Northern Territory Government

NORTHERN TERRITORY GOVERNMENT SUBMISSION TO THE SENATE COMMUNITY AFFAIRS REFERENCES COMMITTEE INQUIRY INTO THE INDEFINITE DETENTION OF PEOPLE WITH COGNITIVE AND PSYCHIATRIC IMPAIRMENT IN AUSTRALIA

A. Scope and Introduction

1. This submission provides the Northern Territory's response to the Terms of Reference set out by the Senate Community Affairs References Committee Inquiry into the Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia, released on 2 December 2015 and reissued on 13 September 2016.

2. The submission focuses on persons with cognitive and psychiatric impairment who are subject to Supervision Orders under Part IIA of the Criminal Code (NT) ('Criminal Code'). This is because section 43ZC of Part IIA of the Criminal Code expressly provides that a Supervision Order is for an indefinite term. For completeness, however, information in relation to civil involuntary detention is also included, noting that those involuntary detention treatment orders are not for an indefinite duration.

3. The Northern Territory comprises a land area of 1,345,035 km^2 and a population of 244,307 people (as at 30 June 2015), about 76,000 of whom live remotely. The Northern Territory's small but dispersed population poses significant challenges with respect to economies of scale and resourcing. The prevalence of forensic orders in the Territory is also higher than in some other jurisdictions.

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

B. Part IIA of the Criminal Code - Supreme Court

5. Prior to 2002, the Criminal Code provided for a defence of insanity and 'want of understanding' in an accused person, but not for the disposition of an accused person following a finding of not guilty because of mental impairment, other than detention at the Administrator's Pleasure. Part IIA of the Criminal Code was introduced in the Northern Territory in 2002 by the *Criminal Code Amendment (Mental Impairment and Unfitness to be Tried) Act 2002*, based on similar legislation in other jurisdictions. That Act introduced a new system applicable to the trial of indictable offences in the Supreme Court, where capacity is an issue, either at the time of the offending behaviour or at the time of trial, or both.

6. Whether an accused person is not guilty by way of mental impairment or unfit to stand trial are questions which are determined in the Supreme Court. Where a person's fitness to stand trial is raised, an investigation is held. Once a person is found unfit to be tried, the Court must determine whether there is a reasonable prospect that the person might, within the next 12 months, regain the capacity to stand trial. If the person does or would not regain capacity, a special hearing must be held to determine whether the accused person is guilty of the offence they were charged with, not guilty, or not guilty by reason of mental impairment.

7. On finding that an accused is not guilty due to mental impairment, the Court must either order the person to be discharged unconditionally or, alternatively, declare the accused 'liable to supervision' under sections 43I(2) or 43X(2). If the Supreme Court declares a person liable to supervision, it must make a Supervision Order.

8. The Supreme Court relies on reports from psychiatrists or other appropriate experts for the purpose of determining appropriate terms and conditions of a Supervision Order. A Supervision Order can be in the form of a Custodial Supervision Order or a Non-Custodial Supervision Order.

C. Review of Supervision Orders

9. Section 43ZC of the Criminal Code states that, subject to sections 43ZD, 43ZE and 43ZG, a Supervision Order is for an 'indefinite term'.

10. However, section 43ZK contemplates a review before the Supreme Court at least annually, and section 43ZG guarantees a major review. It should also be noted that section 43ZD confers a right on all supervised persons to make an application to the Supreme Court for a variation or revocation of the Supervision Order at any time. Such applications can be made prior to or following expiration of the term fixed under section 43ZG at the time the Supervision Order is first made.

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

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

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

13. In weighing up these factors, the Court relies heavily on expert clinical evidence provided by health professionals from the Department of Health, and consultants in private practice.

14. Part IIA of the Criminal Code contemplates rehabilitation of supervised persons and envisages a process of transition from Custodial to Non-Custodial Supervision Orders, and ultimately, unconditional release. The principle of least restriction in sections such as 43ZM permeates reporting and decision making under Part IIA, and significant efforts are made to ensure a Supervision Order is tailored and reviewed periodically so as to impose the least restriction practicable in the circumstances having regard to the resources available, and the risk profile and needs of the supervised person.

