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REPORT OF THE

**ROYAL
COMMISSION
AND BOARD
OF INQUIRY**

INTO THE PROTECTION
AND DETENTION OF
CHILDREN IN THE
NORTHERN TERRITORY

VOLUME 2B

19

CASE MANAGEMENT
AND EXIT PLANNING

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CASE MANAGEMENT AND EXIT PLANNING

REHABILITATION: INDIVIDUAL RIGHT AND COMMUNITY EXPECTATION

Case management is a practical and effective way to coordinate services for rehabilitating children and young people. The goal is to help young people *'promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society'*.¹ This is achieved by providing access to activities and programs, including education and vocational training, based on each young person's individual circumstances and needs.²

International and domestic human rights standards for youth detention and the *Youth Justice Act* (NT) include rehabilitation as a core purpose and objective.

International human rights standards provide that:

- the purpose of services to children and young people in youth detention is to help rehabilitate them so they can assume a socially constructive and productive role in society,³ and
- children and young people in detention shall receive the care, protection and all necessary assistance, social, educational, vocational, psychological, medical and physical – they may require, based on their age and sex, and personality and individual traits.⁴

The Australasian Juvenile Justice Administrators' (AJJA) Juvenile Justice Standards provide that *'the principal purpose of a juvenile justice system is to intervene with children and young people to contribute to the reduction in re-offending'*.⁵ The standards require:

- the implementation of comprehensive assessment and case management systems

- that interventions demonstrate a capacity to reduce reoffending
- that children and young people are provided with opportunities and the support needed to behave responsibly
- the delivery of services within the context of family and support networks to reduce reoffending
- that children, young people, their families and support networks are able to participate actively in assessment, case planning and decision-making
- that service delivery for children and young people who are Aboriginal is informed by cultural advice from family and community members
- that key agencies, programs and services operate in partnership
- that community organisations provide services and programs to children and young people, and
- that facilities provide a physical environment that is safe and secure, and promotes rehabilitation.⁶

The AJJA Standards for Juvenile Custodial Facilities state that detention facilities should *‘provide a humane, safe and secure environment, which assists young offenders to address their behaviour and make positive choices about their lives, both during custody and upon their return to the community.’*⁷

It is an object of the *Youth Justice Act* to ensure that children and young people who have committed an offence are given appropriate treatment and rehabilitation.⁸

The Act further provides that programs and services should encourage social skills and develop children and young people’s potential as members of society, and that they should be dealt with in a way that enables their reintegration into the community.⁹

Rehabilitation is also a legitimate expectation shared by victims of crime and the wider community. By targeting the causes of offending behaviour, rehabilitation is a means of reducing recidivism and in turn enhances community protection.¹⁰

The legislative framework does not refer expressly to detention exit planning or post-release support. However, such planning and support are recognised as indispensable components of an effective rehabilitation program for children and young people in detention, who are inevitably returned to the community.¹¹ International human rights standards require pre-release planning while children and young people are detained and the provision of sufficient post-release services to facilitate their successful reintegration into the community.¹²

The *Youth Justice Act* makes superintendents of youth detention centres responsible for using case management to achieve rehabilitation.¹³ Under regulation 69 of the Youth Justice Regulations (NT), the Superintendent is required to maintain a comprehensive *‘case management system’* that assesses each detainee’s educational, vocational training and rehabilitation needs, and ensures a corresponding program of activities is available to each detainee.

The benchmark for case management in youth detention was described in Department of Correctional Services policies as a *‘collaborative process of assessment, intervention, planning, linking, facilitation, review and advocacy to assist clients and families to improve their lives and provide opportunities that are likely to assist in reducing the risk of re-offending.’*¹⁴

This goal was not achieved for the majority of children and young people in detention during the relevant period. In practice, few children and young people were provided with comprehensive case management attention and rehabilitation services, including exit planning. Through much, if not most, of the relevant period case management services were under-resourced and over-burdened. Families and responsible child protection workers were not adequately engaged in planning, and security and discipline within youth detention were prioritised over rehabilitation efforts.

Youth detention senior management was on notice about some of the deficiencies in the case management system, but did not act until the events at the former Don Dale Youth Detention Centre in August 2014 exposed the failings of a youth detention framework lacking any serious focus on rehabilitation, as analysed in the *Review of the Northern Territory Youth Detention System Report* (Vita Report).¹⁵ After the Vita Report delivered recommendations in early 2015, improvements were made to the case management system. However, deficiencies within the model and inadequate resourcing undermined its effectiveness and some of those deficiencies still exist.

This chapter describes the case management system in youth detention during the relevant period, including exit planning and identifies and examines deficiencies. Chapter 24 (Leaving detention and throughcare) considers rehabilitation and case management from a forward-looking perspective. It provides recommendations to improve the approach to rehabilitation not only for detention centres but more broadly for youth justice, based on research and evidence of practices in other jurisdictions.

Evidence gathered on case management services

In December 2016 the Commission issued a number of statement requests to the Northern Territory Government, including a request for statements dealing with case management services in youth detention during the relevant period.¹⁶

The statements and evidence received in response to those requests in early 2017 were primarily limited to the relevant policies in force throughout the relevant period,¹⁷ and practice since the implementation of recommendations arising from the Vita Report in 2015 to date.¹⁸

Some relevant evidence from across the relevant period, including the period 2013-2015, was received incidentally in the course of the Commission's inquiries and public hearings during March-June 2017 from former detainees, youth justice officers, former Correctional Services operational and departmental managers, and two case workers who worked in the case management unit. Some of these witnesses were represented by the Solicitor for the Northern Territory.

In June 2017, the Commission again asked the Northern Territory Government to address the statement request concerning case management, with specific attention drawn to the period between 2013-2015, given that evidence of an adverse nature about case management services had arisen during inquiries concerning that period.¹⁹ In response, in August 2017 the Northern Territory Government provided statements from two former senior case workers,²⁰ however the scope of their evidence was limited to the period 2006-2013.

In submissions,²¹ the Northern Territory Government relied heavily on the statements of those two former senior case workers, which was in some respects at odds with evidence from other Northern Territory Government witnesses on the subject of case management. The Northern Territory Government submitted that evidence from youth detention staff who were not employed in the case management unit should not be preferred over the evidence of those who were.²² The Commission is not satisfied that this distinction is an adequate basis on which to prefer, as a blanket rule, the

evidence of one witness over another. In the majority of instances where there was a suggested conflict of evidence, the evidence of the two senior case workers referred to policy standards or general propositions of practices across the period 2006-2013, whereas the evidence of the other witnesses concerned more specific timeframes, events and observed practices.

To the extent that evidence has been available, the Commission has made findings about case management services. However in the circumstances described above, the Commission has been unable to make conclusive findings about these services across the whole of the relevant period.

REMAND STATUS AND ELIGIBILITY FOR CASE MANAGEMENT

While various iterations of policies and procedures specified that both sentenced and remanded in custody children and young people were eligible for case management services, in reality only a minority were.

The policies distinguished between services for short and long term detainees, requiring an assessment of the likely length of detention as less or more than two months. Only those children and young people who were sentenced or 'likely to be remanded' for more than two months were eligible for individualised, intensive case management.²³ Until late 2015, the time frame for assessing needs to devise a case management plan was approximately three weeks.²⁴ Case plans were to be reviewed and updated every three months.²⁵ Given the high rates of short periods of remand, these benchmarks necessarily excluded most detainees at any given time.²⁶ Former Assistant General Manager and General Manager Mr Michael Yaxley confirmed that during his tenure in management roles from 2009 to 2013, sentenced children and young people were the focus of case management services.²⁷

Short periods of detention on remand, short sentences and limited resources were among the problems that hindered delivery of effective rehabilitation planning and corresponding programs. Some targeted programs required participation over an extended period while others, such as violent offender programs, were not available without a finding of guilt, which generally excluded detainees on remand.²⁸ The author of the *Review of the Youth Justice System in England and Wales in 2016* told the Commission that 6 months is the minimum period during which something useful could be done to rehabilitate young detainees.²⁹

Until 2016, release or exit planning was an additional process to case planning. It was an aspect of 'long-term' case management.³⁰ Policies in place during the relevant period variously identified that exit plans were only required for children and young people sentenced or remanded for a period of more than two months³¹ and later, one month,³² as at admission. However, the senior case manager between late 2009 to mid 2013 told the Commission that only children and young people sentenced to a period of one month or more detention received exit plans.³³ In any event, exit plans were expected to be settled three weeks before release,³⁴ again excluding children and young people detained for short and unpredictable periods.

The only release or exit management requirement that appeared to apply to all children and young people was the discharge procedure, which involved returning property and arranging travel or repatriation plans.³⁵ Providing identification and contacting Centrelink to start relevant payments upon release were only recommended as part of the longer-term case management process.³⁶ Senior managers in youth detention acknowledged that remand status was a barrier to targeted case management for most children and young people during the relevant period.³⁷ The Commission acknowledges the challenges posed by a large remand population. This difficulty was identified in

the 2011 Carney Review of the Northern Territory Youth Justice System:

The most challenging aspect of the operations of the Don Dale Juvenile Detention Centre is the lengthy remand periods and short sentences which are often back dated, that hamper the development and successful implementation of case management programs.³⁸

If a child or young person was held only for a weekend or for three or four days, there was insufficient time to assess them and prepare a case and/or exit plan.³⁹ However, with average remand periods of two to four weeks since 2012,⁴⁰ some form of individual needs-based assessment should have been undertaken for all detainees, as is now required by policy.⁴¹

Throughout the relevant period, the high remand population also put pressure on the availability of case management resources for the few longer-term sentenced detainees. Caseworkers carried out basic tasks for all detainees, such as facilitating phone calls and family visits, and conducting fortnightly classification reviews. As the case management unit was often under-resourced, which is discussed later in this chapter, this left little time for individual intensive rehabilitation assessment, planning and service delivery.

However, the challenges of remand have been better addressed in other jurisdictions. In addition to achieving lower proportions of children and young people on remand, more emphasis has been placed on, and resources provided for, designing case management programs to help in the transition from detention back into the community. In some cases, separate transition facilities have been built, see Chapter 24 (Leaving detention and throughcare).

The lack of external service providers to help children and young people on remand creates further limitations. The North Australian Aboriginal Justice Agency's (NAAJA) Throughcare Program, discussed in more detail in this chapter, recently received additional funding from the Healing Foundation and is now able to assist some remandees before and after release. But the Commission was told that additional resources are needed to work with the large number of children and young people on remand.⁴²

Finding

Throughout the relevant period, a majority of children and young people were ineligible for intensive, individualised case management and exit planning services. The high remand population in youth detention was and continues to be a barrier to effective rehabilitation planning and program delivery to both remanded and sentenced young people.

ADEQUACY OF STAFFING AND ASSESSMENT TOOLS

Consistent with the duties envisaged in case management policies and procedures,⁴³ the Commission heard evidence from former case managers⁴⁴ who said their role was to:

- develop case and release plans
- work with detainees and families to offer support
- provide counselling for detainees
- facilitate provision of professional support services to detainees
- assist with detainee classification reviews

- prepare reports, including institutional, parole and court reports
- conduct assessments of detainees, and
- facilitate phone calls and family visits.

However, throughout the relevant period, case management services were commonly understaffed and experienced high staff turnover rates. The case management unit at the former Don Dale Youth Detention Centre experienced ‘a revolving door’ turnover of case managers and was described by a former General Manager as ‘chronically understaffed’.⁴⁵ Those who remained had ‘burdensome and unrelenting’ workloads.⁴⁶ At one point, there was only one case manager,⁴⁷ and at other times there were only two⁴⁸ or three⁴⁹ for up to 50 detainees. The current Territory Families case management team leader said this ratio for caseloads was more than double the optimum level in her experience, that is, no more than 12 detainees per case manager.⁵⁰

Mr Yaxley described case management during his tenure as Assistant General Manager and General Manager during 2009-2013:

‘During my tenure the CMU [case management unit] experienced ongoing problems recruiting qualified Case Managers in both DDYDC and ASYDC...Existing staff often had a high workload due to the difficulties maintaining staffing levels especially during periods of rising numbers of detainees...The CMU were responsible for writing Behaviour Management Plans (BMPs). Developing a BMP was an intensive time consuming process that also required consultation. This combined with the staffing issues meant that case workers were not available to run programs for detainees as they had to prioritise their resources.’⁵¹

During the period 2009-2014, the monthly daily average of children and young people in youth detention commonly sat between 40-50, and as discussed below, Alice Springs had no local case manager.⁵² Between at least 2009-2013 the case management unit consisted of a senior case manager and two other case managers, however the senior case manager performed supervision and did not have a full detainee case management workload.⁵³

In early 2016 there were only two case managers including the team leader, which the team leader considered to be inadequate.⁵⁴ During January-April 2016 the average daily number of children in youth detention was between 55-60.⁵⁵

The single caseworker position in Alice Springs was unfilled for a number of years dating back to at least 2009.⁵⁶ While the Department of Correctional Services attempted to fill the role, it could not attract suitably qualified candidates. Case managers from the former Don Dale Youth Detention Centre had to travel to Alice Springs to deliver case management services, putting further strain on the services in Darwin.⁵⁷ After the Vita Report’s criticisms of case management, staff from the Family Responsibility Centres⁵⁸ were brought into the Alice Springs Youth Detention Centre and the former Don Dale Youth Detention Centre to compensate for staff shortages.⁵⁹

When detainee numbers were high and staffing resources under pressure, case managers had limited capacity to do more than basic tasks of ‘day to day case management and crisis interventions’ with little time left to organise and facilitate even group treatment programs.⁶⁰ There were few resources to run therapeutic programs to address factors underlying detainees’ offending behaviour.⁶¹ During the relevant period, the lack of facilities and space to conduct programs in the detention centres also undermined the effectiveness of the few programs and activities that were available.⁶²

Some detainees recalled having positive interactions with their case manager,⁶³ but commonly, children and young people identified their case manager as the person who arranged approvals for telephone number lists so they could contact family.⁶⁴ Few could recall what, if anything else, their case manager did for them.⁶⁵

Mr Terry Byrnes, an experienced case manager who worked with NAAJA as a Throughcare Program worker and senior Indigenous youth justice worker from 2011,⁶⁶ observed that while case managers cared about the detainees, they seemed to lack specific training to deal with young people with complex needs. He noted that case management based on the young people's individual backgrounds and problems was 'sorely lacking'.⁶⁷

Various case management policies dated between 2006 and 2011 referred to the Youth Level of Service Inventory (YLSI), an individual needs assessment tool commonly used in youth justice case management. Former senior case managers who worked in youth detention between 2006-2013 told the Commission the tool was,⁶⁸ or at least should⁶⁹ have been, used as part of the case management framework. However the tool did not appear to be used consistently, at least in the later part of the relevant period.

An internal Department of Correctional Services review in April 2014 which included assessment of case management services at the time, identified the absence of proper needs assessments:

'It is generally acknowledged by staff that many interventions currently delivered to young people in custody are not targeted in the sense of being delivered to young people on the basis of an assessment of risk and criminogenic need...Risk assessments are not currently being used to inform decisions regarding program participation and rehabilitation outcomes. Although the current client assessment process involves examination of relevant information regarding the clients' background and offending, criminogenic needs are not systemically targeted as a basis for intervention. Consequently there is a blurring of the boundaries between criminogenic and non-criminogenic need.

*It is submitted that the current admission assessment, based on self-reporting by the client, is ineffective in identifying the critical risks and needs. While there are a number of rehabilitative interventions that have been delivered to young people in custody, there are a number of gaps in terms of addressing critical risks and needs.'*⁷⁰

The Vita Report observed that at the time of its inquiries in late 2014, staff members used the YLSI tool inconsistently and without training.⁷¹ The YLSI tool was then formally adopted, or re-introduced, with training in its use for case management staff in 2015, discussed further below.

In the absence of specific training, the effectiveness of such a tool must have been impacted by the experience and qualifications of the staff applying it. Across the relevant period, the staffing allocation for the case management unit comprised both professional, tertiary and non-professional level pre-requisite qualifications. Non-professional case manager roles were classified as 'Administrative Officers', which required no relevant qualifications or training, merely 'previous youth work experience'.⁷²

The current team leader of case management services for youth detention observed that a heightened level of training and experience of staff since the introduction of the Case Management

and Throughcare Services manual in January 2016 has contributed, among other things, including the increase of programs, to *'significant improvement in the case management of detainees.'*⁷³

The Commission acknowledges the difficulties in recruiting people with professional qualifications to roles in the Northern Territory. However the Commission also considers that the complexity of characteristics and needs of the youth detention population means effective case management services, both assessment of needs and identification and delivery of corresponding programs and services, require staff delivering those services to hold qualifications or training and experience relevant to the needs and case management of children and young people.

A system without adequate qualified staffing resources and clear structure as to needs assessment and planning could not achieve the rehabilitation aims of case management and be compliant with the principles and obligations described in the *Youth Justice Act*.

Findings

Case management services across the detention centres were more often than not understaffed throughout the relevant period. As a result:

- **case managers were commonly unable to perform much more than basic case management functions, and**
- **children and young people did not receive adequate individualised rehabilitation needs assessment and planning while in detention.**

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.

ADEQUACY OF EXIT PLANNING

As explained above, exit planning was not an obligatory aspect of case management services for the majority of children throughout much of the relevant period.

The Commission's inquiries did not extend so far as to permit in depth assessment of whether or not all children and young people falling within the eligibility category in fact received exit planning, or the adequacy of exit planning in cases where it was done. However, the following observations are made.

The evidence of two former senior case managers (2006-2013) in response to the Commission's request for information about exit planning emphasised administrative tasks and logistical arrangements, such as applying for identification, establishing Centrelink eligibility, and organising travel arrangements to return home.⁷⁴ While it was suggested that external service providers sometimes visited young people in detention for the purposes of release planning, there was no continuation of service or relationship between the case management unit and the detainee upon release, as the file became *'inactive.'*⁷⁵

The evidence of one former senior case manager and the submissions of the Northern Territory

Government pointed to exit planning actions undertaken by the youth detention case management unit in circumstances where a court order requiring a level of case management intervention had been made.⁷⁶ Such actions, while positive, were not part of a routine exit planning and post-release service planning framework for eligible children in youth detention.

The evidence of a senior case worker during the period 2009-2013 confirmed that ultimately, successful exit planning depended on the involvement of external organisations:

*'The best working relationship during the period that I was senior case worker was with the NAAJA Through care program. The Case Workers and NAAJA Through care workers met regularly and openly discussed the young person's needs, wishes and plans for the future and worked together to refer the detainee to the appropriate services and plan for release. The Case Management Unit relied on external services once young people left detention. There was otherwise a limited ability or function for Case Workers to continue a working relationship with young people once they were released. For social workers, this inhibited our ability to assist the young person to follow through with their goals. There was a reliance on NGOs to pick up where the young person and the Case Management Unit had left off.'*⁷⁷

The discussion below of the current state of affairs concerning case management and exit planning confirms that adequate exit planning and post-release service delivery still depends upon the involvement of external organisations.

Stepping into the gap: Community organisations and post-release services

In the absence of adequate exit planning and arrangements for post-release services by the Northern Territory Government, community organisations have stepped in to try to fill this gap. They have done so with some success, though they have reached only a minority of children and young people entering and leaving detention.

Since 2010, the North Australian Aboriginal Justice Agency (NAAJA) has operated the Throughcare Program in Darwin that provides pre- and post-release support for Aboriginal people, including children and young people.⁷⁸ It is the only comprehensive program of its kind in the Northern Territory and is not provided for, or designed or funded by the Northern Territory Government.

Support starts as close as possible to six months before release and continues after release for a period, depending on the client's needs.⁷⁹

*Our approach aims to assist our clients in the early, and often stressful, period immediately following release from custody whilst also working to empower our clients by reducing the intensity of support as they become more able to independently navigate 'life on the outside' for themselves.*⁸⁰

Since the program began its intensive case management service in 2010, the agency has attempted to compile data to assess whether the program reduces recidivism.⁸¹

The agency said that while it was not a reliable statistical analysis, the data indicated that during the collection period only 14% of clients returned to prison while in the Throughcare Program.⁸² In terms of youth-specific data, the program had opened 95 case management files for children and young people since 2010, with only 24 of those returning to detention.⁸³ The data suggests that the Throughcare Program has reduced recidivism rates for children and young people, compared with other jurisdictions.⁸⁴ However, the Northern Territory Government's failure to collect the necessary data, whatever be the difficulties in doing so contended for by the Northern Territory Government, makes conclusive analysis impossible.

It should also be noted that many categories of detainees fall outside the coverage of this program. These include any non-Aboriginal detainees, any children and young people released from detention in Darwin but returning to live outside Darwin, and all detainees released from detention in Alice Springs. They do not receive any similar throughcare service.

These detainees may benefit from other programs, which may not be as comprehensive as Throughcare, run by organisations such as the Central Australian Aboriginal Legal Aid Service (CAALAS), Mission Australia and the Alice Springs Youth Accommodation and Support Services.

CAALAS provides assistance through its Youth Justice Advocacy Program, which is operated by a single staff member. This person also provides some limited case management and exit support to detainees, primarily helping with immediate problems after release, such as returning home. Clearly, this level of service is insufficient to cater for the complex needs of many in Central Australia's youth detention population.

Mission Australia's Post Release Support Program was, until December 2016, funded by the Department of Correctional Services. Since youth justice became part of Territory Families, no funding has been provided to run this service and it now operates only for adult prisoners on release.⁸⁵ The primary service provided help with accommodation,⁸⁶ starting three months before release.⁸⁷ Other services included engaging with education or employment authorities and providing assistance with administrative tasks.⁸⁸ Some children and young people leaving detention receive support from another Mission Australia program in Darwin, SPIN 180, a homelessness program for youth generally.⁸⁹

The Alice Springs Youth Accommodation and Support Services assists children and young people with homelessness and related issues.⁹⁰ It is a non-government organisation funded by the Northern Territory Department of Housing and Community Development.

The Alice Springs Youth Accommodation and Support Services is not a specific post-release program but caters for a range of children and young people. It is able to provide ongoing accommodation for those who cannot reintegrate into their families.⁹¹ They are moved into transitional housing where they have to learn to accept greater responsibility and develop independent living skills.

Finding

Throughout the relevant period, exit planning and post-release service delivery largely depended on external, non-government organisations delivering case management services additional to those offered by the Northern Territory Government's youth detention case management unit.

ADEQUACY OF STAKEHOLDER INVOLVEMENT

The need to involve those persons and organisations who deal and work with children and young people in the community in youth detention case management processes is uncontroversial.⁹² Such stakeholders include throughcare style program workers from organisations such as NAAJA in Darwin, CAALAS in Alice Springs, detainees' families, child protection workers where the child or young person is subject to a child protection order and health practitioners.

The rationale for their involvement is obvious. Often, they have existing relationships with young people and have a longer-term familiarity with their needs and their family and community background. They are also more likely to maintain those relationships with young people when they leave detention. If they are involved in case management planning, they can support effective delivery of post-release services.

In the past, youth detention case management policies recognised this imperative⁹³ and in practice, collaboration with community organisations has been mostly routine. However, the involvement of families and child protection workers throughout the relevant period has been limited and at times cooperation with community organisations has been wanting.

The Commission heard evidence from some family members who said they were in regular contact with detainees but were not informed of, or involved in, plans for their management.⁹⁴ The senior case worker for the period in 2009-2013 confirmed that during that period at least, family members were not included on the list of stakeholders to be invited to participate in case management meetings and

*'families were contacted by the Case Management Unit if there were any incidents at a centre, or if their child had been injured during a recreational activity, for instance. There was otherwise not a great deal of informal communication between families and the Case Management Unit.'*⁹⁵

Many detainees come from, and return to, remote communities. Involving the family in case management while a child or young person is in detention in Alice Springs or Darwin is obviously made more difficult by distance. The Commission also accepts that in many instances, the families of children and young people involved in offending behaviour may not be willing or able to participate in case management planning. This may be for a variety of reasons other than distance, such as their own drug, alcohol, mental health or criminal offending issues. In such cases, however, efforts should be made to engage an extended family or community member with familiarity with the child or young person and capacity to engage in the process both during the stay in detention and post-release. A possible contact in the future could be a 'recognised entity', discussed in Chapter 34 (Legislation and the legal process).

However, common sense dictates that where a child or young person is to be released from detention into the care of family, if rehabilitation efforts are to have a reasonable chance of success

efforts must be made to involve the family in case management and exit planning. Acceptance of this connection also requires recognition of the need to ensure families have adequate access to services in the community which enable them to support children and young people, such as housing and health services, see Chapter 28 (A new model for youth detention) and Chapter 24 (Leaving detention and throughcare).

The limited involvement of child protection caseworkers from Territory Families, and previous child protection government departments, for detainees who are the subject of a child protection order is discussed in Chapter 35 (The crossover of care and detention).

Mr Byrnes said that prior to mid-2013 the Department of Correctional Services provided a good level of communication and support for NAAJA's involvement with young people.⁹⁶ He observed that from mid-2013 when there was a change of case management team leader, the support for NAAJA's work deteriorated, and the level of communication and cooperation declined.⁹⁷ This included cessation of fortnightly case management meetings following the August 2014 tear gassing incident.⁹⁸ These have since recommenced.⁹⁹

As noted above, the information received from the Northern Territory Government about case management services in response to requests from the Commission has not covered the whole of the relevant period. The Northern Territory Government received notice of Mr Byrnes' evidence as part of the Commission's preparations for hearings,¹⁰⁰ and in June 2017 the Commission specifically drew to the Northern Territory Government's attention this aspect of Mr Byrnes' evidence and invited a response.¹⁰¹ However, no statement addressing his evidence or case management services during the period mid-2013 to 2015, other than Mr Rogers', referred to below, was provided.

The Commission acknowledges that the relationship between youth detention case management services and NAAJA has improved significantly since 2013-2015 and both are 'working towards the same end'.¹⁰² The Aboriginal Peak Organisations Northern Territory's (APO NT) submissions recognised the value of cooperation between the two bodies:

Good relationships and a culture of collaboration with personnel from both the Northern Territory Department of Correctional Services (NTDCS) and Territory Families enhances the quality of the throughcare support the [NAAJA] Youth Worker provides.¹⁰³

Finding

At least during the period 2009-2013, family members were not involved routinely in case management planning for children and young people in detention.

