



## TOP END WOMEN'S LEGAL SERVICE INC.

FREE LEGAL ADVICE FOR WOMEN

Advice | Information | Referral | Advocacy

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17 April 2020

Aboriginal Justice Unit  
Department of the Attorney-General and Justice  
GPO Box 1722  
Darwin NT 0801

*By email to [agd.aju@nt.gov.au](mailto:agd.aju@nt.gov.au)*

Dear Aboriginal Justice Unit,

### **Submission of the Top End Women's Legal Service – draft Northern Territory Aboriginal Justice Agreement 2019-2025**

The Top End Women's Legal Service Inc. (**TEWLS**) welcomes the opportunity to make a submission to the draft Northern Territory Aboriginal Justice Agreement 2019-2025 (**the draft NTAJA**).

In January 2020, TEWLS had the opportunity to meet with representatives from the Aboriginal Justice Unit in respect of the draft AJA. We make this submission in support of the matters raised during that January 2020 consultation and note that our submission is focussed on the experiences of our clients, particularly Aboriginal and Torres Strait Islander women in the Greater Darwin region.

#### About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. We provide high quality, responsive, and culturally appropriate free legal advice, information, casework and representation services, community legal education and advocacy in civil and family law to women living in the Greater Darwin region.

TEWLS' service area and targeted outreach services include Darwin, Palmerston, Dawn House Women's Shelter, six Indigenous communities in the Greater Darwin region, at Adult Migrant English Programs, and women incarcerated at the Darwin Correctional Centre (**DCC**). We provide advice and representation services for civil and family law matters, with the most frequently requested areas of assistance being family law, domestic and family violence, housing and tenancy, consumer law, credit and debt, fines, sexual assault, discrimination, employment law, compensation for victims of crime, and complaints.

TEWLS primarily delivers services to women at risk of or experiencing domestic and family violence, where a large number of our clients do not speak English as their main language. An even greater number of our clients seek legal assistance whilst experiencing financial disadvantage. On review of our 2018/2019 statistical data, around 30 per cent of TEWLS clients identify as being of Aboriginal or Torres Strait Islander descent.

Notably, TEWLS remains the only service to provide a consistent civil and family law clinic for women incarcerated at the DCC.

## Our submission

### **I Support for the draft NTAJA**

TEWLS commends the draft NTAJA and confirm our support for the development of this agreement; a critical step for the NT in the movement to address soaring rates of Aboriginal and Torres Strait Islander incarceration, discrimination and disadvantage.

In this response to the draft NTAJA, TEWLS will focus on our client's experiences, being Aboriginal and Torres Strait Islander women in the Greater Darwin region, and will particularly reference the experiences and realities of our clients who are incarcerated at the DCC. Noting the vision of our service – a community in which women enjoy and are entitled to legal and social justice – TEWLS continues to advocate for holistic, culturally safe and specialist responses, particularly responses that aim to redress inequalities experienced by women.

To ground this submission, TEWLS provides the following redacted case examples arising from TEWLS' civil and family law clinic at the DCC.

#### **Josie's story**

Josie is young woman who was in a relationship with Peter for three years. During their relationship, Josie was physically, sexually and psychologically abused by Peter, and sought to escape the relationship on multiple occasions.

While Josie's past experiences meant that a referral to Ruby Gaea for counselling services whilst incarcerated was possible, Josie has been unable to access counselling and related support services in respect of her domestic and family violence related experiences. Of note, when being sentenced in respect of her criminal matters, the judge indicated that Josie's past trauma from domestic and family violence was a contributing factor to her offending and that in order to break the cycle of recidivism, Josie should seek specialist assistance.

#### **Rebecca's story**

Rebecca has been in an on/off relationship with Troy for over a decade. During their relationship, Rebecca instructs that she would intentionally offend so that she could return to Darwin Correctional Centre, where she knew she would be safe. Rebecca has a long history of incarceration and has previously been unable to connect with domestic and family violence services on the outside meaningfully because of Troy's coercive and controlling violence.

Rebecca has expressed that she would appreciate meeting with a specialist domestic and family violence counsellor while incarcerated at the DCC. Rebecca instructs that she is "more ready" to understand cycles of domestic and family violence and trauma when she is incarcerated.

#### **Karie's story**

Karie is incarcerated for offences committed whilst 'ice' affected. She has drug, domestic violence and mental health issues which stem from complex trauma acquired as a child as a consequential to multiple sexual offences upon her. She is a mother who seeks to engage appropriately with her children and to improve herself.

To achieve this, and to address the foundation issues to her incarceration, Karie requires access to confidential trauma informed and culturally competent domestic violence counselling whilst incarcerated, and post release, from a non-government service in order to ensure confidentiality and facilitate meaningful therapeutic engagement.

## II Comments to the draft NTAJA

In reviewing the draft AJA, we provide specific comments to the below items as follows:

### A *Aim One: Strategy 8 – expand non-financial options for the payments of fines*

Fines target the disadvantaged groups within our community, including Aboriginal Australians, the homeless, the mentally ill, the welfare dependent and prisoners.<sup>1</sup> In TEWLS' experience, and particularly within our practise at the DCC, it is common for Aboriginal women to have accrued fines worth thousands of dollars, where there is no capacity and/or likelihood that the fines will be paid. For these women, the worry and shame in respect of these finds compound pre-existing disadvantage, and commonly eventuate in perpetuating the cycle of recidivism.

On 20 September 2019, TEWLS made request to the NT Attorney-General for amendments to be made to the *Fines and Penalties (Recovery) Act 2001* (NT) (**the Fines Act**) – a copy of this request is **enclosed** for the Unit's reference. As noted in our request, the purpose of the sought amendments were to promote therapeutic and counselling engagement, and to address otherwise unpayable debt via two primary means; first, via an expansion of the operation of Division 9 Community Work Orders under the Fines Act; and second, via the empowerment of the Fines Recovery Unit (**FRU**) with discretionary powers to reduce or revoke fines. With respect to the latter, TEWLS was and remains concerned about the unintended punitive impact of fines, including the above noting mental health impacts, as well as impacts in respect of transport (where unpaid fines can impede an individual's capacity to engage with the Motor Vehicle Registry) and family obligations. Consequently, TEWLS supports Strategy 8 of the draft NTAJA for the expansion of non-financial options for the payments of fines, and would commend the inclusion of discretionary powers for the reduction or waiver of fines in specified circumstances.

TEWLS' request to the NT Attorney-General for legislative and/or regulatory amendments to the Fines Act was based upon TEWLS' work during the Australian Law Reform Commission's Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples,<sup>2</sup> where research undertaken in respect of other Australian jurisdictions showed that the New South Wales Work and Development Order model had high levels of success and was one method "...to reduce the harm caused to Aboriginal and Torres Strait Islander people."<sup>3</sup> Of particular note, the New South Wales model includes approved activities such as counselling, drug or alcohol treatment, and mental health treatment; all of which are commonly sought by our clients and would contribute to breaking the cycle of recidivism.

