenity. A recurring theme in Aboriginal communities as part of the NT Police community safety management process is the importance of a safe community, free from offensive language and disorderly behaviours. Community members often pose sanction options that should apply if people engage in offensive behaviour and the use of offensive language as Aboriginal communities' state it is detrimental to the values they wish to uphold in their communities.

**Question 6–5**
Should offensive language provisions be removed from criminal infringement notice schemes, meaning that they must instead be dealt with by the court?

[79] *Summary Offences Act* s47; Summary Offences Regulations r3.

### NTG Response to Question 6-5

The *Summary Offences Act* is currently under review. However, it is the view of NTG that the current infringement scheme provides an appropriate diversionary option for police members to respond to any offensive behaviours on the spot without arrest. To remove this provision from the infringement scheme would unnecessarily raise the level of criminality applicable to the offence resulting in the imposition of more severe penalties if there is no option to deal with the offence by way of an infringement notice.[80] Those who receive an infringement notice have the option to challenge the notice in court, however, if this option is removed every person charged with offensive language would be required to appear before the court, which would unnecessarily increase the case load of the court for what is often considered a minor offence. Removing the offence from the criminal infringement notice scheme has the potential to increase waiting periods before criminal cases are heard before the court, which in turn results in victims waiting longer periods before their case is resolved.

**Question 6–6**
Should state and territory governments provide alternative penalties to court ordered fines? This could include, for example, suspended fines, day fines, and/or work and development orders.

### NTG Response to Question 6-6

In the NT, fines are able to be remitted and converted into community work. Work Development Orders could be adapted in the NT as the relevant legislation (*Sentencing Act* and *Youth Justice Act*) allow rehabilitation projects as options for community work projects. It should be noted that NTG is currently considering other alternative options to infringements and court-imposed fines.

However, consideration of alternative penalties depends principally on the availability of resources and skills of service providers to support alternatives. This may present as a major challenge for delivery of a model in remote areas.

**Question 6–7**
Should fine default statutory regimes be amended to remove the enforcement measure of driver licence suspension?

[80] *Laskie v Rigby* [2013] NTSC 39.

### NTG Response to Question 6-7

It is acknowledged that the use of driver licence suspensions as part of the fine recovery scheme can create issue (particularly in circumstances where a licence holder lives remotely, has little access to mail services, has a low literacy level, etc.) as it often results in licence holders continuing to drive as they are unaware that their licence has been suspended. This sometimes results in apprehension for driving unlicensed, contributing to a further downward spiral into the NT criminal justice system.

It is also acknowledged that licence suspension for default of fines is a reasonable action for the majority of people living in urban settings.

**Question 6–8**
What mechanisms could be introduced to enable people reliant upon driver licences to be protected from suspension caused by fine default? For example, should:

a) recovery agencies be given discretion to skip the licence suspension step where the person in default is vulnerable, as in NSW; or

b) courts be given discretion regarding the disqualification, and disqualification period, of driver licences where a person was initially suspended due to fine default?

### NTG Response to Question 6-8

As identified in question 6-7 above, a “one size fits all” approach to fine recovery is not appropriate, particularly in remote settings. People value their licence, and the majority of offenders enter time to pay options to repay their outstanding fines if they know that their drivers licence is in jeopardy.

Mechanisms that may assist in avoiding suspension through fine default could include the use of existing locally based resources (Police, DriveSafe Remote, Health workers, Regional Economic Development Officers etc) who could make contact with fine defaulters and link them with the Fines Recovery Unit before a licence is suspended.

**Question 6–9**
Is there a need for regional driver permit schemes? If so, how should they operate?

### NTG Response to Question 6-9

NTG is not supportive of a dual licensing scheme and instead focussed on maximising access opportunities to the DriveSafe Remote program for remote Aboriginal Territorians. NTG focuses on providing culturally appropriate, place based, education and training with the expected outcome; a driver's licence and a greater appreciation of their responsibility to other road users.

**Question 6–10**
How could the delivery of driver licence programs to regional and remote Aboriginal and Torres Strait Islander communities be improved?

### NTG Response to Question 6-10

NTG recognises that unlicensed driving is a major social justice problem for Aboriginal people, who are overrepresented in data on traffic and vehicle regulatory offences, and are imprisoned as a direct result.