MANAGEMENT: SECURITY OVER REHABILITATION

Over the course of 2013 and 2014, case management staff were demoted from having a lead role in behaviour management planning and decision-making. These processes became subject to the veto of the Assistant General Manager and General Manager.¹⁰⁴

Mr William Rogers was a caseworker at the former Don Dale Youth Detention Centre in 2013 and 2014. He had started working there as a youth justice officer in 2004¹⁰⁵ and completed a Bachelor

degree in social welfare in 2013.¹⁰⁶ He explained how during his time the classification decision-making process changed from one led by a senior case manager involving stakeholders from across the detention centre to a less inclusive and consultative one:

[Before 2014] the classification meeting had been run by the senior caseworker and there was ... input from the CMU [case management unit], education staff and senior youth justice officers. On my return in 2014, the classification meetings only involved the Assistant General Manager (AGM) and the caseworker relevant to the detainee being classified.¹⁰⁷

Mr Rogers observed that in 2014 it was 'more common for the classification recommendation made by the case manager to be overruled by the AGM'.¹⁰⁸

Mr Rogers expressed frustration over the lack of consultation with case managers in the management of detainees and spoke to the Children's Commissioner of case managers' lack of 'clout'.¹⁰⁹ He drew this observation to the Commission's attention.¹¹⁰ He also observed that as a result of their loss of influence, youth justice officers showed him and his colleagues less respect.¹¹¹

Mr Christopher Castle was a case manager at the Alice Springs Youth Detention Centre between November 2012 and April 2013. He advised that his involvement in behaviour management of young people placed in isolation was superficial:

'... I was not part of any decision-making process which led to a detainee being placed in the BMU [Behaviour Management Unit]. The senior caseworker took me through the process of reviewing the BMU protocol over the phone. I experienced the process as fairly vacuous because, although I read and signed off on the document, I had no apparent role or responsibility in ascertaining whether the procedure was adhered to as that role was left with the youth justice officers.'¹¹²

Mr Castle left the job because he found himself 'constantly at odds with the senior youth justice officers' and considered 'there was a tension between the therapeutic approach that [he] adopted as a necessary part of [his] role, and the culture and practice of Alice Springs Youth Detention Centre'.¹¹³ He illustrated this by referring to the view of senior youth justice officers that 'a BMU placement was not the time for detainees to be offered counselling'.¹¹⁴ This view was reflected in at least one instance recounted by Mr Clee, who confirmed there was an occasion when a young person was expressly prohibited from accessing their caseworker for at least 12 hours, and possibly up to 24 hours, when placed in isolation.¹¹⁵

It might be thought that when a child or young person was placed in isolation that was the point at which they were most in need of counselling. Unfortunately, most senior Correctional Services management staff throughout the relevant period lacked the education or training that would have enabled them to understand this.¹¹⁶ Unsurprisingly, given the lack of expert or professional input into behaviour management planning during the period of at least 2013-2015,¹¹⁷ behaviour management plans focused on discipline.¹¹⁸ The failings of the security-focused behaviour management plan regime for detainees with complex behaviours who were placed in isolation is discussed in more detail in Chapter 14 (Isolation).

The diminished role of case management unit staff in the management of children and young people in isolation in 2013–14 was a symptom of the increased dominance of management's security, control and punishment strategies over individual, needs-based assessments and program responses.

Finding

During at least 2013-14, the management of detainees failed to achieve a balance between the security of the detention centre and the rehabilitation of the detainees, as required under the Youth Justice Act (NT).

WARNINGS TO MANAGEMENT ABOUT CASE MANAGEMENT DEFICIENCIES

To fulfil their statutory duty to deliver case management services, superintendents were reliant on support and resources from the Department of Correctional Services and the government. Mr Yaxley recalled bringing the issue of insufficient case management staffing to the attention of the Executive Directors Group during his time as Acting General Manager in 2012.¹¹⁹ Two significant reports were delivered to the Commissioner and the Minister for Correctional Services, warning of serious deficiencies in case management services in between September 2013- April 2014.¹²⁰ Mr Elferink denied to the Commission that he had received these reports or otherwise had knowledge of the concerns raised. Ms Cohen raised the issue at Executive Director Meetings in May 2014 as one presenting 'ongoing significant concerns'.¹²¹

Mr Middlebrook considered there were no significant problems in youth detention until 2013, when he perceived an increase in incidents and the seriousness of the behaviours of a small group of young people in detention. Even from this time, Mr Middlebrook failed, despite warnings about the lack of a comprehensive rehabilitation regime and its impacts on behaviour,¹²² to make the connection between some of the drivers of those young people's behaviour both inside and outside detention and what case management services could achieve.

Mr Middlebrook, and another senior manager,¹²³ identified an increase in young people entering detention with drug abuse issues. Mr Middlebrook considered this to be a significant contributor to the increase in the seriousness of behaviours and incidents.¹²⁴ Despite observing such a trend, Mr Middlebrook failed to advocate to the Minister for funding to address it, for example for drug testing, detox treatment or rehabilitation programs. He accepted in hindsight that he should have.¹²⁵

Only on receipt of the Vita report, which drew the connection between the lack of a rehabilitation and case management driven approach to youth detention and the high level of incidents that had eventuated by late 2014, did management start to improve resourcing case management. Even after this time however, Mr Middlebrook and Minister Elferink continued to advance punitive and disciplinarian approaches to managing unwanted behaviours,¹²⁶ undermining development of a needs based intervention approach.

CHANGES FOLLOWING THE VITA REPORT AND THE CURRENT CASE MANAGEMENT AND EXIT-PLANNING FRAMEWORK

The Vita report identified two aspects of the case management process that were inadequate:

A case management process that is un-coordinated and driven by individual staff who, in some cases, are without training and who, without consultation with other government and non-Government stakeholders, other than custodial staff, drive the case management process in a very basic fashion.

*Lack of training and/or consistent use of an appropriate screening instrument or assessment tool that should drive the case management process by identifying risk factors that are criminogenic and significant in that particular young person's offending and re-offending history.*¹²⁷

The report also recognised that the programs and activities were:

*not targeted ... on the basis of a formal assessment of risk and criminogenic needs' and there were 'no examples of programs currently provided at either NT YDCs [Northern Territory Youth Detention Centres] that would, in the eyes of the reviewer, be considered to be of sufficient intensity to bring about change in the highest risk group of offenders.*¹²⁸

As a result, the report stated that it was *'highly doubtful that meaningful headway [was] being made to reduce reoffending'*.¹²⁹

Changes to case management and exit planning following the Vita Report

Executive Director of Youth Justice, Salli Cohen, saw the Vita Report as an opportunity to press for a model with rehabilitation as the objective rather using a security and control approach.¹³⁰ Following the report's recommendation in 2015 the Department of Correctional Services:

- rolled out formal training and implementation of the Youth Level of Service/Case Management Inventory (YLS/CMI) assessment tool referred to in earlier policies
- reviewed case management policies and procedures, and
- expanded the individual criminogenic needs-based programs available.¹³¹

The YLS/CMI assessment tool judges a young person's criminogenic needs and the circumstances that might prevent them from accepting intervention and identifies their case planning needs. It assesses factors including criminal history, education, drug and/or alcohol problems and antisocial personality pattern. The results indicate what intervention is required and what program might suit the child or young person.

The review resulted in the creation of an *Interim Case Management Unit Procedure Manual* in December 2015, followed by an *Interim Case Management Assessment and Throughcare Services Manual* in January 2016. A final version of the *Case Management and Throughcare Services (CMATS) Manual* was published in September 2016.¹³² The manual governs the delivery of case management services and includes guidelines on the way case management is to prepare children and young people for release from detention.¹³³

The introduction of the CMATS manual is a positive development. It provides a much clearer framework for case management services and removes the distinction between planning for time in detention and for release. This is a step towards a continuum model of case management, discussed further in Chapter 24 (Leaving detention and throughcare).

The CMATS manual states that the caseworker must collaborate with the detainee to develop a case plan. This is similar in many ways to the former exit plans¹³⁴ and requires consideration of similar factors.¹³⁵

One notable change from previous policies is that the manual requires children and young people on remand to have a case plan that guides their rehabilitation and reintegration into the community.¹³⁶ It also sets a two-week time frame for completing assessments of detainees on admission, which ought to increase the number of children on remand who are assessed.¹³⁷ However, the requirement for planning for children and young people on remand is not met consistently. This is unsurprising because of the difficulty in engaging with children who are in detention for short periods. The Director, Programs and Services, Territory Families, explained:

*'[T]his requirement cannot be met for all young people, particularly young people on short remand for whom there is very little time or opportunity to develop a case plan before they exit detention. It is also dependent on appropriate resourcing of the staff in the detention centre case management unit.'*¹³⁸

Concern about resourcing is supported by evidence of staff shortages since the introduction of the manual in 2016. Clearly, the situation has affected service delivery by the case management unit.¹³⁹ At one point, there were only two staff members servicing all children and young people in the current Don Dale Youth Detention Centre. Witness CB stated:

*'The ability of case managers to prepare case plans in a timely fashion is dependent upon appropriate resourcing of the staff. Staff numbers impact on case load numbers. For example, in February and March 2016, due to staff on maternity leave, followed by a period of training and recruitment of new staff, there was only one case manager and myself at Don Dale, and one acting case manager in Alice Springs, managing the caseload of detainees at that time.'*¹⁴⁰

In addition to lacking resources, caseworkers also face the challenge of working in, at times, poor quality facilities. At the current Don Dale Youth Detention Centre, there was a conference room in which caseworkers could conduct meetings with detainees. However, the air-conditioning unit in this room was broken and not replaced. As a result, caseworkers were forced to shift between a number of demountable rooms.¹⁴¹ Witness CB stated:

*'Service delivery at Don Dale Youth Detention Centre would be improved if we had access to better facilities in which to deliver the interventions ... A lack of a reliable location to deliver the interventions undermines the services.'*¹⁴²

While the range of programs targeting individual needs was expanded after the Vita Report, this did not render the case management service 'comprehensive' for individual detainees. In 2015–16, \$618,653 was spent on case management programs, which is \$179,347 short of the allocated \$798,000.¹⁴³ Since *A Safer Northern Territory through Correctional Interventions* (the Hamburger Review) was delivered, expenditure on case management services in 2016–17 was increased to \$947,000.¹⁴⁴ Even with additional funding, rehabilitation services are not reaching many detainees.¹⁴⁵

A comparison of admission and program participation statistics since July 2015 shows that case management services are not comprehensive. From 1 July 2015 to 30 June 2016, there were 164 individual admissions to the current Don Dale Youth Detention Centre and 105 to the Alice Springs Youth Detention Centre.¹⁴⁶ In the same period, only 10 young people participated in individual counselling and six in individual mood and behaviour management sessions. No more than two received individual treatment for issues relating to violent behaviour, sexual offending and anger management. Nine participated in specific drug and alcohol related programs: one in individualised relapse prevention and eight in the Safe Sober Strong Program. There were 12 sentenced

participants in individualised Changing Habits and Reaching Targets program and 21 in the group Step Up program.¹⁴⁷

The Hamburger report also found that as at July 2016, many of the rehabilitation programs adopted at the current Don Dale Youth Detention Centre were not being facilitated, or had been postponed for various reasons, including insufficient staffing.¹⁴⁸ The Changing Habits and Reaching Targets program had not been delivered because of *'resourcing limitations and the small number of eligible participants'*. To be eligible, a young person must be sentenced and required to complete at least three months on a detention order, or on a combined detention order and period of community supervision.¹⁴⁹ Sentence only eligibility applied to a number of programs offered by the case management unit.¹⁵⁰ In all, 23 participants attended *'at least one module'* of the Step Up program, but only four or five had completed the entire program.¹⁵¹

In Alice Springs, there were no therapeutic programs available,¹⁵² which Territory Families explained by reference to the almost exclusively short remand period population there.¹⁵³

The psychologist involved in the Hamburger report identified the following systemic barriers to effective case management:

- lack of information sharing and joined-up case management between health and detention centre staff
- lack of timely assessments when children and young people entered the facility
- emphasis on security regimes to the detriment of other activities, including educational and criminogenic programs
- insufficient support for welfare and psychological staff
- negative attitudes of several staff members towards rehabilitation services and programs targeting behavioural change
- staff frustration that rehabilitative efforts were not sufficiently supported, and
- the view of some senior correctional officers that security, restriction and containment were the main purpose of the facility, taking priority over reducing the risk of further offending or maximising reintegration back into communities.¹⁵⁴

CASE MANAGEMENT IN 2017

It is apparent from the experiences of a range of internal and external youth detention stakeholders that despite the significant improvements made to the case management system, obstacles to effective rehabilitation efforts for children and young people in detention persist in 2017.

Case management and throughcare unit managers working for Territory Families identified resourcing challenges such as:

- having heavy case loads, including needing to conduct assessments and prepare case management plans within a fortnight of a young person coming into custody, or even being able to draw up a case plan for each young person in detention
- having too few facilitators to be able to offer a program
- being forced to reduce the scope or period of a program because of insufficient resources
- using program facilitators who have insufficient training
- experiencing a lack of governance in facilitating and supervising programs
- running programs that were not evaluated before or after implementation

- running programs, including Changing Habits and Reaching Targets and Step Up, that required high levels of cognitive and literacy abilities and the capacity for introspection
- dealing with operational aspects such as lockdowns, and
- dealing with inadequate physical facilities.¹⁵⁵

While anecdotal, the experiences of youth justice officers and health workers at the current Don Dale Youth Detention Centre which they shared with the Commission at a closed forum in February 2017, reflected some of these difficulties. In particular, staff identified the challenge of building rapport with children and young people and connecting them with mental health and substance abuse treatment services when they were in detention for short periods.¹⁵⁶

The observations of those working in the facilities highlight again the challenges of inadequate resourcing as well as the large number of children and young people in remand. These difficulties reinforce the need for more resources as well as alternatives to detention, such as increased bail support and community based accommodation.

Workers from NAAJA's Throughcare Program said that although communication with them about exit planning had improved, it was still irregular and the process lacked sufficient collaboration between Territory Families and other interested parties.¹⁵⁷ They also said that exit plans prepared by Territory Families' caseworkers at the Don Dale Youth Detention Centre lacked content as to engagement with services post-release. As a result, NAAJA's plans are commonly the only plans dealing with engagement and follow up post-release and are more heavily relied on.¹⁵⁸ In July 2017, the Northern Territory Government suggested establishing Youth Outreach and Re-engagement Teams that would provide greater case management capacity, with a specific focus on post-release services and throughcare.¹⁵⁹

Considered together, these observations suggest ongoing deficiencies in the case management and exit planning framework provided by the Northern Territory Government for children and young people in youth detention in the Northern Territory. Solutions to these issues are considered in greater detail in Chapter 24 (Leaving detention and throughcare).

Recommendation 19.1

1. **A case management system be implemented in all youth detention centres:**
 - **to manage behaviours in a therapeutic non-punitive, non-adversarial, trauma-informed and culturally competent way**
 - **to apply to all detainees including those on remand**
 - **to include:**
 - **training case workers in the use of an evidence-based and culturally appropriate individual needs assessment tool, utilised from admission of a child or young person and on an on-going basis**
 - **give case workers access to a manual that is comprehensive, up-to-date and reviewed on a regular basis**
 - **training and accrediting case workers to deliver therapeutic, trauma-informed and child-centred case management to all young people within the detention centres**
 - **resourcing and funding an increase in the case worker to client ratio to ensure that intensive and consistent case management can be delivered to each young person**
 - **implementing a multi-disciplinary approach to case management**

-
- engaging with relevant stakeholders, including community service providers, the young person and, where appropriate, the young person's family and/or departmental caseworkers
- providing each young person with individually tailored rehabilitation, with appropriate programs and services, including drug and alcohol programs ensuring each young person has ongoing access to their case managers, case management programs and activities regardless of security classification
 - ensuring young people on remand are provided with appropriately tailored case management services for release planning, and
 - ensuring case management and release planning for children and young people in detention take account of existing therapeutic and rehabilitation interventions and maintain their existing relationships with service providers.

2. Where appropriate, the young person's community caseworker continue as a caseworker during any period the young person is in detention.

ENDNOTES

- ¹ Exh.006.001, United Nations Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), regulation 12.
- ² Exh.006.002, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules'), 29 November 1985, tendered 11 October 2016, regulations 24.1, 26.1.
- ³ Ex.006.002, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules'), 29 November 1985, tendered 11 October 2016, regulations 24.1, 26.1.
- ⁴ Exh.006.002, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules'), 29 November 1985, tendered 11 October 2016, regulation 26.2.
- ⁵ Exh.283.232, Australasian Juvenile Justice Administrators Juvenile Justice Standards, 2009, tendered 31 March 2017, p. 3.
- ⁶ Exh.283.232, Australasian Juvenile Justice Administrators Juvenile Justice Standards, 2009, tendered 31 March 2017, standards 3, 4, 5 and 7.
- ⁷ Australasian Juvenile Justice Administrators Standards for Juvenile Custodial Facilities, March 1999, p. 6. <https://www.humanrights.gov.au/sites/default/files/Annexure%20H%20-%20AJJA%20Standards.pdf>
- ⁸ *Youth Justice Act* (NT) s 3.
- ⁹ *Youth Justice Act* (NT) ss 4, 151(3).
- ¹⁰ Exh.311.050, Australasian Juvenile Justice Administrators Principles of Youth Justice in Australia, October 2014, tendered 28 April 2017, pp. 1-2.
- ¹¹ Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, para 6; Central Australian Aboriginal Legal Aid Service's submissions aptly described 'trauma-informed, child-centred case management' as 'essential to maximising a young person's prospects of rehabilitation and successful reintegration into the community': Submission, Central Australian Aboriginal Legal Aid Service, 10 July 2017, p. 46, para 3.64. See also Submissions, Aboriginal Medical Services Alliance NT, 25 August 2017, p 28 and Exh.031.002, Annexure 1 – Report "A Safer Northern Territory Through Correctional Interventions" [REDACTED]. July 2016, tendered 5 December 2016.
- ¹² Exh.006.001, United Nations Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), regulations 79, 80.
- ¹³ *Youth Justice Act* (NT) s 151(2).
- ¹⁴ Exh.741.029, Annexure MP-29 to Statement of Mark Payne, 23 February 2017, Youth Detention Procedures and Instructions Manual, 2007, tendered 25 July 2017, p. 0684; Exh.741.066, Annexure MP-66 to Statement of Mark Payne, Case Management Unit Policy and Procedure, March 2010, tendered 25 July 2017, p. 1.
- ¹⁵ Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, pp. 37-40.
- ¹⁶ Exh.788.001, Request for Statement 2 issued to the Northern Territory Government, 30 December 2016, tendered 20 October 2017, pp. 5-6.
- ¹⁷ See Exh.741.000, Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, paras 27, 67-73; Exh.738.000, Statement of Jeanette Kerr, 21 February 2017, tendered 25 July 2017, para. 20; Exh.374.000, Statement of Amanda Nobbs-Carcuro, 24 March 2017, tendered 11 May 2017, paras 12-14.
- ¹⁸ Exh.374.000, Statement of Amanda Nobbs-Carcuro, 24 March 2017, tendered 11 May 2017, paras 15-33, 60-159; Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017.
- ¹⁹ Exh.789.001, Letter from Solicitor Assisting the Commission to Solicitor for the Northern Territory, 21 June 2017, tendered 20 October 2017, pp. 2-3.
- ²⁰ Exh.787.000, Statement of Tanya Blakemore, 22 August 2017, tendered 20 October 2017; Exh.784.000, Statement of Mary Culhane-Brown, 16 August 2017, tendered 20 October 2017.
- ²¹ Submissions in response to Notice of Adverse Material 25/17, Northern Territory Government, 14 September 2017.
- ²² Submissions in response to Notice of Adverse Material 25/17, Northern Territory Government, 14 September 2017, paras 27(e), 48(b), 48(b), 49, 68(a).
- ²³ Exh.741.029, Annexure MP-29 to Statement of Mark Payne, Youth Detention Procedures and Instructions Manual, 2007, tendered 25 July 2017, p. 0685.
- ²⁴ Exh.741.066, Annexure MP-66 to Statement of Mark Payne, Case Management Unit Policy and Procedure, March 2010, tendered 25 July 2017, p. 7; Exh.784.000, Statement of Mary Culhane-Brown, 16 August 2017, tendered 20 October 2017, para. 37.
- ²⁵ Exh.741.066, Annexure MP-66 to Statement of Mark Payne, Case Management Unit Policy and Procedure, March 2010, tendered 25 July 2017, p. 8.
- ²⁶ Consistently throughout the relevant period, the vast majority of children and young people in detention were on remand for periods of less than one month. See Chapter 9 (The purpose of youth detention).
- ²⁷ Transcript, Michael Yaxley, 22 March 2017, p. 2269: lines 1-25.
- ²⁸ Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 86.
- ²⁹ Exh.643.000, Précis of Evidence of Charlie Taylor, 27 June 2017, tendered 29 June 2017, paras 48-52; Transcript, Charlie Taylor, 29 June 2017, p. 5366: lines 23-46. In 2015-16, approximately 80% of total receptions to youth detention were for remand-only periods. The average length was remand-only period was 17.5 days: Exh.696.001, Statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, para. 72; Exh.696.006, Annexure CW-6 to Statement of Carolyn Whyte, Output 2.b, tendered 10 July 2017, Table 2b(iii).
- ³⁰ Exh.784.000, Statement of Mary Culhane-Brown, 16 August 2017, tendered 20 October 2017, para. 54.
- ³¹ Exh.741.029, Annexure MP-29 to Statement of Mark Payne, Youth Detention Procedures and Instructions Manual, 2007, tendered 25

- July 2017, p. 622.
- ³² Exh.741.066, Annexure MP-66 to Statement of Mark Payne, Case Management Unit Policy and Procedure, March 2010, tendered 25 July 2017, pp. 7-8.
- ³³ Exh. 787.000, Statement of Tanya Blakemore, 22 August 2017, tendered 20 October 2017, para. 69.
- ³⁴ Exh.784.000, Statement of Mary Culhane-Brown, 16 August 2017, tendered 20 October 2017, para. 67.
- ³⁵ Exh.741.029, Annexure MP-29 to Statement of Mark Payne, Youth Detention Procedures and Instructions Manual, 2007, tendered 25 July 2017, tendered 25 July, p. 622.
- ³⁶ Exh.741.029, Annexure MP-29 to Statement of Mark Payne, Youth Detention Procedures and Instructions Manual, 2007, tendered 25 July 2017, p. 0689; Exh.741.066, Annexure MP-66 to Statement of Mark Payne, Case Management Unit Policy and Procedure, March 2010, tendered 25 July 2017, pp. 7-8; Exh.784.000, Statement of Mary Culhane-Brown, 16 August 2017, tendered 20 October 2017, para. 54.
- ³⁷ Transcript, Michael Yaxley, 30 March 2017, p. 2269: lines 1-20; Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para. 257.
- ³⁸ Exh.096.017, Carney Review of the Northern Territory Youth Justice System, 30 September 2011, tendered 17 March 2017, p. 109.
- ³⁹ Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, paras 24, 117; Exh.374.000, Statement of Amanda Nobbs-Carcuro, 24 March 2017, tendered 11 May 2017, para. 153.
- ⁴⁰ Exh.696.001, Statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, para. 72: in 2012–13, the average remand period was 21.1 days or three weeks; in 2015–16, the average remand period was 17.5 days.
- ⁴¹ Exh.374.000, Statement of Amanda Nobbs-Carcuro, 24 March 2017, tendered 11 May 2017, paras 153-154, 17-21.
- ⁴² Exh.378.000, Statement of Thomas Fletcher Quayle, 21 April 2017, tendered 12 May 2017, para. 26.
- ⁴³ Exh.741.029, Annexure MP-29 to Statement of Mark Payne, Youth Detention Procedures and Instructions Manual, 2007, tendered 25 July 2017, pp. 684-694; Exh.741.066, Annexure MP-66 to Statement of Mark Payne, Case Management Unit Policy and Procedure, March 2010, tendered 25 July 2017, pp. 1-12; Exh.784.000, Statement of Mary Culhane-Brown, 16 August 2017, tendered 20 October 2017, paras 18, 55.
- ⁴⁴ Exh.093.001, Statement of Christopher Castle, 7 February 2017, tendered 16 March 2017, para 14; Exh.447.000, Statement of William Rogers, 6 March 2017, tendered 12 May 2017, paras 9, 13; Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 11.
- ⁴⁵ Exh.151.001, Statement of Greg Harmer, 3 February 2017, tendered 24 March 2017, para. 16; Exh.104.001; Statement of Terry Byrnes, 10 December 2016, tendered 20 March 2017, para. 62; Transcript, Michael Yaxley, 22 March 2017, p. 2262: lines 43-46.
- ⁴⁶ Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para. 145.
- ⁴⁷ Exh.151.001, Statement of Greg Harmer, 3 February 2017, tendered 24 March 2017, para. 16.
- ⁴⁸ Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 79.
- ⁴⁹ Transcript, Ian Johns, 28 March 2017, p. 2030: lines 23-24.
- ⁵⁰ Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 17.
- ⁵¹ Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, paras 5.2-5.4, 92, 94.; Transcript, Michael Yaxley, 30 March 2017, p. 2265: lines 5-13.
- ⁵² Exh.415.001, Statement of Carolyn Whyte, 18 April 2017, tendered 12 May 2017, p. 3, diagram: Northern Territory Youth Detainee Projection; Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, p. 41, Diagram 'Monthly daily average number of youth in detention by Indigenous status and sex 1 July 2006 to 25 September 2016.'
- ⁵³ Exh.787.000, Statement of Tanya Blakemore, 22 August 2017, tendered 20 October 2017, para. 17.
- ⁵⁴ Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 16.
- ⁵⁵ Exh.415.001, Statement of Carolyn Whyte, 18 April 2017, tendered 12 May 2017, p. 3, diagram: Northern Territory Youth Detainee Projection.
- ⁵⁶ Ms Kerr confirmed that as at December 2016 the position had been vacant 'for a number of years' and had been filled 'recently': Transcript, Jeanette Kerr, 8 December 2016, p. 516: lines 32-37. CAALAS had previously expressed concern including in its 2011 submission to the Review of the NT Youth Justice System regarding the case management at Alice Springs Youth Detention Centre, including the lack of case worker at the facility 'for a significant period of time': Submission, Central Australian Aboriginal Legal Service, 10 July 2017, p. 46, p. 3.65.
- ⁵⁷ Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 93; Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para. 149.
- ⁵⁸ The Darwin and Alice Springs Family Responsibility Centres provide services to families to promote the safety and wellbeing of young people, and to support parents/carers to exercise appropriate control over their behaviour. See: Northern Territory Government, 'Online Service Centre', [website], 2013, <<http://www.services.nt.gov.au/Pages/Search-Results.aspx?q=Family-Responsibility-Centres---Top-End>>; Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para. 148: a staff member from the Darwin Family Responsibility Centre was also used to back-fill one of two vacant case worker positions in 2013.
- ⁵⁹ Exh.785.001, Email from Salli Cohen to Ken Middlebrook, 'Case mgt – ASYDC and DDYDC', 22 June 2015, tendered 20 October 2017, p. 1.
- ⁶⁰ Exh.096.017, Carney Review of the Northern Territory Youth Justice System, 30 September 2011, tendered 17 March 2017, p. 116; Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para. 144.
- ⁶¹ Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para. 144.
- ⁶² Exh.190.001, Statement of Michael Yaxley, 2 March 2017, tendered 29 March 2017, para. 275; Transcript, Ken Middlebrook, 26

April 2017, p. 2959: lines 4-10; Exh.375.001, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 99.