### B *Aim One: Strategy 11 – expand prison and diversion programs for Aboriginal women*

In 2008, the Ombudsman of the Northern Territory (**NT**) noted that "[w]omen constitute a small but growing part of the NT prisoner population. Their small numbers present both a challenge and an opportunity for the Territory to get things right."<sup>4</sup> Since the first Women in Prison Report, the rapid growth of female incarceration in the NT, and indeed across Australia, has continued. More concerning, included in the growth of female incarceration generally is the rate of incarceration of Aboriginal women; the fastest growing segment of the prisoner population in

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<sup>1</sup> Julia Quilter and Russell Hogg, "The Hidden Punitiveness of Fines" (2018) 7(3) International Journal for Crime, Justice and Social Democracy 9-40, 15.

<sup>2</sup> Australian Law Reform Commission, "Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples", Report No 133 (2017).

<sup>3</sup> Australian Law Reform Commission, "Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples", Summary Report No 133 (2017) 18.

<sup>4</sup> Ombudsman NT, "Women in Prison NT: Report of the Investigation into complaints from women prisoners at DCC 2008", Ombudsman NT, 11 April 2008, 4.

Australia.<sup>5</sup> As noted in the supporting document to the draft NTAJA,<sup>6</sup> in the NT there is a significant overrepresentation of Aboriginal women compared with non-Aboriginal women,<sup>7</sup> where between 2008 and 2017, the rate of incarceration of Aboriginal women in the NT more than doubled, increasing by 109 per cent.<sup>8</sup> It is within this context that TEWLS welcomes Strategy 11 of the draft NTAJA, noting that women are often forgotten within the correctional system as a relatively small group as compared with the male prison population.<sup>9</sup>

While supporting the expansion of prison and diversion programs for Aboriginal women incarcerated within the NT, TEWLS has been particularly advocating for the engagement of an external, specialist mental health / domestic and family violence counsellor at the DCC over a number of years. In 2019, TEWLS made complaint to the Ombudsman of the NT in respect of women's inadequate access to health services at the DCC, specifically advocating for the engagement of a specialist counsellor to assist in addressing women's, including Aboriginal women's, experiences of trauma and violence – a copy of this complaint is **enclosed** for the Unit's review and reference.

As noted by the Australian Law Reform Commission in their recent inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples, 89 per cent of domestic and family violence victims in the NT are Aboriginal.<sup>10</sup> Add to this stark figure the fact that nationally, Aboriginal women are up to 35 times more likely to experience domestic and family violence than non-Aboriginal women,<sup>11</sup> and that family and sexual violence have been identified as key drivers of incarceration for Aboriginal women in Australia,<sup>12</sup> and we have a clear picture of Aboriginal women incarcerated in the NT; a group of women disproportionately impacted by domestic and family violence who have suffered devastating consequences.

Currently at the DCC, women are unable to access mental health or domestic and family violence counselling; services provided at the DCC are in line with criminal sentencing, such as alcohol and other drug counselling, and fail to holistically address the needs of incarcerated women so as to address their cycle of recidivism. This means that women are unable to access external generalist counselling services to address trauma, including where the particular woman has been a victim of domestic violence. The current situation stands in contradiction to numerous reports regarding issues in custody, including a 2005 Victorian study which found that female prisoners saw mental health / well-being as being the single biggest issue they faced in prison, and saw mental health as inextricably linked with other issues such as family violence, sexual abuse and addiction.<sup>13</sup> TEWLS notes that in 2016, the service facilitated the introduction of sexual assault counselling services for women incarcerated at the DCC through local service provider, Ruby Gaea; a service need identified through TEWLS' casework and DCC clinic and actioned after the service received requests for same.

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<sup>5</sup> Law Council of Australia, "The Justice Project Part 1 - Aboriginal and Torres Strait Islander People" (2018) 5.

<sup>6</sup> Department of the Attorney-General and Justice, Northern Territory Government, "Pathways to the Northern Territory Aboriginal Justice Agreement" (2019).

<sup>7</sup> Ibid, 59.

<sup>8</sup> Derived from Australian Bureau of Statistics, Prisoners in Australia, 2017 (2017) cat. no. 4517.0 <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/7B1DF284B985CDE1CA25835A0010FCD7?opendocument>>

<sup>9</sup> See, e.g., StoryProjects, "Birds Eye View: Giving you a new perspective on women in prison" (2020).

<sup>10</sup> See above n 2, 77; Northern Territory Government, Domestic, Family and Sexual Violence Reduction Framework 2018-2028 (2018) 18.

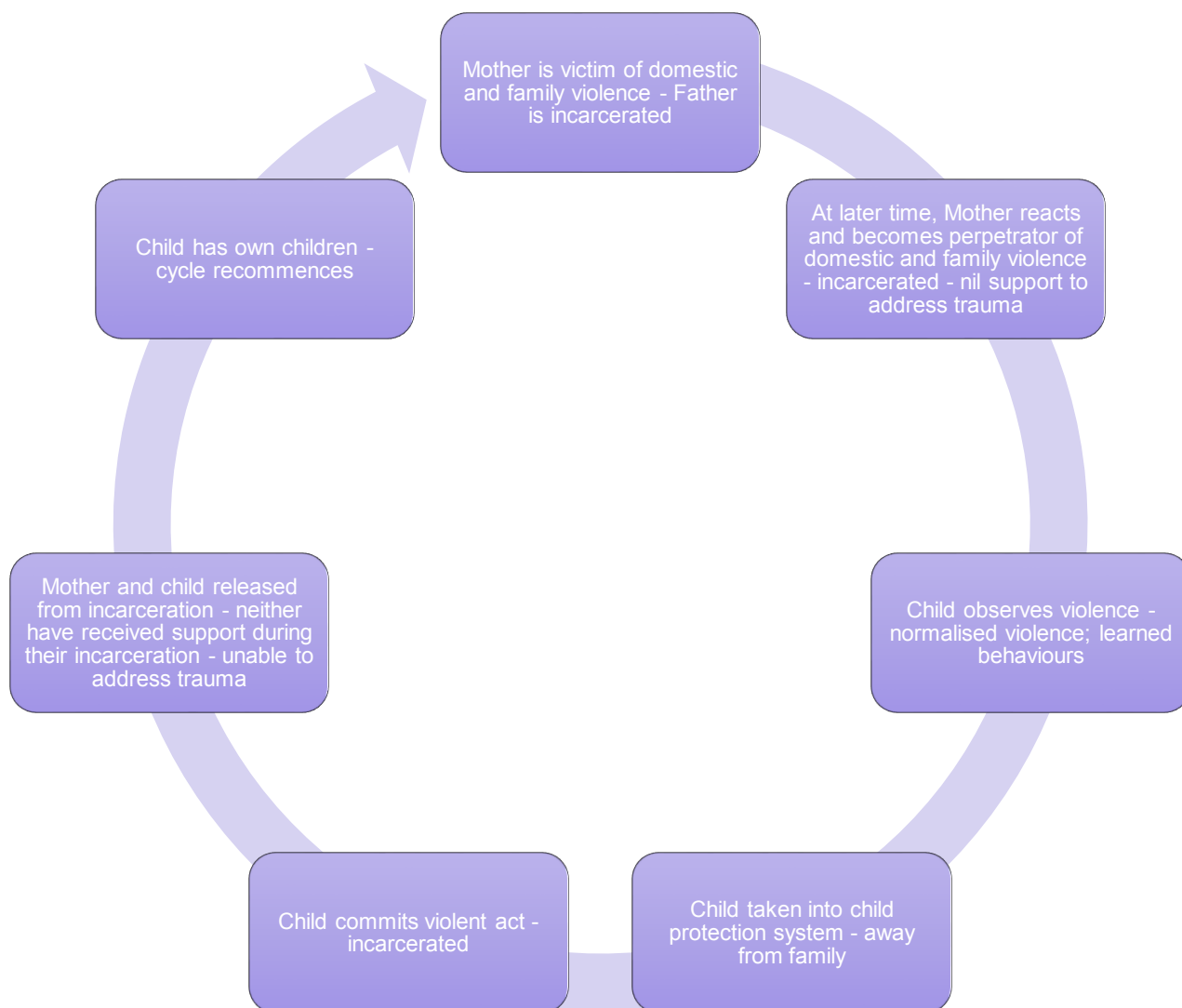
<sup>11</sup> See above n 2, 352.

