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28 November 2017

Hon Michael Gunner  
Chief Minister of the Northern Territory  
GPO Box 3146  
Darwin NT 0801

By email: [chief.minister@nt.gov.au](mailto:chief.minister@nt.gov.au)

Dear Chief Minister

**Re: Camouflaged, specialised police with military-grade weapons to patrol Darwin and Alice Springs at night.**

We write on behalf of Australian Lawyers for Human Rights (**ALHR**) to express our concerns with the Northern Territory (**NT**) Police Commissioner's recent announcement of the intent to send a unit of camouflaged, specialised police with military-grade weapons to target children in Darwin and Alice Springs at night.

We are astonished that a little more than a week after your Government was handed the damning Report of the Royal Commission into the Detention and Protection of Children in the Northern Territory (**Royal Commission**) you would even consider use of the Territory Response Group (**TRG**), part of the Australian Government's national counter-terrorism taskforce, to manage vulnerable at-risk children.

This move appears to violate your international legal obligations toward children and completely ignore the findings and recommendations of the Royal Commission, and moreover, evidence-based best practice in relation to reducing rates of youth offending.

We are particularly alarmed by statements that Commissioner Reece Kershaw made to the media, including that the decision to deploy the TRG was not based "*strictly on pure evidence.*" When asked whether children as young as 10 years of age would be approached by camouflaged TRG officers carrying assault weapons, he said, "*they may be.*"<sup>1</sup>

Further he is reported to have gone on to state that it was up to the response group to determine how they conducted their operation. "*At the moment, we're bringing these children and youth before the courts, and nothing has come to me to say we're breaking the law — we're here to uphold and maintain social order,*" he said. "*We give them the task, and how they deliver that is*

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<sup>1</sup> <http://mobile.abc.net.au/news/2017-11-25/nt-police-with-assault-weapons-to-combat-youth-crime/9193520>

*up to them."*

Such statements appear to indicate a very concerning lack of awareness of the grave systemic problems and the breaches of domestic and international law that were found by the Royal Commission in relation to the NT's treatment of children. The Police Commissioner should be aware of the Northern Territory's human rights obligations toward all children.

**Although we note that following the Commissioners statements you sought to give the media assurances to the effect that assault rifles will not be carried, we also note that it is still the intention that the TRG will be deployed to specifically target Aboriginal children.**

### **International Legal Obligations**

As a signatory to the United Nations Convention on the Rights of the Child (CRC)<sup>2</sup> Australia, the NT Government and all of its agents are obliged, in all actions concerning children, to ensure that the best interests of the child are the primary consideration. Therefore contrary to the Commissioner's assertions otherwise, how children are policed must in fact be determined by this guiding principle and the TRG do not have a free reign to determine how they will conduct operations involving contact with children.

What you are proposing is the deployment of a usually heavily armed police unit with specialized counter-terrorism task force training and equipment, to deal with youth crime such as property damage, stealing and street offences. In ALHR's submission and for the reasons set out below, it is implausible that this could be in the best interests of the children concerned and is therefore in breach of Article 3 of the CRC.

We note that given its almost certain disproportionate impact on Aboriginal children, this move is very likely to also be incompatible with children's right to non-discrimination under Article 2 of the CRC as well as under the CERD.

### **Disproportionate impact on Aboriginal and Torres Strait Islander Peoples**

ALHR is deeply concerned that intensive night-time policing by the TRG will disproportionately target already vulnerable and disadvantaged Aboriginal and Torres Strait Islander children in Darwin and Alice Springs. Coupled with other inequities and challenges already within the system this policing measure will further condemn Aboriginal children to a life of institutionalisation. That you would take this populist action so soon after receiving the report of the Royal Commission is concerning.

The Northern Territory already has a juvenile detention rate that is 6 times the national average and 97% of these children are Aboriginal. Almost three quarters of the youths detained in the Northern Territory are on remand after bail has been refused. Internationally the NT tops all countries in the United Nations figures for imprisonment rates. Deployment of the TRG will only serve to increase these nationally and internationally unprecedented figures.

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<sup>2</sup> Convention on the Rights of the Child , Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 , entry into force 2 September 1990

ALHR reminds you that in 2016 the Northern Territory Government stated that it was going to cut Indigenous incarceration by an extraordinary 50 per cent by 2030. Deploying the TRG is totally inconsistent with that target and will be counterproductive.

## Royal Commission Findings and Recommendations

### Path to detention

As you and the Police Commissioner will be well aware, the Royal Commission made the following findings in relation to the path to detention

1. That the Northern Territory Police overcharge children and young people with offences.<sup>3</sup>
2. Northern Territory Police sometimes fail to comply with the obligation in section 22 of the *Youth Justice Act* to proceed by way of summons, rather than arrest, except in prescribed circumstances.<sup>4</sup>
3. Northern Territory Police sometimes fail to comply with the requirement in Article 37 of the CRC and section 4(c) of the *Youth Justice Act* to use arrest only as a last resort.<sup>5</sup>
4. There is no legislative provision to prevent children and young people in the Northern Territory being held in custody with adults which would conform with Article 37(c) of the CRC.<sup>6</sup>

We are very concerned that use of the TRG will lead to an increase in the abovementioned human rights violations and systemic issues facing NT children at a time when you should be taking urgent action to address them.