⁶³ Exh.050.001, Statement of Dylan Voller, 25 November 2016, tendered 12 December 2016, para. 169; Transcript, Dylan Voller, 12 November 2016, p. 687: lines 29-46; Exh.167.001, Statement of BQ, 17 February 2017, tendered 27 March 2017, paras 48-51; Exh.065.001, Statement of Jamal Turner, 21 February 2017, tendered 13 March 2017, para. 71.

⁶⁴ Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 87; Closed court transcript, AU, 23 March 2017, p. 6: lines 33-36; Exh.128.001, Statement of AU, 18 February 2017, 23 March 2017, para. 33; Exh.068.001, Statement of BF, 20 February 2017, tendered 13 March 2017, para. 44; Exh.154.001; Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 79; Transcript, Ian Johns, 28 March 2017, p. 2030: lines 10-20.

⁶⁵ Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para. 61; Exh.068.001, Statement of BF, 20 February 2017, tendered 13 March 2017, para. 44; Statement of AU, 18 February 2017, 23 March 2017, para. 33; Closed court transcript, AU, 23 March 2017, p. 6: lines 33-36; Exh.102.001, Statement of BN, 14 February 2017, tendered 20 March 2017, para. 113.

⁶⁶ Exh.104.002, Annexure 1 to Statement of Terry Byrnes, resumé, undated, tendered 20 March 2017, p. 4.

⁶⁷ Transcript, Terry Byrnes, 20 March 2017, p. 1483: lines 14-22.

⁶⁸ Exh.784.000, Statement of Mary Culhane-Brown, 16 August 2017, tendered 20 October 2017, paras 16, 28.

⁶⁹ Exh.787.000, Statement of Tanya Blakemore, 22 August 2017, tendered 20 October 2017, para. 28.

⁷⁰ Exh.211.011, Annexure SC-10 to statement of Salli Cohen dated 21 February 2017, p. 86.

⁷¹ Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, pp. 13, 40.

⁷² Exh.785.001, Email from Salli Cohen to Ken Middlebrook 'Case mgt – ASYDC and DDYDC', 22 June 2015, tendered 20 October 2017, p. 1; Exh.784.000, Statement of Mary Culhane-Brown, 16 August 2017, tendered 20 October 2017, para. 14; Exh.784.001, Annexure MCB-1 to statement of Mary Culhane Brown, caseworker position descriptions, various dates, tendered 20 October 2017, pp. 1-3; Exh.787.000, Statement of Tanya Blakemore, 22 August 2017, tendered 20 October 2017, para. 15.

⁷³ Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 22.

⁷⁴ Exh.784.000, Statement of Mary Culhane-Brown, 16 August 2017, tendered 20 October 2017, paras 67-68; Exh.787.000, Statement of Tanya Blakemore, 22 August 2017, tendered 20 October 2017, paras 70-72.

⁷⁵ Exh.784.000, Statement of Mary Culhane-Brown, 16 August 2017, tendered 20 October 2017, paras 69-70.

⁷⁶ Exh.784.000, Statement of Mary Culhane-Brown, 16 August 2017, tendered 20 October 2017, para. 68; Submissions, Northern Territory Government, 14 September 2017, para. 63.

⁷⁷ Exh.787.000, Statement of Tanya Blakemore, 22 August 2017, tendered 20 October 2017, para. 58.

⁷⁸ Exh.378.000, Statement of Thomas Quayle, 21 April 2017, tendered 12 May 2017, paras 14-15.

⁷⁹ Exh.379.000, Statement of Samantha Taylor-Hunt, 10 April 2017, tendered 12 May 2017, para. 33.

⁸⁰ Exh.379.000, Statement of Samantha Taylor-Hunt, 10 April 2017, tendered 12 May 2017, para. 32.

⁸¹ This is part of the agency's reporting requirements associated with its Commonwealth funding: Exh.378.000, Statement of Thomas Quayle, 21 April 2017, tendered 12 May 2017, para. 30.

⁸² Exh.378.000, Statement of Thomas Quayle, 21 April 2017, tendered 12 May 2017, para. 30.

⁸³ Exh.378.000, Statement of Thomas Quayle, 21 April 2017, tendered 12 May 2017, para. 32.

⁸⁴ In 2015–16, the rate of return to sentenced supervision within 12 months of release ranged from 25% in Tasmania and the Australian Capital Territory to 55 per cent in Western Australia: see Australian Institute of Health and Welfare, 2017, Young people returning to sentenced youth justice supervision 2015–16, Juvenile Justice Series no. 21, Australian Institute of Health and Welfare, Canberra, p. 24.

⁸⁵ Exh.381.000, Statement of Darren Young, 26 April 2017, tendered 12 May 2017, para. 32.

⁸⁶ Transcript, Darren Young and Melissa Previtera, 12 May 2017, p. 3922: line 15.

⁸⁷ Exh.381.000, Statement of Darren Young, 26 April 2017, tendered 12 May 2017, para. 33.

⁸⁸ Exh.381.000, Statement of Darren Young, 26 April 2017, tendered 12 May 2017, paras 38-40.

⁸⁹ Exh.381.000, Statement of Darren Young, 26 April 2017, tendered 12 May 2017, para. 17.

⁹⁰ Exh.368.000, Statement of Janet Wright, 2 May 2017, tendered 11 May 2017, paras 15-19.

⁹¹ Transcript, Janet Wright, 11 May 2017, p. 3773: lines 19-23.

⁹² Transcript, Jeanette Kerr, 8 December 2016, p. 505: line 47 – p. 506: lines 1-3; Exh.375.001, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 54.

⁹³ Exh.741.029, Annexure MP-29 to Statement of Mark Payne, Youth Detention Procedures and Instructions Manual, 2007, tendered 25 July 2017, p. 0686; Exh.741.066, Annexure MP-66 to Statement of Mark Payne, Case Management Unit Policy and Procedure, March 2010, tendered 25 July 2017, p. 3. As to current policy, the Commission observes that the current manual does not identify expressly family members as stakeholders: Exh.374.005, Annexure AN-5 to Statement of Amanda Nobbs-Carcuro, Case Management and Throughcare Services Manual, September 2016, tendered 11 May 2017, pp. 4, 11, 17.

⁹⁴ Exh.136.001, Statement of BZ, 20 February 2017, tendered 23 March 2017, paras 52-54; Exh.085.001, Statement of CA, 17 February 2017, tendered 16 March 2017, para. 32.

⁹⁵ Exh.787.000, Statement of Tanya Blakemore, 22 August 2017, tendered 20 October 2017, paras 53, 59.

⁹⁶ Exh.104.001, Statement of Terry Byrnes, 10 December 2016, tendered 20 March 2017, paras 60-62.

⁹⁷ Exh.104.001, Statement of Terry Byrnes, 10 December 2016, tendered 20 March 2017, paras 57-62. See also Chapter 22 (Detention system oversight) - 'The removal of NAAJA's Community Legal Education legal rights sessions from the Tivendale School'.

⁹⁸ Exh.104.001, Statement of Terry Byrnes, 10 December 2016, tendered 20 March 2017, para. 61.

⁹⁹ Exh.375.001, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 48.

¹⁰⁰ Exh.790.001, Letter from Solicitor Assisting the Commission to Solicitor for the Northern Territory – Notice of possible evidence which may be adverse to party interests, 24 February 2017, tendered 20 October 2017.

- ¹⁰¹ Exh.789.001, Letter from Solicitor Assisting the Commission to Solicitor for the Northern Territory, 21 June 2017, tendered 20 October 2017, p. 3.
- ¹⁰² Transcript, Thomas Quayle and Samantha Taylor-Hunt, 12 May 2017, p. 3892.
- ¹⁰³ Submissions, Aboriginal Peak Organisations Northern Territory, 31 July 2017, p. 178.
- ¹⁰⁴ Exh.447.000, Statement of William Rogers, 6 March 2017, tendered 12 May 2017, paras 14-18.
- ¹⁰⁵ Exh.447.002, Annexure 2 to Statement of William Rogers, Children's Commissioner interview, 13 November 2014, p. 4.
- ¹⁰⁶ Exh.447.000, Statement of William Rogers, 6 March 2017, tendered 12 May 2017, para. 5.
- ¹⁰⁷ Exh.447.000, Statement of William Rogers, 6 March 2017, tendered 12 May 2017, para. 17.
- ¹⁰⁸ Exh.447.000, Statement of William Rogers, 6 March 2017, tendered 12 May 2017, para. 18.
- ¹⁰⁹ Exh.447.002, Annexure 2 to Statement of William Rogers, Children's Commissioner interview, 13 November 2014, pp. 6, 29.
- ¹¹⁰ Exh.447.002, Statement of William Rogers, 6 March 2017, tendered 12 May 2017, para. 12.
- ¹¹¹ Exh.447.000, Statement of William Rogers, 6 March 2017, tendered 12 May 2017, para. 19.
- ¹¹² Exh.093.001, Statement of Christopher Castle, 7 February 2017, tendered 16 March 2017, para. 30.
- ¹¹³ Exh.093.001, Statement of Christopher Castle, 7 February 2017, tendered 16 March 2017, para. 19.
- ¹¹⁴ Exh.093.001, Statement of Christopher Castle, 7 February 2017, tendered 16 March 2017, paras 35-36.
- ¹¹⁵ Transcript, Barrie Clee, 20 April 2017, p. 2570: lines 5-35.
- ¹¹⁶ See Chapter 23 (Leadership and management).
- ¹¹⁷ Transcript, Salli Cohen, 24 April 2017, p. 2799: lines 1-19.
- ¹¹⁸ See Chapter 14 (Isolation).
- ¹¹⁹ Transcript, Michael Yaxley, 28 March 2017, p. 2178: line 20 – p. 2179: line 25.
- ¹²⁰ See (1) the September 2013 memorandum concerning the Summary Directed Review of an Incident at Banksia Hill Detention Centre in Western Australia, (2) the April 2014 Review of NT Detention Centre Operations: Exh.211.011, Annexure SC-10 to statement of Salli Cohen dated 21 February 2017, pp. 43, 45, 46 (Banksia Hill memorandum pp. 5, 7, 8) and pp. 80-81, 86 (April 2014 Review pp. 3-4, 9). See discussion of the origins of and responses to these reports in Chapter 23 (Leadership and management).
- ¹²¹ Exh.283.266, 15 Executive Directors' Meeting – Minutes – 12 May 2014, tendered 31 March 2017, p. 4.
- ¹²² See the September 2013 memorandum concerning the Summary Directed Review of an Incident at Banksia Hill Detention Centre in Western Australia, (2) the April 2014 Review of NT Detention Centre Operations: Exh.211.011, Annexure SC-10 to statement of Salli Cohen, Banksia Hill memorandum dated September 2013 pp. 43, 45, 46 (pp. 5, 7, 8) and Youth Detention Review dated April 2014 pp. 80-81, 86 (pp. 3-4, 9). See discussion of the origins of and responses to these reports in Chapter 23 (Leadership and management).
- ¹²³ Transcript, Russell Caldwell, 29 March 2017, p. 2110: lines 30-35, p. 2155: lines 24-30, p. 2153: lines 10-22;
- ¹²⁴ Transcript, Ken Middlebrook, 26 April 2017, p. 2938: line 46 – p.2939: line 3.
- ¹²⁵ Transcript, Ken Middlebrook, 26 April 2017, p. 2939.
- ¹²⁶ See Chapter 23 (Leadership and management) and Chapter 13 (Use of force) ; Exh.283.129, Email from Middlebrook to Salli Cohen, Victor Williams, Kevin Cooper, Rob Steer' 'Discussions with teh [sic] Minister', 20 June 2015, tendered 31 March 2017; Exh.282.303, ABC report 'Hardened prison guards to watch over youth in NT detention centre, but only during daylight hours', 2 June 2015, tendered 31 March 2017; Exh.282.304, ABC report 'Police searching Darwin and Palmerston for escaped youths from Don Dale Youth detention centre', 2 June 2015, tendered 31 March 2017.
- ¹²⁷ Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, p. 13.
- ¹²⁸ Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, p. 38.
- ¹²⁹ Exh.437.002, Annexure 2 to Statement of Michael Vita, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 12 May 2017, p. 38.
- ¹³⁰ Exh.283.295, Email 'Fwd: Review into Northern Territory Youth Detention Centres', 25 November 2014, tendered 31 March 2017, p. 1.
- ¹³¹ Exh.374.000, Statement of Amanda Nobbs-Carcuro, 24 March 2017, tendered 11 May 2017, paras 15-33; Exh.033.001, Statement of Jeanette Kerr, 30 November 2016, paras 38-42, 53; Exh.311.133, 5.13 Case Management Minister's Brief, 30 August 2016, tendered 28 April 2017, pp. 1-2.
- ¹³² Exh.374.005, Annexure AN-5 to Statement of Amanda Nobbs-Carcuro, Case Management and Throughcare Services Manual, September 2016, tendered 11 May 2017.
- ¹³³ Exh.374.000, Statement of Amanda Nobbs-Carcuro, 24 March 2017, tendered 11 May 2017, para. 19.
- ¹³⁴ Exh.374.005, Annexure AN-5 to Statement of Amanda Nobbs-Carcuro, Case Management and Throughcare Services Manual, September 2016, tendered 11 May 2017, pp. 32-33.
- ¹³⁵ Exh.374.005, Annexure AN-5 to Statement of Amanda Nobbs-Carcuro, Case Management and Throughcare Services Manual, September 2016, tendered 11 May 2017, pp. 32-32; requirements to consider include criminogenic needs and intervention treatment to address that need, accommodation, family connections, education, employment and training, health, finances, culture and identity, as well as other needs, such as parenting support.
- ¹³⁶ Exh.374.005, Annexure AN-5 to Statement of Amanda Nobbs-Carcuro, Case Management and Throughcare Services Manual, September 2016, tendered 11 May 2017, p. 11.
- ¹³⁷ Exh.374.005, Annexure AN-5 to Statement of Amanda Nobbs-Carcuro, Case Management and Throughcare Services Manual, September 2016, tendered 11 May 2017, pp. 5-8.
- ¹³⁸ Exh.374.000, Statement of Amanda Nobbs-Carcuro, 24 March 2017, tendered 11 May 2017, para. 20(a).
- ¹³⁹ Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 102.

- ¹⁴⁰ Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 16.
- ¹⁴¹ Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 99.
- ¹⁴² Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 99.
- ¹⁴³ Exh.311.133, '5.13 Case Management Minister's Brief', 30 August 2016, tendered 28 April 2017, p. 4.
- ¹⁴⁴ Exh.311.133, '5.13 Case Management Minister's Brief', 30 August 2016, tendered 28 April 2017, p. 4.
- ¹⁴⁵ Exh.311.133, '5.13 Case Management Minister's Brief', 30 August 2016, tendered 28 April 2017, p. 5.
- ¹⁴⁶ Exh.311.133, '5.13 Case Management Minister's Brief', 30 August 2016, tendered 28 April 2017, p. 3.
- ¹⁴⁷ Exh.311.133, '5.13 Case Management Minister's Brief', 30 August 2016, tendered 28 April 2017, p. 5.
- ¹⁴⁸ Exh.031.002, Annexure 1 to Statement of Keith Hamburger, 'A Safer Northern Territory through Correctional Interventions', July 2016, tendered 5 December 2016, p. 160.
- ¹⁴⁹ Exh.375.001, Statement of CB, 10 May 2017, tendered 11 May 2017, paras 86-88.
- ¹⁵⁰ Transcript, Jeanette Kerr, 8 December 2016, p. 515: lines 20-30.
- ¹⁵¹ Exh.375.001, Statement of CB, 10 May 2017, tendered 11 May 2017, para. 90.
- ¹⁵² Exh.031.002, Annexure 1 to Statement of Keith Hamburger, 'A Safer Northern Territory through Correctional Interventions', July 2016, tendered 5 December 2016, p. 151.
- ¹⁵³ Transcript, Jeanette Kerr, 8 December 2016, p. 515: lines 14-30.
- ¹⁵⁴ Exh.268.001, Statement of Theresa Ellis-Smith, February 2017, tendered 31 March 2017, paras 13-14.
- ¹⁵⁵ Exh.792.001, Letter from Northern Territory Government to Solicitor Assisting Royal Commission into the Protection and Detention of Children in the Northern Territory, 27 July 2017, tendered 20 October 2017, paras 4-5; Exh.375.000, Statement of CB, 10 May 2017, tendered 11 May 2017, paras 35, 84, 92-93, 99-103, 116-117; Exh.374.000, Statement of Amanda Nobbs-Carcuro, 24 March 2017, tendered 11 May 2017, paras 153-154; Transcript, CB, 11 May 2017, p. 3857: lines 30-50.
- ¹⁵⁶ Community Meeting, Darwin (Youth Detention Staff Forum), 22 February 2017.
- ¹⁵⁷ Exh.378.000, Statement of Thomas Quale, 21 April 2017, tendered 12 May 2017, para. 57.
- ¹⁵⁸ Transcript, Samantha Taylor-Hunt, 12 May 2017, p. 3893: line 30 to p. 3894: line 8.
- ¹⁵⁹ Exh.786.001, Annexure B – Current Status to Letter from Solicitor for the Northern Territory to Solicitor Assisting Royal Commission, 7 July 2017, tendered 20 October 2017, p. 9.

20

DETENTION CENTRE
STAFF

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DETENTION CENTRE STAFF

INTRODUCTION

International standards make clear that the effective administration of youth detention facilities depends on the integrity, humanity and professional capacity of detention centre staff. The *Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules) cover the management of juvenile justice facilities as well as the selection, recruitment and training of personnel. These rules require personnel employed in youth detention facilities to be continually encouraged to fulfil their duties in a humane, committed, professional, fair and efficient manner; to always conduct themselves in a manner that deserves and gains the respect of the children and young people in their care; and to provide them with positive role models and perspectives.¹ The rules also provide for the careful selection and recruitment of personnel.²

Similarly, the *Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) identify the need for suitable training, refresher courses and appropriate models of instruction to establish and maintain the necessary professional competence of personnel working with children and young people in detention.³

The *United Nations Convention on the Rights of the Child*, to which Australia is a party, makes clear that every child or young person deprived of liberty ‘shall be treated with humanity and respect for the inherent dignity of the human person’, and in a manner that is consistent with their age.⁴

The Australian Juvenile Justice Standards, which the Australasian Juvenile Justice Administrators developed as early as 1996, provide that staff members should be competent to deliver effective juvenile justice services and should demonstrate organisational, professional and ethical values and behaviour.⁵

The *Youth Justice Act* (NT) and *Youth Justice Regulations* (NT) reflect these principles and set out the responsibilities of detention centre staff members, particularly those in the role of superintendent.

According to the Youth Justice Regulations, detention centre staff members, known as youth justice officers, are required to:

- *‘exercise understanding, restraint and patience in the care, control and supervision of detainees and in the maintenance of discipline amongst detainees’*
- *‘encourage positive behaviour among detainees that is consistent with increasing the responsibility and independence of detainees.’⁶*

For the reasons outlined in this chapter, it is apparent that there was a gulf between the requirements in the regulations and the actual operation of youth detention centres in the Northern Territory.

The Commission accepts, as the Northern Territory Government has argued, that some 550 youth justice officers were employed across the detention centres over the 10-year period which the Commission is charged with investigating and that it has heard evidence from only a small number of them. Those youth justice officers who gave evidence in the public hearings were not challenged about their perceptions of limited training and the attitudes and culture prevailing in their respective workplaces when they were employed. Some youth justice officers and management did reject some of those observations about a prevailing culture where their conduct was concerned. Having carefully considered the Northern Territory Government’s objections to general conclusions being drawn from this body of evidence, the Commission is of the view that it may do so.

It is accepted that it is both onerous and challenging to manage children and young people in detention with complex and difficult behaviours, from diverse backgrounds and, invariably, from backgrounds of profound disadvantage. Accordingly, a comprehensive understanding of the challenge, a robust recruitment process and relevant workforce training were required.

Until at least 2015, the recruitment and training of youth justice officers, or their equivalent, was ad hoc and driven by crisis management. The approach was to recruit to meet immediate needs rather than adopt a program of finding candidates with suitable skills for the current and future requirements of the detention centres.

As a consequence of this approach to recruitment as well as poor and often inappropriate training, and an over-reliance on a casualised workforce, many of those employed as youth justice officers during the relevant period were not competent to undertake the work.

The title of detention centre workers changed from *‘youth worker’* to *‘youth justice officer’*. Staff members told the Commission they preferred the former title because it was a more appropriate description of their work, which involves working with children and young people rather than punishing them.⁷ The Commission heard that from 2010 the youth detention centres’ approach to managing detainees tended to become progressively harsh and punitive. As the Commission heard, some youth justice officers clearly worked hard to apply and maintain the standards required in the Youth Justice Regulations in these difficult circumstances,⁸ but a number resorted to punitive and sometimes violent methods to control the children and young people in their care. This allowed an environment to flourish where some detainees were bullied and belittled by those who ought to have been committed to their care. Far from being good role models, some youth justice officers’ own poor behaviour in swearing at detainees and breaching rules endorsed a certain lawlessness.

This chapter will explore the human resource practices involved in recruiting and training the detention centre workforce. As will be shown, these practices have been found to be wanting. They are emblematic of a system in continual day-to-day operational crisis, seemingly lacking the wherewithal to take a long-term strategic view and implement practices to comply with legislation.

RECRUITMENT AND STAFF CULTURE

Evidence before the Commission was clear that difficulties in recruitment were an ongoing issue in youth detention in the Northern Territory throughout the relevant period.⁹ Substandard recruitment practices led to an influx of inexperienced staff members who were responsible for some of the most vulnerable children and young people in the community.

In 2009, one observer said that *'all that seemed to be required to obtain a job was to know someone who already worked there'*.¹⁰

One former youth justice officer expressed her views about recruitment at Don Dale in the following way:

*'I sometimes thought that management must have been desperate for new recruits, given the kind of people who were employed. In particular was the recruitment of big muscly men who did not appear to have any particular skills, interest or experience in working with children, but were physically able to dominate the detainees when it was thought their behaviour required a physical response.'*¹¹

Another youth justice officer commented that a real lack of professionalism was present among youth justice officers from 2011 to 2012, when a *'fairly young crew'* came through the centre.¹²

In 2012, existing staff members were asked whether they knew anyone who wanted to work as a youth justice officer.¹³ This approach to recruitment appears to have contributed to the influx of inexperienced workers. Former youth justice officer Jon Walton said that he heard about a job at the former Don Dale Youth Detention Centre from a friend's father in January 2012. He went into the detention centre in the morning to enquire about employment opportunities and that afternoon received a request to commence as a youth justice officer immediately.¹⁴

More casual staff members were employed at Aranda House and the Alice Springs Youth Detention Centre than permanent employees. The recruitment of suitable casual youth justice officers was difficult and, as a result, the Commission heard that between 2011 and 2012 people with no experience in youth justice were being recruited with minimal training and, in some instances, without background checks.¹⁵ In 2015, a Professional Standards Unit (PSU) audit found that seven of the 22 youth justice officers employed at the Alice Springs Youth Detention Centre did not hold a valid Ochre Card.¹⁶

From around 2012, the Commission accepts the evidence that *'a brutish and bullying regime'* and a *'macho punitive'* approach, as recounted by some youth justice officers, was displayed in the management and staff culture of the former Don Dale Youth Detention Centre.¹⁷ One former youth justice officer who worked at the centre from 2007 to 2012 said of the male staff members involved in that approach:

*'... [they] appeared to me to think they had a right to bully, tease and harshly apply or misapply rules about privileges to the detainees because of the fact that they were there as punishment for offending and therefore deserved this kind of treatment.'*¹⁸

She also observed that their behaviour was *'rarely nurturing or rehabilitative'*¹⁹ and *'[t]he bully boys did not seem stressed about getting kids that were in isolation in the cells out to get fresh air and exercise'*.²⁰ Another former youth justice officer commented that *'there were certainly a number of male officers who were – it seemed that their sole purpose for being there was to feel good about themselves and to wield their power over other people'*.²¹

As the competence of staff members deteriorated, the behaviour of the children and young people in detention worsened and there were more incidents of a violent or serious nature. Between May 2010 and April 2011 four allegations were made of youth justice officers assaulting children and young people in detention.²² Central Australian Aboriginal Legal Aid Services (CAALAS) submitted that discussions with their clients who were in custody at Aranda House and the Alice Springs Youth Detention Centre in 2010 and 2011 *'indicated that there was an entrenched culture of abuse, in which they saw violent and abusive behaviour by staff as the norm.'*²³ Further, one youth justice officer commented that the changes in culture she observed, which started in the months before the first serious incident at the former Don Dale Youth Detention Centre, on Boxing Day 2011, were in fact the catalyst.²⁴ Another youth justice officer said that inexperienced staff contributed to the Boxing Day incident.²⁵

The practice of hiring *'muscle'* developed in 2013 and 2014.²⁶ As set out below, the Commission heard that a *'boys' club'* mentality prevailed in 2014 and led to the coining of various names, including *'TBC'*, *'Jimmy's Boys'* and the *'Don Dale Turtles'*.

