SUBMISSION TO SOCIAL POLICY SCRUTINY COMMITTEE: ***CRIMINAL CODE AMENDMENT BILL 2018***

1. *Assaults on emergency workers*

    a. It is acknowledged that assaults against ambulance officers and paramedics are prevalent, and that emergency workers selflessly place themselves in harm's way to perform a valuable service. The St John's #handsoffambos initiative is a well-designed campaign to remind the public to give first responders the time and space to do their life-saving work. However, the proposed amendments will not protect ambos, as there is no evidence that increasing penalties actually deters people from committing offences. Assaults against emergency workers are typically perpetrated by offenders in a state of intoxication and/or agitation. The last thing on their mind would be the penal consequences of their criminal conduct. Having regard to the Northern Territory's appalling, unsustainable and unaffordable rate of incarceration, any increase in penalties is both undesirable and harmful.

    b. The stated premise of this amendment – that for the purposes of the criminalisation of assault, emergency service workers should be placed in the same special category as police – is misconceived. Police occupy a special position in that they have special powers (eg entry, search, apprehension, restraint, detention) in the exercise of which they are specially authorised to use force, including, in extreme cases, lethal force. The rationale for a separate offence of assaulting police is to support police in carrying out their role, having regard to these special powers. Emergency workers, on the other hand, do not have any such powers, and are already adequately and appropriately protected by the provisions applicable generally to assaults on workers, as set out in s188A of the *Criminal Code*.

    c. The maximum penalty for an assault on a worker who does not suffer harm is currently identical to the maximum penalty for an assault on a police officer who does not suffer harm: 5 years imprisonment. Similarly, the maximum penalty for assaulting either a worker or police officer who suffers harm is also currently the same: 7 years. Accordingly, the only practical effect of the amendment would be to increase the maximum for causing serious harm to an emergency worker from 14 years to 16 years. It may therefore be inferred that the underlying purpose of this amendment is to send a rhetorical "tough on crime" message, without actually implementing any reform of substance. That course is inconsistent with the important principle of transparency in legislation, and is accordingly undesirable.

    d. This part of the Bill should be opposed.

Alternative verdicts to manslaughter

a. When s161A was introduced to the Legislative Assembly on 31 October 2012, Attorney-General Elferink predicted that the prosecution for this offence would be "rare". The Attorney was correct. In the ensuing six years, it appears that there has been only one conviction and sentence for this offence (Esau Pascoe, CN 21345256, sentence imposed by Riley CJ, 17 July 2014). It is unsurprising that s161A has so rarely arisen: in almost all cases where an unlawful and voluntary application of force has caused a death, it can be readily proven that the person who applied the force did so with either: intent to cause death or serious harm (murder); recklessness (manslaughter); or negligence

(manslaughter). Accordingly, in practice, the beneficial effect of the proposed amendment would likely be negligible.

b. On the other hand, the introduction of an alternative to manslaughter would add significantly to the complexity of the already complex directions and instructions that judges in homicide cases are obliged to deliver and juries are obliged to consider, and elevate the risk of appellably erroneous directions, additional confusion for jurors, jury error and miscarriages of justice. The directions commonly given to juries in murder trials in relation to the physical elements of the alternative offences of murder and manslaughter are the same. Only the fault elements are different. By contrast, both the physical and fault elements of s161A are different from manslaughter, necessitating lengthier and more convoluted directions.

c. Furthermore, the reform, if enacted, would in all likelihood have no significant effect on sentences currently imposed in manslaughter trials. Judges have the power and discretion to impose a just sentence – up to life imprisonment – in accordance with the circumstances of the offender and the offence, for offenders convicted of manslaughter. Where the moral culpability of the offender is at the lower end of the scale because, for example, the fault element was neither intent to kill or cause serious harm (as commonly occurs in provocation manslaughter) nor recklessness, the courts can and do reduce the penalty that would otherwise have been imposed. Were the reform enacted, and a jury did return an alternative verdict of guilty to the offence of violent act causing death, in all likelihood the sentence imposed would not differ greatly to that which would have been imposed had the offender been convicted of manslaughter, although presumably it would be somewhat more lenient.

d. The proposal to amend s316(2), but not s316(1), which relates to indictments charging a person with murder, is illogical, unsupported by principle and unexplained. If, as is proposed, juries should in appropriate cases be instructed to consider violent act causing death as an alternative to manslaughter, they should also be instructed to consider that charge as a second alternative to murder (the first alternative being manslaughter). It is reasonable (and perhaps compelling) to infer that the unidentified proponent of the Bill wishes to avoid the prospect that a person accused of murder may become the beneficiary of a compromise verdict of violent act causing death. Tactical considerations of this type in framing statutory amendments are unattractive and should be discouraged and discounted. If, notwithstanding the Commission's objections, this reform proceeds, then it is strongly submitted that it should also be applied to s316(1).

e. This reform proposes a minor amendment to the statutory provisions regulating criminal homicide. If enacted, it will have minimal effect. There is however a serious need to reform another aspect of the law of homicide in the Northern Territory, namely the repeal of s157(2) of the *Criminal Code*, which fixes a mandatory sentence of life imprisonment for murder, and the introduction of associated appropriate measures to allow for the resentencing of the scores of Northern Territory offenders currently serving that sentence. Mandatory sentencing for murder has been repeatedly and trenchantly criticised by judges, academics, commentators and legal services. It is beyond the terms of reference of this Inquiry to directly consider this issue, but unless and until it is addressed, the opportunity to beneficially reform other aspects of the law of homicide in the Northern Territory is very limited.