<sup>12</sup> Ibid.

<sup>13</sup> Lorana Bartels, Indigenous women's offending patterns: A literature review (Australian Institute of Criminology Reports: Research and Public Policy Series: Report 107, AIC 2010) 12.

In October 2016, TEWLS made submission to the then Royal Commission into the Protection and Detention of Children in the Northern Territory.<sup>14</sup> In that submission, TEWLS referenced cycles of detention and recidivism, identifying key factors as domestic and family violence, inequality and lack to appropriate support services.

**Diagram A: Example of an abridged cycle of incarcerated women**



In 2019, TEWLS completed a pilot program within the Darwin Correctional Centre entitled the “Legal Health Check Pilot”. Through this pilot program, TEWLS was able to gather and collate previously unavailable data in relation to women incarcerated at the Darwin Correctional Centre, where findings include:

- 82 per cent of respondents had experienced domestic and family violence;
- 81 per cent of respondents were mothers;
- 93 per cent of respondents did not think that she had good mental health support while incarcerated at the DCC; and

<sup>14</sup> Top End Women’s Legal Service, Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory 2016 (2016).

- 77 per cent of respondents would speak with a domestic and family violence / trauma (mental health) counsellor at the DCC if one was available.<sup>15</sup>

In our submission, the current counselling and mental health gap at the DCC is a lost opportunity. In not providing holistic, wrap-around servicing, Aboriginal women are unable to address their own trauma and mental health, meaning that upon their return to the community, they are consequently unable to break out of their own cycle of detention. In our submission, holistic servicing, including culturally safe and appropriate mental health services, is a critical step in breaking the cycle of recidivism.

**C**     *Aim Three: Strategy 15 – continue to implement a specialist court response to domestic and family violence*

As a service, TEWLS provides specialist, holistic, culturally safe and trauma-informed legal advice and representation, where our clients often face or are required to connect with systems that are non-therapeutic and counterintuitive to the provision of holistic support, particularly in respect of domestic and family violence. TEWLS supports the adoption of the pilot Alice Springs specialist court response to domestic and family violence and commends this model, following its review, as one to be rolled out across the NT, including to the Greater Darwin region.

**D**     *Aim Three: Item 16 – redesign key service delivery models*

TEWLS supports the redesign of key service delivery models in order to meet the needs of Aboriginal Territorians, such that holistic and culturally safe services are able to be provided to the entirety of our community. In supporting this review and redesign, TEWLS notes that this process must include women's voices, where we encourage separate and confidential consultation, particularly with respect to services concerning relationships and families, as well as whole-of-community consultation.

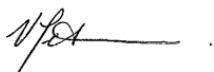
### **III Conclusion**

We appreciate the opportunity to make this submission and affirm our support for ongoing policy and legal development for Aboriginal and Torres Strait Islander women, their children and their communities in the NT.

Should you wish to discuss this submission further, please contact TEWLS by phone on (08) 8982 3000 or email to [admin@tewls.org.au](mailto:admin@tewls.org.au)

Yours faithfully,

**TOP END WOMEN'S LEGAL SERVICE INC.**



Vanessa Lethlean  
Managing Solicitor

**Enclosed**                      TEWLS request to the NT Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA regarding amendments to the *Fines and Penalties (Recovery) Act 2001* (NT) dated 20 September 2019

TEWLS representative complaint to the Ombudsman NT on behalf of women incarcerated at the Darwin Correctional Centre regarding inadequate access to health services dated 1 March 2019

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<sup>15</sup> TEWLS notes that the outcomes of the Legal Health Check Pilot will be published in mid-2020.



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20 September 2019

The Hon Natasha Fyles MLA  
Attorney-General and Minister for Justice  
GPO Box 3146  
Darwin NT 0801

*By email to Minister.Fyles@nt.gov.au*

Dear Minister Fyles,

## **Alleviating the hidden impacts of fines – consideration sought for amendments to the *Fines and Penalties (Recovery) Act 2001 (NT)***

The Top End Women's Legal Service Inc. (TEWLS) write to request that consideration be given to amending the *Fines and Penalties (Recovery) Act 2001 (NT)* (the **Fines Act**). The purpose of such amendments would be to promote therapeutic and counselling engagement, and to address otherwise unpayable debt via two primary means; first, via an expansion of the operation of Division 9 Community Work Orders of the Fines Act; and second, via the empowerment of the Fines Recovery Unit (**FRU**) with discretionary powers to reduce or revoke fines.

We note that the term "fine" is used in this letter to refer to infringement notices and fines issued by Northern Territory Police, as opposed to fines issued by Northern Territory Courts.

### About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. TEWLS provides high quality, responsive, and culturally appropriate free legal advice, casework and representation services, community legal education and advocacy in civil and family law to women living in the Greater Darwin region.

TEWLS' service area includes Darwin, Palmerston, the Royal Darwin Hospital, Dawn House Women's Shelter, six Indigenous communities in the Greater Darwin region, at Adult Migrant English Programs, and women incarcerated at the Darwin Correctional Centre (**DCC**).

Advice and representation services are provided for civil and family law matters, and the most frequently requested areas of assistance are family law, domestic and family violence, housing and tenancy, consumer law, credit and debt, fines, sexual assault, discrimination, employment law, compensation for victims of crime, and complaints.

### The context – women incarcerated at the DCC

Since 2007, TEWLS has operated a civil and family law clinic for women incarcerated in Darwin correctional facilities. TEWLS is the only clinic-based civil and family law service within Sector 4 of the DCC, the women's sector, where we currently attend every third week in line with available resources.

In 2019, TEWLS commenced a Legal Health Check Project (**the Project**) with women incarcerated at the DCC. The legal health check itself is a legal screening tool that TEWLS adapted to “diagnose” the precursors to incarceration and to identify the multiple legal needs of women incarcerated in the DCC. It employs structured interview questions, in a conversational context, building rapport with the interviewee in an aim to identify previously unknown and unmet legal need.

Of the 50 participants in the Project, 69% had unpaid fines with the FRU, many of which are unpayable and consequently serving to compound the respective participants’ financial disadvantage, which is itself a precursor to incarceration. Of note, this financial disadvantage is interconnected with a matrix of vulnerability, where:

- 86% of Project participants were in receipt of Centrelink immediately prior to incarceration;
- 68% of Project participants had a prior incarceration;
- 51% of Project participants had unpaid loans; and
- 40% of Project participants were homeless immediately prior to incarceration.