The boys' club

In 2014, when James (Jimmy) Sizeland became Superintendent of the former Don Dale Youth Detention Centre, a particular group of youth justice officers emerged. Former youth justice officer Ben Kelleher agreed that he was part of a close group who worked together and shared a common interest in mixed martial arts.²⁷ Mr Sizeland was also Mr Kelleher's referee in some of his fighting matches outside the work environment.²⁸

A PSU audit from September 2014 acknowledged that in the recent past there was an issue with a *'boys club'* mentality among male youth justice officers and that the same issue was occurring again with another group of male youth justice officers involved in martial arts fighting.²⁹ The September 2014 memorandum stated that the group:

*'... do not perform the duties of their positions, they bring their mobile phones to work, ignore direction from senior staff as they know that they will not be held to account for it, corrupt new staff to their way of operating, are late for shift or leave early with nothing done about it and when criticised by supervisors become abusive.'*³⁰

Vulnerable witness AY recalled a group of about eight youth justice officers being part of a boys' club at the former Don Dale Youth Detention Centre at this time. He said the

group called themselves 'TBC' and that one member, Mr Walton, would say to the detainees 'Your little gang is useless compared to the TBC'.³¹ Mr Walton accepted that 'he was part of a larger group of male youth justice officers known as the boys club but rejected that he was part of Jimmy's Boys and/or the Don Dale Turtles'.³²

Mr Walton told the Commission the boys' club was a nickname given to a group of about 10 younger male youth justice officers by female staff members.³³ He said the name had 'no special meaning' and TBC was 'most certainly not a gang'.³⁴ He said that, while he never would have referred to it that way, it was possible he said something to detainees like 'Your little gang is useless compared to the TBC' in a 'joking sense' or 'playfully'.³⁵ Mr Sizeland refuted the suggestion that he was part of an identifiable group referred to as Jimmy's Boys.³⁶

Vulnerable witness AY also said:

*'The boys' club or TBC were all into UFC – Muay Tai and kickboxing ... it seemed like they would use their moves on us when doing 'take-downs', when they restrained us by putting us on the floor. This is because when they did them it felt really different to the way other guards did it. They really hurt. They knew where our pressure points were and did different locks and holds on us.'*³⁷

He said when they were bored the boys' club guards would often dare kids to eat bird faeces and cockroaches for chocolate and soft drink. They also offered chocolate and soft drink to boys to encourage them to beat up other boys.³⁸ While the allegations of these sorts of bribes have been strongly denied by former youth justice officers,³⁹ many children and young people have independently told similar stories to the Commission about this type of conduct.⁴⁰ This is further discussed in Chapter 12 (Abuse and humiliation). Mr Kelleher conceded that he heard other youth justice officers refer to the boys' club in jest.⁴¹

Former female youth justice officers spoke of the difficulty and demoralising effect of working within this male-dominated culture.⁴² One former female youth justice officer who worked at the former Don Dale Youth Detention Centre in 2014, told the Commission that she felt less valued as a female staff member in this environment.⁴³

The Commission heard evidence of a punitive culture in youth detention. As this report makes clear in Chapter 9 (The purpose of youth detention), a punitive culture is detrimental to a child or young person's prospects of rehabilitation. A witness who worked at the current Don Dale Youth Detention Centre in 2014 told the Commission that when children and young people were thirsty and asked for water, a particular staff member would only give them half a cup.⁴⁴ Another witness recalled that some of the youth justice officers had a habit of making detainees wait to go to the toilet.⁴⁵ Youth justice officers would also sometimes make racist remarks and swear at the children and young people.⁴⁶

This humiliating and punitive behaviour, which is explored in more detail in Chapter 12 (Abuse and humiliation), demonstrates a complete disregard for the principles of rehabilitation. It ignores and exacerbates the disadvantaged and traumatic backgrounds of all, or nearly all, the children and

young people in detention, and it infringes their basic human right to be treated with dignity and respect. It emphasises the unprofessionalism of some of the youth justice officers. Far from assisting children and young people in detention, treatment of this type is also likely to lead to or exacerbate a child or young person's trauma.

The audit conducted by the PSU in September 2014 provides a snapshot of the staffing issues at the time. It states:

the increase in offender numbers combined with the loss of older experienced staff meant that a large number of new staff were employed in a short space of time. Often these staff were rushed into the workplace without adequate training and without the proper consideration as to, if they were in fact, suitable to perform the duties of a youth justice officer (YJO) in a detention centre.⁴⁷

During the relevant period, youth justice officers were employed who had no prior knowledge or skills to manage the vulnerable children and young people for whom they were responsible. Half of the panel of youth justice officers who gave evidence to the Commission had no prior experience working in youth detention.⁴⁸ Other former youth justice officers had no previous experience working with children. Some of their prior roles included bouncer,⁴⁹ casual labourer⁵⁰ and professional sportsperson.⁵¹

The Commission accepts that having workers from a diversity of backgrounds is a desirable attribute for any workforce, including youth justice officers. Indeed, the Commission heard evidence that some youth justice officers who lacked formal qualifications were well liked and respected by children and young people.⁵² However, youth justice workers, whatever their background, must at least have the required basic skills and experience before they begin to work with children and young people in detention.

In 2015, a bulk recruitment process for youth justice officers commenced. This included the introduction of a Certificate III in Correctional Practice (Youth Justice) for new and existing youth justice officers.⁵³ The Certificate III included core subjects in effective communication, preparing reports and maintaining security, youth custodial specialisation subjects to assist youth justice officers understand how to work effectively with young people and their role in protecting the safety and welfare of young offenders as well as a number of electives.⁵⁴

The Certificate III qualification ceased in April 2017 during the course of this Commission. In June 2017, a Certificate IV was introduced that entails specific youth justice training and is delivered and assessed through the Australian Childhood Foundation Registered Training Organisation.⁵⁵ The Certificate IV qualification includes training in relevant legislation, youth justice officers' responsibilities, the effects of drug and alcohol use, youth mental health first aid, detainee behaviour management, managing threatening behaviours, riot control and the management of at-risk detainees.⁵⁶

Finding:

Between at least 2010 and 2015, the recruitment of youth justice officers was ad hoc and crisis-driven, with insufficient emphasis on the skills and training required to perform the role, with the consequence that staff members employed as youth justice officers were not competent to undertake the work.

THE CASUALISATION OF THE WORKFORCE

In addition to poor recruitment, there was, and continues to be, an over-reliance on casual staff. This was an issue in both Darwin and Alice Springs through much of the relevant period.

The Commission heard evidence that the casualisation of the workforce at the former Don Dale Youth Detention Centre occurred from 2010 in response to a 'spike in detainees'.⁵⁷ Prior to 2010, a youth justice officer told the Commission he believed there were only three or four casual youth justice officers in a pool of about 20 to 30 staff members.⁵⁸ The Commission heard evidence of the benefits of having a staff model based on employing predominantly permanent staff. Michael Yaxley, Former Assistant General Manager, Youth Detention, said that the consistency of shifts enabled youth justice officers to develop relationships and get to know the children and young people in their care. Further, staff morale was high as the staff was more team-oriented and the children and young people had a better understanding of how the detention centre was run because the staffing regime was more consistent.⁵⁹

However, this changed when the number of children and young people in detention increased in 2010, which required additional employees to maintain the ratio of five detainees to one staff member. Those staff members were employed as casuals. Initially, this was anticipated to be a short-term response to the increase in numbers in 2010.⁶⁰ However, the number of children and young people in detention continued to increase, resulting in a permanent group of casual employees.⁶¹ The high number of casual staff members, combined with long shifts and inadequate training, contributed to low morale among the youth justice officers.⁶²

A former Deputy Superintendent of the Don Dale Youth Detention Centre provided an apt account of the staffing issues when he made the following comment:

*'I think ideally what we should have had was obviously a much more robust staffing model with, you know, in an ideal world, with full-time trained staff who'd undergone the appropriate training to work in the appropriate centre. That's obviously your ideal world and it was far from it.'*⁶³

In contrast to Darwin, there has always been a high number of casual employees in Alice Springs. Before 2010, the Alice Springs Juvenile Holding Centre (Aranda House) was used as a holding centre, not a permanent full-time centre. There was one full-time employee and a large number of casual employees because the number of children and young people at the centre fluctuated.⁶⁴ However, when the Alice Springs Youth Detention Centre was opened in 2011, this casual model was carried over from Aranda House.⁶⁵ A former Officer in Charge and Deputy Superintendent of the Alice Springs Youth Detention Centre acknowledged 'there was no permanent staffing model that was actually set and approved' for the Alice Springs facility.⁶⁶

The challenge caused by the casualised workforce in Alice Springs and Darwin included high staff turnover, high absentee rates, irregular training, low staff morale, inconsistent local management, lack of clear and consistent operating procedures between shifts, a complacent security culture and a lack of commitment to the organisation and to the children and young people in its care.⁶⁷

The 2015 *Review of the Northern Territory Youth Detention System Report* (the Vita report) recommended that the imbalance in the qualifications of staff members at the former Don Dale Youth

Detention Centre needed to be reversed because the majority of the youth justice officers employed at the time were either part time or casual.⁶⁸ The Vita report stated that *'the goal is to achieve appropriate staffing levels and greater efficiency through reducing the number of casual employees to 10% with 90% permanently employed. Currently those ratios are reversed.'*⁶⁹ It was suggested that a predominantly permanent staffing model would increase ownership of roles, professionalism and accountability.⁷⁰

The bulk recruitment process which was introduced in 2015 involved the transition from a predominantly casual to a permanent staffing model.⁷¹ However, the Commission received evidence that there are currently 14 casual youth justice officers, 36 youth justice officers on temporary contracts and 60 permanently contracted youth justice officers. Almost half of current employees are not permanent staff.⁷²

Management's actions to attempt to address the casualisation of the workforce are detailed in Chapter 23 (Leadership and management).

Finding:

There was an over-reliance on a casualised workforce in Aranda House and the Alice Springs Youth Detention Centre during the relevant period and in the Don Dale Youth Detention Centre since 2010.

LACK OF EXPERIENCED STAFF

The Commission received evidence that from 2010 onwards there was an exodus of experienced employees.⁷³ These positions were filled by inexperienced new recruits.⁷⁴ As the quality of the staff at the former Don Dale Youth Detention Centre deteriorated over time, less experienced youth justice officers were promoted to senior positions.⁷⁵

That similar issues were prevalent in Alice Springs is not surprising, given the large number of casual employees. The former Officer in Charge and Deputy Superintendent of the Alice Springs Youth Detention Centre told the Commission that a model youth justice officer had a combination of skills, including *'good communication and negotiation skills'*, *'high levels of tolerance and patience'*, the ability to *'take direction and adhere to policy'* and *'a passion for working with kids'*.⁷⁶ However, due to the small size of Alice Springs, it was difficult to attract professional and experienced workers who met this description, and many of those recruited lacked these desired skills.⁷⁷

In 2014, a shortage of experienced staff remained an issue. The Commission received evidence that a youth justice officer with no prior experience working in youth detention was promoted to a senior role after just four months.⁷⁸ In September 2014, the PSU identified the loss of long-term, experienced employees as an issue which contributed to the gradual change in the operation of youth detention.⁷⁹

Youth justice officers themselves acknowledged that they lacked the experience and skills appropriate for their role. One officer, who was employed at the former Don Dale Youth Detention Centre from 2012 to 2014, said that he lacked the appropriate experience and skills to work with children and young people in youth detention. He said he had never worked with children, let alone children from disadvantaged backgrounds. He had no experience working with Aboriginal people

and he was not given information about the skills required to work with children and young people in detention.⁸⁰ Another former youth justice officer, who was the subject of complaints by several former children and young people attributed his behaviour to his age, and acknowledged *'at that time, I was a very junior officer and I had very little real understanding of the position of power I held over the detainees'*.⁸¹

Training

Youth justice officers require comprehensive and ongoing training. They are responsible for some of the most vulnerable children and young people in the community, many with complex behavioural problems compounded by cognitive deficits and physical disability such as hearing loss. With the influx of inexperienced new recruits through ad hoc recruitment, formal training was essential. However, the training they received at the detention centres in Alice Springs and Darwin was either inadequate or non-existent.

The Aboriginal Peak Organisation NT (APO NT) submitted that *'there is a critical need'* for improvements to corrections staff training and development.⁸² Lack of sufficient training has been a long-term issue in youth detention in the Northern Territory. A former youth justice officer who was first employed as a casual youth justice officer at the former Don Dale Youth Detention Centre in 2007, told the Commission that he attended a three-day training program. He explained that his training was *'very brief'* and that there was *'a lot of information jam-packed in three days, including a Professional Assault Response Training [PART] program'*.⁸³ The training provided an overview of the legislation, brief instructions about the use of handcuffs and the *'dos and don'ts of Don Dale'*.⁸⁴ While training related to personal safety and detainee control is obviously essential, this cannot be the sole or primary focus of youth justice officer training.

Dr Gary Manison, an external corrections and security consultant, who reviewed staff training in March 2009, found that the induction at the former Don Dale Youth Detention Centre was *'totally inadequate'* and that staff in Alice Springs did not receive any training at all.⁸⁵ Dr Manison recommended a job-specific vocational education and training program that required minimum qualifications for youth justice officers. He told the Commission he did not know whether any of the recommendations he made were implemented but said *'I am of the view that if my recommendations for enhanced recruitment and training were fully implemented then the incidence and the risk of serious custody incidents may have been lessened'*.⁸⁶

In Alice Springs, the large number of casual employees caused further training problems. Training was often provided on the job, and in some instances casual employees would start and finish their contract of employment without receiving any training at all.⁸⁷ Due to the problems with this model, a basic training package was introduced, which required all new staff members, including casuals, to complete the three-day PART course and have completed senior first aid training prior to or immediately after employment commenced.⁸⁸ Cultural awareness training was offered as a one-day package provided by local Aboriginal people.⁸⁹ Casual staff would complete the course within their first year of employment.⁹⁰ This still resulted in new recruits commencing work and working for a significant period without any of this type of training.

This induction training was insufficient and did not cover, even in a cursory way, suicide and cultural awareness training (which was delivered separately in Alice Springs); operational procedures, including what to do in an emergency; youth mental health; the need to separate younger and older

detainees; coordination with health and welfare services; the importance of maintaining connection to family and country; or the vulnerability of some of the children and young people in the detention centres.⁹¹ Scenario training in important skills such as de-escalation techniques was also limited due to time constraints.⁹²

In January 2011, a new training package was developed for youth detention. Initially, a three-to -four week training program was introduced, but this was reduced because of the immediate need for youth justice officers on the floor.⁹³ A report by the Children’s Commissioner regarding training indicates that a three-week induction program was delivered twice in March and August 2011.⁹⁴ The program was subsequently cut down to two-and-a-half weeks and then to one week.⁹⁵ The one-week course was only able to cover PART training, basic handcuffing and computer training using the Integrated Offender Management System (IOMS).⁹⁶

This minimal training did not equip youth justice officers with the skills or confidence required to handle serious incidents in the detention centres.⁹⁷ A former youth justice officer recalled that many youth justice officers lacked skills, experience and training in de-escalation. He said *‘[u]sing those techniques helped me in my job and I think made a difference to the way detainees treated me’*.⁹⁸

Boxing Day 2011

An example of how inadequate training left youth justice officers completely unprepared for serious incidents is the disturbance at the former Don Dale Youth Detention Centre on Christmas night and Boxing Day morning in 2011.

As early as 2009, youth justice officers were not properly trained to respond to violent or serious incidents. Dr Manison said that when he reviewed staff training in 2009, youth justice officers told him that in the event of a serious incident they thought they should lock themselves in a secure room and call for assistance from their superior.⁹⁹ A former youth justice officer, who was employed at the former Don Dale Youth Detention Centre from 2007 to 2012, also told the Commission *‘my understanding of what to do in the event of a serious incident involving detainees was to lock yourself in the office and call the adult prison next door’*.¹⁰⁰

On Christmas night in 2011, three fire alarms were activated. On each occasion, the detainees were evacuated to the basketball court. During the third evacuation, they became unsettled and then the situation quickly escalated out of control. One of the three employees rostered on that night, recalled:

*‘children were leaping the pool fence, destroying and drowning mattresses in the pool. More and more residents joined in. Plastic chairs were being thrown at the windows of the youth workers’ office, the rest of the building and the education demountable, and we were being verbally abused.’*¹⁰¹

Staff rostered on that night were not aware of any protocols for riot situations apart from calling the superintendent and the prison for backup. An employee rostered on that night said that because she had no specific training in handling riot situations, she mostly relied on common sense.¹⁰²

Just prior to this incident, an emergency procedure manual had been prepared, but it had not been implemented.¹⁰³ The Boxing Day incident was included in the emergency procedure manual, but no drills were conducted about how to deal with that type of incident prior to Boxing Day 2011.¹⁰⁴

A former youth justice officer who was on shift during the incident told the Commission, *'It would have been helpful if there were more role play scenarios during the training, such as how to respond in the event of a serious incident or riot. I would have felt much better prepared for such an incident.'*¹⁰⁵

Despite the seriousness of this incident, training for youth justice officers was not improved.¹⁰⁶ A review of the Alice Springs Youth Detention Centre conducted by the PSU on 22 May 2012 stated:

*'[t]his review has identified a lack of formal training for staff with most being placed on the roster after being interviewed and obtaining their Ochre Card. Training is then conducted on the job and formal training, FIRST AID and PART, when possible.'*¹⁰⁷

The review recommended that all new employees receive adequate training before being placed on the roster and that a formal staff development process be implemented, with a training program that led to a Certificate II qualification.¹⁰⁸ The recommendations were accepted by the Deputy Director of Custodial Operations,¹⁰⁹ but the Commission found no evidence of their implementation at that time.

In May 2012, a response to the Children's Commissioner on the currency of training showed that of 107 youth justice officers working in the Northern Territory:¹¹⁰

- 27 were not trained in PART, and
- 70 had not completed the suicide intervention skills training or any youth forensic mental health first aid training.

Even after these serious deficiencies were identified, the inadequacy of the training continued to be an issue in Northern Territory youth detention centres.

In September 2013, a memorandum prepared for the Commissioner of Correctional Services summarised a review of an incident at the Banksia Hill Detention Centre in Western Australia. The memorandum identified *'potential triggers'* within the former Don Dale Youth Detention Centre. One was that the training provided to youth justice officers at former Don Dale Youth Detention Centre was *'inadequate and antiquated'*.¹¹¹

In December 2013, as part of an operational review of the recommendations that arose from the 2011 *Review of the Northern Territory Youth Justice System Report* (the Carney report), the Department of Correctional Services obtained feedback from staff members about the utility of the recommendations. Common concerns were that new and undertrained staff were responsible for training new recruits and that further training was required for senior employees.¹¹²

In 2014, there were still significant deficiencies in the training provided to youth justice officers. The September 2014 PSU audit found that staff training was poor, and stated that *'what training is provided is brief with no ongoing practice or renewal of learned skills'*.¹¹³ Youth justice officers employed during this time shared this view. A former youth justice officer who was employed during this time said that the training he received was inadequate.¹¹⁴ Another former youth justice officer who was employed at the former Don Dale Youth Detention Centre in 2014, told the Commission that she was disappointed with the induction. She said, *'There wasn't anything on trauma or actual practical skills or practical examples. A large part of it was physical stuff.'*¹¹⁵

An audit of the former Don Dale Youth Detention Centre conducted in April 2014 provides a snapshot of the standard of training at that time. The audit indicates that out of the 71 names recorded in the training officer's database:

- 21 were not qualified in PART
- 27 held a current Senior First Aid qualification
- 33 had completed suicide intervention training, and
- 13 maintained a qualification in Advanced Resuscitation.¹¹⁶

The review by Michael Vita in early 2015 found training was *'grossly inadequate'*, there was a *'lack of appropriate initial and ongoing training/development, especially training to keep in step with a larger and more challenging detainee population.'*¹¹⁷ Further, Mr Vita had *'no doubt that the lack of appropriate training has contributed to poor decision-making during recent incidents in the detention system.'*¹¹⁸

Former youth justice officers said that because they lacked the skills they needed to work with the children and young people in their care, they resorted to what they knew, which meant they often relied on skills that were inappropriate and inconsistent with the rehabilitation of the children and young people in youth detention. A former youth justice officer, who was employed as a youth justice officer in Darwin and Alice Springs from 2010 to 2014, told the Commission that he and other youth justice officers would do whatever they could to try to de-escalate the detainees in their care, including employing unauthorised techniques.¹¹⁹

An audit regarding the conditions at the Alice Springs Youth Detention Centre in November 2012 stated that *'staff seem to not know what to do as they have little or no daily direction or training/mentoring'*. Further, the audit stated that *'staff generally wing through a shift and hope they do everything right'*.¹²⁰

The lack of up-to-date Standard Operating Procedures (SOPs) exacerbated the training deficiencies. Without current procedures, the day-to-day operation of the detention centres was left to the discretion of the shift supervisor. As a result, shift supervisors were running the detention centres *'as they saw fit'*.¹²¹ A former youth justice officer said she was aware that there were SOPs but that *'people without the authority to do so would just choose to change something on the shift to suit their*

own purposes'.¹²² Other staff were not even aware of the procedures.¹²³ For more information about SOPs, see Chapter 11 (Detention centre operations).

Cultural awareness training

Even though most of the children and young people in youth detention during the relevant period were Aboriginal, cultural awareness training was limited. While some former youth justice officers received limited cultural awareness training,¹²⁴ others did not receive any at all.¹²⁵ The Commission heard evidence from former youth justice officers and detainees that staff members often made racial remarks about the children and young people in their care.¹²⁶ A former youth justice officer said *'it was so accepted as part of the culture of the place, it wasn't even noteworthy or worth comment'*.¹²⁷ On occasion, Aboriginal children and young people were told not to speak in their language in detention.¹²⁸

Danila Dilba Biluru Butji Binnilutlum Health Service Aboriginal Corporation (Danila Dilba) submitted that the youth detention workforce must have the capacity to respond effectively and in culturally appropriate ways to the needs of Aboriginal children and young people.¹²⁹ To address this Danila Dilba recommended the recruitment of Aboriginal people with authority and recognition of Aboriginal cultural skills and cultural authority as a professional qualification.¹³⁰

At its visits to other juvenile detention centres in Australia, the Commission discussed and was told about vigorous Aboriginal and Torres Strait Islander cultural practices incorporated into the routine of the centres conducted by Aboriginal or Torres Strait Islander employees. Non-Aboriginal detainees were welcome to join in and many did so. The Commission considers that the increased recruitment of Aboriginal youth justice officers in addition to improved cultural awareness training, is required to ensure that the needs of Aboriginal children and young people in detention are met.

Refresher training

In addition to inadequate training, there was a lack of refresher training for youth justice officers. One former youth justice officer said that in the two years she worked at the former Don Dale Youth Detention Centre, the only additional training she received was fire and first aid training. She said she asked many times for refresher training but was not sure whether her requests were ever followed up with management.¹³¹ Another former youth justice officer indicated that she received supplementary training on suicide prevention around six months after she started working at the former Don Dale Youth Detention Centre in 2007. She said this was useful and she would have liked to have received this earlier as self-harm attempts were a regular occurrence.¹³²

The Commission heard that on some occasions when refresher training was organised, youth justice officers were unable to attend because there were not enough staff members to replace them.¹³³

Shadow shifts

For the majority of the relevant period, after induction, new recruits spent time shadowing other youth justice officers. This provided on-the-job training. However, the Commission heard evidence that sometimes the shadow shifts did not help new recruits because staff they were shadowing were inexperienced and had themselves not received proper training.¹³⁴

This issue was identified in 2009 by Dr Manison. He stated that shadow shifts were not an adequate or appropriate means of training because they reinforced any bad practices of existing staff members who had not received proper training themselves.¹³⁵

On 16 August 2014, youth justice officer Jesse Palu, only on his third shift and with minimal training, was assigned to shadow former youth justice officers Conan Zamolo and Mr Kelleher.¹³⁶ During this shift, there was an incident where Mr Kelleher threw a pear at a detainee's cell door, threatened to assault the detainee and threw wet paper at the camera in his cell. When asked what he thought of this conduct, Jesse Palu told the Commission, *'I actually didn't know what to make of it. I never had a formal showing around the centre'*.¹³⁷

In September, Mr Palu was notified that he was suspected to have engaged in misconduct in breach of the Department of Correctional Services Code of Conduct arising out of this incident, and was temporarily suspended during the investigation.¹³⁸ In response to this notification, Mr Palu said that the day of the incident was his third shift, and he had only received three days of training, which did not cover the Code of Conduct. Ultimately no action was taken against Mr Palu, due to his lack of training.¹³⁹

Current training

It was not until 2015, when management changed, that the training for youth justice officers was improved. The introduction of the Certificate III qualification in 2015 and the Certificate IV qualification implemented in 2017 is discussed above. An eight-week induction program was also part of a bulk recruitment process that commenced in 2015.¹⁴⁰ The Commission also heard that the initial eight-week induction program offered in August 2015 has been shortened to five weeks face-to-face training with one week of shadow shifts.¹⁴¹

A former Executive Director of Youth Justice explained that this program was *'a foundation for professionalising detention centre staff and ensuring a best-practice service delivery model as provided to the children and young people in our care'*.¹⁴² The program included sessions on youth justice officers' roles and responsibilities; presentations from the North Australian Aboriginal Justice Agency and cultural advisers; emergency management codes; IOMs computer training; critical response training; first aid; youth mental health; security; the use of social media; procedures; and assessments of physical fitness.¹⁴³

In 2015, Maybo training commenced in Alice Springs and the current Don Dale Youth Detention Centre. Maybo training is conflict management and physical intervention training based on providing the lowest level of response possible to resolve safely or contain a dangerous or potentially dangerous situation.¹⁴⁴ This program was introduced to replace PART which was found to be inadequate for youth justice officers. A memorandum from 28 January 2015 stated:

*'we have found the current defensive tactics training that is being carried out falls short of our needs. We have used PART for a number of years and although it was adequate in the past, we have found it has not evolved and is not meeting the current requirements.'*¹⁴⁵

It is not known how many youth justice officers received Maybo training. It is understood that

Stabilise, Intercept and Response training now forms part of the current defensive tactics training package for youth justice officers.¹⁴⁶

The need for youth justice officers to be trained in trauma-informed practice was raised in a number of submissions received by the Commission.¹⁴⁷ In 2016 Territory Families commissioned the Australian Childhood Foundation to develop and implement a 'Therapeutic Model of Residential Care' and has amended training materials for youth justice officers to incorporate trauma-informed approaches.¹⁴⁸ This is a positive step towards the improvement of staff training.

