

Professor Les McCrimmon
President, Northern Territory Law Reform Committee
E: Lawreformcommittee.DOJ@nt.gov.au

2 December 2020

Re: Consultation on mandatory sentencing and community-based sentencing options in the Northern Territory

Dear Professor McCrimmon

Jesuit Social Services welcomes the opportunity to contribute to the Northern Territory Law Reform Committee's consultation on mandatory sentencing and community-based sentencing options.

For more than 40 years, Jesuit Social Services has accompanied people involved in, or at risk of becoming involved in, the criminal justice system. In Victoria, we work with people to prevent and divert involvement in the justice system and support people exiting prison and youth justice facilities.¹

The majority of our work in the Northern Territory is focused on supporting children and young people caught up in the youth justice system, through restorative responses, and therapeutic and practical supports. We deliver pre-sentence Youth Justice Group Conferencing in Darwin, Palmerston, Katherine, Tennant Creek and Alice Springs, the restorative element of the *Back on Track* program in Katherine, and Youth Diversion in partnership with The Gap Aboriginal Youth Corporation in Alice Springs.

In this submission, drawing on our practice experience, we outline our opposition to mandatory sentencing; offer reflections on the efficacy of Community Corrections Orders in Victoria and considerations for the implementation of more effective community-based options in the Northern Territory; and highlight the importance of wider system reforms that embed Aboriginal cultural authority, leadership and community participation within the justice system.

In summary, Jesuit Social Services recommends:

- 1) The repeal of all mandatory sentencing provisions under the *Sentencing Act 1995*, the *Domestic and Family Violence Act 2007* and the *Misuse of Drugs Act 1990*.
- 2) Adequate investment by the Northern Territory Government to support greater availability of culturally-appropriate community-based sentencing options and supports (including therapeutic drug and alcohol services, mental health services, therapeutic domestic, family and sexual violence services, and vocational and pre-vocational training options and employment support), in particular increasing the availability of these options and supports for Aboriginal people living in remote communities.
- 3) That the design of community-based options be informed by the evidence of key elements of effective therapeutic programs and community work programs (see page 6).

¹ The range of our programs is available here: <https://jss.org.au/what-we-do/justice-and-crime-prevention/>.

- 4) Independent, robust and ongoing evaluation of the use and implementation of an expanded community-based sentencing scheme that includes attention to the perspectives of people subject to these orders.
- 5) Adequate investment by the Northern Territory Government for the reestablishment of Community Courts and resourcing of new and existing Law and Justice Groups to engage Aboriginal cultural authority and community participation in the sentencing process, under the Aboriginal Justice Agreement.
- 6) Expanded opportunities for offenders and victims in the adult jurisdiction to participate in restorative justice processes.

1. Mandatory sentencing

Jesuit Social Services is opposed to mandatory sentencing in all forms. In our view, mandatory sentencing is a crude, one-size-fits-all approach to sentencing that does not improve community safety; disproportionately impacts marginalised individuals and communities, in particular Aboriginal and Torres Strait Islander people; erodes judicial discretion to consider the particular circumstances of the person and the offence; and can lead to unjust sentencing outcomes. Governments must make every effort to ensure that prison is only ever an option of last resort. Mandatory sentencing undermines this core principle of common law. As well as having substantial financial costs, research shows that imprisonment is not an effective deterrent and can itself be criminogenic.²

We note that under existing mandatory sentencing provisions in the *Sentencing Act 1995* (NT), even where the court deems that “exceptional circumstances” exist that allow it to deviate from the mandatory minimum sentence, it is still required to impose a sentence of imprisonment. Such legislative measures, where imprisonment is made effectively inevitable in a range of cases, are concerning in any context. In the Northern Territory, where the imprisonment rate is more than four times the national rate,³ and Aboriginal and Torres Strait Islander people make up a staggering 83 per cent of the adult prison population, it is particularly so.⁴ Almost thirty years since the Royal Commission into Aboriginal Deaths in Custody recommended that “governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort,”⁵ the presence of mandatory sentencing in the Northern Territory continues to expose a disproportionate number of people to the harms of the prison system.