The DriveSafe NT Remote program was established in 2012 as a fresh policy perspective on driver education and licensing. The program provides an innovative and sustainable solution to the complex, multi-causal and interdependent barriers to getting a driver licence for clients who reside in remote and regional areas of the NT.

The program delivers driver education and licensing services across 75 remote communities. Since inception, the program has delivered 4671 learner licences, 1713 provisional licences and 1589 Birth Certificates have been issued to assist with evidence of identity.

DriveSafe NT Remote is a free, end-to-end licensing program. Participants are assisted to get their required evidence of identity documentation (that includes Birth Certificates also for free). Participants are then individually case managed through the learner licence process, until they are issued a provisional licence.

Driver education is competency-based, using a verbal assessment methodology and unique educational resources to recognize the environmental and cultural attributes of Aboriginal learning styles and linguistically diverse population groups, many with low levels of English literacy with online versions available in English and three Aboriginal languages (Warlpiri, Yolgnu Matha and Kriol).

In addition, driver education and licensing services are delivered in remote high schools and correctional institutions (prisons and work camps) through the Departments of Education and Correctional Services.

The success of the program is underpinned by flexible delivery options using community resources and networks targeting areas of need defined by the community. Many local Aboriginal stakeholders were consulted to test assumptions around how to improve access to a quality driver education and licensing service. They gave an appreciation of the everyday experiences faced by Aboriginal people living in socially complex and remote environments, and how limited access to services impact on road safety outcomes.

## 7. Justice Procedure Offences - Breach of Community based Sentences

**Proposal 7–1**
To reduce breaches of community-based sentences by Aboriginal and Torres Strait Islander peoples, state and territory governments should engage with peak Aboriginal and Torres Strait Islander organisations to identify gaps and build the infrastructure required for culturally appropriate community-based sentencing options and support services.

### NTG Response to Proposal 7-1

NTG supports this proposal. NTG is considering measures to enable appropriate community-based sentencing options and support services such as the Alternative to Prison Model outlined in the response to proposal 2-2. Additionally the COMMIT program, introduced to support offenders with a suspended sentence through administering swift, certain and fair prison sanctions for minor incidents of non-compliance with conditions of sentence, has been extended to parole matters through amendments to the *Parole Act*. The sanctions are proportionate to the non-compliance and act as a deterrent to future breaches.

NTG works closely with Aboriginal Peak Organisations of the Northern Territory (APONT) on justice matters. Members of APONT are represented on the AJA reference committee, which governs the development of the AJA.

## 8. Alcohol

**Question 8–1**
Noting the link between alcohol abuse and offending, how might state and territory governments facilitate Aboriginal and Torres Strait Islander communities, that wish to do so, to:

a) develop and implement local liquor accords with liquor retailers and other stakeholders that specifically seek to minimise harm to Aboriginal and Torres Strait Islander communities, for example through such things as minimum pricing, trading hours and range restriction;

b) develop plans to prevent the sale of full strength alcohol within their communities, such as the plan implemented within the Fitzroy Crossing community?

### NTG Response to Question 8-1

It should be noted that under the *Liquor Act*, the availability of alcohol in the NT is generally restricted in the majority of Aboriginal communities (through alcohol protected areas, meaning drinking alcohol is strictly banned in these communities or general restricted areas, which have rules around the sale of takeaway alcohol and require permits to drink alcohol in a place other than a licensed venue).

It should also be noted that there is consistently high alcohol consumption in the NT, with links between alcohol abuse and offending. A comprehensive public review of alcohol policies and legislation (in particular, the *Liquor Act*) to address alcohol misuse and its effects on individuals, families and communities throughout the NT is due to be completed by the end of September 2017. The outcome of the review will subsequently considered by NTG.

However, decisions that impact on the sale and access of alcohol within a community (where not a dry community), consideration of plans to prevent the sale of full strength alcohol, and accords between liquor retailers and other stakeholders to minimize harm will form part of the NTG's Local Decision Making policy (that is currently under development). This initiative aims to create opportunities for interested communities to exercise a high-degree of local decision making, and where possible to control the delivery of Government services. The Local Decision Making policy initiative will provide an opportunity for government and Aboriginal communities to work together on alcohol issues that impact on Aboriginal peoples' lives.