15. Treatment plans providing for clinical services and support are in place for all supervised persons who are subject to Supervision Orders. It is the overriding objective of treatment plans to rehabilitate all supervised persons safely to a less restrictive situation and ultimately to the community. It is acknowledged that some supervised persons are likely to remain on some form of supervision order for their lifetime, due to the complexities of their case.

16. De-identified examples of relevant treatment plans can be provided to the Senate Committee, if they would assist. Also, longitudinal case studies in relation to particular supervised persons can be made available on request.

17. Decisions as to whether to release a person from a Supervision Order unconditionally or to transition the person from a Custodial to a Non-Custodial Supervision Order may only be made by the Supreme Court.

18. When first making a Supervision Order, the Court is required to fix a term under section 43ZG which is equivalent to the sentence of imprisonment the person would have received if the person had been found guilty of the offence. The Court may backdate the term fixed under section 43ZG to when the person was first taken into custody for the alleged offence.

19. The term set under section 43ZG is a trigger for a major review. The Court must conduct a major review of the Supervision Order within the 3 to 6 month period prior to the expiry of the term, to determine whether to release the supervised person from the supervision order unconditionally. Section 43ZG(6) of the Criminal Code states that the Court must unconditionally release the supervised person unless it considers that the safety of the supervised person or the public will or is likely to be seriously at risk if the supervised person is so released. If the Court considers the safety of the supervised person or the public would be seriously at risk, the Court must confirm or vary the Supervision Order, including to a Non-Custodial Supervision Order if appropriate.

20. Under section 43ZK of the Criminal Code, the 'appropriate person', being the Chief Executive Officer of the Northern Territory Department of Health or the Chief Executive Officer of the Department of the Attorney-General and Justice (if the supervised person is in custody in a correctional facility), must report to the Court at least annually concerning the treatment, management and services provided to the supervised person under the Supervision Order, and any change in prognosis. In addition, section 43ZK of the Criminal Code mandates that the appropriate person also report on the treatment and services planned for the coming 12 months. These reports are authored by clinical experts, ordinarily in a multidisciplinary context.

21. On receiving a section 43ZK report, the Court has discretion to conduct a periodic review under section 43ZH to ascertain whether the person should be released from the Supervision Order, or whether the order should be varied from a Custodial to a Non-Custodial Supervision Order. Although discretionary, in practice sections 43ZK and 43ZH have the effect of guaranteeing a supervised person an annual review of the relevant Supervision Order. Additionally, in many cases the Court's practice has been to conduct a section 43ZH review more frequently than annually, and sometimes as often as 3 monthly.

22. Prior to varying a Supervision Order so as to access accommodation, services or treatment at an 'appropriate place', the Supreme Court must first receive a certificate from the Chief Executive Officer of the Department of Health certifying under section 43ZA(3) that the necessary facilities or services are available in the particular case.

23. The decision to unconditionally release a supervised person from a Supervision Order will often turn on issues concerning whether the supervised person is likely to comply with clinical treatment and management in the absence of a Supervision Order, and the availability of supports and resources in the community. In particular, issues regarding the likelihood of compliance with prescribed medication and abstinence from drugs and alcohol are also common and significant concerns in this decision making.

24. Since 2003, more than 20 persons have been released unconditionally, either because the Court has declined to make a Supervision Order on the finding of not guilty due to mental impairment or unfit to plead, through the nolle prosequi process, or following transition through the scheme provided by Part IIA.

25. In addition, since 2003 many supervised persons have also transitioned from Custodial to Non-Custodial Supervision Orders. Some supervised persons move back and forth between Custodial and Non-Custodial Supervision Orders, due to behavioural, substance misuse and medication compliance issues.