Despite recent changes some of the attendees at the Commission's Youth Justice Detention Staff Forum said they still do not receive appropriate training in de-escalation techniques and that cultural awareness training is inadequate given the high proportion of Aboriginal children and young people in youth detention. Further, staff members said that they do not know how to deal with children and young people who are affected by drugs or are experiencing withdrawal symptoms.¹⁴⁹

Finding:

Throughout the relevant period, the training of youth justice officers was poor in a number of respects:

- a. The training was far too brief to cover the range of skills, systems, processes and compliance matters that needed to be addressed.**
- b. The training was not mandatory and was de-prioritised to operational needs, resulting in youth justice officers working in youth detention centres without undertaking even the basic induction training at times.**
- c. The training was not properly refreshed and rolled out when new policies were introduced.**
- d. To the extent that shadow shifts were used as a training tool, they were at times carried out by other inexperienced or underqualified staff.**

STAFF SHORTAGES

Staff shortages were a recurring problem at the detention centres in Darwin and Alice Springs,¹⁵⁰ which was '*well known within the Department*'.¹⁵¹ The issue worsened with the increase in the number of children and young people from 2010 onwards.¹⁵²

In Alice Springs, staff shortages had the potential to be more severe when youth justice officers were stretched across Aranda House and the Alice Springs Youth Detention Centre, as occurred for a three-day period in 2012.¹⁵³

A ratio of five detainees to one staff member was suggested as an appropriate staff model. However, this was not always achievable due to staff shortages and the increasing number of children and young people in detention.¹⁵⁴

One youth justice officer said that even the five-to-one model is insufficient because it does not account for daily chores – such as cleaning, taking the children and young people to school, preparing meals, changing bed linen and supervising detainees for showering – which remove staff

members from the floor. Additionally, senior youth justice officers were required to answer the office phone and arrange court appointments.¹⁵⁵ For this reason, a three-to-one model was recommended to take into account the additional tasks that youth justice officers are required to undertake during shifts.¹⁵⁶

Staffing limitations reduced the activities that children and young people in detention could engage in throughout the day at the former Don Dale Youth Detention Centre.¹⁵⁷ A former youth justice officer said, *'if there were not enough staff to supervise an outdoor game of basketball, the basketball activity would be cancelled and replaced with an indoor activity such as watching a movie.'*¹⁵⁸ Another witness told the Commission that *'detainees would be locked down for hours at a time simply because there were not enough staff on shift.'*¹⁵⁹

The lack of staff members was also detrimental to the safety and wellbeing of the staff members and the children and young people in their care. A former youth justice officer recalled that *'seniors used to get quite stressed about having limited staff to deal with the high-risk boys.'*¹⁶⁰ At one stage during the relevant period, when children and young people were locked down, staff conducted half-hourly checks on them. However, this changed at some stage to once every hour, which increased the risks to the children.¹⁶¹ Another witness told the Commission the ratio of staff members to detainees was *'dangerous for staff.'*¹⁶²

Former youth justice officers who provided feedback as part of an operational review conducted in 2013 raised the same issues. Some expressed concerns about their own safety due to insufficient numbers of *'on the floor'* staff members to manage challenging behaviour.¹⁶³

Youth justice officers sometimes worked double shifts due to staff shortages. One former youth justice officer, who was employed from 2011 to 2013, said:

*'there were shortages probably once every three weeks and this mainly occurred when people were sick or on holidays and mainly over the weekends ... you would do one full shift which was from about 7:00 in the morning until 2:30 in the afternoon and then the second shift was from about 5:00 until 11:30 at night.'*¹⁶⁴

Another youth justice officer, who was employed during 2014, said *'I was really shocked at the long days that people were working.'*¹⁶⁵

*'..... I worked with people who had done it, and were asleep on the job at regular intervals, because they had been there too many hours. And it was exhausting after eight hours that close, with these detainees who were very demanding, it was physically, emotionally – everything. It was exhausting after eight hours, I'd had enough'*¹⁶⁶

Youth Justice Officer

A former Deputy Superintendent of the former Don Dale Youth Detention Centre told the Commission that on one occasion he received a direction to request that staff members work three eight-hour shifts to complete reporting requirements after a major incident. He said:

*'on this particular occasion, they had done an evening shift as an overtime position because we didn't have enough staff. A major incident occurred on the evening shift that required staff to attend the Royal Darwin Hospital with a detainee. That detainee did not come back until some hour late in the morning and those staff were required to stay back and finish the report ... they didn't leave until 11 o'clock that morning.'*¹⁶⁷

When asked whether this was an isolated incident, the witness said *'that's the only occasion that I can actually recall, but I believe it had happened on more than one occasion'*.¹⁶⁸ He added, *'it wouldn't surprise me if people have crept over that third shift line'*.¹⁶⁹

Initially, there were three eight-hour shifts per day for youth justice officers, which meant a double shift required a staff member to work 16 hours. However, in 2015, two 12-hour shifts per day were introduced.¹⁷⁰ The Commission considers that given the nature of the work, 12 hour shifts are too long.

Tired and overworked staff members were unable to carry out their responsibilities effectively, and this had potentially poor consequences for the children and young people in their care. After working double shifts, youth justice officers were *'deliriously tired'* and *'some slept on the job'*.¹⁷¹ The Commission also heard evidence that staff members were stressed and impatient.¹⁷²

One former youth justice officer said that in March 2011 she discovered a boy sexually molesting another boy in the TV room one night while her co-worker slept on the couch.¹⁷³

Finding:

From about 2010, the youth detention centres were frequently understaffed, which inhibited the operations of the centres and, at times, resulted in youth justice officers working long or multiple shifts with potentially dangerous consequences.

LACK OF SUPPORT

*'Work doesn't get any worse - have to challenge, man handle, wrestle, get assaulted, told repeatedly to 'fuck off dog' and 'I'm gonna kill you' etc etc TOO much after 5 years. The fact these kids feel it's ok to go off as they do is the most worrying. They know they've got nothing left to lose cos they've lost it all already.'*¹⁷⁴

Diary of youth justice officer 27 January 2012

Attendees at the Youth Justice Forum held in Darwin in February 2017 discussed the difficult working conditions experienced by youth justice officers. Attendees said that the only break that youth justice officers have during their 12 hour shift is half an hour when the detainees are locked down after school.¹⁷⁵

Because of these working conditions, staff morale was low and staff members did not feel supported by management.¹⁷⁶

In November 2012, after an incident at the Alice Springs Youth Detention Centre, Mr Ferguson, the director of the PSU, sent an email to Mr Yaxley relaying complaints made by staff:

*'we currently work 13 hour shifts, with little support from senior staff ... [t]he lack of support from senior staff regarding an incident on Tuesday the 7th where YW [REDACTED] was punched in the side of the face by a detainee during attempts to implement an intensive management plan towards him. There was no briefing going into the situation and there was no de-briefing after the incident had occurred.'*¹⁷⁷

Senior staff members also did not feel supported and would take their frustration out on other employees.¹⁷⁸ Further, the PSU audit conducted in September 2014 noted that staff had commented that 'the whole place feels like it's falling apart'.¹⁷⁹

Ultimately, the recruitment process, the absence of adequate training, inexperienced staff, a lack of support and the conditions in which youth justice officers worked put them under immense pressure. This significantly compromised their ability to support children and young people in detention and led to poor practices and bad behaviour.

Finding:

Some youth justice officers felt they were not sufficiently supported by management despite the exceptionally difficult environment in which they were working.

Recommendation 20.1

The selection criteria for a youth justice officer be amended to include demonstrated experience working with vulnerable young people including an understanding of child and adolescent development, issues with drug use, poverty, cultural identity, mental health and disability.

Recommendation 20.2

Youth justice officers be required to obtain a Certificate IV in Youth Justice in the first 12 months of their employment

Recommendation 20.3

Youth justice officers participate in induction training before commencing work in youth detention centres which includes at least the following:

- report writing and the use of the Integrated Offender Management System;
- work place policies and procedures, including any Code of Conduct
- the *Youth Justice Act* (NT) and the Youth Justice Regulations (NT)
- responding to suicide and self-harm
- de-escalation and mediation
- use of reasonable force
- use of restraint devices
- trauma informed practice
- cultural awareness
- drug and alcohol awareness
- mental health issues, and
- staff well-being.

Recommendation 20.4

Shadow shift training be provided only by youth justice officers who have attended induction training and refresher training and have been a youth justice officer for at least 12 months.

Recommendation 20.5

Annual refresher training be provided to youth justice officers or when new detention centre policies are introduced and annually.

Recommendation 20.6

Superintendents participate in an induction training program before commencing work in youth detention centres on the *Youth Justice Act* (NT) and Youth Justice Regulations (NT).

Recommendation 20.7

Territory Families continue to move towards a permanent staffing model for youth justice officers.

Recommendation 20.8

Youth detention centres be sufficiently staffed to ensure that:

- youth justice officers do not work extended shifts
- are able to take annual leave, and
- detainees need not be locked down to enable youth justice officers to take necessary breaks during their shifts.

Recommendation 20.9

Territory Families investigate introducing eight shifts for youth justice officers of less than 12 hours duration.



ENDNOTES

- ¹ Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, rule 83.
- ² Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, rule 82.
- ³ Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, rule 22.
- ⁴ Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, Art 37(c).
- ⁵ Exh.283.232, Juvenile Justice Standards 2009, 1 July 2015, tendered 31 March 2017, p. 9.
- ⁶ Youth Justice Regulations (NT) r 64.
- ⁷ Exh.189.001, Statement of Ian Johns, 1 March 2017, tendered 28 March 2017, para. 10; Transcript, Ian Johns, 28 March 2017, p. 2019: lines 30 - 35.
- ⁸ Closed court transcript, BF, 13 March 2017, p. 4: lines 33-39; Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 23; Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, paras 40-42; Closed court transcript, AN, 24 March 2017, p. 19: lines 31-32; Closed court transcript, BX, 31 March 2017, p. 5: lines 46-47; Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 13.
- ⁹ In 2004 recommendations were made to the Department of Justice to improve training and recruitment: Exh.777.001, Review of Human Resources NT Juvenile Detention 2004, 2004, tendered 22 August 2017, pp 49-50. A further review conducted in 2009 found that none of these recommendations were implemented: Exh.283.061, Report of Review of NTDCS Staff Training and Development Arrangements May 2009, 18 May 2009, tendered 31 March 2017, p. 10. Poor recruitment was identified as an issue by management in 2011: Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para. 58; and identified by the PSU as an issue in 2012: Exh.435.002, Annexure 2 to Statement of Phillip Brown, 2 May 2012, tendered 12 May 2012. Poor recruitment was also raised in subsequent external reports: Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, pp. 6, 13, Exh.031.002, Annexure 1 – Report "A Safer Northern Territory Through Correctional Interventions", 31 July 2016, tendered 5 December 2016, p. 141.
- ¹⁰ Dr Gary Manison reviewed the recruitment practices at the detention centres in Darwin and Alice Springs. He found that the vetting process was inadequate: Exh.265.001, Statement of Dr Gary Manison, 14 February 2017, tendered 31 March 2017, para. 22.
- ¹¹ Exh.153.001, Statement of Louise Inglis, 15 February 2017, tendered 24 March 2017, para. 30.
- ¹² Transcript, Leonard de Souza, 22 March 2017, p. 1651: lines 4-6.
- ¹³ Exh.157.001, Statement of Jamie Clee, 16 March 2017, tendered 24 March 2017, para. 6.
- ¹⁴ Exh.147.001, Statement of Jon Walton, 21 March 2017, tendered 31 March 2017, para. 17.
- ¹⁵ Exh.435.000, Statement of Phillip Brown, 2 May 2017, tendered 12 May 2017, para. 47; Exh.435.002, Annexure 2 to Statement of Phillip Brown, 22 May 2012, tendered 12 May 2017, p. 2.
- ¹⁶ Exh.778.001, Audit, Working with Children Clearances, October 2015, tendered 22 August 2017.
- ¹⁷ Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, paras 6, 37; also discussed in Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017, pp. 5, 6; Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, paras 83-84; Exh.189.001, Statement of Ian Johns, 1 March 2017, tendered 28 March 2017, para. 53.
- ¹⁸ Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 37.
- ¹⁹ Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 36.
- ²⁰ Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 54.
- ²¹ Transcript, Louise Inglis, 24 March 2017, p. 1784: lines 29-30, 34-36.
- ²² Exh.095.005, Annexure GM-4 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017; Exh.095.006, Annexure GM-5 to Statement of Gerald McCarthy 14 March 2017, tendered 17 March 2017; Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 October 2016, paras 239-241; Exh.064.163, Police v Derek Tasker, 5 February 2014, tendered 31 March 2017, para. 9; Exh.064.023, Morgan Preliminary Investigation, 11 May 2010, tendered 29 March 2017, p. 2.
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- ²⁴ Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 53.
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- ²⁶ Exh.189.001, Statement of Ian Johns, 1 March 2017, tendered 28 March 2017, para. 33.
- ²⁷ Transcript, Ben Kelleher, 21 March 2017, p. 1552: lines 36-46, p. 1553: lines 1-7, p. 1567: line 40 – p.1568: line 30.
- ²⁸ Transcript, James Sizeland, 28 March 2017, p. 1984: lines 42-43.
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- ³¹ Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 14.
- ³² Submissions, Jon Walton, Response to Notice of Adverse Material 10, 28 August 2017, para. 14.
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- ³⁴ Exh.274.001, Statement of Jon Walton, 21 March 2017, tendered 31 March 2017, paras 13, 15.
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- ³⁶ Exh.173.001, Statement of James Sizeland, 26 March 2017, tendered 27 March 2017, paras 12-16.
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- 38 Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, para. 17.
- 39 Exh.436.001, Statement of Conan Zamolo, 16 March 2017, tendered 12 May 2017, paras 50-55; Transcript, Ben Kelleher, 19 April 2017, p. 2483, lines 24-30. Exh.274.001, Statement of Jon Walton, 21 March 2017, tendered 31 March 2017, paras 18-19.
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- 41 Exh.106.001, Statement of Ben Kelleher, 16 March 2017, tendered 21 March 2017, para. 57.
- 42 Transcript, Eliza Tobin, 24 March 2017, p. 1772: lines 3-11; Transcript, Saki Muller, 24 March 2017, p. 1773: lines 9-17.
- 43 Transcript, Saki Muller, 24 March 2017, p. 1773: line 9.
- 44 Transcript, Conan Zamolo, 20 March 2017, p. 1396: lines 33-34; Exh.098.001, Record of Interview – Conan Zamolo, 21 November 2014, tendered 20 March 2017, p. 9.
- 45 Exh.151.001, Statement of Greg Harmer, 3 February 2017, tendered 24 March 2017, para. 37.
- 46 Transcript, Youth Justice Officer Panel, 24 March 2017, p. 1783: line 20.
- 47 Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017, p. 1.
- 48 Exh.151.001, Statement of Greg Harmer, 3 February 2017, tendered 24 March 2017, para. 5; Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 7.
- 49 Exh.435.002, Annexure 2 to Statement of Phillip Brown, 2 May 2012, tendered 12 May 2012, p. 2.
- 50 Exh.147.001, Statement of Jon Walton, 21 February 2017, tendered 24 March 2017, paras 10-11.
- 51 Exh.106.001, Statement of Ben Kelleher, 16 March 2017, tendered 21 March 2017, para. 5.
- 52 The Commission notes that before commencing as a youth justice officer, Mr Harmer held various roles including taxi driver, bus driver, pub manager and cinema projectionist: Exh.151.001, Statement of Greg Harmer, 3 February 2017, tendered 24 March 2017, para. 5. Despite his lack of formal qualifications, Mr Harmer was referred to positively by a number of children and young people: Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 40; Exh.717.000, Supplementary Statement of Dylan Voller, 8 April 2017, tendered 25 July 2017, para. 75.
- 53 Exh.212.001, Statement of Salli Cohen, 8 March 2017, tendered 30 March 2017, para. 36; Exh.746.000, Statement of Jenni Gannon, 5 May 2017, tendered 25 July 2017, para. 12.
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- 56 Exh.746.000, Statement of Jenni Gannon, 5 May 2017, tendered 25 July 2017, para. 22.
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- 78 Transcript, Jesse Palu, 19 April 2017, p. 2547: line 40.
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- 80 Transcript, Conan Zamolo, 20 March 2017, p. 1436: lines 37-41, p. 1437: lines 1-2.
- 81 Exh.147.001, Statement of Jon Walton, 21 February 2017, tendered 24 March 2017, para. 34.
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- 86 Exh.265.001, Statement of Dr Gary Manison, 14 February 2017, tendered 31 March 2017, para. 48.
- 87 Transcript, Barrie Clee, 15 March 2017, p. 1123: lines 7-10.
- 88 Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, paras 51, 52.
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- 98 Exh.151.001, Statement of Greg Harmer, 3 February 2017, tendered 24 March 2017, para. 78.
- 99 Exh.265.001, Statement of Dr Gary Manison, 14 February 2017, tendered 31 March 2017, para. 39.
- 100 Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 48.
- 101 Exh.153.001, Statement of Louise Inglis, 15 February 2017, tendered 24 March 2017, para. 103.
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- 105 Exh.153.001, Statement of Louise Inglis, 15 February 2017, tendered 24 March 2017, para. 20.
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- 107 Exh.435.002, Annexure 2 to Statement of Phillip Brown, 22 May 2012, tendered 12 May 2017, p. 2.
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- 122 Transcript, Louise Inglis, 24 March 2017, p. 1788: lines 34-35.
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- 124 Transcript, Saki Muller, 24 March 2017, p. 1719: line 36; Transcript, Greg Harmer, 24 March 2017, p. 1792: lines 10-12, 16-17; Transcript, Gavin Johns, 28 March 2017, p. 2034: lines 14-28.
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- ¹⁴¹ Exh.746.000, Statement of Jenni Gannon, 5 April 2017, tendered 25 July 2017, para. 30.
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- ¹⁶⁵ Transcript, Saki Muller, 24 March 2017, p. 1779: lines 5-6.
- ¹⁶⁶ Transcript, Eliza Tobin, 24 March 2017, p. 1780: lines 28-32.
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- ¹⁷³ Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 22.
- ¹⁷⁴ Exh.154.001, Statement of Eliza Tobin, 8 February 2017, tendered 24 March 2017, para. 52.
- ¹⁷⁵ Youth Detention Centre Staff Forum, 22 February 2017.
- ¹⁷⁶ Exh.189.001, Statement of Ian Johns, 1 March 2017, tendered 28 March 2017, paras 41-46.
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RECORD KEEPING

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RECORD KEEPING

INTRODUCTION

Governments rely on the collection of accurate data to gauge the effectiveness of their activities. They can use this data to analyse trends and the success of programs and other evidence-based tools to evaluate what works and what does not.

Maintaining accurate records in closed environments such as youth detention centres facilitates oversight, both internal and external, and helps to prevent potential abuses of power.

Northern Territory legislation requires that government records be maintained accurately. Under the *Information Act (NT)*,¹ Northern Territory Government organisations must:

- keep full and accurate records of their activities and operations, and
- implement practices and procedures to safeguard the custody and ensure proper preservation of their records.

The Northern Territory Government adopted a position before the Commission that its records, such as incident reports in youth detention facilities ‘provide evidence of the facts they recite’.²

In response to very serious allegations against its employees the Northern Territory Government elected on some occasions to provide only copies of its written records of events and not put forward a statement from its employees.³ Identified far from trivial errors in a number of the records of the Northern Territory Government examined by the Commission mean that the Commission has had to approach the accuracy of the records with caution.

It is a criminal offence for a person to knowingly give misleading information to a Northern Territory Government organisation.⁴ It is also an offence for a person to intentionally delete or dispose of a record, although this offence does not apply if it is done in compliance with a relevant practice or procedure of the organisation.⁵

More specifically, in relation youth detention centres, legislation and directives issued by the Commissioner for Corrective Services require records to be maintained about activities including the use of restraints, isolation, searches, the use of force and making complaints. Youth detention centres also have extensive closed-circuit television (CCTV) coverage, however CCTV footage was automatically overwritten after a period of 30 to 60 days, discussed below. At the legislative and policy level, there appears to have been an extensive framework for accurate records to be maintained.

However, the evidence before the Commission in relation to record keeping revealed that in practice these standards were not always met. For instance, on at least one occasion, discussed later in this chapter, CCTV footage was deleted after the minimum retention period despite multiple police requests that it be provided for the purpose of an investigation. The Commission also received evidence that basic record keeping requirements, such as obtaining sign-offs from supervisors, were not being complied with; records were not being prepared in a timely manner; and, in some cases, records were created that appeared to be sanitised or misleading versions when compared by external investigators to the accounts of other witnesses to the events.

Individuals at every level of the youth detention centre system, including youth justice officers, the Commissioner and the Executive Director of Youth Justice, identified deficiencies in aspects of the record-keeping practices.⁶ External investigations by the Northern Territory Children's Commissioner and Mr Michael Vita, Centre Manager, New South Wales Juvenile Justice, and comments by the Northern Territory courts considering particular matters, came to the same conclusion.

The Department of Correction's own Professional Standards Unit also identified deficiencies in aspects of the record keeping. Mr David Ferguson, Director of the Professional Standards Unit, told the Commission that:

... most of my reviews and the reports and the statement I have given [to the Commission] clearly show that there has been ongoing failure of recording accurate details of events in juvenile detention over this period.⁷

These failings have created a situation where records of the activities that occurred in youth detention centres about very serious matters, such as the use of force against detainees, cannot be assumed to be complete and accurate accounts of the events. Further, the absence of a record about a particular event cannot be assumed to indicate that the event did not occur. Mr Vita summarised the issue:

Record keeping is an important part of procedures and it serves to maintain and substantiate the actions of staff. Accurate records also provide transparency; their absence provide[s] suspicion.⁸

REGISTERS REQUIRED BY LEGISLATION

As mentioned above, an extensive framework of legislation and policy requires the maintenance of records in relation to activities occurring in youth detention centres. The relevant legislation in the Northern Territory requires the superintendent of a youth detention centre to maintain:

- **a register of the use of approved restraints:**⁹ which requires information to be recorded about the approved restraint that was used, the circumstances in which it was used, the time it was used, the name of the person who authorised the use and any medical attention required. The legislative requirement for this register was introduced in August 2016. Prior to August 2016, directives issued

by the Commissioner required that a register record the use, for example, of handcuffs for external escorts.¹⁰

- **a journal recording the isolation of a detainee:**¹¹ which requires information to be recorded about matters including the date and time the detainee was isolated and released, the reason for their isolation, staff observations taken at intervals not exceeding 15 minutes and the name of the staff member, the date and time of exercise periods and ablutions, and details of approval by the Commissioner for isolation exceeding 24 hours. During part of the relevant period, there was also a separate regime for the segregation of detainees under a directive issued by the Commissioner. This regime required the preparation of an 'intensive management plan', sometimes referred to as a 'behavioural management plan', which was required to record the duration of the segregation, behavioural standards of detainees to be achieved and maintained, recommendations for participation in interventions, accommodation requirements and other matters.¹² This regime, as well as isolation generally, is discussed further in Chapter 14 (Isolation).
- **an 'at-risk' register,**¹³ which requires staff actions to be recorded, including observations of detainees declared 'at-risk', at intervals not exceeding 15 minutes.
- **a register of searches,**¹⁴ which requires recording the names of the person searched and the staff members who carried out the search, the nature of the search, the date and time the search was carried out, and the reasons for and results of the search.
- **a register of internal complaints,**¹⁵ which requires recording the name of the complainant, the name of the person from whom the complaint was received, the date and time the complaint was received, the nature of the complaint and the action taken.

These records are discussed further below.

REGISTERS KEPT BY DIRECTIVE OF THE COMMISSIONER

In addition to the above legislative requirements, directives issued by the Commissioner also required the recording of a range of incidents that may occur in youth detention centres, including the use of force.

Incident reports

The Commissioner's directives state that incident reports must provide a '*factual and objective account of the incident*' and, depending upon the seriousness of the incident, must either be completed by an officer finishing their rostered shift, or in a timeframe agreed by the superintendent.¹⁶

Information about certain incidents occurring at youth detention centres must be recorded in a register, including assaults, the self-harm of a detainee, escapes, 'disturbances', the discovery of contraband, fire, injury or illness requiring hospitalisation, property damage, death and sexual assault.

After August 2009, the Northern Territory Department of Corrections used the electronic database known as the Integrated Offender Management System (IOMS).¹⁷ IOMS is the primary tool for electronically recording and storing information relating to the management of detainees.¹⁸ It allows the electronic recording of incident reports.¹⁹ Shift supervisors or officers in charge are required to

review and endorse all incident reports written on their shift, and comment where appropriate.²⁰

Prior to the introduction of IOMS in 2009, incident reports were included in detainees' files.²¹

Use of force registers

The Northern Territory Government's directive on the 'use of force' defines force as *'touching, moving and the application of heat, light, noise, electrical or other energy, gas, odour or any other substance or thing if applied to such a degree as to cause injury or personal discomfort.'*²²

Directives issued by the Commissioner state that there shall be a 'use of force register' and provide guidance on how that register is to be maintained. For example, they require that the superintendent maintain a register that details the names of the officers and detainees involved in an incident, the date and time of the incident, the nature of force used, details of any injury or medical attention to any officer, detainee or other person and an account of the event leading to the use of force and reasons for its use.²³

The register must be signed off by the superintendent or the shift supervisor, as a delegate.²⁴

ISSUES WITH THE MAINTENANCE OF REGISTERS

Despite the extensive legislative and policy framework, there were significant issues with how registers were maintained. The Commission heard of poor training and an environment in which officers had such heavy workloads that they did not complete reports in a timely manner. Audits by the Professional Standards Unit, which reviewed samples of paperwork, identified consistent omissions of key aspects of information in all of the above registers.