Alcohol also features in Community Safety Action Plan (CSAP) processes operating through NT Police and local communities. Notable examples of community driven alcohol initiatives include the Groote Eylandt Liquor Management Plan, Gove Peninsula (East Arnhem) Liquor Permit System and Alice Springs liquor management options.

**Question 8–2**
In what ways do banned drinkers registers or alcohol mandatory treatment programs affect alcohol-related offending within Aboriginal and Torres Strait Islander communities? What negative impacts, if any, flow from such programs?

### NTG Response to Question 8-2

The Banned Drinker Register (BDR) is a simple and effective way of restricting the supply of alcohol to people whose alcohol misuse creates real problems in their lives and for others. The BDR covers everyone equally – all adults, from all backgrounds, across all locations, all incomes, all jobs.

The previous NT Government removed the initial BDR in late 2012 before a formal evaluation could be conducted. Based on the anecdotal evidence from Police, health practitioners, takeaway outlets and members of the community, the Banned Drinker Register is considered to be an effective supply reduction measure.

The Australian Government's Standing Committee on Indigenous Affairs, conducted an inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities. The Committee was chaired by the Hon Dr Sharman Stone MP, Liberal Member for Murray. The Inquiry's report in June 2015 titled "Alcohol, hurting people and harming communities", found:

- '*that when the BDR was abolished, alcohol-related harms in the Northern Territory increased*.'
- '*…alcohol related hospital emergency admissions rose by 80 per cent in the 14 months following the abolition of the BDR in the NT*'.
- '*…substantial analysis by the NDRI has shown that there was a reduction in alcohol-related harms in Alice Springs as a result of the BDR*'.

Recommendation 8 of that report stated: '*That the Northern Territory Government reintroduce the Banned Drinker's Register and set up a comprehensive data collection and evaluation program which monitors criminal justice, hospital and health data*.'

Within the first 12 months of operation, 2,500 people were on the Banned Drinker Register and there had been 16,490 declined alcohol sales to problem drinkers.

The BDR was reintroduced in the Northern Territory on 1 September 2017 along with the commencement of the *Alcohol Harm Reduction Act 2017*. The BDR enforces prohibitions applying to individuals from the purchase, possession or consumption of alcohol arising from Banned Drinker Orders[81] or court conditions applying to sentencing orders, bail or DVOs. The BDR is an enforcement mechanism which acts as a supply reduction measure to help reduce alcohol related harm to individuals, families and the community. The model aims to reduce harms associated with alcohol misuse and support people to access help through therapeutic interventions.

The *Alcohol Mandatory Treatment Act 2013* and *Alcohol Protection Orders Act 2013* were repealed with the commencement of the *Alcohol Harm Reduction Act 2017*.

## 9. Female Offenders

**Question 9–1**
What reforms to laws and legal frameworks are required to strengthen diversionary options and improve criminal justice processes for Aboriginal and Torres Strait Islander female defendants and offenders?

### NTG Response to Question 9-1

A review of the recent sentencing remarks and cases considered by the Supreme Court and Local Court in the NT confirms similar observations made by the ALRC in relation to Aboriginal female defendants.[82] Consistent with the observations, Aboriginal female offenders in the NT also share common issues of victimisation, poverty, substance abuse, mental illness or cognitive disability.

Whilst the discussion paper refers to the observation that Aboriginal women are more likely to be subject to 'preventative' detention regime, it should be noted that the

[81] Made under the *Alcohol Harm Reduction Act 2017* by police or the BDR Registrar

[82] *Namatjira v The Queen* [2013] NTCCA 8; *R v Duncan* [2015] NTCCA 2; *R v Carol Campbell* (Unreported, Supreme Court of Northern Territory SCC 21518096, Martin J, 27 July 2015); *Police v Ms Jones* [2013] NTMC 017. See more Carly Ingles, 'Overflow: Why So Many Women in NT Prisons?' (Paper presented at the Australasian Institute of Judicial Administration Aboriginal Justice Conference, Alice Springs, 25-26 August 2016).

previous legislation which introduced alcohol mandatory treatment and alcohol protection orders have now been repealed as a result of the *Alcohol Harm Reduction Act 2017* (NT) which commenced on 1 September 2017.[83]

Although there are currently no diversionary options specifically for Aboriginal female offenders in the Northern Territory, the Through-Care program at NAAJA and the Kunga Stopping Violence program through CAALAS offers re-integration support and case management for Aboriginal women who have been sentenced to a term of imprisonment.

