

Ms. Leanne Liddle
Director, Aboriginal Justice Unit
Department of the Attorney-General and Justice

Via email: agd.aju@nt.gov.au

24 April 2020

Dear Ms Liddle,

Re: AMSANT Submission to the Northern Territory Aboriginal Justice Agreement 2019-2025: Draft Agreement for Consultation

Thank you for the opportunity to provide a submission in response to the *Northern Territory Aboriginal Justice Agreement 2019-2025: Draft Agreement for Consultation*.

The Aboriginal Medical Services Alliance NT (AMSANT) is the peak body for Aboriginal Community Controlled Health Services (ACCHSs) in the Northern Territory (NT). AMSANT has been established for over 25 years and has a major policy and advocacy role at the NT and national levels. Our 26 members are located right across the NT from Darwin to the most remote areas. The ACCHSs sector is the largest provider of primary health care to Aboriginal people in the Northern Territory. ACCHSs deliver comprehensive primary health care in an integrated, holistic, culturally secure framework which combines a population health approach with primary health care service delivery; in addition, ACCHSs are also involved in diverse health research activities.

AMSANT provides guidance and advocacy on a wide range of research, public health issues, education, workforce, continual quality improvement programs, social and emotional wellbeing, housing and other determinants of health that affect NT Aboriginal people. AMSANT has high level collaborations with the NT and Commonwealth Governments on these issues.

AMSANT welcomes the opportunity to provide further input to the Northern Territory Aboriginal Justice Agreement (NTAJA). AMSANT has previously made submissions on justice and social policy related matters that disproportionately impact Aboriginal people in the Northern Territory, including (but not limited to):

- Submission to the Council of Attorneys-General – Age of Criminal Responsibility Working Group review (2020)
- Submission to Senate Inquiry: Effective Approaches to prevention, diagnosis and support for Fetal Alcohol Spectrum Disorder (2019)
- Submission to the Select Committee on Intergenerational Welfare Dependence (2018)
- Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory (2017).

We note that the development of our submission has been significantly impacted by the rapidly unfolding COVID-19 pandemic. This has hampered the opportunity for consultation with our member services, as AMSANT's priorities have urgently and necessarily shifted towards providing

support and advocacy for member services and Aboriginal people and communities across the NT in responding to the pandemic. Likewise, the priorities of our member services have been focussed primarily on preparing for and responding to the pandemic in their communities across the NT, and have had limited opportunity to consider external matters beyond this critical task in this context.

We thank the Department of Attorney-General and Justice and the Aboriginal Justice Unit for accommodating AMSANT's submission beyond the closing date. As such, our submission is relatively brief and focuses primarily on the areas of intersection between justice and health.

We also provide our endorsement of the submissions made by the following bodies/organisations:

- Aboriginal Peak Organisations Northern Territory (APO NOT)
- Northern Australian Aboriginal Justice Agency (NAAJA)
- Jesuit Social Services.

General comments

Overall, AMSANT is broadly supportive of the NTAJA. We acknowledge the substantial consultation that has been undertaken to develop the *Pathways to the Northern Territory Aboriginal Justice Agreement* and the *Northern Territory Aboriginal Justice Agreement 2019-2025 Draft Agreement for Consultation* documents.

However, we also recognise that this is a multifaceted space; justice cannot be considered in isolation to other interacting social determinants such as health, housing, poverty and employment. Addressing disadvantage must be at the core of any government strategy; without such measures to reduce inequality, progress will be limited.

AMSANT believe the NTAJA could be further strengthened by:

- Greater focus on prevention and early intervention (recommendation 1)
- Addressing systemic and structural racism (recommendation 2)
- Greater focus on appropriate mechanisms to manage the complex needs of people with disability who become justice involved (recommendation 3).

Recommendation 1: Greater focus on prevention and early intervention

At present, Aim One of the draft NTAJA is to *Reduce reoffending and reimprisonment rates of Aboriginal Territorians*. AMSANT believes that to wait for the point of offending and imprisonment is already leaving it too late.

To be truly effective, the first and foremost aim of the NTAJA should be focused on prevention and early intervention, with measures that prioritise addressing disadvantage and working with families and communities at the earliest signs of struggle.