Outside of the DCC, almost all Project participants reported having had experienced multiple vulnerability indicia, including:

- 83% of Project participants had experienced domestic family violence (with a corresponding 85% of Project participants wanting trauma counselling to be made available within the DCC);
- 83% of Project participants having or having had drug or alcohol misuse issues;
- 83% of Project participants are Mothers;
- 77% of Project participants had, on at least one occasion, been the victim of a violent act;
- 70% of Project participants had experienced homelessness; and
- 53% of Project participants had a pre-existing mental health issue.

The data collected during the scope of the Project demonstrate circumstances including the above that not only make it difficult for these women to pay their debts, but also to navigate and negotiate the fines enforcement system itself.

#### Amendments sought to the Fines Act

In a representative capacity, TEWLS seeks legislative and/or regulatory amendments to the Fines Act to enable and encourage the operation of Community Work Orders as a first instance penalty option and as an alternative to fines. TEWLS also seeks that consideration be given to empowering the FRU with discretionary powers governed by written guidelines to reduce or revoke fines issued to persons with no prospect of repayment and who will likely suffer the unintended punitive impacts of fines.



To give context to the amendments sought, TEWLS provides the following deidentified case study – an example that is unfortunately, not uncommon for our clients, particularly those incarcerated at the DCC.

#### TEWLS deidentified Case Study – “Barbara”

Barbara is an Aboriginal woman with complex psychological trauma. She has never been employed, she cycles in and out of incarceration at the DCC, with extensive periods of homelessness.

Barbara owes FRU over \$30,000.00, an amount comprising of 65 unpaid fines. Of the 65 fines, 33 fines are “public space offences”, being fines for using indecent language in a public area, stacking/storing goods in a public area, and consuming alcohol in restricted/ public areas.

Public space offences are often considered to be directly related to homelessness.<sup>1</sup> For Barbara, \$30,000.00 is an unfathomable – and most importantly, unpayable – amount of debt.

Barbara’s fines vary in cost; however, the most common fine is \$277.00, including enforcement charges. The average weekly income of a person on Centrelink’s Newstart Allowance is \$248.50.<sup>2</sup> This means that the average fine costs approximately 112% of Barbara’s weekly income.

Barbara instructs she would like to access alcohol and trauma counselling to address the issues underlying her incarceration and recidivism. Access to such services, with attendance reducing unpayable debt, could assist with well-being, reduce recidivism, increase productivity and save on incarceration costs.

#### Fines compounding vulnerability

Fines target the disadvantaged groups within our community, including Aboriginal Australians, the homeless, the mentally ill, the welfare dependent and prisoners.<sup>3</sup> Although imprisonment is no longer directly used as an enforcement measure for unpaid fines, unless a community service order is breached,<sup>4</sup> fines still present significant hidden penal affects. TEWLS particularly note the comments of researchers Julia Quilter and Russell Hogg, who have stated that:

*Abolishing imprisonment for default has removed the most visible marker of unfairness and inequity, but perhaps only to displace the problems into the more hidden, arcane domains of administrative practice under novel enforcement systems that produce their own punitive effects.*<sup>5</sup>

A fine debt often exacerbates the acute hardships of those most likely to be fined, making those vulnerable feel even more helpless, anxious and overwhelmed. These negative psychological effects can contribute to substance abuse and mental illness, which are known precursors for offending conduct.

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<sup>1</sup> Chris Povey, Lucy Adams & Chris Hold of the PILCH Homeless Persons’ Legal Clinic, “*Fines, Infringements and Homelessness*”, Submission to the Sentencing Advisory Council, *Court Fines and Infringement Fines Project*, October 2013, 3.

<sup>2</sup> Ibid.

<sup>3</sup> Julia Quilter and Russell Hogg, “The Hidden Punitiveness of Fines” (2018) 7(3) *International Journal for Crime, Justice and Social Democracy* 9-40, 15.

<sup>4</sup> *Fines and Penalties (Recovery) Act 2001* (NT) s 86.

<sup>5</sup> Julia Quilter and Russell Hogg, above n 3, 17.

In the Australian Law Reform Commission's (**ALRC**) 2018 Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (Pathways to Justice) (the **ALRC Report**), the ALRC reported that,

*Fine enforcement regimes can aggravate criminogenic factors and operate to further entrench disadvantage, especially when the penalty for default or secondary offending includes further fines, driver licence suspension or disqualification, and imprisonment.*<sup>6</sup>

It is TEWLS' submission that the Northern Territory fines enforcement system, based on an escalating penalty model that includes all the penalties listed by the ALRC, unfortunately entrenches disadvantage. By way of example, suspension of a driver's licence (section 60 of the Fines Act) causes a loss of mobility. For an Aboriginal person living in a remote NT community, where no public transport is available, the fine defaulter is now limited in being able to access health services, shops and extended family.<sup>7</sup> If there is no alternative transport, then the fine defaulter may drive unlicensed, thereby breaking the law and committing more serious offences which may result in incarceration.<sup>8</sup>

### The NSW model

In that same ALRC report, the ALRC recommended the, "nationwide adoption of Work and Development Orders based on the New South Wales (**NSW**) model"<sup>9</sup> as one method "...to reduce the harm caused to Aboriginal and Torres Strait Islander People."<sup>10</sup> It is TEWLS' view that the adoption of this model within the Northern Territory legislative and regulatory fines scheme would see benefits extend throughout the community in our jurisdiction.

Under the NSW model, individuals with unpaid fines are able to apply for a Work and Development Order (**WDO**) if they:

- Have a mental illness;
- Have an intellectual disability or cognitive impairment;
- Are homeless;
- Are experiencing acute economic hardship; or
- Have a serious addiction to drugs, alcohol or volatile substances.<sup>11</sup>

If an individual is successful in their application for a WDO – notably via an application to the corresponding NSW department to the FRU, Revenue NSW – their WDO may require them to undertake in one or more of the following:

- Unpaid work for, or on behalf of, an approved organisation;
- Medical or mental health treatment in accordance with a health practitioner's treatment plan;

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<sup>6</sup> Aboriginal Law Reform Commission (ALRC), "Pathways to Justice - An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples", Summary Report No. 133 (2017) 18.

<sup>7</sup> Mary Spiers Williams and Robyn Gilbert, "Reducing the unintended impacts of fines", *Indigenous Justice Clearinghouse*, Current Initiatives Paper 2 (2011) 4.

<sup>8</sup> *Ibid.*

<sup>9</sup> ALRC, above n 6, 18.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Work and Development Order Guidelines 2017* (NSW), cl 4.