Whilst the Alice Springs Domestic Violence Court reforms are not specifically directed at Aboriginal female offenders, the reforms do aim to provide a 'whole of court' approach to domestic and family violence that focuses on victim safety and offender accountability through improved processes and engagement with victims and offenders. In this regard, these reforms may have the indirect consequence of alleviating the trauma and victimization which many female Aboriginal offenders experience.

Considering the above, the following areas could be reformed to strengthen diversionary options and improve criminal justice processes for Aboriginal female defendants and offenders:

- Repeal of mandatory sentencing.
- Violations of parole.
- Internal processes including sentenced management, framework classification process and Through-care modelling be overhauled for female prisoners.
- Availability of funding to ensure all sentenced prisoners can undertake to maximise participation rates, education, treatment, prison industries and employment opportunities.
- Review of Administrative home detention legislation to reduce criteria requirements.
- Review of legislation to enable community based organisations to supervise prisoners.
- Consideration of other socio-economic factors including housing, education, employment, financial independence and transport as well as safe places for females to go in their communities to avoid violence.
- Safe accommodation in community to support community based orders/diversionary options rather than incarceration. Diversionary options that support contact with children, provide parenting support, pro-social role models/mentors.

[83] *Alcohol Harm Reduction Act 2017* s46.

## 10. Aboriginal Justice Agreements

**Proposal 10–1**
Where not currently operating, state and territory governments should work with peak Aboriginal and Torres Strait Islander organisations to renew or develop Aboriginal Justice Agreements.

### NTG Response to Proposal 10-1

As indicated in the Introduction of this submission, the NTG has commenced the process towards developing an AJA through the AJU. The consultation phase for the development of the AJA for the NT is still in its early stages, having commenced in July 2017. However, the AJU will focus on gathering information and perspectives from remote and regional communities in the NT to drive the development of the content of the AJA.

It is intended that under the framework of the AJA, NTG will enter into a partnership with Aboriginal and non-government organisations to address the complex issues that contribute to the disadvantage and rising incarceration and recidivism rates of Aboriginal Territorians.

It is anticipated that a final agreement will be delivered by December 2018.

**Question 10–1**
Should the Commonwealth Government develop justice targets as part of the review of the Closing the Gap policy? If so, what should these targets encompass?

### NTG Response to Question 10-1

This a question for consideration by the Commonwealth Government, however should justice targets be considered, then any set targets should focus on outcomes rather than outputs.

## 11. Access to Justice Issues

**Proposal 11–1**
Where needed, state and territory governments should work with peak Aboriginal and Torres Strait Islander organisations to establish interpreter services within the criminal justice system.

### NTG Response to Proposal 11-1

NTG agencies frequently use interpreters to communicate with offenders in custody and the community.

The Aboriginal Interpreter Service (AIS) in the NT has interpreters which cover many languages and dialects, employing approximately 30 interpreters covering the main Northern Territory Aboriginal languages, and more than 400 casual interpreters covering close to 100 languages and dialects. As of 2016, the AIS interpreting hours have steadily increased from 20,000 to 30,000 hours over a 5 year period. The rate of qualified certification of AIS interpreters has also increased from 30 per cent to almost 60 per cent in the last 5 years.

NT Police are required to use interpreters when questioning any person in relation to an offence, and where the person has difficulties with English. During 2015-16, the Police Caution – AIS App, was implemented across the NT Police Force. The app is designed to translate the police caution into 18 Aboriginal languages and improve delivery and understanding of a person's legal rights when being held and questioned in police custody. The app is readily available on Police iPads and includes a language map that shows where each language in the NT is spoken.

NT Police also employ Aboriginal Community Police Officers (ACPO); while an ACPO is not required to know local languages it is a consideration when filling specific ACPO positions across the NT as the links an individual has with a local community and clans is an important factor in the success of community engagement. NT Police also use Aboriginal Liaison Officers to complement the relationship between Police and the community.