D. Number of Supervision Orders

26. As at October 2016, there are 36 people who are subject to a Supervision Order under Part IIA. Of that number, 19 are subject to Custodial Supervision Orders, and 17 subject to Non-Custodial Supervision Orders. Of all Part IIA supervised persons, approximately 80% are Indigenous.

27. These figures may be compared to those of 2013 when there were 25 persons subject to Supervision Orders under Part IIA, 11 of whom were subject to Custodial Supervision Orders. This represents an increase of around 40% in the total number of supervision orders over approximately 3 years. This increase is not attributable to changes in criminal defences or the applicable legislation.

28. Although anecdotal, the increase in number is likely the product of a combination of factors, including:

    - an increased awareness of Part IIA by parties to criminal proceedings in the Supreme Court;
    - legal representatives possibly being more willing to advise clients to seek consideration under Part IIA due to increasing capacity and sophistication of the service system; and
    - increasing misuse of alcohol, drugs and volatile substances and the manifestation of consequent harm, including through offending behaviour.

29. On 21 March 2016, New South Wales had 5.3 persons per 100,000 population (a total of 412; written submission No. 66 of the NSW Government refers) who were forensic patients. The incidence of forensic patients in the Northern Territory for the same period was 14.8 persons per 100,000 population (a total of 36). These figures are not intended to oversimplify the complexities of this area of service delivery but are intended to provide a baseline picture of the burden of forensic patients in the NT compared to a much larger jurisdiction like NSW.

E. Facilities

30. When Part IIA of the Criminal Code commenced operation in 2002, there were 3 persons held in Northern Territory Correctional facilities 'at the Administrator's pleasure', and there were no substantive facilities or services capable of treating and managing supervised persons within the forensic context. Approved facilities did exist under the *Mental Health and Related Services Act*, however those facilities were generally used for the treatment (and detention if required) of acutely ill persons in need of clinical and pharmacological treatment.

31. Since 2002, the Northern Territory has achieved a steady development of specialist or tailored facilities and services for the purpose of treating and managing supervised persons. These include (in reverse chronological order):

    - construction and commissioning of the Complex Behaviour Unit at Darwin Correctional Centre;
    - construction and commissioning of the 'step down' Cottages adjacent to the Darwin Correctional Centre;
    - construction and commissioning of the Secure Care Facility at Alice Springs;
    - establishment of various residential situations in the community from time to time;

- capacity building, encouragement and support of non-government organisations (NGOs) and overall strengthening of this sector;
- establishment of the John Bens Unit within G Block of Alice Springs Correctional Centre;
- significant workforce development (including indigenous employment) in each of the Departments of Attorney-General and Justice and Health; and
- increased use and development of specialist consultants in private practice.

32. Supervised persons on Custodial Supervision Orders are accommodated in Correctional facilities, particularly the Complex Behaviour Unit and the John Bens Unit, but also at the Secure Care Facility in Alice Springs, or at the 'step down' Cottages in Darwin. The Secure Care Facility and the Cottages are not part of a Correctional facility.

33. Of the 19 supervised persons on Custodial Supervision Orders, 14 are held in environments other than in the mainstream of Correctional facilities, whereby intensive clinical therapeutic services and management are provided. The remaining 5 supervised persons on Custodial Supervision Orders also receive in-reach clinical services and support in the mainstream sections of Darwin and Alice Springs Correctional Centres.

34. **Table 1 in Appendix A** provides an overview of the locations of the 19 persons who are subject to Custodial Supervision Orders in the Northern Territory, as at October 2016. Further details in relation to those locations are provided below.

35. The Darwin Correctional Centre was commissioned in late 2014 and includes a 24 bed, purpose built Complex Behaviour Unit which commenced operation in 2015. This Unit is staffed by a clinical manager, and correctional officers with particular training or skills, together with in-reach services provided by clinicians with expertise in mental illness and cognitive impairment. It is intended that, wherever possible, supervised persons currently detained in a Correctional Centre will be transferred to the Complex Behaviour Unit.