In the context of comprehensive primary health care, within which our member services operate, the notion of prevention and early intervention is best demonstrated through early childhood intervention programs that are universally available. In our submission to the Senate Inquiry on Effective approaches to prevention, diagnosis and support for Fetal Alcohol Spectrum Disorder¹, AMSANT made reference to the three tiers of early childhood intervention programs that would be central to improving outcomes for children at risk of developmental vulnerabilities. These tiers are

¹ Submission 62, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/FetalAlcoholSpectrumDi/Submissions

universal (available to all families), *targeted* (available to higher risk groups within the population), and *indicated* (for children/families with specific needs, e.g. developmental delay or children in the child protection system). AMSANT believes that by adopting a public health approach that prioritises prevention and early intervention, the NTAJA will have greater opportunity for effectively supporting children, young people, families and communities at the earliest signs of trouble, and providing clear pathways that divert away from the justice system.

AMSANT supports a justice reinvestment approach that diverts resources away from imprisonment, to investment into measures that strengthen communities and address the underlying causes of behaviour related to crime. Justice reinvestment is increasingly being recognised as a real alternative to overly punitive and ineffective approaches for Australian communities seeking to tackle problems around offending and incarceration. In our submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory (2017)², AMSANT recommended that the Northern Territory Government develop a policy in support of justice reinvestment and whilst this was specifically aimed at youth justice, the underlying premise is transferrable to justice overall.

AMSANT notes the recommendation by NAAJA that an Aboriginal Justice Funding Model is developed (recommendation 1) which would see an overhaul of funding within the justice system, diverting funds away from prisons and policing towards community-based initiatives and early intervention programs. AMSANT fully supports this recommendation.

Recommendation 2: Addressing systemic and structural racism

The Uluru Statement from the Heart captures so succinctly the disproportionate impact of systemic and structural racism on, and ensuing powerlessness within these systems of, Australia's First Nations peoples:

*Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are aliened from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.*³

AMSANT believes that the NTAJA should include strategies that are more explicitly aimed at addressing systemic and structural racism. The *Pathways to the Northern Territory Aboriginal Justice Agreement* document makes acknowledgement of the impact of racism through policies of 'colonisation, dispossession and dislocation from land, family, language, culture, knowledge systems, authority and values' (NT AGD, 2019) that have contributed significantly to the disparity between Aboriginal and non-Aboriginal people in the Northern Territory.

AMSANT supports the view that racism is a key determinant of health and wellbeing for our people (Paradies et al 2008; Marwick et al 2019; Paradies et al 2015; Priest et al 2011). The impact of racism on health and wellbeing, and pathways from racism to ill-health, have been shown to include:

- Reduced or unequal access to resources required for health, such as housing, employment, education, access to health care
- Increased exposure to risk factors associated with ill health

² http://www.amsant.org.au/wp-content/uploads/2018/06/170420-AMSANT-Royal-Commission-submission_FINAL.pdf

³ Referendum Council 2017, Uluru Statement from the Heart
https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF

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- Increased exposure to negative emotion reactions that adversely impact on mental health and wellbeing, immune, endocrine and cardiovascular systems, and
 - Negative responses to racism such as smoking, alcohol and drug use (Paradies et al, 2008).

AMSANT believes the NTAJA could be clearer in prioritising the work required by government institutions involved in justice, such as police, prisons and child protection, to decolonise and address the systemic racism embedded in these institutions. Improvements in Aboriginal justice outcomes cannot be carried by Aboriginal people, communities and organisations alone.

AMSANT supports NAAJA's recommendation that the Northern Territory Government create a Northern Territory Anti-Racism Strategy as a way to tackle a whole-of-government (and indeed, whole-of-Territory) approach to eliminating racism and its impacts on Aboriginal Territorians.

Recommendation 3: Greater focus on appropriate mechanisms to manage the complex needs of people with disability who become justice involved

AMSANT, along with our member services, have been persistent in advocacy work that addresses the complex and multiple contributors to developmental vulnerability in Aboriginal children in the Northern Territory.