Training

The Commission received evidence of poor staff training in relation to record-keeping obligations and practices. External reviews in 2013 and 2015 warned that IOMS training was insufficient and was carried out informally by supervisors and/or peers.²⁵ Ms Saki Muller, a youth justice officer employed in 2014, said she received no training on how to fill out the use of force register or other registers.²⁶ Mr Leonard de Souza similarly said that even things as simple as filling out the right paperwork, and making youth justice officers familiar with the computer systems, were not covered in initial training.²⁷

Mr James Sizeland, Assistant General Manager at the former and current Don Dale Youth Detention Centres between February 2014 and June 2015, said that compared to his experience in adult corrections, youth detention centre staff members did not understand the importance of creating records and were not adequately trained. He told the Commission that this had led to *'a number of issues where staff became very slack in these areas.'*²⁸

Ms Salli Cohen, the Executive Director of Youth Justice, remarked that record keeping:

*'... was one of the things that we absolutely needed to follow up in training. If staff have not been trained in appropriate record keeping, understanding why they need to do appropriate record keeping, and within the required time frames, unfortunately it is not surprising that those records aren't well kept.'*²⁹

Availability of registers and timing issues with recording

The Commission received evidence that some youth justice officers did not know where registers were kept or that the registers could not always be accessed when needed.

Mr Ben Kelleher told the Commission that when he worked at the former Don Dale Youth Detention Centre some youth justice officers *'didn't have a clue'* where the use of force register was, and he did not always know where it was kept when he worked at Don Dale Youth Detention Centre.³⁰ Mr Trevor Hansen, a former youth justice officer, gave evidence that at Alice Springs Youth Detention Centre, the use of force register was sometimes unavailable to be filled out because it was locked in an unoccupied manager's office, to which staff did not have a key and, because of this, a second book was made up so that a journal was always available.³¹

Mr de Souza gave evidence that incident reports were not always filled in because staff members had to do it in their own time, because taking them off the floor to write incident reports may have required a lockdown due to lack of staff.³² Mr Ian Johns, a Senior youth justice officer, gave very similar evidence, agreeing that *'more often than not, staff don't necessarily fill in incident reports because they don't have time to do so'*.³³ A memorandum from the Director of the Professional Standards Unit, Mr Ferguson, to Commissioner of Corrections, Mr Middlebrook, in September 2014 also said that the reports were not being completed by the end of shift, as was required.³⁴

Mr Kelleher told the Commission that because of the pressure of work and the lack of available staff, on some occasions *'people would fill out form[s] for people, and they'd just come and simply sign it at the bottom if it was correct'*.³⁵

Professional Standards Unit audit observations

Audits conducted by the Professional Standards Unit during the relevant period identified consistent issues with a lack of information being recorded in registers, failures of supervisors to sign off on registers and registers not being filled out in a timely manner. Mr Ferguson told the Commission that in auditing a particular issue for compliance, such as record keeping, the Professional Standards Unit checks a fairly broad sample to ensure that an accurate picture of the activity is analysed.³⁶

In relation to the use of force register, three audits of the former and current Don Dale Youth Detention Centre across a two-year period identified similar issues:

- in March 2014, an audit of eight separate incidents of the use of force in a two-month period found that only two incidents had the majority of the required details and, in both cases, they had not been signed off by the delegated officer. The audit also found that since early February 2014, the superintendent or delegated officer had not signed off on any entries in the paper based use of force register, although reports were submitted in IOMS.³⁷
- in May 2015, an audit of six IOMS incident reports found that three were still in draft form at the time of the audit and were not forwarded for endorsement until approximately a week after the incidents had occurred. Several of the officer reports from these six incidents were not submitted in IOMS on the day of the incident. Several of the IOMS incident reports relating to use of force incidents also showed another officer's name on the report. The audit also observed that a *'significant number'* of other IOMS incident reports were in draft form, some of which were created

and entered as far back as two months before the audit occurred.³⁸

- in August 2016, it was observed that some entries in the use of force register had not been completed and others were missing relevant information. Entries in the register were also being incorrectly filled out by staff members who stated CCTV footage was available when there had been none requested or saved.³⁹

Concerns were also raised in Professional Standards Unit audits about record keeping involving detainees who had been placed in isolation or considered 'at-risk':

- an audit in April 2014⁴⁰ of records from the former Don Dale Youth Detention Centre found that, based on a review of eight detainee placement records, only three were fully and correctly completed and the remaining five records had consistent omissions including detainee and incident numbers, total time for the duration of some placements recorded, and the time some placements ceased.
- an audit in December 2014⁴¹ of Alice Springs Youth Detention Centre records reviewed a sample of five incidents from the isolation register across a period of three months. In one example, the Behaviour Management Unit register did not show a time that the placement ceased or a total time for this placement. In another, the Behaviour Management Unit register page was not completed to show a time that the placement ceased, the total time of the placement, or a date and a time that the Superintendent or General Manager was advised of this placement.
- an audit on 8 January 2015 investigated record keeping after a specific incident at the current Don Dale Youth Detention Centre on 4 January 2015. It found that not all the required information for commencement of isolation placements was completed and several observation forms were sighted where 15-minute intervals were recorded but no other occurrence or observation was noted against this time. In some cases, those omissions were for several consecutive 15-minute observation periods.⁴²
- an audit in July 2015⁴³ of records from the current Don Dale Youth Detention Centre found that 'at risk' documentation recorded in the IOMS was not fully or accurately completed. For two of the files located, not all the completed appendix forms detailing the individual management plan, observations notes, medical notes and officer reports were attached in IOMS.
- an audit in May 2016⁴⁴ of records from the current Don Dale Youth Detention Centre identified that not all activities and decisions made in relation to detainees were recorded because the journal was being filled out by communications staff members and not those staff members involved in managing detainees. The audit also stated that not all entries in the isolation journal had been signed off by a senior youth justice officer at the end of each shift.
- an audit in October 2016⁴⁵ of records from the current Don Dale Youth Detention Centre found that it appeared that a senior youth justice officer had signed a number of pages prior to the isolation journal having entries recorded in them, rather than signing those pages after verifying that the entry was correct, and there were also occasions where pages were left unsigned by the senior officer. The audit also identified that detainees placed at risk were not being observed at 15-minute intervals and there was no record of food and drink being supplied.⁴⁶

In relation to the 2016 audits, Mr Ferguson stated that the lack of accurate recording meant the purpose and length of placements could not always be ascertained and that gaps in record keeping made it *'difficult for NTCS to provide an explanation for the youth's continued placement or if the*

placement complies with the legislation'.⁴⁷ In 2014, the Children's Commissioner expressed similar concerns in a report about an investigation into a detainee who was isolated in the Behaviour Management Unit, and observed that:

*'It is also of significant concern, that due to poor record keeping at the Don Dale Youth Detention Centre I was unable to determine the amount of time [REDACTED] had been kept in isolation.'*⁴⁸

Similar issues were again identified in relation to the search and restraints register:

- an audit of the search register in March 2014 found that most information was entered as required, but with 'consistent exceptions', namely, that searching officers' names had been entered without a corresponding signature and frequently the search entries had not been signed off by the shift supervisor, confirming those searches.⁴⁹
- an audit of the Alice Springs Youth Detention Centre handcuff register in December 2014 identified that shift supervisors consistently failed to sign off the register.⁵⁰

The adequacy of report keeping in the complaints register is detailed in Chapter 22 (Detention system oversight). However, internal and Professional Standards Unit audits noted, yet again, consistently poor record keeping. For example, a 2012 audit of the register at Alice Springs Youth Detention Centre by Barrie Clee, Superintendent of the Alice Springs Youth Detention Centre, identified that it had incomplete sections and that some complaints had not been forwarded to the Superintendent in Darwin.⁵¹ The same deficiencies were observed again at the Alice Springs Youth Detention Centre in 2014, where complaint forms were frequently missing details, such as dates when detainees were advised of outcomes, the progression of complaints and when complaints were finalised.⁵²

The Commission notes that in Mr Clee's 2012 internal audit, he observed that some files, journals and registers at Aranda House and Alice Springs Youth Detention Centre had 'many unsigned sections'.⁵³

It is concerning that a failure to sign records as required was a recurring theme in many of the audits conducted by the Professional Standards Unit in the years after the audit at both the Alice Springs Youth Detention Centre and the current Don Dale Youth Detention Centre.

Communication of audit results

In many cases⁵⁴ the audit recommended that the relevant shift supervisor be reminded of their responsibilities to ensure that registers were fully and correctly completed. However, there is evidence that the results of these audits were never communicated, or at least not always communicated, to people responsible for maintaining the registers, as set out below.

On the use of force register, the Commission heard that during Mr Sizeland's time as Assistant General Manager of the Don Dale Youth Detention Centre a Professional Standards Unit audit in 2014 recommended that all entries in the use of force register be signed off by the Deputy Manager or a delegated officer. Mr Sizeland was assigned responsibility for reminding staff of their obligation to ensure that use of force incidents were properly recorded in the register, that the register was reviewed by the Deputy Manager or delegate, and that this process was checked for compliance.⁵⁵ However, Mr Sizeland said that no one ever told him about the deficiencies identified in the audit and he had not seen the audit report, notwithstanding that the audit made him responsible for

ensuring that proper sign-off occurred in the future.⁵⁶ Mr Russell Caldwell, the Superintendent, agreed that he was responsible for the implementation of the audit recommendations, but said he had not seen the audit report, could not recall having been told about the recommendations of the audit and that this recommendation may have '*slipped through the cracks*' because of operational pressures.⁵⁷

The Commission was shown several pages of entries in the use of force register for the Don Dale Youth Detention Centres for the period six months after this audit. They show that between November 2014 and February 2015, with one exception, nothing was signed off by either the Deputy General Manager or a delegated officer.⁵⁸

This same issue was again identified in a May 2015 audit, where incidents were being signed off by the shift supervisor, but not by the Assistant General Manager or his delegate. The audit stated:

*This finding was similar to that which was previously identified during the 2014 use-of-force audit, where a delegate was not signing off the register pages in most cases. Although a recommendation was made then, to remind staff to undertake this procedure, it appears not to have been enforced.*⁵⁹

The Northern Territory Government submitted that the Commission should not accept this part of the May 2015 report because Mr Sizeland had told the Commission that his 'understanding' was that sign offs on the use of force register had been delegated to the shift supervisor, and on that basis the sign off was being done by a delegate.⁶⁰

Even if the Commission were to accept Mr Sizeland's somewhat hesitant oral evidence about the delegations that were in place, this conclusion would only raise a more serious concern as to how it came to be that the Professional Standards Unit prepared an audit, which was discussed with the Acting Director Youth Justice, approved by the Audits and Investigation Officer, transmitted through the Manager of the Professional Standards Unit and signed off by the Executive Director of Youth Justice, without any of those officers detecting that the primary finding and recommendation of the audit were premised on a mistaken understanding of the delegations that were in place. It would emphasise, rather than alleviate, the Commission's concerns.

The Northern Territory Government also submitted that the Commission should not accept the finding from the 2015 audit that staff were not reminded to undertake the procedure after the 2014 audit, on the basis that the register was actually signed off on some occasions after the April 2014 audit.⁶¹ This submission is not accepted. It does not follow from the fact that staff sometimes completed the register correctly that they must have been reminded of their obligations. The evidence is overwhelmingly to the contrary. The person responsible for issuing the reminder, Mr Sizeland, did not know he was supposed to issue the reminder and the register continued to be completed incorrectly. If the Commission were to accept this submission, it would again beg the more concerning question as to why so many senior staff signed off on an inaccurate audit report.

The sign-off by the Assistant General Manager or a delegated officer was particularly important in practice, because, as the records show, there were examples of the Assistant General Manager making comments about the adequacy of records when they were signed off. For example, on a page in the use of force register signed off by Mr Sizeland, he commented, '*not filled out properly*'.⁶² In this case, the only thing recorded in the 'account of event' for the use of force section was, '*detainee threatened staff and was non-compliant*'.

Specific issues in relation to isolation registers and intensive management plans

There were specific issues with record keeping in relation to detainees housed in the Behaviour Management Unit under an intensive management plan regime, otherwise known as an *'individual management plan'*. This regime, and its relationship with the *Youth Justice Act* (NT), is considered in Chapter 14 (Isolation).

Mr Sizeland was shown examples of these plans, which he created for several detainees in August 2014. He accepted that they were all effectively uniform, to the extent of exhibiting the same typographical errors.⁶³ Mr Sizeland did not keep a record of expired plans. He typed over the previous version and destroyed the hard-copy original *'to prevent confusion'*. Because of this practice, a Children's Commissioner investigation was unable to confirm when these individual management plans were first implemented or their content. Mr Sizeland admitted it was possible that he had not compiled the required individual management plans when he should have, and said the reason was he had been *'extremely busy'*.⁶⁴

There were also record keeping issues in relation to the requirement for a written record of approval from the Superintendent for 24-hour placements and from the Commissioner for 72-hour placements. Mr Caldwell said approval for 24-hour placement was given by phone or email, and that it might be recorded on IOMS, but there was no procedural requirement to do so. In relation to 72-hour placements, he was shown e-mail approvals from Mr Middlebrook, and although he thought that a record may have been kept in the Behaviour Management Unit journals, there was no logistical system governing them as they were an unusual situation.⁶⁵

There are periods of time for which Behaviour Management Unit journals are missing. The Northern Territory Government advised the Commission⁶⁶ that journals from between January 2014 and 12 February 2014 could not be located, despite exhaustive searches. It advised the Commission that it had identified similar issues with missing search registers for:

- the former Don Dale Youth Detention Centre, for the periods 1 August 2006 to 9 January 2007 and 11 July 2011 to 10 April 2012, and
- Alice Springs Youth Detention Centre, for the periods 1 August 2006 and 12 November 2008 and 30 June 2010 to 5 November 2011.

Finding

During the relevant period, there were periods of time in which superintendents/assistant general managers failed to maintain adequate registers relating to the activities in youth detention centres in breach of the *Youth Justice Act* (NT), the *Youth Justice Regulations* (NT), the *Information Act* (NT) and Commissioner's Directives.

CLOSED-CIRCUIT TELEVISION

The youth detention centres have video cameras installed with the ability to record most areas in the centres. CCTV footage, unlike written accounts by officers involved, provides objective evidence of what occurred and is an important safeguard against false complaints by detainees and false reports

by youth justice officers. However, during the relevant period, the systemic issues identified above in relation to written record keeping were aggravated because of problems retaining CCTV footage.

Apart from Youth Justice Regulations that require the monitoring of detainees when isolated and at risk by either CCTV or physical observation by a staff member,⁶⁷ there are no legislative requirements in the Northern Territory for a youth detention centre to be otherwise covered by CCTV.

In terms of the retention period for CCTV footage, Mr Clee, who held various positions at Alice Springs Youth Detention Centre during the relevant period, including as the officer in charge, said that the centre's CCTV footage was overwritten, and therefore deleted, after 40 days and was only usually kept if requested by the General Manager. If there was footage of a serious event that required investigation, Mr Clee said he would instruct staff members to download it.⁶⁸

Mr Sizeland gave evidence that the centres' CCTV was only kept 'for a number of days' before it was overwritten. Mr Sizeland admitted that 'it was a pretty bad system'.⁶⁹

He said that either he or the shift supervisor could ask for the preservation of CCTV footage. The designation of an incident level in the IOMS did not necessarily impact on whether CCTV was preserved. He said that:

*'It depends whether there's an interested body in it ... if it was a police matter or some matter for external investigation, i.e., the Children's Commissioner, then we would store it and hand it over.'*⁷⁰

The Northern Territory Government told the Commission that current arrangements are that CCTV footage is overwritten 30 to 60 days after an event unless it is archived.⁷¹

Standard Operating Procedures issued by the Commissioner for Corrections provided for circumstances in which CCTV footage was required to be retained. For example, Procedure 9.1,⁷² which was implemented in 2013, required that in instances of alleged detainee-on-detainee assaults or detainee-on-staff assaults, the 'Deputy General Manager' was required to download CCTV footage as evidence.

However, in instances of alleged staff-on-detainee incidents or assaults, there was no requirement under the procedures to download CCTV footage. This may have had serious consequences for investigations, if police were unable to obtain footage before it was routinely deleted. The Northern Territory Government submitted to the Commission that this omission from the procedure was of no consequence because in practice all assaults were and are referred to the police, and therefore 'notable incidents' for which CCTV was retained.⁷³ This practice is not reflected in the written procedures available to the Commission. Even if it was generally true in practice, the omission from the procedure is striking given that there is a specific requirement to download the CCTV footage for detainee on staff assaults, even though those too must be referred to police.

A later directive, issued in January 2016, stated that where a detainee is anticipated to become violent or demonstrate aggressive behaviour and the use of force may be required, the incident in its entirety must be recorded, where possible.⁷⁴ This directive also contemplated that handheld video recorders might be used to record such incidents.⁷⁵

The Northern Territory Government advised the Commission in November 2016 that CCTV footage is not kept beyond the standard retention period unless a 'notable incident' occurs. This advice stated that examples of notable incidents include Children's Commissioner, police or Professional Standards

Unit investigations, property damage, self-harm incidents, coronial investigations, assaults on staff, Health Complaints Commissioner investigations; riotous behaviour, escape by a detainee, and breach of discipline by staff. An at-risk or isolation placement of itself is not considered a notable incident.

The Professional Standards Unit identified specific issues with the retention of CCTV footage in its audit of the use of force register in August 2016.⁷⁶ The audit sample identified five incidents in which officers advised that there was either an independent record of CCTV and/or video footage. However, when the Professional Standards Unit requested the CCTV footage, it was informed that no recordings were available to view. The audit stated:

'It appears that when officers are filling out the register under the independent record section, they are circling CCTV without confirming that there is CCTV footage captured. It is assumed that officers are indicating that there is CCTV footage available as there are CCTV cameras in the vicinity of where the incident took place.

*Additionally, if the security systems manager is not advised or aware that an incident occurred, steps aren't taken to ensure that the incident is caught on CCTV and/or stored to prevent it from being recorded over or archived, which is the case for the above incidents.'*⁷⁷

The audit also advised that there was nothing specific in any directives at the time regarding creating and archiving essential CCTV for youth justice incidents.⁷⁸

The Commission also heard evidence of delays in providing CCTV footage to external authorities when requested. For example, in 2010 a youth detention centre staff member provided CCTV footage to the Children's Commissioner only after repeated requests and after falsely claiming that it had already been provided to the police, and then only after a period of eight months had elapsed.⁷⁹ In cross-examination the officer involved said that he had provided the footage to the police and that he could not explain why the police had provided sworn statements saying they had not received it.⁸⁰ The Commission considers that the more probable explanation is that it was not provided to the police.

The Northern Territory Police Youth Detention Taskforce Review, which commenced after the Commission was announced to examine police interactions with youth detention centres,⁸¹ identified that:

*'Whilst in most cases CCTV footage was made available to police promptly following request, there are a number of instances when obtaining the footage became unnecessarily time consuming and difficult, in one instance at least, the difficulties experienced should have been sufficient to enliven a suspicion that the Correctional Services' employees involved were being deliberately obstructive.'*⁸²

In this case, the Northern Territory Police requested footage in April 2013, and followed up on the matter numerous times over a three-month period. They were advised in July 2013 that the footage had since been deleted.⁸³

The Northern Territory Government submitted that the Commission should not infer from the above passage from the Northern Territory Police Youth Detention Taskforce Review that Correctional Services employees were engaged in 'self-interested obstruction' and that those employees did not 'have any interest in obstructing police access to such footage' in cases where CCTV footage related

to an alleged detainee on detainee assault.⁸⁴ The Commission accepts that the evidence available to it is not sufficient to make a finding that the failure to provide police with timely access to the footage in this case was due to a self-interested cover up, but notes that self-interest may exist in cases of detainee on detainee assaults, for example where a staff member is responsible for the supervision of detainees and consequences could attach to the failure to supervise.

Aside from self-interested cover up, there are a number of problematic reasons why staff might not cooperate with police, for example a cultural resistance to external oversight, a dislike of police, or simply considering the police's investigation to be a waste of time. Even in the case of an incident involving detainee on detainee assault, a staff member might have an interest in avoiding accusations that they failed to supervise the detainees properly. The conclusions that can be drawn are that the system allowed Correctional Services' employees the opportunity to obstruct police investigations should they be so minded, and that the police concluded on occasions that may have occurred.

Detective Sergeant Wells, who was involved in the Taskforce Review, acknowledged that there are potential problems requesting footage from staff at youth detention centres who may themselves be the subject of complaints.⁸⁵ This was also identified by Dr Howard Bath, who said:

*'Corrections record-keeping system and surveillance systems are sometimes maintained by senior facility staff, who are the very people who may be the subject of complaints. To remove such conflict of interest, or the perception that these systems might be tampered with, it would be desirable for only persons outside the Corrections system to have the ability to permanently and irrevocably delete or alter these records.'*⁸⁶

The Northern Territory Government submitted that Dr Bath was wrong to say that the surveillance systems were sometimes maintained by senior facility staff, as the person responsible is the 'Security Systems Manager' who is not a person who would, plausibly, be subject to a complaint from a detainee.⁸⁷ The Commission accepts that such a role exists, but the evidence clearly establishes that this person is not invariably involved in preserving or extracting surveillance footage. The Northern Territory Government itself asked the Commission to accept the evidence of Mr Clee that when he was manager at Aranda House there was no internal IT support, he was personally responsible for preserving CCTV footage, and that he extracted it with the support of a private company.⁸⁸

The importance of retaining CCTV footage is illustrated in the example of a detainee who was in the current Don Dale Youth Detention Centre late last year. Vulnerable witness BH told the Commission that on 12 December 2016, during the public hearings of the Commission, he was involved in an incident with youth justice officers where he was allegedly forced onto a concrete floor. He complained of injuries to his head and was taken to hospital after the incident.

Footage of this incident was played during the Commission's public hearings. Still photographs of the footage show two youth justice officers grabbing BH, lifting him up and then forcing him down onto a concrete floor from approximately shoulder height. All of this occurred in the space of less than five seconds. This incident, and BH's account, is detailed in Chapter 13 (Use of Force). In this case, the CCTV footage was only obtained because BH made a complaint to the Commission and the Commission could require the CCTV to be produced during the period before it was overwritten. Had the Commission not requested the footage, or if no complaint had been made to some other body, there was a likelihood that the footage would have been overwritten in the usual course.

Finding

During the relevant period, there were several systemic deficiencies in the operation and retention of CCTV footage, including:

- routine overwriting of CCTV footage after a short period
- standard operating procedures that required CCTV footage to only be recalled for allegations of detainees assaulting staff members or each other, but not when staff members assaulted or used force on detainees, and
- the potential conflict of interest which arose because, in at least some instances, the officers who could be the subject of complaints were also responsible for maintaining the CCTV system.

FALSE OR APPARENTLY MINIMISED RECORDS

The Commission heard evidence of occasions where written records appeared to be false or which minimised the description of the use of force against detainees. These were identified by the Professional Standards Unit, the Children's Commissioner and the courts, at various stages during the relevant period, or through the Commission's own investigations.

Five examples are considered below. In each case, the records created by youth justice officers or management were shown to be false or appeared to be minimised because of the existence of other evidence that contradicted them, such as other detainees' accounts or CCTV footage. In one case, the relevant youth justice officer even admitted that he falsified records. These examples underscore the importance of maintaining CCTV footage or obtaining accounts other than from the youth justice officer involved where possible.

Example 1: Professional Standards Unit investigation into an alleged assault by an officer, April 2010

In April 2010 at the former Don Dale Youth Detention Centre, a detainee alleged that he was assaulted by a youth justice officer. Police were initially involved, but the detainee later indicated that he did not want to proceed with an assault charge. A preliminary investigation by the Professional Standards Unit followed. No CCTV was reviewed, but the investigation involved an analysis of IOMS reports and interviews with several other detainee eyewitnesses.⁸⁹

The investigation found evidence from the detainee eyewitnesses that conflicted with the information provided in the two youth justice officers' reports, that there was sufficient evidence to conclude that an assault on the detainee had occurred as alleged. The investigation stated that the content of the two youth justice officers' 'case notes/reports appear to be erroneous or sanitised to conceal the extent of the alleged assault'.⁹⁰

Example 2: Children's Commissioner investigation into assault by an officer, October 2010

This example concerns an alleged assault by a youth justice officer on a detainee on 20 October

2010. For a still photograph from the CCTV footage see Chapter 13 (Use of Force). The Children’s Commissioner investigation analysed IOMS reports written by the youth justice officers involved and compared them against available CCTV footage. The Children’s Commissioner stated,

I am concerned that the four officers’ reports appear to be inaccurate when compared to the CCTV footage. The inaccuracies appear to uniformly emphasise [REDACTED] challenging behaviours, and to minimise the use of force by [a youth justice officer].⁹¹

Example 3: The case of Police v. Tasker (2014) NTMC 02

This example concerns an allegation of excessive use of force by a youth justice officer on a detainee in December 2010. In this case, the detainee was declared ‘at risk’ after allegedly threatening to kill himself. Derek Tasker, a youth justice officer, used force against the detainee to remove his clothing and place him in an ‘at-risk’ gown pursuant to the protocols that existed at the time. This incident and CCTV stills of the footage are discussed in Chapter 13 (Use of Force).

Mr Tasker was charged with unlawfully assaulting Dylan Voller in relation to this incident. While Mr Tasker was found not guilty, the magistrate reviewed the use-of-force records relating to the incident. The judgment stated that:

‘A single page of a use of force register was referred to... Under ‘nature of force used’ is written ‘pinned down on mattress by two YW’s’...’ However, it is clear from all the evidence including [CCTV footage of the event] that the only person who made any physical contact with [the detainee] during the incident was Tasker. Accordingly, this note is plainly wrong.’⁹²

In this judgment, the magistrate also noted that there was a ‘paucity of evidence’ to establish that the detainee had even been properly placed at risk. The evidence the magistrate criticised and to which he said could not give ‘any real weight’ included an officer’s incident report that was not signed by anyone and had no indication of who it was prepared by or when, apart from a note that the document was posted on the IOMS.⁹³

Example 4: Accounts relating to an incident involving a detainee on 16 August 2014

This example concerns an incident on 16 August 2014 in which it was alleged that youth justice officer Mr Kelleher entered a cell, attempted to cover a camera and threatened to assault a detainee. Mr Kelleher was accompanied by another youth justice officer, Conan Zamolo.