36. The 6 bed 'step-down' Cottages located adjacent to the Darwin Correctional Centre were also opened in 2014 and provide residential accommodation, supervision and therapeutic services to supervised persons. The Cottages are managed and administered by the Department of Health and are generally intended for persons suffering cognitive impairment. In addition to clinical and therapeutic services, persons resident at the Cottages engage in a significant range of activities including culturally appropriate activities.

37. The Secure Care Facility commenced operations in Alice Springs in 2013, and is managed by the Department of Health. That facility has a capacity for 8 cognitively impaired clients, but has operated below capacity due to both the availability of staff and the needs and risks of the supervised persons who currently reside there, and those who might be admitted. Residents at the facility are usually subject to a Custodial Supervision Order.

38. In addition to receiving clinical support and services which include implementation of behaviour management strategies directed to enhancing prosocial behaviour, supervised persons at the Secure Care Facility engage in a significant range of activities. The Department of Health applies a strong cultural focus in these activities, including daily visits to family and places with which the supervised persons can identify.

39. The Secure Care program includes a transitional community based house to provide step down accommodation as part of an individual's transition plan to a less restrictive community based placement. The transition house enables clients from Secure Care to spend time in a less restrictive environment in order to assess risk and revise programs accordingly. This approach has been successful with three clients involved in this program. A transitional house has also recently been set up in Darwin as part of the Cottages program.

40. Supervised persons at both the Cottages and the Secure Care Facility have regular supported visits to their home communities as part of their step down program and connection with family and culture. This aspect of service provision is aimed at facilitating a return to country when this has been identified as an appropriate outcome for a client.

41. The Alice Springs Correctional Centre has operated an area within G Block as a positive behaviour support unit since 2006, which then became the John Bens Unit. Although not purpose built and having a much simpler service model, the operating philosophy of this Unit is similar to that which has been implemented in the Complex Behaviour Unit. Due to the therapeutic, clinical and operational advantages offered by the Complex Behaviour Unit, all supervised persons on Custodial Supervision Orders at the John Bens Unit have been or are under consideration for transfer to the Complex Behaviour Unit.

42. Prior to establishment of the Secure Care Facility, Cottages and Complex Behaviour Unit, the Department of Health pursued a range of alternatives directed to providing individualised responses for clients subject to Custodial and Non-Custodial Supervision Orders, with the objective of transitioning supervised persons from Custodial to Non-Custodial Supervision Orders, and ultimately unconditional release. A number of accommodations were secured and modified over time, to enable less restrictive provision of therapeutic and clinical services and treatment.

43. De-identified case studies concerning particular supervised persons and models can be provided if they would assist the Senate Committee.

44. In relation to Non-Custodial Supervision Orders, the Department of Health also relies on accommodation and services provided by NGOs in appropriate matters. Several of these providers and accommodations now exist in both Alice Springs and Darwin. Where practicable, these enable development and implementation of individualised responses and placements, including for clients in remote communities.

45. As noted above, there are 17 supervised persons on Non-Custodial Supervision Orders residing in a range of accommodation situations. Of these at least 9 are in supported accommodation situations with NGOs, which involves ongoing clinical services and management. Others live independently with a variety of services and supervision, depending on their circumstances.

46. Some persons on Non-Custodial Supervision Orders in supported accommodations operated by NGOs may have restrictive conditions imposed by the Court, including concerning departure from their accommodation with approval, or in company of, support staff.

47. **Table 2 in Appendix A** provides an overview of the locations of the 17 persons who are subject to Non-Custodial Supervision Orders in the Northern Territory, as at October 2016.

48. The advent of an electronic monitoring program in the Northern Territory over the last couple of years has also enhanced options and increased flexibility in relation to conditions which attach to Supervision Orders. Monitoring is in the form of radio frequency or GPS, or both, and has been applied in a number of cases as one measure to address risk and reduce the level of restriction which might otherwise apply.

F. Treatment and Programs

49. The Department of Health provides in-reach and community 22 therapeutic and clinical services to supervised persons through both the Mental Health Service and the Office of Disability.