We note also that the Royal Commission also found significant failures in systems to rehabilitate and divert children away from crime and conflict with the law. It was found that children and young people in detention in Alice Springs were particularly disadvantaged. Their prospects for rehabilitation were compromised by the absence of local case management services.<sup>7</sup> Further, that Territory Families, and its predecessors, failed to provide the support needed to some children in care to assist them to avoid pathways likely to lead into the youth justice system.

ALHR is concerned that whilst it may be a populist move to deploy the TRG on the streets of Alice Springs and Darwin, the resultant increased contact with police and ensuing charging of children will only perpetuate the above failures to protect the best interests of NT children. Rather than investing in the intensive policing of children by a counter-terrorism task force, your Government should be urgently changing the age of criminal responsibility to 14<sup>8</sup> years and investing in measures to address the inadequacies identified by the Royal Commission - doing so would be a far more effective way to reduce rates of offending in the community.

We call in support of legal agencies of the Northern Territory for an immediate moratorium on the arrest and charging of children under the age of 12 years in line with the Royal Commission's recommendation.

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<sup>3</sup> Vol 2B, p. 249

<sup>4</sup> Vol 2B, p. 230

<sup>5</sup> Vol 2B, p. 230

<sup>6</sup> Vol 2B, p. 239

<sup>7</sup> Vol 2B, p. 13

<sup>8</sup> We note this is the average age of criminal responsibility in Europe

## **Ignores “place-based” and partnership approaches**

We further submit that this move fails to take any heed of the Royal Commission’s Recommendations in relation to a ‘place-based’, partnership approaches to juvenile justice in the NT.<sup>9</sup>

## **TRG has no specialist child or ATSI training**

Finally, we note with grave concern that members of the TRG have no specialist training in dealing with children in general or Aboriginal and Torres Strait Islander children. The Royal Commission recommended:

1. The expansion of Aboriginal Community Police Officers with a highly trained youth division.
2. That all officers involved in youth diversion or youth engagement be encouraged to hold or gain specialist qualifications in youth justice and receive ongoing professional development in youth justice.
3. That all Northern Territory Police receive training in youth justice which contains components about childhood and adolescent brain development, the impact of cognitive and intellectual disabilities including FASD and the effects of trauma, including intergenerational trauma.<sup>10</sup>

ALHR also understand that TRG officers do not consistently wear body worn video cameras, unlike uniformed police officers. If this is the case we are concerned that, should there be an incident with a child when the TRG is conducting these operations, members of the TRG are less accountable than uniformed police officers.

## **Conclusion**

The over-policing of children, particularly Aboriginal and Torres Strait Islander children, is a key factor leading to their overrepresentation in the NT’s youth detention system. The use of intensive policing practices or sentences of detention for juvenile offenders has not been shown to reduce crime rates or rates of reoffending. Contact with the TRG will potentially lead to the locking-up of children on remand and unnecessarily risks exposing them to the criminal justice system; which in turn generally increases their chances of becoming repeat offenders.

The Northern Territory’s increasingly punitive approach to juvenile justice is out of step with the rest of Australia and globally comparative jurisdictions. Jurisdictions like Victoria, the ACT and even Western Australia and the United States of America are really looking to change their youth justice systems to focus more on intervening early in the lives of young people. They have

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<sup>9</sup> Recommendations 7.1 and 7.2 state that the NT Government and the Commonwealth Government should commit to a ‘place- based’ approach for the implementation of the recommendations in partnership with local communities. The partnership should be built on the principles of mutual respect, shared commitment, shared responsibility and good faith. The location of the ‘place’ could be a single community, a group of communities or a region. The purpose of the partnership should be to reach agreement on the strategies, policies and programs needed to provide sustained positive outcomes for children and young people at each ‘place’

<sup>10</sup> Recommendation 25.1

recognised that principles of justice reinvestment, early intervention and diversion should guide youth justice policy. The Royal Commission has now recognised this too.

Sending in police with equipment and training designed to respond to terrorist incidents is no way to reduce youth crime or prevent offending before it happens. This is not evidence-based policy or policing and it is not guided by the best interests of the child.

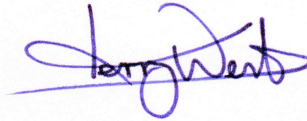
We are deeply disappointed by the decision you have taken. Not only is it inconsistent with Australia's international legal obligations but it is also contrary to what research tells us we should be doing to reduce rates of youth offending and rehabilitate young people. ALHR urges you to reconsider this populist move.

Please note that we also intend to raise our concerns with the NT Children's Commissioner. We thank you for your consideration of this letter and we look forward to hearing from you.

Yours faithfully,



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*ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.*