A range of bodies in Australia, including the Australian Law Reform Commission;⁶ the Law Council of Australia;⁷ Aboriginal-led organisations;⁸ the Australian Human Rights Commission;⁹ parliamentary

² Cullen, Francis; Jonson, Cheryl; & Nagin, Daniel (2011) Prisons do not reduce recidivism: The high cost of ignoring science. *The Prison Journal*, 91(3_suppl), 48S–65S. <https://doi.org/10.1177/0032885511415224>

³ Australian Bureau of Statistics (ABS), Corrective Services Australia, June Quarter 2020 ([Weblink](#))

⁴ ABS, *Prisoners in Australia 2019* ([Weblink](#))

⁵ Recommendation 94 of the Royal Commission into Aboriginal Deaths in Custody (1991)

⁶ Australian Law Reform Commission report (2018) *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* ([Weblink](#))

⁷ Law Council of Australia (2014) *Policy discussion paper on mandatory sentencing* ([Weblink](#))

⁸ See, for e.g. North Australian Aboriginal Justice Agency (NAAJA) (2020) *Submissions on the draft Aboriginal Justice Agreement* ([Weblink](#))

⁹ Australian Human Rights Commission (2001) *Social Justice Report 2001*, Chapter 4: Laws mandating minimum terms of imprisonment (‘mandatory sentencing’) and Indigenous people ([Weblink](#))

committees;¹⁰ prominent judges;¹¹ coroners¹² and others have all set out persuasive, evidence-based arguments as to why mandatory sentencing is ineffective and unjust. Conversely, as the Committee's Consultation Paper notes, proponents argue that mandatory sentencing has public support and responds to community concerns about the impact of crime and the perception that sentences handed down by the courts are too lenient. However, the evidence for this is far from clear.

One academic study, comprised of a nationally representative telephone survey of more than 6,000 people, found that a majority of respondents expressed approval for high levels of punitiveness and thought that sentencing was too lenient.¹³ However, the same study also found strong support for alternatives to detention, including 64 per cent who agreed that community correction orders should be used instead of prison for non-violent offenders. The researchers surmised that public opinion in this area is therefore "more diverse and complex than standard opinion polls would suggest."¹⁴

Indeed, researchers have pointed to the limitations of standard opinion polls, which often pose binary or emotive questions that respondents are encouraged to answer directly, with no room for deeper reflection on consequences or alternatives.¹⁵ Various research indicates that, when people are better informed about sentencing practices or the specifics of cases and individuals, support for harsher measures such as mandatory sentencing recedes.¹⁶ For example, a 2011 study, which surveyed 698 jurors in Tasmania as a means of gauging public opinion on sentencing among an informed cohort, found that more than half of respondents suggested a more lenient sentence in the particular cases they deliberated on than the trial judge ultimately imposed.¹⁷

This suggests that the design and implementation of more effective, evidence-based policies on justice – including approaches focused on prevention, diversion and alternatives to imprisonment – should involve communities from the outset and be accompanied by educative initiatives aimed at informing and engaging the broader public. This requires political leadership and a decisive break from the kind of populist 'tough on crime' political rhetoric designed to appeal to an imagined receptive public. Instead of investing in prisons and designing harsher and more inflexible sentences, we need to address the root causes of crime, resource prevention and restorative programs, and implement alternatives to imprisonment that support people to be held to account, address their offending behaviour, and turn their lives around, thereby reducing the rate of reoffending and enhancing community safety.

¹⁰ See, for e.g. Parliamentary Joint Committee on Human Rights, *Report 8 of 2016, Criminal Code Amendment (Firearms Trafficking) Bill 2016* ([Weblink](#))

¹¹ See, Law Council of Australia (2001) *The Mandatory Sentencing Debate*, pp. 12-13 ([Weblink](#))

¹² ABC (2017) NT coroner criticises mandatory sentencing, says Indigenous law should be considered ([Weblink](#))

¹³ Mackenzie, Geraldine; Spiranovic, Caroline; Warner, Kate; Stobbs, Nigel; Gelb, Karen; Indermaur, David; Roberts, Lynne; Broadhurst, Rod & Bouhours, Thierry (2012) Sentencing and public confidence: Results from a national Australian survey on public opinions towards sentencing. *Australian and New Zealand Journal of Criminology*, 45(1), pp. 45-65.