50. A broad but imprecise dichotomy exists between supervised persons with mental illness and those with cognitive impairment. A proportion of supervised persons are co-morbid, so suffering both mental illness and cognitive impairment, resulting in clinical services and management being provided by both Mental Health Services and the Office of Disability of the Northern Territory Department of Health. However, one of those services will ordinarily be recognised as having primary clinical responsibility for a particular supervised person.

51. As at October 2016, there were 21 supervised persons under the responsibility of Mental Health Services and 10 under the Office of Disability, with 4 persons jointly supervised by Mental Health Services and the Office of Disability.

52. The Mental Health Service Forensic Mental Health Team comprises 2 consultant psychiatrists, a psychologist and numerous mental health nurses (including 2 permanently located at the Alice Springs Correctional Centre) and other allied health professionals, together with a team manager. The Office of Disability has a Specialist Support and Forensic Disability Team, which also includes clinical specialists. Both the Forensic Mental Health and Specialist Support and Forensic Disability teams adopt a multidisciplinary approach, and provide in-reach services to the Correctional facilities, the Complex Behaviour Unit, the Step-Down Cottages, the Secure Care Facility, and to persons on Non-Custodial Supervision Orders, including at supervised accommodation in the community.

53. Where acute inpatient treatment is required, it is provided at approved mental health facilities at Royal Darwin Hospital or Alice Springs Hospital.

54. Persons detained in the Complex Behaviour Unit are supervised by select correctional officers with training in mental health, first aid, aggression management, complex care and suicide prevention. Correctional officers are committed to least restrictive practices, and feedback from supervised persons is positive. The Forensic Mental Health Team provides an 'in-reach' clinical service to the Darwin Correctional Centre. The in-reach service is provided during business hours, and to client's case managed by the team. The team also assesses new referrals from Correctional Services. Correctional officers can also access on-call advice and support by a mental health practitioner outside of business hours.

55. A similar approach has been applied at the John Bens Unit at the Alice Springs Correctional Centre since approximately 2006.

56. A 'Supervised Persons' meeting chaired by the General Manager of the Darwin Correctional Centre is held fortnightly and attended by senior correctional officers, Office of Disability and Forensic Mental Health staff, including a consultant forensic psychiatrist, designated mental health practitioners, and an Indigenous health worker. A similar multidisciplinary management model is also applied at the Alice Springs Correctional Centre, through a standing committee which meets on a regular basis.

57. There are several NGOs that assist with transition for clients on Custodial Supervision Orders back into the community. In the area of mental illness, these include the Top End Association for Mental Health (TEAM Health) and the Mental Health Association of Central Australia (MHACA). Other NGOs in Darwin and Alice Springs specialise in the care and support of persons with cognitive impairment.

58. These NGOs provide a range of residential and community based services. TEAM Health and MHACA also provide a range of non-residential services, including support to those in community housing, an outreach program and personal helpers and mentorship.

59. The service system in Darwin is more diverse than elsewhere in the Territory and includes some supported accommodation in the community, operated by NGOs. Such premises, including 'The Manse', which is collocated with the Tamarind Centre and run by TEAM Health, are appropriate for the transition of some supervised persons through the graduations provided by Part IIA. Two other premises in Darwin are operated by Golden Glow nursing.

G. The differing needs of individuals

60. Individualised treatment plans underpin every Supervision Order.

61. There is no 'one size fits all' approach to appropriate service provision for cognitively and psychiatrically impaired individuals. Many clients are impacted by mental health conditions, acquired brain injury and cognitive disabilities, resulting in particularly complex care needs. The various interventions required to provide optimal functioning for supervised persons are diverse, ideally requiring different physical environments as well as dedicated specialist and clinical staff with appropriate skills, training and experience.