The Professional Standards Unit investigated this incident and reviewed available CCTV footage. No IOMS reports were prepared for this incident. In lieu of those reports, the Professional Standards Unit requested that Mr Zamolo and others provide written accounts of the incident.⁹⁴

In a later statement to the Commission, Mr Zamolo admitted that the account of the event that he gave was untruthful. He said:

*‘I admit now that I was untruthful to Mr Middlebrook ... I told Mr Middlebrook that I believed that Mr Kelleher had done it [thrown wet paper towels at the camera] to clean the camera so he would not get into trouble, and because that is what he told me. **At that time, we had been working together quite intensely in the high security***

*and we had become close. I wanted to protect him.*⁹⁵ [emphasis added]

Example 5: Records relating to an incident on 21 August 2014

Example 5 concerns the accuracy of the records relating to a tear-gassing incident in the Behaviour Management Unit on 21 August 2014.

The CCTV footage showed two detainees who sat quietly together in their cell for the entire time. This was not disputed in the recent civil proceedings.⁹⁶

There were inaccuracies in the flash brief prepared to the Minister, created after the event, which referred to ‘several detainees’ participating in the incident in the Behaviour Management Unit. The author, Russell Caldwell, has admitted that this record was inaccurate. These records influenced media reporting and were also referred to in Michael Vita’s report (the Vita Report):

- the flash brief prepared by Mr Caldwell for the Minister for Corrections on 22 August 2014 stated⁹⁷ that ‘several detainees in the BMU became disruptive and non-compliant, blocking their cameras’. Mr Caldwell accepted in an interview with the Children’s Commissioner that this was not accurate.⁹⁸
- an e-mail written by Mr Caldwell to Mr Middlebrook and Ms Cohen a few hours after the incident occurred stated:⁹⁹

‘The incident was extremely serious ... Tonight the detainees effectively destroyed the behavioural management unit cells, the only maximum-security cells at Don Dale. They weaponised the debris including glass and metal and one staff member was injured.’

- in Ms Cohen’s oral evidence before the Commission, she accepted that in light of the CCTV footage, the reference to ‘the detainees’, without qualification, was incorrect. She admitted that all detainees in the Behaviour Management Unit were not involved in the incident, and she said that she did not watch the CCTV footage at the time.¹⁰⁰
- the Vita Report appeared to rely on these accounts and stated that:¹⁰¹

The other Behaviour Management Unit detainees, who were still locked in their rooms, continued to damage their rooms and attempted to break out themselves as well as arming themselves with various stabbing and cutting implements, gained from damaging their rooms.

Finding

On a number of occasions the written records maintained by detention centre staff or management about serious incidents involving detainees were apparently false, inaccurate or misleading.

CONCLUSIONS AND RECOMMENDATIONS

This chapter has highlighted a number of practices that had the effect of creating an environment that did not support good record keeping.

The Commission is concerned that there appears to be an ongoing practice of using euphemistic or minimised language in the records to, which is specifically mandated by current training. For example, the June 2017 training materials refer to approved ‘terminology’ for use of force and incident reports.¹⁰²

Not allowed	Allowed
Dropped/takedown	Stabilised
Cell	Accommodation or bedroom
Pushed	Deflected
Punishment/punished	Consequence
Isolation or isolated	On a placement

The Northern Territory Government submitted that this part of the training materials was ‘entirely appropriate’, to encourage ‘consistent, professional and accurate’ reporting.¹⁰³ This submission is not accepted. In ordinary language, a report that said that a youth justice officer pushed a detainee and then used a take down manoeuvre carries a different meaning to one that describes the officer deflecting the detainee and then stabilising him. A sentence that read ‘the detainee deflected the youth justice officer so the officer deflected him’ is also meaningless. The words ‘push’ and ‘deflect’ are not synonyms, and mandating that they be used as if they were prevents, rather than encourages, accurate reporting.

These issues call into question whether reliance can be placed on youth justice officers’ accounts as recorded in registers and the IOMS during the relevant period. Whilst the Commission accepts that many or even a majority of youth justice officers probably complied with their record keeping obligations and produced accurate records, the identification of a widespread presence of inaccuracies and incompleteness within the records the Commission has considered has the potential to cast doubt on the reliability of record keeping as a whole. This is particularly the case where there is no objective evidence available, in the form of CCTV footage, to substantiate accuracy of other records.

The availability of video evidence of use of force incidents provides the best objective evidence of what has occurred. The Commission notes the recent recommendations in the June 2017 report on the Banksia Hill Juvenile Detention Centre in Western Australia that such footage is necessary to increase accountability, reduce false allegations and improve training.¹⁰⁴

It also notes the recommendations from the Queensland Government’s Independent Review into Youth Detention, which recommended that CCTV footage should be:

- utilised in a way that ensures that all relevant information is captured and retained to facilitate the investigation of incidents without delay, and
- retained in relation to all use of force incidents above a certain threshold, medical, and emergencies, or where harm has occurred to a staff member or a detainee.¹⁰⁵

The use of body-worn video cameras is another way to ensure that incidents are recorded. Body-worn video cameras can be fitted onto employee uniforms and used to record interactions. They are

common in law enforcement and have been trialled by the Northern Territory Police.¹⁰⁶ The Banksia Hill report referred to adult correctional officers in Western Australia routinely wearing digital lapel cameras to record their responses to incidents.¹⁰⁷ The report recommended that digital lapel cameras that record sound as well as vision should be mandatory for youth justice detention facilities.

The Commission also acknowledges the recommendation of the Northern Territory Police Taskforce Review, which suggested that consideration be given to upgrading the role of the current Northern Territory Police intelligence officer assigned to the Darwin Correctional Centre to include expanded liaison duties with youth detention centres.¹⁰⁸ Detective Sergeant Wells told the Commission that, in practice, this liaison officer could begin the process of requesting that CCTV footage be retained promptly.¹⁰⁹ He also said that simplifying the process by having a single point of contact to obtain footage could deal with the potential conflict of that may arise from requesting footage from staff at youth detention centres who may themselves be the subject of complaints.¹¹⁰

Recommendation 21.1

Territory Families:

- **introduce video and sound recording, in the form of body-worn video cameras in youth detention centres, and**
- **designate an individual, who is independent from youth justice officers, be designated as the single point of contact for the provision of video and sound records to external agencies.**

Recommendation 21.2

Youth Justice Regulations (NT) be amended to require the superintendent:

- **to retain all CCTV footage for at least 12 months**
- **to ensure that any footage is made available on a timely basis on lawful request of any government departments or agency, and**
- **to ensure that all parts of the youth detention centres other than bathroom facilities are sufficiently covered by CCTV cameras.**

Recommendation 21.3

A document retention policy, having regard to all relevant legal obligations, be developed and implemented.

Recommendation 21.4

The criteria for the assessment of the superintendent's work-place performance include compliance with record keeping obligations under the *Youth Justice Act (NT)*, the *Information Act (NT)*, Youth Justice Regulations (NT) and any relevant Commissioner Directives.

Recommendation 21.5

The criteria for the assessment of the Deputy Chief Executive Officer's work-place performance include the steps taken to facilitate and effect compliance with record-keeping obligations under the *Youth Justice Act (NT)*, the *Information Act (NT)*, Youth Justice Regulations (NT) and any relevant Commissioner Directives.

ENDNOTES

- ¹ Information Act (NT), sections 133-134.
- ² Submission, Solicitor for the Northern Territory, 21 August 2017, p.8.
- ³ Transcript, 21 March 2017, p. 1609: line 8 – p.1610: line 22.
- ⁴ Information Act (NT), section 146.
- ⁵ Information Act (NT), section. 145
- ⁶ See, for example, Transcript, Benjamin Kelleher, 21 March 2017, p. 1542: lines 35-40; Exh.152.001, Statement of Saki Muller, 10 February 2017, tendered 24 March 2017, para. 14; Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 27; Transcript, Ken Middlebrook, 26 April 2017, p. 3048: lines 11-14; Transcript, Salli Cohen, 24 April 2017, p. 2839: lines 12-16.
- ⁷ Transcript, David Ferguson, 24 March 2017, p. 1825: lines 42-44.
- ⁸ Exh.437.002, Annexure 2 to Statement of Michael Vita, 11 January 2017, tendered 12 May 2017; p. 16.
- ⁹ Youth Justice Act 2005 (NT), section 158A.
- ¹⁰ Exh.741.005, Annexure MP-5 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, p. 2.
- ¹¹ Youth Justice Regulations 2006 (NT), r. 72.
- ¹² See, for example, Exh.741.046, Annexure MP-046 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017; p. 2.
- ¹³ Youth Justice Regulations (NT), r. 42.
- ¹⁴ Youth Justice Regulations (NT), r. 74.
- ¹⁵ Youth Justice Regulations (NT), r. 67.
- ¹⁶ See, for example, Exh.742.107, Annexure MP-513 to Statement of Mark Payne, 7 March 2017, tendered 25 July 2017, p. 4.
- ¹⁷ Exh.261.001, Statement of Mark Christopher, 24 February 2017, tendered 31 March 2017, para 7.
- ¹⁸ Exh.503.000, Statement of Mark Christopher, 27 April 2017, tendered 19 May 2017, para 5.
- ¹⁹ Exh.503.000, Statement of Mark Christopher, 27 April 2017, tendered 19 May 2017, para 7.
- ²⁰ Exh.741.117, Annexure MP-117 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, page 6.
- ²¹ Exh.1138.001, Letter from the SFNT to Solicitor Assisting, 26 January 2017, tendered 2 November 2017.
- ²² Exh.742.103, Annexure MP-509 to Statement of Mark Payne, 7 March 2017, tendered 25 July 2017, p. 2.
- ²³ Exh.742.103, Annexure MP-509 to Statement of Mark Payne, 7 March 2017, tendered 25 July 2017.
- ²⁴ Transcript, James Sizeland, 27 March 2017, p. 1895: lines 14-17.
- ²⁵ Exh.283.141, IOMs functionality analysis Report, 18 August 2015, tendered 31 March 2017, p. 8; Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 15 September 2013, tendered 31 March 2017, p. 19.
- ²⁶ Exh.152.001, Statement of Saki Muller, 10 February 2017, tendered 24 March 2017, para 14.
- ²⁷ Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para 27.
- ²⁸ Transcript, James Sizeland, 27 March 2017, pp. 1868: lines 30-46.
- ²⁹ Transcript, Salli Cohen, 24 April 2017, p. 2839: lines 12-16.
- ³⁰ Transcript, Benjamin Kelleher, 21 March 2017, p. 1542: lines 32-33.
- ³¹ Transcript, Trevor Hansen, 13 March 2017, p. 965: line 22, p. 966: line 33.
- ³² Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para 69.
- ³³ Transcript, Ian Johns, 28 March 2017, p. 2029: lines 16-21.
- ³⁴ Exh.125.001, YJ Detention Review September 2014, 19 September 2014, tendered 23 March 2017, p. 5.
- ³⁵ Transcript, Benjamin Kelleher, 21 March 2017, p. 1542: lines 35-40.
- ³⁶ Exh.124.0001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 10.
- ³⁷ Exh.064.166, Response – Use of Force Register, 2 April 2014, tendered 29 March 2017, p. 1.
- ³⁸ Exh.283.121, Audit memorandum, Review of Record Keeping at Don Dale Youth Detention Centre May 2015, 26 May 2015, tendered 31 March 2017, pp. 1-2.
- ³⁹ Exh.064.313, Memorandum to ED Custodial Operations – Use of Force August 2016, 26 August 2016, tendered 31 March 2017, p. 4.
- ⁴⁰ Exh.283.178, Response – Behaviour Management Unit Register, 2 April 2014, tendered 31 March 2017, pp. 1-2.
- ⁴¹ Exh.283.196, Signed memorandum, Alice Springs Youth Detention Centre audits November 2014, 8 December 2014, tendered 31 March 2017, pp. 2-6.
- ⁴² Exh.064.223, Memorandum – Post Incident Cell Placement: C Block Review January 2015, 8 January 2015, tendered 29 March 2017, pp. 1-4.
- ⁴³ Exh.774.001, Signed memorandum: At risk (self-harm) Don Dale Youth Detention Centre, 14 July 2017, tendered 22 August 2017, pp. 1-2.
- ⁴⁴ Exh.124.007, Annexure DF-6 to Statement of David Ferguson, 3 May 2016, tendered 23 March 2017, pp. 1-4.
- ⁴⁵ Exh.124.008, Annexure DF-7 to Statement of David Ferguson, 6 October 2016, tendered 23 March 2017, pp. 1-6.
- ⁴⁶ Exh.124.0001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 26.
- ⁴⁷ Exh.124.0001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 22.
- ⁴⁸ Exh.1169.001, Letter from Children’s Commissioner to Commissioner Middlebrook [REDACTED], 29 September 2014, tendered 2 November 2017.
- ⁴⁹ Exh.775.001, Memorandum, Audit Search Register at Don Dale Youth Detention Centre, 3 April 2014, tendered 22 August 2017, pp. 1-2.
- ⁵⁰ Exh.283.196, Signed memorandum, Alice Springs Youth Detention Centre audits November 2014, 8 December 2014, tendered 31

- March 2017, p. 3.
- ⁵¹ Exh.064.126, Audit 26.07.2012, 29 November 2012, tendered 15 March 2017, p. 1.
- ⁵² Exh.283.196, Signed memorandum, Alice Springs Youth Detention Centre audits November 2014, 8 December 2014, tendered 31 March 2017, pp. 4-5.
- ⁵³ Exh.064.126, Audit 26.07.2012, 29 November 2012, tendered 15 March 2017, p. 11.
- ⁵⁴ See, for example, Exh.064.166, Response – Use of Force Register, 2 April 2014, tendered 29 March 2017, p. 2, 4; Exh.283.196, Signed memorandum, Alice Springs Youth Detention Centre audits November 2014, 8 December 2014, tendered 31 March 2017, pp.2-6; Exh.775.001, Memorandum, audit Search Register at Don Dale Youth Detention Centre, 3 April 2014, tendered 22 August 2017, p. 2.
- ⁵⁵ Exh.064.166, Response – Use of Force Register, 2 April 2014, tendered 29 March 2017, p. 4.
- ⁵⁶ Transcript, James Sizeland, 27 March 2017, p. 1895: lines 24-27.
- ⁵⁷ Transcript, Russell Caldwell, 29 March 2017, p2105: lines 34-36; p. 2107: lines 35-46.
- ⁵⁸ Exh.176.001, Use of force examples, 2 April 2014 tendered 27 March 2017, p. 30-55.
- ⁵⁹ Exh.064.264, Further Professional Standards Unit audit, 25 May 2015, tendered 31 March 2017, p. 1.
- ⁶⁰ Submission, Solicitor for the Northern Territory, 21 August 2017, p. 14. The submission actually referred to this being evidence being given by Mr Caldwell, but this appears to have been an error in the submission. The evidence was given by Mr Sizeland.
- ⁶¹ Submission, Solicitor for the Northern Territory, 21 August 2017, p. 14.
- ⁶² Exh.176.001, Use of force examples, 2 April 2014 tendered 27 March 2017, at p. 32.
- ⁶³ Transcript, James Sizeland, 27 March 2017, p. 1894: lines 5-15.
- ⁶⁴ Exh.437.003, Annexure 3 to Statement of Michael Vita, 11 January 2017, tendered 12 May 2017, p. 33.
- ⁶⁵ Transcript, Russell Caldwell, 29 March 2017, p. 2113: line 30, p. 2115: line 25.
- ⁶⁶ Exh.311.145E, Letter from SFNT to Commission about documents not yet located 3 December 2016, 3 December 2016, tendered 28 April 2017.
- ⁶⁷ Youth Justice Regulations 2006 (NT), rr. 42, 72.
- ⁶⁸ Transcript, Barrie Clee, 15 March 2017, p. 1152: line 40, p. 1153: line 10.
- ⁶⁹ Transcript, James Sizeland, 27 March 2017, p. 1942: lines 19-21.
- ⁷⁰ Transcript, James Sizeland, 27 March 2017, p. 1942: lines 11-13.
- ⁷¹ Exh.776.001, Letter from SFNT to Craig Rawson, 14 November 2016, tendered 22 August 2017, p. 2.
- ⁷² Exh.741.000, Annexure MP-183 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, pp. 9-12.
- ⁷³ Submission, Solicitor for the Northern Territory, 21 August 2017, p. 17.
- ⁷⁴ Exh.741.015, Annexure 15 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, pp. 9-12.
- ⁷⁵ Exh.741.015, Annexure 15 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, pp. 9-12.
- ⁷⁶ Exh.124.005, Annexure DF-4 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, pp. 1-4.
- ⁷⁷ Exh.124.005, Annexure DF-4 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, p. 3.
- ⁷⁸ Exh.124.005, Annexure DF-4 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, pp. 1-4.
- ⁷⁹ Transcript, Barrie Clee, 20 April 2017, p. 2595: line 27, p. 2597: line 11.
- ⁸⁰ Transcript, Barrie Clee, 20 April 2017, p. 2597: line 30-p.2598: line 29.
- ⁸¹ Transcript, Keiran Wells, 9 May 2017, p. 3590: lines 41-47.
- ⁸² Exh.349.001, Northern Territory Police Youth Detention Task Force Review, 16 September 2016, tendered 9 May 2017, p. 34.
- ⁸³ Exh.706.002, Memorandum, Northern Territory Police Youth Detention Task Force Review, 21 October 2016, tendered 10 July 2017, p. 3.
- ⁸⁴ Northern Territory Government, Submissions in response to Notice of Adverse Material 9/17, 21 August 2017, para 73.
- ⁸⁵ Transcript, Keiran Wells, 9 May 2017, p. 3594: line 15.
- ⁸⁶ Exh.011.001, Statement of Howard Bath, 5 October 2016, tendered 12 October 2016, para. 99(c).
- ⁸⁷ Northern Territory Government, Submissions in response to Notice of Adverse Material 9/17, 21 August 2017, para 74.
- ⁸⁸ Northern Territory Government, Submissions in response to Notice of Adverse Material 9/17, 21 August 2017, para 72; Transcript, Barrie Clee, 20 April 2017, p. 2597: line 29-36.
- ⁸⁹ Exh.064.028, YJAC Professional Standards Unit investigation YW HMORGAN, 31 May 2010, tendered 14 March 2017, pp. 4-47.
- ⁹⁰ Exh.064.028.YJAC Professional Standards Unit Investigation YW HMORGAN, 31 May 2010, tendered 14 March 2017, p. 5.
- ⁹¹ Exh.053.027, Children’s Commissioner confidential report relating to youth detention practices, 12 February 2015, tendered 14 December 2017, p. 18.
- ⁹² Exh.064.163, Police v. Derek Tasker, 5 February 2014, tendered 31 March 2017, pp. 23-25.
- ⁹³ Exh.064.163, Police v. Derek Tasker, 5 February 2014, tendered 31 March at paras. 39, 44.
- ⁹⁴ Exh.064.214, Completed investigation report Behaviour Management Unit incident 2014, 4 November 2014, tendered 23 March 2017, p. 2.
- ⁹⁵ Exh.286.001, Statement of Conan Zamolo, 16 March 2017, tendered 19 April 2017, para. 27.
- ⁹⁶ (2017) NTSC 22 at 192.
- ⁹⁷ Exh.311.041, Behaviour Management Unit at Don Dale Youth Detention Centre compromised and staff members assaulted with weapon, 22 August 2014, tendered 28 April 2017.
- ⁹⁸ Exh.283.229, Transcript, Caldwell part 2, 25 November 2014, tendered 31 March 2017, at p. 8.
- ⁹⁹ Exh.194.012, Annexure RSC-12 to Statement of Salli Cohen, 13 March 2017, tendered 29 March 2017.

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- ¹⁰⁰ Transcript, Salli Cohen, 24 April 2017, p. 2888: lines 24-27.
- ¹⁰¹ Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, p. 53.
- ¹⁰² Exh.741.117, Annexure 117 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, pp. 8-9.
- ¹⁰³ Northern Territory Government, Submissions in response to Notice of Adverse Material 9/17, 21 August 2017, para 99.
- ¹⁰⁴ Behaviour management practices at Banksia Hill Detention Centre June 2017, <http://www.oics.wa.gov.au/wp-content/uploads/2017/07/Full-report.pdf>, p. 35.
- ¹⁰⁵ See , <http://www.youthdetentionreview.qld.gov.au/review-of-youth-detention-centres-report-updated-28-June-2017.pdf>, recommendations 10.R3, 10.R4.
- ¹⁰⁶ See, for example, body-worn video trial, <http://www.pfes.nt.gov.au/Police/Community-safety/Body-worn-video-trial.aspx>.
- ¹⁰⁷ Behaviour management practices at Banksia Hill Detention Centre June 2017, <http://www.oics.wa.gov.au/wp-content/uploads/2017/07/Full-report.pdf>, at p. 35.
- ¹⁰⁸ Exh.349.001, Northern Territory Police Youth Detention Task Force Review, 16 September 2016, tendered 9 May 2017, recommendation 5.
- ¹⁰⁹ Transcript, Keiran Wells, 9 May 2017, p. 3593: line 44, p. 3594: line 2.
- ¹¹⁰ Transcript, Keiran Wells, 9 May 2017, p. 3594: lines 15-16.

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DETENTION SYSTEM
OVERSIGHT

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DETENTION SYSTEM OVERSIGHT

INTRODUCTION

Youth detention centres are closed environments, with limited access to them and limited visibility of their internal operations. They are necessarily characterised by a power imbalance between detainees and staff members.

Robust oversight of these centres is essential to protect the rights of detainees. This requires mechanisms which can penetrate the closed environment and monitor the power imbalance. Oversight mechanisms can include:

- internal and external inspections and reporting
- processes for accepting and responding to complaints, and
- avenues for reviewing and appealing decisions made within the institution.

The mere existence of oversight bodies, if effective and resourced adequately, can deter the inappropriate treatment of children and young people.¹

During the relevant period, the Northern Territory lacked strong oversight and complaint processes for its youth detention centres. Internal complaints mechanisms were not well understood by detainees. If they did understand the process, they chose not to invoke it because they believed, often for good reason, it would not improve their position. Some had little or no confidence that complaining would improve their plight.

Although external oversight mechanisms such as the Children's Commissioner, the Ombudsman and the Northern Territory Police had powers to ensure effective oversight, they were still ineffective in improving the situation of children and young people who made complaints.

Barriers which prevented effective and robust oversight during the relevant period include:

- insufficient powers for external oversight bodies
- obstructionist attitudes towards complaints and oversight at the highest levels of management
- the failure of management to act on the findings and recommendations of internal and external oversight bodies
- poor record-keeping, and
- unawareness on the part of staff members and detainees regarding human rights and legal rights.

The significant failings of oversight and complaints mechanisms throughout the relevant period demonstrate that substantial reform is needed.

HUMAN RIGHTS STANDARDS FOR EFFECTIVE OVERSIGHT

International human rights rules set standards for the independent oversight of places of youth detention, including:²

- the appointment of qualified inspectors who:
 - are independent of the centre administration
 - have unrestricted access to all staff members, records and detainees³
 - have the power to conduct regular and unannounced inspections to assess compliance with the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* and national laws
 - submit reports on their findings and make recommendations to ensure compliance,⁴ and
- the right of children and young people to speak confidentially to any inspecting officer.

Human rights standards also detail requirements for allowing children and young people in detention to make complaints, including rights to:⁵

- make a complaint or request to the director of the facility
- make a complaint or request to the central administration, judicial or other proper authority without censorship of the substance of the complaint
- be informed of the response to a complaint without delay
- request assistance to make a complaint from external sources, including family, lawyers and advocacy groups, and
- have complaints received and investigated by an independent office who follows through on the resolution of complaints.

At the domestic level, standards agreed by the Australasian Juvenile Justice Administrators include requirements that feedback, review and complaints procedures be in place⁶ and that children and young people have the opportunity to appeal decisions that affect them.⁷ The standards note that it is likely that these requirements are being met if children and young people are '*assisted to raise concerns about the centre or its services without fear of retribution*' and they '*and their advocates know about and understand the internal and external complaints procedures and report satisfaction with the centre's practices*'.

THE LEGAL AND POLICY FRAMEWORK FOR OVERSIGHT

Section 163 of the *Youth Justice Act* (NT) confirms the legal entitlement of a detainee, and a responsible adult on their behalf, to make a complaint about a matter that affects them in detention pursuant to a procedure set out in the *Youth Justice Regulations* (NT).

This procedure does not affect or limit the right of a detainee to access any other complaint procedure, including to external bodies such as an Official Visitor and the Ombudsman.⁸ The section does not refer to the Children's Commissioner, however that is an additional external, statutory complaint mechanism available to children and young people in detention. Complaints may also be made to the Northern Territory Police in respect of alleged criminal behavior.

The *Youth Justice Regulations* prescribe the procedure for detainees to make complaints internally, within youth detention facilities, as follows:⁹

- complaints to the superintendent must be in writing
- if a child or young person lacks adequate writing skills, a member of staff must write the complaint on their behalf and record the nature of the complaint accurately, and
- complaints may be lodged with any member of staff, and a staff member must forward the complaint without delay.

Even on its face this process is flawed. Children and young people relied on centre staff members to process their complaint or even write it. This must have deterred some children and young people from making complaints.

When the superintendent receives the complaint, the superintendent:

- must deal with a complaint as soon as practicable
- may dismiss a complaint without further action when considered trivial, and
- may refer the complaint to the Children's Commissioner if the matter could be the subject of a complaint under the *Children's Commissioner Act 2013* (NT), or give written notice to the Children's Commissioner about the complaint if the superintendent is going to deal with the complaint under the *Youth Justice Regulations*.¹⁰

In all cases, the child or young person must be informed of the outcome of the complaint or action taken, though no timeframe for notification is prescribed. Regulation 67 requires the superintendent to record the following details of all complaints in a register:

- the child or young person's name
- the name of the person who made the complaint
- the date and time the complaint was received
- the nature of the complaint, and
- the action taken in response to it.