- Educational, vocational or life skill courses;
- Financial or other counselling;
- Drug or alcohol treatment; or
- A mentoring program (if under the age of 25).<sup>12</sup>

Under the NSW model, fines are satisfied / repaid at a rate of \$30.00 per hour of the approved activity, and although a WDO is only available at the fine enforcement stage, an individual can apply for fine enforcement for the purposes of applying for a WDO.<sup>13</sup>

Since its inception in 2011, the WDO scheme has been recorded to successfully “ameliorate the systemic difficulties that fines present to very disadvantaged people in the community”.<sup>14</sup> In 2014, INCA Consulting were commissioned by the the NSW Government to undertake an evaluation of the WDO scheme. After undertaking their evaluation, in 2015 INCA Consulting Evaluation reported that 96% of sponsors – being approved organisations or health practitioners that assist those unable to pay their fines – believed the WDO scheme, “had helped reduce the level of stress and anxiety their clients felt about their fines debt”,<sup>15</sup> and 87% of sponsors, “...said the scheme had enabled clients to address the factors that made it hard for them to pay or manage their debts in the first place.”<sup>16</sup>

In a representative capacity, TEWLS submits that individuals who are unable to pay off their fines, if able to apply for a community work order similar to a WDO that included educational, vocational or life skill courses, would be assisted to improve their health and wellbeing whilst reducing recidivism. We commend legislative and/or regulatory amendments to the Fines Act and promote these options for your consideration.

Aside from alleviating the entrenched vulnerabilities borne by many fine defaulters and aside from contributing to a reduction in recidivism, TEWLS submit that an adoption of a model similar to the NSW WDO scheme in the Northern Territory would see additional benefits flow through our community. Tangible benefits of schemes like the WDO scheme include the community work that is completed, such as graffiti clean-up. There were also reports in the evaluation of the NSW scheme that some fine defaulters who undertook voluntary work as part of a WDO continued to volunteer after their WDO had been completed.<sup>17</sup> Further intangible benefits of such a scheme include encouraging citizenship and community health.

#### Empowering the FRU with discretionary powers

In addition to advocating for the consideration and operation of a WDO scheme similar to the NSW model, it is TEWLS’ view that consideration of the individual circumstances of the fine defaulter is critical when issuing fines and essential when applying enforcement methods.

Provisions held within the *Sentencing Act 2001* (NT) (the **Sentencing Act**) suggests that the Northern Territory understands the importance of a discretionary approach that takes into

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<sup>12</sup> Ibid cl 6.1.

<sup>13</sup> Chris Povey, Lucy Adams & Chris Hold of the PILCH Homeless Persons’ Legal Clinic, above n 1, 26.

<sup>14</sup> INCA Consulting, ‘Evaluation of the Work and Development Order Scheme: Qualitative Component: Final Report’, Prepared for NSW Department of Justice, May 2015, 8.

<sup>15</sup> Ibid 3.

<sup>16</sup> Ibid.

<sup>17</sup> INCA, above n 14, 22.

account an individual's circumstances. Section 17 of the Sentencing Act provides that the Court is to consider the "financial circumstances of the offender"<sup>18</sup> and "the nature of the burden that its payment will impose on the offender"<sup>19</sup> when deciding the amount of the fine the Court is to issue. This discretionary approach is also supported by the decision of *Walker v Meredith [2008] NTSC 23*, where Justice Mildren held that an order allowing the fine defaulter to serve extra time in prison as an alternative to paying his fines (per section 26(2) of the Sentencing Act) was appropriate due to the individual circumstances of the fine defaulter, which included no prospects of payment and that he was already serving a long prison sentence.

While provisions of the Sentencing Act provide for the judiciary to take into account the above noted financial circumstances of an offender, the imposition and payment of infringement-based fines – being fines not imposed by a Court – do not. This means that some individuals, such as the deidentified case study noted above, will accrue and owe thousands of dollars in fines to the FRU, where there are often little to no prospects of repayment.

To account for this current gap, it is TEWLS' submission that the FRU be empowered with discretionary powers governed by written guidelines to reduce or revoke fines issued to persons with no prospect of repayment and who will likely suffer the unintended punitive impacts of fines. In our submission, this discretion, coupled with the adoption of a WDO scheme, would alleviate the pressures experienced by persons with unpayable debt, contributing to goals including reduced rates of recidivism and heralding a prioritisation of community well-being.

### Conclusion

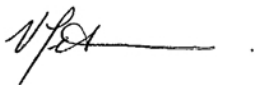
In light of the above, TEWLS advocate for the consideration and addition of the NSW model into the NT scheme, as well as the extension of discretionary powers open to the FRU.

We thank you for your consideration of the above and would be pleased to discuss the potential merit with delegated officers, at their convenience. Alternatively, we would welcome the opportunity to contribute to a broader consultation process.

In the interim, should you require anything further regarding this letter, please do not hesitate to contact Vanessa Lethlean, TEWLS Managing Solicitor by telephone to (08) 8982 3000 or by email to [vlathlean@tewls.org.au](mailto:vlathlean@tewls.org.au).

Yours faithfully,

**TOP END WOMEN'S LEGAL SERVICE INC.**



Vanessa Lethlean  
Managing Solicitor

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<sup>18</sup> *Sentencing Act 2005 (NT)* s 17(1)(a).

<sup>19</sup> *Ibid* s 17(1)(b).



# TOP END WOMEN'S LEGAL SERVICE INC.

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1 March 2019

Mr Peter Shoyer  
Office of the Ombudsman NT  
12<sup>th</sup> Floor, NT House  
22 Mitchell Street  
Darwin NT 0800

*By email to [nt.ombudsman@nt.gov.au](mailto:nt.ombudsman@nt.gov.au)*

Dear Mr Shoyer,

**Complaint – Third-Party Representative – Complaint on behalf of women incarcerated in the Darwin Correctional Centre – Inadequate access to health services – Top End Women's Legal Service Inc.**

The Top End Women's Legal Service Inc. (**TEWLS**) writes in a representative capacity to make complaint of failures by the Northern Territory (**NT**) Departments of the Attorney General and Justice (specifically, NT Correctional Services) and Health to provide equal or adequate access to health services to women incarcerated in the Darwin Correctional Centre (**DCC**).

With reference to this complaint, TEWLS confirms that we have positive connectivity with NT Correctional Services staff, who have previously indicated that they would welcome and facilitate additional services and programs for incarcerated women. In addition, TEWLS acknowledges DCC resource realities and constraints.

## About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. Founded in 1996, TEWLS is funded by the Commonwealth Attorney General's Department and the Department of Prime Minister and Cabinet. TEWLS' team of six provide high quality, responsive and culturally appropriate legal advice, casework, community legal education and advocacy in civil and family law areas to women living in the Greater Darwin region.

TEWLS offers holistic legal services in Darwin, Palmerston, at the Royal Darwin Hospital, at Dawn House Women's Shelter, on six Indigenous communities in the Greater Darwin Region, at Adult Migrant English Programs, and within DCC. The most frequently requested areas of assistance include family law, domestic and family violence, housing and tenancy, consumer law, debts, fines and welfare rights, sexual assault, discrimination, compensation for victims of crime, and complaint matters.

TEWLS is presently the only scheduled legal service providing a civil and family law advice and representation service to women at the DCC. With strong connectivity established over many years, a TEWLS Solicitor and TEWLS Indigenous Community and Project Officer currently attend Sector 4 (the Women's Sector) of the DCC every third Thursday, in line with available resources. Where capacity exists, community legal education presentations are provided on salient topics including domestic and family violence and domestic violence orders, family law and child protection, victims of crime applications, fines, consumer, and contract law.