62. Each individual has distinct needs and psycho-social requirements. As an example, challenging behaviour associated with those with foetal alcohol spectrum disorders (FAS-D) can be mistaken for symptoms of a mental health condition, but is in fact related to the underlying pathology of central nervous system damage. There is no cure for FAS-D, but problematic symptoms can be addressed via various directed pharmacological and behavioural interventions.

63. Cognitively impaired individuals can exhibit a spectrum of behavioural issues. This group requires specialised assessment, followed by development and implementation of structured behavioural support programs to address their ongoing and complex needs.

64. The behaviour and general presentation of mentally ill clients is more variable across a continuum, and depends on multiple internal and external factors. Interventions for mentally ill individuals are thus targeted towards recovery and rehabilitation.

H. Culturally appropriate responses

65. Approximately 80% of persons currently subject to Custodial Supervision Orders in the Northern Territory are Indigenous. As such, the cultural needs of Indigenous people are a high priority.

66. The Elders visiting the program is an initiative of NT Correctional Services of the Department of Attorney-General and Justice, aiming to provide cultural and community links to Aboriginal and Torres Strait Islanders who are incarcerated or detained in Correctional facilities. The program relevantly operates in the Darwin and Alice Springs Correctional facilities. Communities involved in the program include Ngukurr, Beswick/Burunga, Kalkaringji, Lajamanu, Groote Eylandt, Tiwi, Hermannsburg, Yuendumu, and the Barkly and Gove regions. There are plans to expand the program into Central Australia and Arnhem Land.

67. The establishment and maintenance of family and cultural contact for supervised persons is a priority for the Department of Health. Culturally appropriate activities are particularly available for persons on Non-Custodial Supervision Orders in supported accommodation.

68. Additionally, the Department of Health has ensured that information about mental health standards and patient rights is available in six languages at in-patient facilities.

69. The Northern Territory Government also has a strong Indigenous employment program. NT Correctional Services employs Indigenous support officers in Correctional facilities, and the Department of Health employs a full-time Aboriginal and Torres Strait Islander Mental Health Worker as part of the Forensic Mental Health Team.

70. The Forensic Mental Health Team has established formal networks with some remote communities to assist the return of people to their communities following a Custodial Supervision Order.

71. The Aboriginal Interpreter Service assists with the assessment and treatment of clients as required.

I. Diversion and Orders in the Local Court

72. Part 10 of the *Mental Health and Related Services Act* allows a court to adjourn proceedings for an offence to make treatment orders with respect to a person charged with offences and who in the opinion of the court is in need of treatment under the Act.

73. In particular section 77 of the *Mental Health and Related Services Act* applies to offences heard and determined in the Local Court, and requires the Local Court to dismiss summary charges if satisfied, following receipt of a certificate from the Chief Health Officer, that at the time of carrying out the conduct constituting the alleged offence the person was suffering from a mental illness or mental disturbance and as a consequence, the person did not know the nature and quality of the conduct, did not know the conduct was wrong, or was not able to control his or her actions.

74. Currently there is no provision for the treatment and disposition of an accused person upon such a finding; only the dismissal of charges under section 77 of the *Mental Health and Related Services Act*.

75. However, by Terms of Reference dated 26 May 2015, the then Northern Territory Attorney-General and Minister for Justice requested the Northern Territory Law Reform Committee (NTLRC) to investigate, examine and report on law reform in relation to the interactions between people with mental health issues and the justice system, and ways that this interaction, as well as outcomes for both the individual and society, might be improved.

76. The Terms of Reference included consideration of steps that might be taken to ensure the first point of contact for a person experiencing mental health issues after arrest is with the mental health system and not the justice system, as well as possible amendments to section 77(4) of the *Mental Health and Related Services Act* to provide a court exercising summary jurisdiction with options other than a mandatory dismissal of the charge.

77. The NTLRC Report no. 42 on *the Interaction of People with Mental Health Issues and the Criminal Justice System* dated May 2016 has been published on the Department of the Attorney-General and Justice website. The NT Government is currently considering the recommendations of the NTLRC and options for their implementation.