¹⁴ *Ibid*, p. 57.

¹⁵ Department of Justice, Canada, Research and Statistics Division, *Mandatory sentences of imprisonment in common law jurisdictions: some representative models* ([Weblink](#))

¹⁶ Karen Gelb, Sentencing Advisory Council (2006) *Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing* ([Weblink](#)); Department of Justice, Canada, Research and Statistics Division, *Mandatory sentences of imprisonment in common law jurisdictions: some representative models* ([Weblink](#)); Lowitja Institute (2014) *Views on Alternatives to Imprisonment: A Citizens Jury Approach* ([Weblink](#)).

¹⁷ Warner, Kate; Davis, Julia; Walter, Maggie; Bradfield, Rebecca; Vermey, Rachel, Australian Institute of Criminology (2011), *Public judgement on sentencing: Final results from the Tasmanian Jury Sentencing Study* ([Weblink](#))

2. Community-based sentencing

The Committee has also been tasked with inquiring into the operation of community-based sentencing in the Northern Territory, with consideration given to models in other jurisdictions such as Victoria. While each jurisdiction presents its own unique context, there may be lessons to be learned from Victoria's community sanctions regime. As an organisation working with people involved with the justice system in both these jurisdictions, we believe that the use, availability and effective implementation of community-based sentences demands the ongoing attention of policymakers as a priority. Importantly, community-based sentences that are linked to appropriate treatment and support services have the potential to keep people out of prison.

2.1 Community Corrections Orders

As the Committee is aware, the Community Correction Order (CCO) was introduced in Victoria in January 2012 to replace several other non-custodial orders. CCOs may include certain discretionary conditions set by the court, such as unpaid community work, medical treatment, curfews and non-association conditions, alongside mandatory conditions, including that no further offence is committed.¹⁸ Overall, this sentencing option is understood to fulfil both punitive and rehabilitative purposes, simultaneously promoting the best interests of the community and the person and potentially directing people away from prison.¹⁹

At least on the measure of recidivism, outcomes among people on CCOs in Victoria appear better than for those sentenced to prison. In Victoria, the rate of return to corrective services (which includes a prison sentence or a CCO) within two years was 15.6 per cent for people on CCOs in 2018–19.²⁰ By comparison, 57 per cent of people sentenced to prison in Victoria returned to corrective services within two years.²¹ Even when accounting for differences in seriousness of offences, such a significant differential in recidivism rates suggests imprisonment is clearly failing to reduce the rate of reoffending.

a) Experiences of people on CCOs in Victoria

Jesuit Social Services recently conducted research, funded by the Victorian Legal Services Board, aimed at improving understanding of the needs and experiences of people on CCOs in Victoria, and how the system can better support rehabilitative pathways. The study was based on survey data collected from 200 men and women on CCOs in Melbourne's west metropolitan region, as well as in-depth interviews with 20 participants.²²

The characteristics of participants in the study demonstrated the intersection of justice system involvement with disadvantage across a range of measures including low levels of educational attainment, economic exclusion, financial distress, social isolation, physical and mental health issues.

¹⁸ *Sentencing Act 1991* (Vic), s. 48 ([Weblink](#))

¹⁹ *Boulton v The Queen*. 342 (Victorian Court of Appeal 2014); Victorian Auditor General (2017) *Managing Community Correction Orders* ([Weblink](#))

²⁰ Productivity Commission, *Report on Government Services 2020* ([Weblink](#))

²¹ *Ibid.*

²² The project report is available [here](#). A related journal article is: Green, Rachael; Hopkins, David; and Roach, Garry. "Exploring the Lived Experiences of People on Community Correction Orders in Victoria, Australia: Is the Opportunity for Rehabilitation Being Realised?" *Australian & New Zealand Journal of Criminology*, (September 2020) ([Weblink](#))

Over half of the 200 people who took part in the study reported that they were unemployed and seeking work, and approximately two thirds of these had been unemployed for more than one year.