## The Third-Party Representative Complaint

### **I Jurisdiction**

The Office of the Ombudsman NT (**Ombudsman NT**) has jurisdiction over administrative actions of public authorities. The definition of public authority includes an agency or another entity that is constituted or established for a public purpose by or under a law of the Territory.<sup>1</sup> An administrative action is any action involving a matter of administration, and includes any decision, recommendation, action or inaction by a public authority.<sup>2</sup>

### **II Standing**

TEWLS confirms that we have standing to make this complaint as a third-party representative.<sup>3</sup> We raise a substantive issue and possess first-hand evidence of the issues that are the subject of this complaint, per legislative requirements.<sup>4</sup>

### **III Complaint**

TEWLS makes complaint that the Departments of the Attorney-General and Justice and Health are failing to provide equal or adequate access to health services to women incarcerated in the DCC.

Specifically, TEWLS makes complaint that:

- Incarcerated women at DCC do not have equal or adequate access to health services compared with non-incarcerated women and consequently, are not receiving health services per requisite standards under international, national and NT laws; and
- There has been a continued failure on behalf of the relevant government departments to incorporate the recommendations of multiple investigations and reports relating to service provision within the DCC.

It is our view that the lack of primary and preventative medical, support, therapeutic and related services compounds the social disadvantage of our clients, whilst exacerbating issues foundational to incarceration and recidivism rates. In some cases, inadequate and unequal access to health services can cause deterioration in existing mental and other health conditions and trauma flowing from a history of sexual, physical, emotional and/or psychological abuse.

### **A Background**

In the most recent report of NT Correctional Services,<sup>5</sup> the daily number of prisoners held in adult correctional institutions in 2016-2017 was 1,637, where 84 per cent identified as Indigenous. Further, during 2016-2017, there were 287 sentenced female receptions, representing a 4 per cent increase from the previous year.<sup>6</sup> Incarceration rates of Indigenous women are of particular concern, where the Australian Law Reform Commission's "Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples" report found that Indigenous

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<sup>1</sup> *Ombudsman Act 2009* (NT) ss 5 (a), (e).

<sup>2</sup> *Ibid*, s 6.

<sup>3</sup> *Ibid*, s 21(1)(c).

<sup>4</sup> *Ibid*, ss 21(3)(a), (b).

<sup>5</sup> Northern Territory Correctional Services, Annual Statistics 2016 – 2017, Northern Territory Government 2018, Northern Territory.

<sup>6</sup> *Ibid*, 7.

women are 21.2 times more likely to be incarcerated than non-Indigenous women.<sup>7</sup> In addition, the rate of imprisonment for Aboriginal and Torres Strait Islander women exceeded that of non-Indigenous men.<sup>8</sup> Concerningly, women represent the fastest growing group of incarcerated persons in the country.<sup>9</sup>

Under Commonwealth legislation, incarcerated persons and young people in detention are excluded from receiving Medicare and Pharmaceutical Benefit Scheme subsidies.<sup>10</sup> It is understood that this exclusion was designed to avoid duplication of services, as state and territory governments are expected to fund prison-based health services. Of note, prison-based health services have an opportunity to provide primary and preventative medical, support, therapeutic and related services.

In the NT, there are two government funded health services who provide assistance to incarcerated clients. The Prison Health Service (**PHS**) provides medical assistance, while the Forensic Mental Health Service (**FMHS**) provides at-risk assessments and temporary case management of persons who enter the DCC mentally unwell. The FMHS also provides case management of persons in custody who are subject to criminal responsibility provisions of the *Criminal Code Act 1983* (NT). Private providers and primary health services *may* also provide specialist mental health services to prisoners in the Northern Territory,<sup>11</sup> where an example is the introduction of Ruby Gaea to the DCC. In 2016, TEWLS facilitated Ruby Gaea's commencement of services to women incarcerated in the DCC after identifying high-levels of sexual assault disclosures and associated trauma.

While some services are available to women incarcerated in the DCC, it is our experience that clients are continuing to present at the TEWLS DCC legal clinic with untreated psychological and physical injuries. In our experience, while some clients' issues are in respect of responses and response timeframes following the completion of a medical request form (**MRF**), other clients' issues are in respect of the lack of domestic and family violence related services available within the DCC.

We include a selection of recent anonymised client stories which demonstrate the shortfalls in the provision of health services to women at the DCC. The stories also reflect the extent to which women at DCC have experienced significant family and domestic violence and are now experiencing the associated trauma which has flowed from past events.

#### **Josie's story**

Josie is young woman who was in a relationship with Peter for three years. During their relationship, Josie was physically, sexually and psychologically abused by Peter, and sought to escape the relationship on multiple occasions.

While Josie's past experiences meant that a referral to Ruby Gaea for counselling services was possible, Josie has been unable to access counselling and related support services in respect of her domestic and family violence related experiences. When being sentenced in respect of her criminal matters, the judge indicated that Josie's past trauma from domestic and family violence was a contributing factor to her offending and that in order to break the cycle of recidivism, Josie should seek specialist assistance.

<sup>7</sup> Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017).

<sup>8</sup> *Ibid*, Ch 3.

<sup>9</sup> Australian Bureau of Statistics, *Corrective Services, Australia*, September Quarter 2018, Cat No 4512.0, ABS, Canberra.

<sup>10</sup> *Health Insurance Act 1973* (Cth) s 19(2).

<sup>11</sup> Queensland Centre for Mental Health Research, *Prison Mental Health Services: A Comparison of Australian Jurisdictions* (April 2018), 20.

### **Isabelle's story**

Isabelle is a woman who was incarcerated with a pre-existing medical condition. During her incarceration, Isabelle lodged a MRF to attend a doctor or nurse in respect of her condition. After multiple requests, Isabelle was able to attend a doctor more than five (5) weeks after lodging her initial MRF. Isabelle instructs that during the interim period, she was in pain and was unable to focus because of her medical condition.

### **Rebecca's story**

Rebecca is an Indigenous woman who has been in an on/off relationship with Tony for over a decade. During their relationship, Rebecca instructs that she would intentionally offend so that she could return to the DCC where she knew she would be safe. Rebecca has a long history of incarceration and is often unable to connect with domestic and family violence services on the outside because of Tony.

Rebecca has expressed to TEWLS that she would appreciate meeting with a specialist domestic and family violence counsellor while incarcerated at the DCC. Rebecca instructs that she is "more ready" to understand cycles of domestic and family violence and trauma when she is incarcerated.

In contrast to the lack of medical services available to our clients, TEWLS is confident that each of their experiences would have been different had they presented with similar issues outside of DCC. It is our view that the presentations would have been met with the timely provision of health services, including holistic health services for immediate and ongoing domestic and family violence related mental health support.

## ***B Legislative and regulatory framework***

Fundamentally, the obligation for prisoners to have access to the same standard of health care as the general community is reflected in NT, Commonwealth and International legislation, regulations and guidelines.