78. In late 2015, the Mental Health Court Liaison Service was established, comprising three mental health court clinicians based in the Local Court at Darwin and two at the Local Court at Alice Springs. The Mental Health Court Liaison Service provides mental state and capacity assessments, advice and reports to the Local Court and other referrers with respect to accused persons where factors related to mental illness need to be taken into account. Information is also provided to the Local Court in relation to the availability and appropriateness of possible programs and treatment, having regard to the accused's circumstances and available resources.

79. Additionally, in March 2016, the Mental Health Diversion List commenced in the Local Court. This List has been implemented administratively by the Chief Judge of the Local Court, Dr John Lowndes, and its practice is still evolving. The purpose of the List is to divert accused persons who have possible mental health issues or cognitive impairment from the regular criminal justice system and into the diversionary list.

80. At this stage, the Mental Health Diversion List deals with the following matters:

- pre-assessment advices under section 74 of the *Mental Health and Related Services Act;*
- applications and hearings for certificates under section 77 of the *Mental Health and Related Services Act*;
- applications for bail where the accused suffers from a possible mental illness, mental disturbance or cognitive impairment; and
- pleas of guilty or sentence indications where it is likely that a mental illness, mental disturbance or cognitive impairment will be relied on in mitigation of sentence.

J. Civil Detention of cognitively or mentally impaired people

81. In the Northern Territory, cognitively or mentally impaired people may be detained under provisions of the *Mental Health and Related Services Act* or the *Disability Services Act* according to whether they fulfil relevant detention criteria. It is generally considered these orders are not of an indefinite nature, though it is theoretically possible that some orders could be extended or renewed on a potentially indefinite basis.

82. Under the *Mental Health and Related Services Act,* the relevant criteria for admission at assessment are on the grounds of mental Illness, mental disturbance or complex cognitive impairment. Following initial assessment and admission, an involuntary patient is examined by a second authorised psychiatrist within 24 hours. An involuntary patient is then examined at least every 72 hours during any further period of involuntary detention. The Mental Health Review Tribunal must review the person's admission and any ongoing detention within 7 or 14 days.

83. When the Mental Health Review Tribunal reviews an involuntary admission, it will determine whether it is satisfied that the person fulfils the relevant criteria for involuntary admission. If so satisfied, the Mental Health Review Tribunal may order that the person be detained for a further period of up to 3 months for admissions on the grounds of mental illness, 14 days for admissions on the grounds of mental disturbance, or 14 days on the grounds of Complex Cognitive Impairment.

84. For admission on the grounds of mental illness or mental disturbance, orders must be reviewed. For admission on the grounds of Complex Cognitive Impairment, the order ceases to have effect at the end of the period stated in it (no longer than 14 days) and cannot be further reviewed, however this does not prevent a person with Complex Cognitive Impairment being detained on the grounds of mental illness or mental disturbance following assessment for involuntary admission on those grounds. If the Mental Health Review Tribunal is not satisfied that the person fulfils the criteria for involuntary admission, the person can be admitted as a voluntary patient (if applicable) or must be discharged.

85. The relevant criteria for detention under the *Disability Services Act* includes that the person has a complex cognitive impairment and is engaging in repetitive conduct of high risk behaviour likely to cause harm to himself or herself or to someone else, and unless the person receives treatment and care in a Secure Care Facility the person is likely to cause serious harm to himself or herself or to themselves or someone else or will represent a substantial risk to the general community. The Local Court may make a Treatment Order for a duration of no less than 6 months and no more than 2 years. A Treatment Order may be revoked, varied or a new Treatment Order put in place upon application to the Local Court.

86. There are currently no persons detained under the *Disability Services Act* in the Northern Territory. However, at least 3 supervised persons have been assessed by the Chief Executive Officer of the Department of Health under section 43ZA(4)(b) of the Criminal Code to have fulfilled the criteria for involuntary treatment and care in a Secure Care Facility.