Key findings that emerged from the study, and that may prompt broader reflection for other jurisdictions, included:

Access to services

- Though many participants described having actively taken steps to address issues that were recognised as a ‘problem’, there was little evidence to suggest that the participants in this study were receiving adequate support to address self-identified needs or to improve their inclusion in the community.
- There was an identified need for assistance to address social isolation and social support, family and relationship functioning, use of violence in and out of the home, financial counselling and financial literacy, and the geographical accessibility of services.
- The majority of service encounters described by participants in this study appeared to be associated with an element of coercion, thus potentially undermining benefits.
- Employment services were the most common service type accessed by participants. However, dissatisfaction levels with mainstream employment services were very high and many disengaged as a result.
- Participants placed the highest value on the quality of interpersonal interactions with professionals (above the functional role of the service). These included qualities of staff genuineness, respect, and willingness to help.

Community work

- Participants in this study emphasised that they wanted to “give back” or “repay” their debt to the community.
- However, no individual was able to identify any useful skills that they had gained from community work programs and commonly described the work that they had undertaken as time-wasting, punitive and demeaning, linking these experiences to poor self-esteem and a perception of worthlessness.
- Participants gave the most negative assessments of community work programs when there were not clear links to community benefit.
- Interviewees commonly spoke about how their community work was “unnecessarily drawn out” as they were allocated program hours only one or two days a week, regardless of their availability.
- Interactions with community corrections staff appeared to have a significant role shaping program attendance, with the significance of such interactions appearing to be amplified due to the common experience of social isolation.
- Male interviewees did not appear to benefit from the group environment of community work programs, with some describing how the group environment had a negative impact on them.
- The majority of women (86 per cent) participated in the “light duties” program – which received the most negative feedback – compared to 25 per cent of men. It appeared that this over-representation of women in a program with the lowest skill requirement was shaped by

dominance of men in other programs and lack of availability of other appealing or suitable programs.

In summary, it did not appear that participants in this study experienced the system as supporting or promoting positive change. Instead, the punitive impact of CCOs was the dominant experience – especially in relation to community work.

b) What can we learn from the experiences of people on CCOs?

Key features for delivery of more effective support services and community work that emerged from analysis of the experiences of participants were consistent with existing understandings about ‘what works’ in relation to program or service delivery with people in the justice system.²³ These are summarised below. In relation to community work programs, many elements overlap with those identified by Turner and Trotter (2013) in their review of best practice for the operation of community service schemes.²⁴

Key elements of therapeutic programs

- Delivery of multi-model, holistic and tailored forms of support (as opposed to ‘one size fits all’)
- A relational approach to service provision.
- Emphasis on building confidence and motivation.
- Long-term support, with services able to support people to work through smaller steps towards larger goals.
- Programs that minimise the use of coercion.
- Programs that are geographically accessible.

Key elements of community work programs

- Placement in productive and valued community work roles, with tangible community benefits.
- Opportunity to build skills, including ‘soft’ skills.
- Opportunity for interaction with community members.
- Pro-social interactions with supervisors and others.
- Individual or small group placements where possible.
- Efficiency of placements, with periods of engagement in community work streamlined and condensed where possible (including possibilities for after hours and weekend attendance).

c) Implications for the Northern Territory

The above findings may be valuable to consider in the review, design and implementation of any revamped community-based sanctions scheme in the Northern Territory. In general, we believe that barriers to community-based sentences should be removed as much as possible to allow for judicial

²³ For example, see: McGuire, James, ‘‘What Works’ to Reduce Re-offending’, in Craig, Leam A., Louise Dixon and Theresa A. Gannon eds. (Oxford, John Wiley & Sons, 2013), pp. 20-49; Turner, Shelley & Trotter, Chris (2013) *Best practice principles for the operation of community service schemes: A systematic review of the literature*. Department of Justice and Regulation, Corrections Victoria.