### ***1 Northern Territory***

In the NT, legislation mandates that prisoners must be "provided with access to health care that is comparable with that available to persons in the general community in the same part of the Territory".<sup>12</sup> The Commissioner is required to arrange for the provision of appropriate health care for prisoners including mental health, community health and the welfare services necessary to implement those services.<sup>13</sup>

### ***2 Commonwealth***

The Standard Guidelines for Corrections in Australia, including the Guiding Principles for Community Corrections (**the Standard Guidelines**),<sup>14</sup> constitute "outcomes or goals to be achieved by correctional services". They "represent a statement of national intent" from which the NT "must continue to develop its own range of relevant legislative, policy and performance

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<sup>12</sup> *Correctional Services Act 2014* (NT), s 82(2); This is also acknowledged on the NT Department of Correction Website <<https://nt.gov.au/law/prisons/prisoners-rights>>, page updated 3 June 2015, accessed 22 Jan 2019. "Prisoners' rights" NT Gov.

<sup>13</sup> *Correctional Services Act 2014* (NT), s 82(1); see *Health Practitioner Regulation National Law Act 2009* (Qld) s 5.

<sup>14</sup> Standard Guidelines for Corrections in Australia (Revised 2012).



standards”.<sup>15</sup> Although TEWLS acknowledges that the Standard Guidelines are not a set of absolute standards or laws to be enforced, we are of the view that they advocate for a standard that both the PHS and FMHS should meet.

The Standard Guidelines also advocate for a standard of health services to be provided that is comparable with the general community.<sup>16</sup> Such health care services include preventative services, counselling services, specialist services and promoting continuity with external health services upon release.<sup>17</sup> This includes when a prisoner enters or is released from prison and is under medical or psychiatric treatment.<sup>18</sup>

### 3 *International*

Internationally, both the United Nations (UN) Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (**the Bangkok Rules**) and the UN Standard Minimum Rules for the Treatment of Prisoners (**the Nelson Mandela Rules**) set out a series of rules that Australia must meet to fulfil its human rights obligations in relation to prisoners.<sup>19</sup> Specifically, both the Bangkok and Nelson Mandela Rules require that prisoners receive and have access to appropriate health care standards. It is TEWLS’ view that these standards are not currently being met for women incarcerated at DCC.

## **C Previous Investigations and Reports of Service Provision within the DCC**

Over the past decade, service delivery within the DCC has been the subject of numerous reviews and recommendations. Despite this, incarcerated persons and particularly incarcerated women continue to receive an inadequate standard of care compared to non-incarcerated persons.

Below is a selection of the key findings and recommendations made in those investigations and reports most relevant to this complaint.

### 1 *The Women in Prison Report*

In 2008, the Ombudsman NT released *Women in Prison – Northern Territory: Report of the investigation into complaints from women prisoners at the Darwin Correctional Centre (the Women in Prison Report)*.<sup>20</sup> The Women in Prison Report found:

“..a number of positive recent initiatives and considerable momentum and enthusiasm for change among staff and management. It also found a lack of resources, poor planning, outdated and inappropriate procedures and a failure to consider women as a distinct group with specific needs. This had resulted in a profound lack of services, discriminatory practices, inadequate safeguards against abuse and very little in the way of opportunities to assist women to escape cycles of crime, poverty, substance abuse and family violence.”<sup>21</sup>

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<sup>15</sup> Ibid, 3.

<sup>16</sup> Ibid, 27.

<sup>17</sup> Ibid, 15, 26-28.

<sup>18</sup> Ibid, 28.

<sup>19</sup> UN Bangkok Rules on Women Offenders and Prisoners: In December 2010, this gap was filled when the United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders, known as the Bangkok Rules, were adopted by the UN General Assembly (Resolution A/RES/65/229)) (United Nations Office on Drugs and Crime. United Nations Standard Minimum Rules for the Treatment of Prisoners: The Nelson Mandela Rules. General Assembly resolution 70/175 annex, adopted 17 December 2015, A/RES/70/175).

<sup>20</sup> *Women in Prison – Northern Territory: Report of the Investigation into complaints from women prisoners at Darwin Correctional Centre* Office of the Ombudsman Northern Territory (April 2008).

<sup>21</sup> Ibid, 4.

The Women in Prison Report acknowledged that it “is well established” that “the prevalence of mental health problems among prisoners is significantly higher than in the community” and identified that the “NT Government recognises that prison is “an environment already known to exacerbate symptoms of mental health.””<sup>22</sup>

The Women in Prison Report included clinical and non-clinical solutions, including female prisoners being informed of their right to request individual counselling sessions, as well as a continuum of care, including medical and psychiatric throughcare, being provided. In addition, the Women in Prison Report recommended that a joint report be furnished by the then NT Department of Health and Community Services, NT Correctional Services and the Ombudsman, which would include report as to progress in mental health and disability care for women prisoners. TEWLS notes that the latter joint report is not publicly available.

## 2 *The Hamburger Report*

In 2016, the report, *A Safer Northern Territory through Correctional Interventions: Report of the review of the Northern Territory Department of Correctional Services (the Hamburger Report)*,<sup>23</sup> made a series of findings and recommendations about Correctional facilities in the NT. The review team specifically reported being told of difficulties for female prisoners in accessing medical services.<sup>24</sup>

The Hamburger Report made notable findings and recommendations in relation to clinical support and counselling services, including:

Finding 24: That as NTDCS [**Northern Territory Department of Correctional Services**] clinical staff do not carry responsibility for the day to day counselling or support of prisoners with ad hoc needs, given their focus on the delivery of programs, both the FMHS and the correctional service have identified a gap in the provision of general counselling and support for prisoners with such presentations as:

- Grief and loss problems
- Adjustment to custody difficulties
- Relationship or family breakdown, and
- Presentations involving anxiety and depression.

Finding 57: That NTDCS and the Operations Manager, FMHS, Department of Health develop a service delivery model to manage the day-to-day ad hoc needs of prisoners accommodated at the Darwin and Alice Springs Correctional Centres.

A further finding of the Hamburger Report in relation to female prisoners was that NTDCS has not yet been able to address the particular needs of female inmates to the extent achieved by other jurisdictions.<sup>25</sup>

## 3 *Investigation of the Health and Community Services Complaints Commissioner*

In February 2016, the Health and Community Services Complaints Commission (**HCSCC**) published a final report following an investigation into the PHS at DCC.<sup>26</sup> The HCSCC's report demonstrated a continued failure by the PHS to meet the needs of incarcerated women, where

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<sup>22</sup> Ibid, 137, 142.

<sup>23</sup> Department of the Attorney-General and Justice, *A Safer Northern Territory through Correctional Interventions: Report of the review of the Northern Territory Department of Correctional Services* (31 July 2016).

<sup>24</sup> Ibid, 109.

<sup>25</sup> Ibid, 110.

<sup>26</sup> *Final Investigation Report: Investigation into the Prison Health Service at Darwin Correctional Centre*, Health and Community Services Complaints Commission (2016).

recommendations included improvement in the assessment of health needs. It is TEWLS' view that in spite of the detailed supporting investigation, accessibility to health services continues to be a lived experience by women incarcerated in the DCC.