K. Justice and Advocacy

87. A number of supervised persons have guardians appointed for them under the *Guardianship of Adults Act.*

88. The Community Visitor Program provides an advocacy and support service to people receiving treatment from the Department of Health in each approved treatment facility in the Northern Territory. The Community Visitor is located within the Anti-Discrimination Commission and is independent from the Department of Health.

89. The Community Visitor Program is established under Part 14 of the *Mental Health and Related Services Act*. A Community Visitor may inquire into and make recommendations relating to the adequacy of services, the standard of accommodation, the physical well-being and welfare of patients, the adequacy of information relating to the rights of patients and complaint procedures, compliance with the *Mental Health and Related Services Act* by facility employees and any other matter they consider appropriate.

90. A Community Visitor Panel is established for each inpatient facility in the Territory. Each panel has three members: a Medical Practitioner, a Legal Practitioner and a Community Member.

91. Community Visitors attend inpatient facilities at least fortnightly, and attempt to resolve any complaints detained persons have in relation to their detention or treatment.

92. Panels visit the approved treatment facilities at least once every six months. During these visits, they inquire into matters such as the quality of assessment, treatment and care provided to consumers; how well information is provided about complaints and legal rights; the level of opportunities and facilities for recreation, education, training and rehabilitation; and the extent to which the principle of the least restrictive alternative guides the way consumers are treated. The panel then meets with management to discuss and attempt to resolve any issues that arise from their visit and any previous visits.

93. The Community Visitor Program is not a legal service and does not provide legal advice or legal assistance to consumers, but can assist with legal queries by referral and liaison as appropriate.

    Involuntary treatment orders under the *Mental Health and Related Services Act* are reviewed by the Mental Health Review Tribunal. The Mental Health Review Tribunal must appoint a lawyer to represent the detained person at their hearing if the person is otherwise unrepresented and the Mental Health Review Tribunal considers that the person should be represented. Legal representation for people

before the Mental Health Review Tribunal has historically been provided by private lawyers, the Northern Territory Legal Aid Commission and the North Australian Aboriginal Justice Agency. This role has now been taken over by the Northern Territory Legal Aid Commission, with scope to brief private lawyers if necessary.

94. Further, Part 2.3 of the *Correctional Services Act* provides for the appointment of Official Visitors for each correctional facility, who must visit and inquire as to the treatment, conditions and behaviour of inmates, including those supervised persons who are in the Correctional facilities. The Official Visitor must also provide a report to the Minister. To date, while the Official Visitor has visited the Darwin Correctional facility, these visits have not included the Complex Behaviour Unit because current operational and offender demands in other areas of the facility have meant that the Official Visitors have been unable to prioritise the unit.

95. All accused persons who may come under Part IIA are represented by legal representatives. In addition to the usual duties and obligations, that practitioner holds an 'independent discretion' to act as he or she reasonably believes to be in the supervised person's best interests under section 43ZO of the Criminal Code. This includes in relation to a review hearing conducted under sections 43ZG and 43ZH of the Criminal Code.

Dated: 24 October 2016

APPENDIX A

Table 1 Location of Supervised Persons on Custodial Supervision Orders*

Facility	**Number of clients**
Darwin Region	
Darwin Correctional Centre, Holtze	3
The Cottages,, Holtze (on leave from DCC)	1
Complex Behaviour Unit, Darwin Correctional Centre	8
Alice Springs Region	
Alice Springs Correctional Centre	2
Secure Care Facility, Alice Springs	5
Total	19

Table 2 Location of Supervised Persons on Non-Custodial Supervision Orders*

Office of Disability Managed– **Territory wide**	**Number of clients**
Community based, supported at home	2
The Cottages, Holtze	1
Forensic Mental Health Managed – Darwin Region	
Community based, NGO managed accommodation	6
Forensic Mental Health Managed – Alice Springs Region	
Community based, being either supported at home or in NGO managed accommodation	3
Alice Springs subacute facility	1
Other (interstate or transitioning)	4
Total	17

- **Figures as 18 October, 2016 – locations fluctuate.**