²⁴ Turner, Shelley & Trotter, Chris (2013) *Best practice principles for the operation of community service schemes: A systematic review of the literature*. Department of Justice and Regulation, Corrections Victoria.

discretion and the flexible use of this sentence, implemented with conditions that support the person and reduce reoffending.

In Victoria, a range of serious offences preclude the use of a CCO.²⁵ While these offences cause harm and demand serious responses, continuing to introduce restrictions that make courts unable to impose community-based supervision as a sentencing option limits judicial discretion and undermines the principle of prison as a last resort. We note that in jurisdictions such as Tasmania and New South Wales that have similar CCO regimes to Victoria, there are no restrictions on the offences for which a CCO may be imposed.²⁶

The use and implementation of community-based sentencing in the Northern Territory should be subject to independent, robust and ongoing evaluation that includes attention to the perspectives of people subject to these sanctions. We also note that 'softer' measures of the effectiveness of community-based sentencing may be valuable, rather than recidivism benchmarks alone. For example, it is widely accepted among criminologists that desistance of offending is a process that occurs over time,²⁷ with offending decelerating and becoming less serious, rather than being a single event.²⁸ Reductions in the frequency or severity of offending may therefore be more realistic markers of effective interventions. More nuanced measures of a program's effectiveness may also include impacts on a person's health status, access to housing, social connections or engagement with employment – all of which may indicate positive change along a pathway to desistance.²⁹

2.2 A stronger system of culturally-appropriate community-based options and supports

The Victorian experience underscores that, in order to have a real impact for offenders (and the community), community-based sentencing options must be well-designed and appropriately resourced. The *Pathways to the Aboriginal Justice Agreement* report highlights the lack of culturally-appropriate non-custodial sentencing options and supports as an impediment to both access to and successful completion of community-based orders for Aboriginal people in the Northern Territory.³⁰

Enabling Aboriginal Territorians to take full advantage of community-based orders, and to set people up for success in completing those orders, requires the development of a far stronger system of community-based options and supports than currently exists, and recognition that the demographic and geographic challenges of service delivery in the Northern Territory are no excuse for not affording Aboriginal Territorians the same access to justice as non-Aboriginal Territorians.

²⁵ <https://www.sentencingcouncil.vic.gov.au/about-sentencing/community-correction-order>.

²⁶ Gelb, Karen; Stobbs, Nigel; & Hogg, Russell, (2019) Community-based sentencing orders and parole: A review of literature and evaluations across jurisdictions, Queensland Sentencing Advisory Council ([Weblink](#))

²⁷ Maruna, Shadd, Thomas P. Lebel, Nick Mitchell, et al. 'Pygmalion in the Reintegration Process: Desistance from Crime through the Looking Glass', *Psychology, Crime & Law*, vol. 10/no. 3 (2004) pp. 271-281.

²⁸ Berghuis, Maria. 'Reentry Programs for Adult Male Offender Recidivism and Reintegration: A Systematic Review and Meta-Analysis', *International Journal of Offender Therapy and Comparative Criminology*, vol. 62/no. 14, (2018), pp. 4655-4676.

²⁹ Gelb, Karen; Stobbs, Nigel; & Hogg, Russell, (2019) Community-based sentencing orders and parole: A review of literature and evaluations across jurisdictions, Queensland Sentencing Advisory Council ([Weblink](#))

³⁰ Northern Territory Department of Attorney-General and Justice (2019) *Pathways to the Aboriginal Justice Agreement*, p.50 ([Weblink](#)) In 2017, the completion rate for community-based orders was 70.8 per cent for Aboriginal offenders, compared to 84 per cent for non-Aboriginal Territorians (citing Productivity Commission (2017) Report on Government Services 2017, Volume C: Justice Table 8A.20).

It is positive to see commitments in the Northern Territory's draft Aboriginal Justice Agreement to building this system of supports, including increasing the availability of community-based options for offenders in remote communities, the development of on-country alternatives to custody models (including the recently established Life Skills Camp in Alice Springs and planned model for young men in Groote Eylandt), and strengthened case management for Aboriginal offenders. We urge commitment by the Northern Territory Government to investment in these initiatives that is commensurate with the need, alongside much needed investment to improve the availability of alcohol and drug treatment services, mental health services, therapeutic supports for domestic, family and sexual violence perpetrators and survivors, vocational and pre-vocational training options and employment support across the Territory.