#### 4 *Women in Prison II Report*

In August 2017, the Ombudsman NT's report relating to conditions faced by women in the Alice Springs Women's Correctional Facility was tabled in the Legislative Assembly (**the Women in Prison II Report**).<sup>27</sup> This Report revisits similar issues to those discussed in the first Women in Prison Report, including gender-specific culturally appropriate access to health care services. The Women in Prison II Report also made recommendations based on its conclusion that the fundamental purpose of the correctional system should be rehabilitation.<sup>28</sup>

Although the Women in Prison II Report was focused on women incarcerated in the Alice Springs Correctional Facility, it makes two relevant recommendations for the purposes of this complaint. Firstly, it recommended that the NT Government, specifically the Department of Attorney-General and Justice acknowledge the importance of differentiating between the needs and characteristics of female prisoners in facility, policy and program development, as well as the importance of addressing the needs and characteristics of individual prisoners.<sup>29</sup> The Report also recommended that NT Correctional Services develop, in consultation with the Ombudsman NT, a detailed plan which would include responses, proposed actions to address the relevant issue and a timeline (amongst other logistical details).<sup>30</sup> Relevantly, one of the proposed topics was health care.

Although the Women in Prison II Report acknowledges that health care issues are predominantly addressed by the HCSCC,<sup>31</sup> it noted that "[t]ime in custody should be fully utilised to address mental and other health issues, disabilities, alcohol and other drug dependency and a raft of other hurdles that may limit the capacity and willingness of the offender to reintegrate."<sup>32</sup> The Report also identifies that "[p]utting additional resources and effort into health promotion, identifying health issues and treatment has the potential to ... increase the longer term prospects for recovery and rehabilitation."<sup>33</sup>

In tabling the report, the Chief Minister noted work to support Aboriginal women through the Aboriginal Justice Agreement (which is still in development) and remarked:

I am pleased to report to the Assembly that addressing this report's recommendations will be included in the work this government is already undertaking on justice reform. I have outlined a number of activities and projects are already under way as part of that reform. This work will ensure that ongoing statements to justice and Correctional Services meet the specific needs of women who unfortunately come into contact with our justice system so that our services support their rehabilitation and effective reintegration back to the communities where they belong.<sup>34</sup>

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<sup>27</sup> *Women in Prison II: Alice Springs Women's Correctional Facility*, Office of the Ombudsman Northern Territory (2017).

<sup>28</sup> *Ibid*, 1.

<sup>29</sup> *Ibid*, 7.

<sup>30</sup> *Ibid*, 8.

<sup>31</sup> *Ibid*, 61.

<sup>32</sup> *Ibid*, 4.

<sup>33</sup> *Ibid*, 62.

<sup>34</sup> Office of the Ombudsman Northern Territory, *Annual Report 2016/2017*, 20.

## 5 *Summary of reports and investigations*

Despite numerous reports, investigations and recommendations, health care services provided to women at DCC continue to fall below the standard of care these women would otherwise receive were they not incarcerated.

Concerningly, TEWLS is not confident that the recommendations made in the Women in Prison Report II will be put into place due to the reasons given for the lack of progress since the release of the first Women in Prison Report.<sup>35</sup> Such reasons include resourcing requirements and growth in prisoner numbers. This is especially concerning given that the latest Report identifies that NT Correctional Services was supportive of the first set out recommendations, including increased access to health care services, and advised DHCS of their support in March 2009.

### **D Outcomes sought**

In light of the above, it is TEWLS' view that the provision of adequate health care services should be a priority agenda item for women incarcerated at the DCC. This provision should include timely responses to requests for assistance, as well as the provision of services not currently available and/or accessible within the DCC.

#### *1 Domestic and family violence counsellor*

Noting our experience that a large portion of women incarcerated at DCC would benefit greatly from increased access to non-forensic psychological services, TEWLS strongly advocates for all women to have access to an independent external mental health specialist/counsellor. Given the high rates of family and domestic violence and associated trauma experienced by the women at DCC it would be important that any specialist in this position has extensive knowledge in assisting women in these areas. Further, due to the over-representation of Indigenous women at DCC, TEWLS submits that the specialist should have particular experience in working with Indigenous women.

An essential component of this recommendation is independence – it is TEWLS' view that per previous recommendations, the newly created position would need to be an independent service provider delivering mental health services and counselling to women incarcerated at DCC. Indeed, an external expert, independent of the DCC and respective Departments, is required to ensure a robust, best-practise, therapeutic framework that permits connectivity post-release. In support of this outcome, TEWLS has identified an appropriate expert in Darwin who is available to respond to the needs of women at DCC on a contract or Medicare service-provider rebate basis.

TEWLS proposes two ways in which such a position could be funded:

- Funding by the Department of Health – rather than this position being exclusively located at DCC, we submit that the specialist should be housed at a non-government organisation, such as Dawn House Women's Shelter or Ruby Gaea, who have existing counselling positions for professional connectivity and support. It is our view that possible initiatives at DCC could include group work and individual counselling sessions with incarcerated women; or
- Funding by Medicare (Commonwealth) – while women at the DCC are excluded from receiving Medicare benefits under Commonwealth legislation,<sup>36</sup> an alternate avenue that could provide the necessary funding is via petitioning the Federal Health Minister to direct that Medicare benefits be payable in respect of professional services rendered at DCC,

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<sup>35</sup> Above n 30, 5.

<sup>36</sup> *Health Insurance Act 1973* (Cth) s 19(2).

pursuant to the relevant exemption.<sup>37</sup> Relevantly, in the Second Reading speech for the legislation, it was “considered important that the Minister should have this power of direction to ensure that individuals are not disadvantaged in any circumstances.”<sup>38</sup> TEWLS submits that given this intent and the high rate of incarcerated Indigenous clients at DCC, the Health Minister should exercise discretion in relation to health services provided at DCC. TEWLS draws your attention to the fact that this discretion has previously been exercised to allow for additional and culturally specific Aboriginal health services as a result of the high rate of poor health among Aboriginal people in community.<sup>39</sup>

Further to the above, TEWLS has commenced informal discussions with organisations who have indicated a willingness to provide professional support to the person undertaking this position. This professional relationship would benefit both the women incarcerated and the mental health specialist. Professionally, it would provide ongoing peer-support relationship through which that person could seek advice, clarification and referrals. For clients, it may assist in their rehabilitation and reparation by providing a support avenue for them post-release.<sup>40</sup>

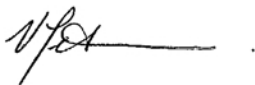
### Conclusion

TEWLS appreciates the opportunity to make this complaint and support ongoing service provision for women incarcerated at DCC.

We thank you for your consideration of the above and look forward to being updated of the outcome. We would be pleased to be contacted by phone on (08) 8982 3000 or email to [admin@tewls.org.au](mailto:admin@tewls.org.au) (contact person Vanessa Lethlean).

Yours faithfully,

**TOP END WOMEN’S LEGAL SERVICE INC.**



Vanessa Lethlean  
Managing Solicitor

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<sup>37</sup> Ibid.

<sup>38</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 20 May 1976, 2351 (Ralph Hunt, Minister for Health).

<sup>39</sup> Cumming, C, Kinner, S.A., Preen, D.B., Larsen, A. (2018) In sickness and in prison: the case for removing the Medicare exclusion for Australian prisoners, *Journal of Law and Medicine*, 26(1), 140.

<sup>40</sup> Above n 14, 6.