Situation Normal All F*ed Up**

The Northern Territory Law Reform Committee's final report into *Mandatory Sentencing and Community Based Sentencing Options* is currently gathering dust in an office somewhere on Level 5 of the NT Parliament Building. It was released to the Cabinet in March this year- it almost certainly states what we all already know, all forms of mandatory sentencing should be abolished in the NT.

On Tuesday 11 May 2021 the NT Government passed further legislation that has the effect of broadening mandatory sentencing to include 'mandatory pre-sentencing'. The Bill was assented to on 14 May and commenced on 15 May 2021.[1]

There is a belief in the community that locking up children in detention centres makes the community safe. That is false. It in fact has the potential to drastically worsen the safety of the community in the long term. If you want to stop crime you need to deal with the underlying causes of crime and address those factors. Until we do that we will see no reduction in crime, research based evidence and indeed the lived experience and history of the NT criminal jurisdiction shows this to be true.

There is a belief in the community that the Court and Judicial officers do not care about youth crime. That is false. The criminal justice system has been let down for decades by successive Northern Territory Governments that have resolved to put politics ahead of the welfare of the community. Currently the criminal justice system is being left to pick up the pieces without ever being provided with the funding, infrastructure and tools to successfully roll out and transition to a therapeutic model.

I have previously described the recent amendments to the *Youth Justice Act* and *Bail Act* as a dagger to the heart of the youth justice system. This is because the fundamental purpose of the original unamended Bill was to remove judicial discretion in the granting of bail for youths who have committed a 'serious breach of bail'.[2]

The new laws are contrary to the recommendations of the final report of the *Royal Commission into the Protection and Detention of Children in the Northern Territory*.

Rather than committing to a full scale roll out of reforms following the publishing of the final report the government has slowly unrolled a series of watered down reforms in a piece- meal fashion. That approach has certainly impacted upon the effectiveness of moving to a therapeutic based system. We have seen a failure of commitment to adequately fund, staff and source infrastructure to support and protect both the community and vulnerable youths at risk of committing crime in our community.

CLANT was one of a handful of stakeholders who were invited to participate in two last-minute briefings with ministerial and departmental officers. This consultation process took place after the introduction and second reading of the Bill. All NGO stakeholders present urged the government to reconsider the Bill as it was bad law and did not meaningfully deal with the issue of youth offending nor protect the community.

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[1] Having been gazetted on 17 may 2021.

[2] Defined as, while on bail, being charged with a prescribed offence or by way of a breach of bail through non-compliance with electronic monitoring or curfew conditions (unless the non-compliance is trivial or technical or in exceptional circumstances).

Following this consultation and in an apparent attempt to 'safeguard' the provision from possible legal challenge, the originally proposed s38AA was amended by the insertion of 38AA (3) which allows a court to release the child on the original bail conditions if satisfied 'exceptional circumstances' exist to justify bail. The legal interpretation of exceptional circumstances is well understood and a high bar to overcome.

This new s38AA is internally inconsistent with the new s7B, of the *Bail Act*. The effect is a two test system for the grant of bail for the same child in the same circumstances. If a child has their bail revoked and is remanded in detention under s38AA (1), having failed to persuade the court that exceptional circumstances exist, the child can immediately make a fresh application for bail under section 7B.

Under s7B there is no requirement to satisfy the court of exceptional circumstances. The child would need to overcome a presumption against bail, having regard to the relevant matters pursuant to section 24 and 24A of the *Bail Act*.[3] If granted bail under s7B (3) the child will have to be subject to electronic monitoring and reside in supported bail accommodation.

On 4 March 2021 the Office of the Children's Commissioner released its final report on 'Saltbush Social Enterprises- Monitoring Visits'.[4] This report scrutinised the two primary accommodation facilities for residential bail supported programs. The report was tabled in Parliament on or about 11 May 2021.

The report makes critical findings regarding the facilities at both Darwin and Alice Springs, citing amongst other matters, a lack of an evidence based therapeutic framework for the treatment of children at either placement, unsuitable environments for children, lack of consistency and clarity in obligations regarding intake and admission processes, a lack of access to therapeutic and recreational programs within the facilities, a lack of clarity and consistency in the oversight and provision of case plans and educational plans, a lack of appropriately trauma informed and qualified staff at the facilities.

The Children's Commissioner made 16 recommendations to be implemented by 31 August 2021. These recommendations lay bare the shortcomings and highlight the ineffectiveness of the current regime of bail supported accommodation.

This is the very regime that the government has now mandated children must enter, via section 7B (3) of the *Bail Act*, if they are to be provided a further grant of bail following the commission of a 'serious breach of bail'.

To date the government has made no commitment to implementing these sixteen recommendations. This leaves the youth justice system and the Courts with two current options for 'at risk' and vulnerable children (1) they be remanded in detention in a facility not fit for purpose; or (2) they be bailed on electronic monitoring to supported residential accommodation which is not fit for purpose.

Both options are frightening as neither have the capacity to meaningfully protect the community or rehabilitate at risk children. We remain 'SNAFU'.

Marty Aust
17 May 2021

[3] Presumably being read in conjunction with the principles of section 4 of the *Youth Justice Act*.
[4] Accessible at (https://territorystories.nt.gov.au/10070/827443/0/0).