Fetal alcohol spectrum disorder (FASD), along with other mental and cognitive disabilities, often have a range of underlying causal factors such as adverse social circumstances, physical health problems affecting development including anaemia and recurrent infections, and suboptimal parenting, which may be due to a range of issues and exposure to traumatic events in the early years including family violence. Traumatic childhood experiences, prenatal alcohol exposure and prenatal trauma may lead to deficits in cognitive, social and behavioural domains (Price et al, 2017), which in turn are factors that increase a person's susceptibility to contact with the justice system (Blagg et al, 2017).

The Banksia Hill study (Bower et al, 2018) showed that as many as 36 per cent of 99 young people who took part in this study within a Western Australian youth detention facility were diagnosed with FASD, and 89 per cent had at least one domain of severe neurodevelopmental impairment. The links between developmental vulnerabilities (including FASD), justice system involvement, intergenerational trauma and colonisation cannot be dismissed (Blagg et al, 2017).

There is also an increasing awareness of the association between hearing impairment and Aboriginal people in the criminal justice system, particularly in the Northern Territory. Vanderpoll and Howard (2012) undertook to assess the prevalence of hearing loss amongst Aboriginal adult inmates in Darwin and Alice Springs correctional facilities. Their study showed that at that time, hearing loss was widespread with 94 per cent of Aboriginal inmates showing significant hearing loss (Vanderpoll et al, 2012). A study by He et al (2019) showed a demonstrable link, particularly in boys, between hearing impairment and youth offending. The NTAJA should include strategies to address effective communication by police, lawyers, the judiciary and correctional staff with justice involved people with hearing impairment.

The justice system is quite simply not designed to manage people with cognitive disabilities and mental health disorders, however, it is essential that it becomes appropriately equipped to identify, respond and manage such conditions, and to ensure that people coming into contact with the justice system because of such conditions are identified and diverted out of the system into appropriate treatment or support. Overwhelmingly, particularly in the NT, however, this is found not to be the case. Detention (often indefinite) is used as a means to manage people with cognitive and psychiatric impairments which is unacceptable. Behaviours associated with such cognitive,

psychiatric or neurodevelopmental impairments are often viewed by institutions such as schools, police and prisons through a prism of institutional racism rather than disability (Baldry et al, 2015). Furthermore, these systems and interventions tend to foreground the offending behaviours rather than the 'complex social disadvantage or disability, mental health or alcohol and other drugs (AOD) support needs' (Baldry et al, 2015).

AMSANT advocates for a social and emotional wellbeing (SEWB) framework in understanding and addressing complex health, mental health and substance abuse issues, including alcohol and other drugs (AOD), FASD and other cognitive disabilities. Such a framework is underpinned by principles of culturally responsive, trauma-informed care and encompasses domains of connection to culture, body, mind and emotions, land, family and kinship, spirituality and community (Gee et al, 2014). Understanding the implications of disruption and connection in relation to these domains is central to developing the capacity of staff, services and organisations to create a culturally informed environment in which healing and wellbeing can be nurtured.

AMSANT supports the recommendation made by Jesuit Social Services to ensure that on intake, all young people referred to youth justice diversion programs receive a comprehensive assessment, including screening for FASD.

Concluding comments

AMSANT echoes APO NT's calls for concurrent investment and initiatives in mental health and wellbeing, housing, education, training and employment, support for families and young people, and the development of empowered and culturally appropriate Aboriginal law and justice decision-making bodies at the community level.

We also believe the agreement could strengthen the embedding of Aboriginal community controlled organisations (ACCOs) in the redesign of service delivery models, governance structures and partnerships (in particular, strategies 16, 21 and 23).

AMSANT continues to advocate on matters of importance that are interrelated to the NTAJA but perhaps outside of its direct remit to address, including raising the age of criminal responsibility to 14 years of age, advocacy on the social determinants of health, and alleviating poverty and inequality.

In closing, AMSANT supports the view established by the Royal Commission into Aboriginal Deaths in Custody that imprisonment should only be used as a last resort and urge the NTAJA to embed this as an underlying principle of the final agreement.

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