NTCS has also developed a suite of educational resources to provide explanations regarding the role of corrections and the orders it supervises to meet the gap in interpreting services. The ultimate goal of this project is to enhance understanding for offenders and the wider community in relation to court and parole orders as well as providing general awareness of the conditions imposed upon such orders which is intended to improve compliance. The suite of resources comprise four separate but related resources using printed and audio media to depict court and parole order conditions, a wallet card for offenders to place the relevant sticker indicating a common court or parole order condition, two interactive eStories to display on an iPad relating to court and parole orders, as well as 12 fact sheets that provide information about types of order and the role of key corrections staff.

**Question 11–1**
What reforms to laws and legal frameworks are required to strengthen diversionary options and specialist sentencing courts for Aboriginal and Torres Strait Islander peoples?

### NTG Response to Question 11-1

In the NT, courts are established in Darwin and the regional centres of Alice Springs, Tennant Creek, Katherine and Nhulunbuy. Circuit courts are regularly held in remote communities with visiting judges. In addition to the judges and their accompanying court support staff, Aboriginal legal aid services also attend courts to provide legal advice and representation to all Aboriginal people appearing before the court. These services often include Aboriginal Field Officers that have extensive knowledge of the community. However there are no specific or specialist sentencing courts for Aboriginal people currently operating in the NT.

During the period 2003 to 2012 community courts operated in the NT, without a statutory framework, which enabled elders from the Aboriginal offender's community to 'provide advice to the magistrate with respect to factors relevant to sections 5 and

6 of the *Sentencing Act* 1995 (NT) …such as the background of the defendant and their views about what would be effective and appropriate sentences.'[84]

Other specialist frameworks which impact Aboriginal people and are currently operating in the NT include the pilot Mental Health Diversion List and the COMMIT program.

In the NT, the Chief Judge of the Local Court has piloted a Mental Health Diversion List since 2016. The Mental Health Diversion List sits on every Tuesday and Thursday and at this stage the list has yet to be extended to other locations outside of Darwin. The purpose of this list is to divert all defendant who have possible mental health issues or a cognitive impairment from the mainstream criminal justice system into a specialist list which provides a therapeutic framework that allows for the management and treatment of such offenders. So far, over 200 offenders have been referred to the mental health diversion list since it commenced in 2016.

From 27 June 2016, the Supreme Court and Local Courts of the NT trialled a *Compliance Management or Incarceration in the Territory Sentencing Program* (COMMIT). As a more intensive form of supervised suspended sentence, COMMIT targets higher needs offenders with a history of violating court orders who, through drug or alcohol addiction, are involved in the criminal justice system. It uses swift, certain and proportionate sanctions for violations of conditions while maintaining collaborative supervision arrangements with the offender, probation and parole officer, community rehabilitation providers, prosecutors, defence lawyers, police and the sentencing judge. As at 21 June 2017, 46 males and 9 females received COMMIT orders. So far, the trial program has resulted in 55 offenders, who would otherwise have been in prison for lengthy periods of time, now being intensively supervised in the community.

Additionally a new specialised approach for dealing with domestic and family violence matters is also being set up in the Alice Springs Local Court. The proposed model seeks to provide a 'whole of court' approach to domestic and family violence that focuses on victim safety and offender accountability through improved processes and engagement with victims and offenders. It is anticipated that the Domestic Violence Court will commence operations in November 2017.

Whilst these recent initiatives are directed at both Aboriginal and non-Aboriginal defendants in courts, they aim to address underlying problems which contribute to the over-representation of Aboriginal people in the NT criminal justice system in either a more therapeutic or holistic manner.

[84] Thalia Anthony and Will Crawford, 'Northern Territory Aboriginal Community Sentencing Mechanisms: An Order for Substantive Equality' (2014) 17(2) *Australian Aboriginal Law Journal* 79, 80-82.

**Proposal 11–2**
Where not already in place, state and territory governments should provide for limiting terms through special hearing processes in place of indefinite detention when a person is found unfit to stand trial.

## NTG Response to Proposal 11-2

The recommendations of the Northern Territory Law Reform Committee Report No. 42 on *the Interaction of People with Mental Health Issues and the Criminal Justice System* published in May 2016 is currently under consideration.

While section 43ZC of the Criminal Code states that, subject to sections 43ZD, 43ZE and 43ZG, a supervision order is for an 'indefinite term', section 43ZG requires the court, when first making a supervision order, to fix a term equivalent to the sentence of imprisonment that the person would have received if the person had been found guilty of the offence. A supervision order is then subject to major review, annual reporting or periodic review so that the court can consider varying the supervision order or releasing the person from the supervision order.