3. Further reform directions

Nearly thirty years on from the Royal Commission into Aboriginal Deaths in Custody, three years on from the Royal Commission into the Protection and Detention of Children in the Northern Territory, and after countless reports presented to governments articulating what is needed to reduce the incarceration of Indigenous Australians, the number of Aboriginal Territorians who are imprisoned continues to grow: in the ten years to 2017, the imprisonment rate for Aboriginal adults in the Territory grew by almost 40 per cent (from 1,981 per 100,000 to 2,755 per 100,000).³¹ The repeal of mandatory sentencing must be considered in context of the still urgent need for deep, systemic reform of the criminal justice system in the Northern Territory. We hope that the development of the Aboriginal Justice Agreement is an indication of the Northern Territory Government's willingness to commit to genuinely transformative reform of the Northern Territory justice system.

a) Engaging cultural authority and community participation in sentencing

If sentencing is at the core of the criminal justice system,³² the engagement of cultural authority and community participation in the sentencing process is a fundamental and necessary shift towards 'two-way' justice. Jesuit Social Services strongly supports the reestablishment of Community Courts and the resourcing of new and existing Law and Justice Groups as part of the Aboriginal Justice Agreement and urges the Northern Territory Government to resource them appropriately. We similarly support the direction in the draft Aboriginal Justice Agreement to review and reform the *Sentencing Act 1995 (NT)* to promote culturally responsive sentencing practices, and note that the Northern Territory Government has referred matters on customary law to the Law Reform Committee.

b) Application of restorative approaches in the adult jurisdiction

Finally, in the context of wider justice system reform, we invite the Committee's consideration of the application of restorative justice approaches in the adult jurisdiction. We do so acknowledging the peacemaking practices embedded in Aboriginal law and culture, the existing skill and expertise in intercultural approaches to justice in the Territory, and the significant and ongoing work is needed to

³¹ Australian Bureau Of Statistics (2017) 'Prisoners in Australia, 2017', cited in Northern Territory Department of Attorney-General and Justice (2019) *Pathways to the Aboriginal Justice Agreement*, p.58.

³² Judicial Conference of Australia, Judge for Yourself: A Guide to Sentencing in Australia (2014), cited in the Australian Law Reform Commission (2018) *Pathways to Justice*, p.229.

decolonise restorative justice as a discipline across Australia.³³ The development of restorative justice programs for adults in the Northern Territory must engage this expertise, in a process committed to two-way learning and ultimately the decolonising of our justice system.

Jesuit Social Services has been delivering pre-sentence Youth Justice Group Conferencing in the Northern Territory since 2017, building on more than 15 years' experiencing delivering Youth Justice Group Conferencing in Victoria.³⁴ Group Conferencing is a restorative justice process that engages the victim, offender, their support people and other stakeholders in a process of truth-telling and problem-solving. Facilitated by a specially trained convenor³⁵, a Group Conference brings the affected parties together to, a) hear what happened and how people have been affected, and then b) identify ways to repair the harm and make a plan to improve things for the future.

Restorative justice as an approach recognises that crime is about more than breaking the law: it hurts individuals and damages relationships. Restorative approaches therefore seek to respond to harm with healing, and create an opportunity for dialogue between individuals, with benefits for victims, offenders and the wider community. The core principles underpinning restorative processes, including Group Conferencing are to work *with* participants (rather than *doing to or for*), to do no further harm, and to restore right relations.

In the three years that we have been delivering Group Conferencing in the Territory, we have received six referrals for young adults (all young men, all Indigenous), with ages ranging from 18 to 23 years at the time of referral. Three of the young men had matters in the Supreme Court, with the others having matters in the Darwin and Katherine Local Courts, with offences including property damage, unlawful entry, stealing, and aggravated robbery. These referrals have been initiated by the legal representatives of those young people, raised in Court and supported by the presiding Judge. An overview of the Group Conferencing process for young people in the Northern Territory is provided at **Appendix A**.