**Question 11–2**
In what ways can availability and access to Aboriginal and Torres Strait Islander legal services be increased?

## NTG Response to Question 11-2

Aboriginal and Torres Strait Islander Legal Services are funded by the Commonwealth government through the Aboriginal Legal Assistance Programme. In the NT this program funds NAAJA and CAALAS to deliver this service as the two primary Aboriginal legal services. The Commonwealth government is also responsible for funding Aboriginal Family Violence Prevention Legal Services nationally, which in the Northern Territory are delivered by the North Australia Aboriginal Family Violence Legal Service and the Central Australian Aboriginal Family Legal Unit.

NTG provides core funding to the Northern Territory Legal Aid Commission (NTLAC) for Northern Territory law matters. NTLAC's duties, under section 8 of the *Legal Aid Act*, include ensuring its services are accessible. NTG works collaboratively with NTLAC to ensure NTLAC is sufficiently resourced to undertake priority work which includes representation for clients charged with indictable and summary offences,

child protection matters, youth justice, and duty lawyer services in the Local Court, Mental Health Review Tribunal and domestic violence services. These priority areas specifically seek to address the high rates of Aboriginal incarceration, recidivism and disadvantage.

**Proposal 11–3**
State and territory governments should introduce a statutory custody notification service that places a duty on police to contact the Aboriginal Legal Service, or equivalent service, immediately on detaining an Aboriginal and Torres Strait Islander person.

### NTG Response to Proposal 11-3

NT Police practice mandates that notification is provided to the respective Aboriginal Legal Service upon the detention of an Aboriginal person.

## 12. Police Accountability

**Question 12–1**
How can police work better with Aboriginal and Torres Strait Islander communities to reduce family violence?

### NTG Response to Question 12-1

Reduction in family violence is a priority area for the NTG. NT Police have a key role to play in developing the measures required to reduce family violence in Aboriginal communities. Priority areas include reducing dependence on alcohol and drugs and maintaining a focus on education and community safety (including through Community Safety Action Plans and groups). Measures include the CEPOs, in a joint initiative between the NT Police, the NTG and the Commonwealth Government, to assist in promoting crime prevention and community engagement through the active establishment and promotion of community involvement, ownership and leadership of community based activities. This includes working within schools to have a positive impact on relationships between Police and members of school communities.

NT Police have recently established a dedicated Domestic and Personal Violence Command to provide consistent and effective delivery of DFV services, both proactive and reactive, to reduce the rates and severity of family violence across the NT.

Integrated responses to Domestic and Family Violence (DFV) are affected through the Family Safety Framework (FSF). The Family Safety Framework provides holistic intervention for families involved in serious DFV situations. Fortnightly FSF meetings are undertaken throughout the NT across six different sites and incorporate both key government and non-government organisations.

The use of body worn video technology to record DFV victims is also expected to have a significant positive impact in terms of reducing trauma to victims by removing the requirement that evidence in chief be given in person.

NT Police continue to receive DFV refresher training, including content from non-government organisations to ensure culturally competent responses. Early intervention in the community and family setting is a key focus and a primary component of community engagement.

**Question 12–2**
How can police officers entering into a particular Aboriginal or Torres Strait Islander community gain a full understanding of, and be better equipped to respond to, the needs of that community?

### NTG Response to Question 12-2

NT Police recognise the importance of understanding Aboriginal communities and the ability to respond to the needs of a community. Cultural understanding and training feature in the NT Police recruit course curriculum along with mandatory cultural awareness training for all members. Local engagement and training with identified Traditional Owners or Elders also improves understanding and cross cultural awareness. ACPOs are another integral component of NT policing utilising the valuable skills and experience that ACPOs members have in the areas of language, culture and engagement.

Having a strong relationship with the local school is also recognised as a means by which Police can gain greater insight into a community. Relationships could possibly be enhanced through NT Police being more mindful when exercising certain powers at school to ensure that those powers are only utilised when necessary.

**Question 12–3**
Is there value in police publicly reporting annually on their engagement strategies, programs and outcomes with Aboriginal and Torres Strait Islander communities that are designed to prevent offending behaviours?