Based on our experience delivering these conferences and the benefits to offenders and victims, we see value in expanding opportunities for restorative processes in the adult jurisdiction, at all stages of the justice continuum (diversion, pre-sentence and post sentence). Group Conferencing can be used as a response at different points in the justice system, including:

- i) **diversion** where the process functions as an alternative to court (as is the case with police-referred diversion Youth Justice Conferencing in the Northern Territory),
- ii) **sentencing support** where the process functions as an adjunct to court with the potential to divert from more intensive supervisory options, with the proceedings and agreement reached during the conference taken into account in the sentencing process (as is the case with Territory Families-funded pre-sentence Youth Justice Group Conferencing program), and/or

³³ For example, that of the Tiwi Ponki mediators, that developed through the Mawul Rom program, and previously funded projects in the communities of Gunbalanya/Oenpelli and Lajamanu.

³⁴ Since 2003.

³⁵ A skill set similar to but distinct from mediation

- iii) **post-sentencing healing**, whereby the people affected by the offence meet to make sense of the experience together in a way that enables them to move forward with their lives.³⁶

While Group Conferencing is more commonly associated with minor crime and young offenders, restorative justice programs are run in the adult jurisdiction in the ACT and NSW, and there is good evidence to suggest that it may be better suited to more serious crime. This reflects the potential to address long lasting and complex trauma associated with this kind of crime,³⁷ the greater harm that has been experienced by victims of serious crimes (and hence potential for healing),³⁸ and the evidence that it is often victims who have experienced serious crime who expect more from their involvement in the criminal trial process.³⁹ With careful design and when delivered by highly skilled practitioners, Group Conferencing can also be a safe and effective process for victims and perpetrators of domestic, family and sexual violence.⁴⁰

The introduction of Victim-Offender Conferencing for adults was put forward for discussion in the Northern Territory Government's 2018 discussion paper on Victims of Crime Reform, but we are not aware of the outcomes of this consultation process.⁴¹ As emphasised above, the development of restorative justice programs in the adult jurisdiction in the Northern Territory must engage the expertise of Aboriginal people, with a commitment to two-way learning and actively working towards decolonised models. There may be opportunity for this work to happen in the context of the reestablishment of Community Courts and expansion of Law and Justice Groups.

Notes on framing of restorative justice programs

Jesuit Social Services uses the term Group Conferencing rather than Victim-Offender Conferencing as used by the Northern Territory Government, acknowledging firstly the wider circle of support engaged in the process. We note our concern that government discourse in the Northern Territory in relation to restorative justice programs is overly focused on personal responsibility and unhelpfully caught up in the narrative of 'consequences' for offenders – ultimately undermining the therapeutic intent and restorative potential of the process. The restorative process must promote healing not only at an individual but also at a community level, and create space for truth-telling of the structural and historical factors that have contributed to the situation.

For further discussion of these issues (in the context of youth, but also applicable to the adult jurisdiction), see Blagg, H., Tulich, T. and May, S. (2019) Aboriginal youth with foetal alcohol spectrum disorder and enmeshment in the Australian justice system: can an intercultural form of restorative justice make a difference? *Contemporary Justice Review*, 22:2, 105-121, DOI: 10.1080/10292580.2019.1612246.

³⁶ Moore, DB. and Vernon, A. *Restorative Group Conferencing Convenor's Manual*, Victorian Association for Restorative Justice (VARJ)

³⁷ Bolitho, J. et al. (2014) Restorative Justice for Serious and Violent Offences: Victim-Offender Conferencing in New South Wales, UNSW Australia, pp.3-4; see also p.178 of the Victorian Law Reform Commission (VLRC) report *The Role of Victims of Crime in the Criminal Trial Process* (2016) ([online](#)) for a discussion of the evidence.

³⁸ Ministry of Justice, *Pre-sentence Restorative Justice (RJ)* United Kingdom, May 2014 cited in VLRC (2016) p.180.