### NTG Response to Question 12-3

NT Police report on some strategies, programs and outcomes designed to prevent offending behavior, however, the nature of engagement strategies often makes results difficult to collect, measure and analyse.

Reporting on strategies, programs and outcomes on an annual basis may also limit the capacity to effect long term change, as year on year reporting would not capture the longitudinal approaches to cultural change and its effects on communities.

**Question 12–4**
Should police that are undertaking programs aimed at reducing offending behaviours in Aboriginal and Torres Strait Islander communities be required to: document programs; undertake systems and outcomes evaluations; and put succession planning in place to ensure continuity of the programs?

### NTG Response to Question 12-4

Documentation, system development and an evaluation framework are best practice in any formal program structure.

NT Police assist in the development of local strategies that are often developed on a more informal (unfunded) basis. Regardless, it is the practice of NT Police to document strategies and initiatives and, where possible, use other sources (i.e. local health, housing services, town council, senior elders etc.) to help inform on the effectiveness of the initiatives.

Evaluating programs and initiatives provides opportunities to demonstrate either the effectiveness or appropriateness of an established program or if necessary, that the program should cease. Succession planning forms part of evaluation for programs that are identified as ongoing initiatives and is built into the implementation of ongoing programs. The CEPO program is an example of a highly successful program that embodies these principles.

**Question 12–5**
Should police be encouraged to enter into Reconciliation Action Plans with Reconciliation Australia, where they have not already done so?

### NTG Response to Question 12-5

The NTG is exploring a whole-of-government approach to the implementation of Reconciliation Action Plans in the NT. Any steps by NT Police towards implementing RAPs would be achieved through the whole-of-government process.

## 13. Justice Reinvestment

**Question 13–1**
What laws or legal frameworks, if any, are required to facilitate justice reinvestment initiatives for Aboriginal and Torres Strait Islander peoples?

### NTG Response to Question 13-1

As justice reinvestment primarily involves policy initiatives directed at re-distributing government expenses from criminal justice agencies to local communities to address the causes of offending at grass-roots level[85], it does not necessarily require changes to laws or legal frameworks (though there may be changes that occur as a consequence of implementing justice reinvestment initiatives). However, it does require changes to government budget priorities and an understanding of the need to implement long term strategies to achieve beneficial outcomes.

The 2011 *Review of the Northern Territory Youth Justice System* found that there are potential benefits in adopting a justice reinvestment approach for prevention and early intervention measures for young people in the criminal justice system. In 2015, the NT Council of Social Services and NAAJA received funding for a project to determine the capacity of justice investment to reduce incarceration and offending of 10-24 year old Aboriginal people in Katherine. The project will develop a collective impact framework to identify community needs and priorities before introducing justice reinvestment initiatives.

[85] Australian Human Rights Commission, *Close the Gap - Progress and Priorities Report 2015* (2015) 40

## Part 4 – Conclusion

NTG thanks the ALRC for the opportunity to provide a submission in response to the ALRC Inquiry and the discussion paper. Reducing incarceration rates in the NT is a priority area of action for NTG. Consequently, strategies to achieve results in the medium and long term by reducing incarceration and recidivism rates are being implemented in the NT.

This is particularly so for the AJU, which through development of a comprehensive AJA ensures that the NTG has a primary focus on addressing the high levels of Aboriginal incarceration and assist in the reduction of recidivism in the NT.

NTG also recognises that a whole-of-government approach is the key to addressing Aboriginal incarceration and recidivism rates, and notes contributions were made by the following agencies in the preparation of this submission:

- Department of Chief Minister
- Department of the Attorney-General and Justice
- Police, Fire and Emergency Services
- Territory Families
- Department of Treasury and Finance
- Office of the Commissioner of Public Employment
- Department of Trade Business and Innovation
- Department of Infrastructure, Planning and Logistics
- Department of Housing and Community Development
- Department of Primary Industry and Resources
- Department of Environment and Natural Resources
- Department of Tourism and Culture
- Department of Corporate and Information Services
- Department of Education
- Department of the Legislative Assembly.

Should the ALRC require any further clarification or additional information, the contact person is Leanne Liddle, A/Director Aboriginal Justice Unit, AGD.

Contact details:

Phone: (08) 8935 7665
Fax: (08) 8935 7662
Email: leanne.liddle@nt.gov.au