³⁹ Richards, K. (2009) 'Taking Victims Seriously? The Role of Victims' Rights Movements in the Emergence of Restorative Justice' 21(2) *Current Issues in Criminal Justice* 302:303-4, cited in VLRC 2014, p.178.

⁴⁰ For further discussion see p.9 of Jesuit Social Services' submission to the Northern Territory Department of Attorney-General and Justice's discussion paper on Victims of Crime reform, referencing the South Eastern Centre for Sexual Assault and Family Violence (SEACASA) restorative justice program (see Worth, C. (2016) *Restorative justice, sexual assault & family violence*, SEACASA, Monash Health) and the approach taken in the ACT.

⁴¹ Department of the Attorney-General and Justice (2018) *Discussion Paper: Victims of Crime Reform* ([Weblink](#))



Jesuit Social Services is a social change organisation. We work with the most disadvantaged members of the community, providing services and advocacy in the areas of justice and crime prevention; mental health and well-being; settlement and community building; education, training and employment; gender and ecological justice.

In the development of any restorative justice program for adults, we further emphasise that:

- Safety of all participants is paramount. This must be ensured through best practice program design, robust suitability assessment and skilled and experienced practitioners. Adequate resources must be provided for robust evaluation, to inform design, implementation and ongoing practice improvement.
- The cultural safety of Aboriginal participants requires Aboriginal expertise to inform the design of any program, commitment to building an Aboriginal convenor workforce, ensuring the cultural competency and trauma-informed practice of practitioners and program stakeholders, and the routine involvement of persons with cultural authority must be integral to the process.
- Appropriate resourcing is provided to develop and promote restorative practice in the Northern Territory, including education of the public and stakeholders about restorative justice and the continued development of a skilled and experienced local workforce.

We appreciate the Law Reform Committee taking our views into account.

Yours sincerely

Julie Edwards
CEO, Jesuit Social Services



Jesuit Social Services is a social change organisation. We work with the most disadvantaged members of the community, providing services and advocacy in the areas of justice and crime prevention; mental health and well-being; settlement and community building; education, training and employment; gender and ecological justice.

Appendix A.

Pre-Sentence Youth Justice Group Conferencing in the NT

Jesuit Social Services delivers pre-sentence Youth Justice Group Conferencing in the Northern Territory, with referrals received from the Courts under sections 84 and 64 of the *Youth Justice Act*.

Each Group Conference involves extensive preparation (up to 30 hours) with the offender, victim, support people and other stakeholders. For all Conferences involving an Aboriginal young person (close to 90 per cent), the involvement of persons with cultural authority is integral to all stages of the process.

Generally, a Group Conference will take two to three hours. Occasionally, in more complex situations, the process may involve more than one meeting and, in relevant cases, adapted processes that take into considerations particular dynamics of intimate partner and gender-based violence.

The Group Conference results in the development of an outcome plan identifying what the person who has caused harm (offender) will do to a) repair harm, and b) avoid further offending. The outcome plan identifies a 'circle of support' with shared accountability for helping the young person achieve the goals in their plan.

A detailed pre-sentence report is prepared for the Court, providing context to the young person's circumstances, thoughts around their offending prior to the Conference, their engagement in the Conference process, insight gained into the impact of their actions and remorse, as well as the views of the victim and the young person's family and community. Jesuit Social Services' evaluation of the first two years of the pilot program indicated that lawyers and the judiciary find these reports particularly helpful in the sentencing process.

Lessons from our practice

Our experience delivering Group Conferencing in Victoria, the Northern Territory and Western Sydney has highlighted the following elements as key to program success:

- skilled and experienced Conference Convenors;
- clear program guidelines and a shared understanding of the program objectives;
- involvement of appropriate cultural authority at all stages the process when are conference involves Aboriginal and Torres Strait Islander participants;
- strong buy-in from all involved, achieved through ongoing education and promotion of restorative justice and the specific program model to government, police, the courts, lawyers, victim support services and the general public; and
- an action-research approach to program evaluation that informs ongoing program and practice improvement.