A 2006 procedures manual¹¹ and 2011 draft procedures manual¹² (not published to staff until 2014 and only in draft format)¹³ contained content relating to complaints which referred to and reflected the requirements of the *Youth Justice Act* and the *Youth Justice Regulations*. The extent to which the record keeping procedures were complied with by staff is questionable, given the Solicitor for the Northern Territory confirmed to the Commission that '*there was not a formal complaints register*

*maintained [at the former Don Dale Youth Detention Centre] prior to July 2014.*¹⁴

In March 2013 a Standard Operating Procedure (SOP) relating specifically to complaints was created.¹⁵ The procedure did not refer to the complaints provisions of the Youth Justice Regulations or the *Youth Justice Act* as a basis to inform staff members that the complaints procedure was a right of children and young people, and what steps were required to be taken.

The SOP provided for a hierarchy of people to respond to complaints, if not resolved at each stage. The SOP attached a complaint form, which included a small box in which the substance of the complaint could be recorded. The SOP referred to a complaints register, but not its content.¹⁶

The first point of internal complaint was to the senior youth justice officer on shift, then the shift supervisor and then the senior case worker. No avenue beyond the senior case worker was contemplated if the complaint remained unresolved. The senior case worker provided a list of complaints to the superintendent each month, who forwarded the list of complaints to the Executive Director, but no action was required. This part of the SOP was possibly inconsistent with the legislated requirement that the superintendent deal with complaints. The Northern Territory Government suggested in its submissions that the SOP, being a written document issued by the General Manager, constituted a delegation of the superintendent's responsibilities to other staff, pursuant to section 157 of the *Youth Justice Act*.¹⁷ However in the absence of any express words of intention, or even reference to of the legislative duties sought to be delegated, it is doubtful if the SOP was sufficient to amount to a complying delegation.

In April 2015 the SOP was rewritten and this version appears to be still in place. It reflects the requirements of the legislation, including placing responsibilities with the superintendent, however it does not identify that the right to complain is a legislated one. It requires the Superintendent to record complaints in the complaints register, along with the actions taken to address the complaints. The SOP also contemplates the escalation of complaints beyond the operational level, and the provision of relevant documentation in that event. The SOP refers to alternative options of complaining to staff, Official Visitors, the Children's Commissioner and the Minister or Executive Director. The SOP requires staff members to provide children and young people with '*all necessary assistance*' to make a complaint, without specifying how that might occur or how the complaint is to be recorded.¹⁸

As discussed in Chapter 11 (Detention centre operations), until late in the relevant period there was a lack of consistency in the rules and procedures applied by management and staff in the youth detention centres. Additionally the admissions procedure, during which children and young people were supposed to be informed of how to make a complaint, was inadequate. Accordingly, the Commission cannot be satisfied that the procedures were routinely explained to children and young people entering detention throughout the relevant period.

THE INTERNAL COMPLAINT AND OVERSIGHT SYSTEM

Complaints inside the detention centre

The Commission was made aware of concerns that children may not have known about or made use of internal complaints systems inside the youth detention centres during the relevant period. A reason put forward for not having made complaints was that there may have been a fear of the consequences of doing so. For example, the Northern Territory and Australian Children's Commissioners reported their understanding, based on their interactions with children and young people in detention that at times some children and young people were deterred from making

complaints out of concern of retribution from staff, though this was not a common theme.¹⁹

The Commission was unable to investigate each specific instance of a child or young person's report of difficulties in exercising their rights of complaint.

Reports of some children and young people to the Commission included:

- a youth justice officer, who was supposed to assist young people to make complaints, did not provide complaint forms²⁰
- youth justice officers did not pass on complaints²¹
- youth justice officers did not inform children and young people of the outcome of their complaint²²
- denial of access to complaints mechanisms when 'at risk' or in isolation,²³ or placed on individual management plans,²⁴ and
- a perception they had been subject to consequences such as isolation as a result of making complaints,²⁵ and
- not making complaints to external bodies because they felt nothing would come of it.²⁶

When vulnerable witness AN expressed a desire to make a complaint about treatment during the course of an at-risk placement, a complaint form and pens were denied because these were not permitted under the at-risk procedure. Staff members did not offer to complete a form, as required by the legislation. When AN asked to call the Ombudsman she was told this was not possible because it was a public holiday, staff did not make any efforts subsequently to assist her to make a complaint.²⁷

Notwithstanding the above evidence it appears that attempts were made to inform detainees that they could make complaints and it is the case that complaints were made from time to time. The available detention centre complaint registers, and detainee telephone call records, established that children and young people did make complaints both internally within the centre, and to the Children's Commissioner, the Ombudsman and other organisations such as the Health Care Complaints Commission. Each child and young person had unlimited and unrecorded access to 9 telephone numbers, which included the Ombudsman, Children's Commissioner and various legal aid organisations.²⁸ Information about complaints procedures was also contained in the detainee admission handbook (discussed further in Chapter 11 (Detention centre operations)), and the telephone numbers of the Ombudsman and Children's Commissioner were displayed on posters in the centres.

Whilst the Commission makes no findings about the adequacy of attempts made to make complaints processes known to detainees and in that regard whether the requirement to do so under section 150 of the *Youth Justice Act* was complied with, it is clearly the case that vigilance is necessary to ensure that the intent of section 150 of the *Youth Justice Act* is fulfilled. Simply handing over an admissions handbook, particularly given the extremely poor literacy rates of children and young people in detention (discussed further in Chapter 16 (Education in detention)), without anything more would not be sufficient to ensure that detainees understand their right to make a complaint and feel comfortable in doing so. Rather written and verbal reminders would be needed. Leaders of the detention centres would be required to remind detainees of their rights and also reinforce to detainees and staff the acceptable standards of behaviour in the detention centres by both detainees and youth justice officers and also reinforce the consequences for not conforming to those standards.

Complaint mishandling by youth justice officers

I wrote down a complaint about the guard not giving me a cup of water and gave it to a guard. I cannot remember whether it was the same guard or a different guard ... I thought he would give it to his boss and his boss would then read it. The next day, I found my complaint in a rubbish bin in K-Block. This made me really angry and upset and I went off. I was trying to do the right thing by making a complaint and the guard just chucked it out. It made me feel like no one listened to me or cared about me and as if there is no point even trying.²⁹

I asked for complaint forms a number of times, but a lot of the time [the guards] did not provide me with them. The guards said that they would go and get one for me. After a while I would ask again, but the same thing would happen and I would not get the form. In the later times I was in Don Dale, the guards would tease me and say why you don't [sic] make a complaint. I also asked to speak to the person that was in charge, but nobody came to speak to me to allow me to discuss my concerns.³⁰

If I wanted to make a complaint in Don Dale, I was given a coloured piece of paper with space to write my name and the reason for the complaint. I would just hand it to the guards after writing it but I don't know what was supposed to happen with them. The other detainees and I would joke that they would get chucked straight in the bin because it felt like we never heard back.³¹

There was a failure to keep records of complaints in accordance with the legislation³² and good record keeping practice. At the former Don Dale Youth Detention Centre, successive Superintendents breached the requirement to maintain a complaints register, and in its place some ad hoc electronic record-keeping occurred. As noted above, until the recommendations of that audit were implemented in July 2014, there had not been a formal complaints register maintained at the centre.

In February 2014, record keeping was in such a state that a PSU auditor was unable to conclude whether there had been no recent electronic recording of complaints, or no complaints had been lodged.³³

An apparent previously established process of forwarding complaints to the Children's Commissioner each month had also ceased at the time of the audit, or at least had been delayed by some months. Russell Caldwell, the Acting Superintendent at the time, advised the PSU auditor that he was attempting to locate all hand-written complaint forms to forward them to the Children's Commissioner, but had not done so seven weeks later when the auditor checked on the progress of this matter.³⁴ Mr Caldwell also assured the auditor that a review of processes would be undertaken, yet the paper-based complaints register was not implemented for a further three months.³⁵

An audit at the Alice Springs Youth Detention Centre in 2012 also found deficiencies. A register existed and was generally 'of a good standard' but had incomplete sections, and complaints had not been forwarded to the superintendent in Darwin.³⁶ Deficiencies were observed again in 2014, with complaint forms frequently missing details such as dates when detainees were advised of outcomes, the progression of complaints and the dates on which complaints were finalised.³⁷

Since at least 2015, the superintendent's practice has been to provide the complaints register to the Children's Commissioner each month.³⁸

Findings

Prior to July 2014, superintendents and general managers at the former Don Dale Youth Detention Centre did not adequately maintain a complaints register as required by regulation 67 of the Youth Justice Regulations (NT).

STAFF MEMBERS' AND DETAINEES' LACK OF KNOWLEDGE ABOUT LEGAL RIGHTS

The evidence in this chapter as to the state of children and young people's awareness of complaints mechanisms and the responses of staff to complaints establishes that some youth detention staff members and detainees lacked awareness of detainees' legal rights within youth detention centres. This lack of awareness meant:

- detainees were unable to identify when their rights were being breached, and
- staff members were unaware of detainees' rights and so were unable to give effect to those rights, and as a consequence were unable to:
 - observe those rights and ensure that they did not breach them, and
 - take the complaints of youth seriously.

In 2015, the then Executive Director for Youth Justice Salli Cohen made attempts to educate staff about their human rights obligations towards detainees.³⁹ This was a positive step. However, soon after, the Commissioner supported a move to restrict access to legal rights education for detainees, which was delivered at that time by the North Australian Aboriginal Justice Agency at the Tivendale School. This was counter-productive to the achievement of a detention environment in which staff and detainees were both educated about (and were therefore more likely to comply) with their respective rights and duties.

North Australian Aboriginal Justice Agency's community legal education sessions

No community legal education sessions on detainee rights and responsibilities in detention have been delivered by the North Australian Aboriginal Justice Agency or anyone else at Tivendale since June 2015.⁴⁰

This situation appears to have arisen from the breakdown in the relationship between the North Australian Aboriginal Justice Agency and key officers at the time. The Commission received evidence about communications between Lisa Coon from Tivendale School and Andreea Lachszt about a community legal education session held at the current Don Dale Youth Detention Centre on 18 June 2015. Ms Coon determined that the school would not schedule further education sessions with the North Australian Aboriginal Justice Agency.⁴¹ Ms Coon told the Commission that the practice of the North Australian Aboriginal Justice Agency staff members speaking to detainees and taking down their complaints about food '*could be done in a different forum*' and '*made education staff extremely uncomfortable*'. There was also a feeling that it was '*inflaming relations*'.⁴²

The North Australian Aboriginal Justice Agency notes documenting the visit specified that 'one of the teachers – [REDACTED] – was continuously interrupting while we were attempting to run our session. When we were asking questions of the kids, he kept interrupting'.⁴³

The document further outlined the North Australian Aboriginal Justice Agency's concerns about the following conduct:

Andreea, Jo and I were disturbed by the way the teacher, [REDACTED] was interacting with both us and the kids. His behaviour included:

- *Talking over us/interrupting us/answering the questions we were asking the kids instead of letting the kids speak*
- *Imitated tasing one of the kids in the neck – by reaching out with his arm and motioning the taser on one of the boy's neck*
- *Taunting kids with the fact he had eaten slow cooked lamb shanks for dinner when the kids were talking about the food*
- *Belittling the kids, saying things like 'boo hoo', 'you guys are whingers', when Andreea said to the kids that we need to make sure we are clear about what is a joke and what isn't a joke – teacher said – 'everything that is coming out of your mouths are lies'; 'tell them about when we lick all the sprinkles off your biscuits and then give you the soggy SAOs to eat'*
- *When we had discussions around the differences between youth detention and boot camp – the teacher was saying things like – 'you would escape and then what happens ...'*
- *Blaming kids – when boys were talking about all the changes since the riots/breakouts – the teacher asked 'who is to blame for the changes?' the kids replied 'Management' and the teacher responded 'no, you are'*
- *Repeatedly saying the kids are lying.*⁴⁴

Ms Coon gave evidence that the June 2015 session 'was the way our relationship with [the North Australian Aboriginal Justice Agency] had been heading and so it was – this was like the straw that broke the camel's back'.⁴⁵ Following an 'aggressive' meeting with Ms Coon and staff members, the CEO of the North Australian Aboriginal Justice Agency raised this matter with the Department of Corrections. Commissioner Middlebrook said in an email that he was 'not really keen to work with [the North Australian Aboriginal Justice Agency] at all' as 'they have not really done anything for us other than to create difficulties' and 'unless they can demonstrate a greater level of professionalism my position is that they are not coming in'.⁴⁶

The breakdown in the professional relationship between the North Australian Aboriginal Justice Agency, Ms Coon and Mr Middlebrook resulted in detainees no longer receiving this information about their legal rights in detention.

THE PROFESSIONAL STANDARDS UNIT: COMPLAINTS AND OVERSIGHT WITHIN THE DEPARTMENT OF CORRECTIONAL SERVICES

The Professional Standard Unit (PSU) is an oversight mechanism established within the Department of Correctional Services and intended to perform the Department's internal oversight. It operated throughout the relevant period, though ceased to have responsibility for youth detention facilities when Territory Families assumed responsibility in September 2016.⁴⁷ Oversight was to be achieved by routine audits and investigations in response to complaints or other notice of issues.⁴⁸

The PSU Internal Audit Charter outlines the remit of the PSU's functions. Under the Charter, the PSU is responsible for conducting preliminary audits and reviews relating to activities of the Department of Correctional Services and for monitoring the implementation of agreed audit report actions. The PSU Operational Guidelines state that the PSU can conduct compliance reviews at the direction of the CEO or the Commissioner.⁴⁹ After an audit or review, the PSU advises the relevant Director of instances of non-compliance but does not decide the action or discipline appropriate for non-compliance.⁵⁰ The PSU was referred notice of complaints concerning youth detention either from the Commissioner, the superintendent or Executive Director, however was only permitted to conduct reviews and investigations into complaints at the direction or with the approval of the Commissioner.⁵¹

During the relevant period, the PSU was referred 28 complaints regarding youth detention centres. Ten complaints were by, or on behalf of, one detainee. Of the others, 16 related to the detention centres in Darwin, and two related to Alice Springs. However, not all of those complaints referred to the PSU were investigated by it. Some matters recorded as complaints were in fact raised and investigated by the Children's Commissioner.⁵²

The PSU's functions, typical of similar internal review units of this nature, were limited during the relevant period. Its effectiveness as a means of oversight depended on its reports being reviewed meaningfully and its recommendations acted upon. However, as is usual for internal review mechanisms of this nature, the PSU was constrained in what it could investigate. Its work would always have very limited positive impact if the Commissioner or relevant Director did not deal with the problems the PSU's investigations uncovered and then act on its recommendations. Its effectiveness in this regard was, like other oversight mechanisms, liable to be curtailed by Northern Territory youth detention management culture and practices.

Mr Ferguson, the Director of the PSU for most of the later part of the relevant period, accepted the proposition that the PSU, working subject to the direction of the Commissioner, did not detect on a timely basis the serious breaches and instances of mistreatment of children and young people that it in theory should have in its internal oversight capacity.⁵³ The process of conducting audits is discussed below.

The audit process

The PSU's primary role was to conduct operational compliance audits to ensure youth detention centre staff members complied with legislative requirements, directives and operational procedures.⁵⁴

The audit function did not extend to frequent, regular auditing of compliance across all legislation, directives and procedures. Rather, 'high-risk' areas were prioritised for audit every 12 months and other areas every two years. High risk areas were identified as those that involved possible physical

harm namely use of force, isolation and at-risk procedures.⁵⁵ The audit program was set by the Department of Correctional Services' Compliance and Review committee and approved by the Commissioner for Corrections, not by the PSU itself.⁵⁶ The PSU's audit functions extended beyond youth detention, to include community corrections and adult prisons, which was a heavy audit workload for four staff members.⁵⁷

These factors limited its capacity to pursue wider audit functions if and when it saw fit. For example, the audit program did not include auditing the *Youth Justice Act* section 156 requirement that a child or young person must be heard about disciplinary actions taken about them, such as isolation placements. In a directed review of isolation practices and records in January 2015, the PSU observed that this legislative requirement did not appear to have been complied with. This red flag was not heeded by managers who received the PSU report, and no further investigation or auditing of this potential legislative breach was instigated.⁵⁸

The Director of the PSU described audits being based upon, from an auditing perspective, 'a fairly broad sample',⁵⁹ but audits produced to the Commission demonstrated annual auditing of on average between just five and 10 instances of isolation or at-risk placement per year at each detention centre.⁶⁰

Despite these limitations, audits conducted by the PSU, which were done on the paperwork only, established that there were routine breaches of legislated record-keeping requirements in respect of isolation, use of force and 'at risk' registers. The Director of the PSU confirmed in his evidence to the Commission 'there has been ongoing failure of recording accurate details of events in juvenile detention' throughout the relevant period.⁶¹ The failure of record-keeping in youth detention is the subject of Chapter 21 (Record keeping).

At times, the findings of the audit process alerted to serious potential breaches of legislation and policy, including:

- failure to allow a child or young person to be out of their cell for the mandated minimum of one hour per day
- not making 15-minute observations of children and young people who were in isolation or deemed to be 'at risk'
- failure to record instances of the use of force or restraint in the relevant register or journal
- failure on the part of the senior youth justice officer to regularly check journal entries, and
- failure to record the conclusion time of an 'at-risk' or isolation placement.

Consecutive audits identified similar record keeping failures each time, including as recently as August 2016, suggesting that little was done following audits to remedy either record keeping practices or the potentially unlawful practices underlying the record keeping failures. The table below is a sample of findings taken from PSU audits of compliance with use of force, isolation, and at-risk legislation and procedures across the relevant period. The Northern Territory Government submits that the following are too limited a sample to draw any conclusions about the system of internal compliance across all five facilities over the whole of the relevant period. Without more evidence across a greater span of time that is so, but as a sample it is telling and particularly the PSU's observation that the audits did not result in responsive improvement in record keeping. In a closed institution accurate record keeping is essential.

Sample of findings from PSU audit⁶²

Compliance area	Issues identified by audit
Isolation	
April 2014	<ul style="list-style-type: none"> • One Behavioural Management Unit placement was not recorded in the Behavioural Management Unit register. • Details were consistently omitted in the Behavioural Management Unit register, including the duration of placements and the time when placements ceased.
May 2016	<ul style="list-style-type: none"> • In some instances senior youth justice officers did not review and sign off on de-escalation journal entries. • Observations were made by communications staff members viewing CCTV footage, rather than by High Security Unit staff members responsible for detainees. • Detainees were not allowed to take the minimum of one hour out of the de-escalation room. One placement was given only 19 minutes out of the room in a 24-hour period, and five placements were given two to three minutes out of the de-escalation room to clean their regular room. • Staff interactions and/or decisions about the management of detainees, including a step-down reintegration process, were 'not recorded' (thereby assuming this did in fact occur).
August 2016	<ul style="list-style-type: none"> • There were no records of staff members working towards detainees' release from the de-escalation room, or detainees were removed past the period necessary to address the emergency or threat. • Records indicated some detainees were not observed at 15-minute intervals as required, but at intervals ranging from 20 minutes to 75 minutes. • In six 24-hour placement instances, no time out of the de-escalation room was recorded, and in two instances only 22 minutes and 17 minutes were recorded. • No records of detainees receiving a minimum of 'one hour out' de-escalation. • There were no records of any decisions made regarding detainees' access to activities while in de-escalation. • One detainee remained in the same cell for de-escalation placement and accommodation. • Senior youth justice officers were not signing de-escalation journals on completion of shift.
At risk	
July 2015	<ul style="list-style-type: none"> • Some information and documentation recorded or registered in Integrated Offender Management System (IOMS) was not complete or was inaccurate. • 'At risk' files for staff access were stored in an ad hoc manner.
August 2016	<ul style="list-style-type: none"> • No record of actions to put an 'at risk' detainee threatening self-harm in an isolation placement. • Some detainees were not observed at 15-minute intervals, including one who was not physically checked for 25 minutes when the cell camera had been covered. • In some instances, staff members did not record when food, water and opportunities for hygiene were provided. • Staff members failed to record when a further 'at risk' period ceased.
Use of force or restraint	
July 2012	<ul style="list-style-type: none"> • Several pages of the use of force register at Alice Springs Youth Detention Centre were not signed off by the officer in charge.
December 2012	<ul style="list-style-type: none"> • Information recorded by staff members to describe their actions in relation to some incidents lacked detail.

April 2014	<ul style="list-style-type: none"> • The majority of incidents reviewed were missing the majority of the required details. Those that were adequately completed had not been reviewed or signed off, as required. • Concerning one detainee: <ul style="list-style-type: none"> – Reported injuries were not recorded in the use of force register. – There was no evidence that medical assessment had been arranged, or that formal injury reports from staff members were submitted, as was required.
August 2015	<ul style="list-style-type: none"> • There was no evidence that medical assessments had been arranged for detainees involved in use of force incidents, as required. • Information sought for the register was inconsistent with that required by the applied directive.
August 2016	<ul style="list-style-type: none"> • Five use of force incidents were not recorded in the use of force register. • Two entries did not record any attempts by staff members to defuse the situation prior to using force. • Entries incorrectly recorded that CCTV footage or video was available where none had been requested or saved. • Entries identified injuries sustained by the detainee or officer that were not consistent with the reports on IOMS. • Use of the Hoffmann tool was recorded in a situation where no authority had been sought to do so (that is, it was not an 'at risk' episode).

The PSU audits sampled above from across the later part of the relevant period identified breaches of record keeping obligations, potential individual breaches of substantive obligations contained in legislation and department procedures towards children and young people subjected to isolation, and uses of force and 'at risk' procedures.

Until 2016, the recommendations made by the PSU in its audit reports, based on these findings, were predominantly limited to improvements in record-keeping. This raises two significant and related matters of concern. First, that the PSU audits appeared to assume, without foundation or basis, that relevant necessary actions had in fact been carried out by staff members but simply not recorded.⁶³ This apparent assumption was supported by Mr Ferguson's evidence to the Commission when commenting on breaches of procedure identified in a 2016 'at risk' audit:⁶⁴

This audit has identified some breaches of procedure including observations not being recorded, no record of food and drink being supplied and failure to record the commencement of an at risk episode (this does not mean it was not supplied or did not occur but rather than it was not recorded). In 2016 however the audit has not identified an event where non-compliance with procedure has compromised the safety of a detainee.

In the absence of any record of an action, it was impossible for the PSU to make any conclusions about whether such an action had or had not occurred, and whether or not the safety of a detainee had been compromised as a result.

It is concerning that the PSU or some other entity or person was not directed by the Commissioner to investigate whether breaches of legislation and policy or procedure obligations lay behind the poor record keeping.

In respect of the PSU audit functions regarding isolation in particular, the PSU Director's evidence to the Commission was that PSU audits showed detainees appeared to be held in isolation in the Behaviour Management Unit at the former Don Dale Youth Detention Centre for longer periods, and more frequently.⁶⁵ This conclusion, or at least the possibility of it, was supported by the audit records across the relevant period of 2014–16, outlined above.

This should have raised obvious concerns about compliance with the isolation provisions in the *Youth Justice Act*. Despite isolation being a priority area of auditing, and management and the PSU accepting that the Behaviour Management Unit cells were not appropriate for prolonged stays,⁶⁶ the PSU was not directed to conduct further audits and did not ask to make further investigations. Nor was the PSU directed to investigate compliance with the Individual Intensive Management Plan Directive, which was introduced in 2011 and purported to permit the accommodation of detainees in the Behaviour Management Unit beyond 72 hours pursuant to behaviour management plans.⁶⁷ Such steps should have been taken as part of internal oversight of isolation practices in youth detention.

Similarly, the superintendents who were informed of the audit report findings and executive directors who signed off on audit reports and recommendations should have inquired more deeply into the events behind the existing poor records and done more to ensure compliance with record-keeping and other substantive obligations in the future.

Given the identified limitations of the PSU audit process and management's inaction in response to audit reports, it was ultimately unsurprising that the PSU did not appear to become fully aware of the unlawful, prolonged use of the Behaviour Management Unit at the former Don Dale Youth Detention Centre.⁶⁸

The January 2015 Vita Report commented that 'many aspects' of detention centre operations should be assessed and reviewed at regular intervals, but such reviews were not covered by the PSU's existing remit or resource capacity. The report suggested, though did not formally recommend, the implementation of a quality assurance program to address this.⁶⁹ No such program was introduced. In September 2016, when responsibility for youth detention was transferred to Territory Families, PSU auditing was still not considered to be robust enough.⁷⁰

Directed investigations

Sometimes, PSU recommendations for disciplinary action were implemented. For example, the employment of a detention centre staff member assessed as being not fit to perform the role of youth justice officer was terminated, with the grounds clearly explained.⁷¹ However, the PSU's investigation function did not always lead to enduring or systemic improvements.

This was demonstrated on two occasions in which staff were rehired following PSU investigations and recommendations to the Commissioner for further investigation or disciplinary action. It appears that this was enabled because the relevant staff members were on casual contracts at the time of the investigation and the operational management solution to the complaints was simply not to offer them any more shifts and not renew their casual contracts.⁷²

The disconnect between PSU findings and reform was most clearly demonstrated by the Commissioner's inaction in response to the September 2014 review⁷³ by the Director of the PSU. As outlined further in Chapter 23 (Leadership and management), the review identified very serious management failings and mistreatment of children and young people in the former Don Dale Youth Detention Centre. Mr Middlebrook regarded the PSU review as accurate and responsible⁷⁴, and yet no adequate measures were taken to address the issues uncovered until the Vita Report was delivered in early 2015. The Commission acknowledges the resource limitations which Mr Middlebrook faced, and his Department's earlier attempts to obtain necessary funding from successive governments.⁷⁵ However simply using the PSU report in the process of imploring the government to engage an external consultant with the intention of obtaining a report justifying funding⁷⁶ was an inadequate response to the problems the report identified.

A further difficulty with the approach of the Department and the PSU to complaints handling and resolution was the inflexible position taken on the review process during police investigations. The Department's policy was that once a matter was identified as potentially criminal in nature, it was referred to the Northern Territory Police, and any PSU or departmental inquiries were halted. Only after the conclusion of a criminal investigation, in some cases years later, would further investigation or action by the PSU be considered.⁷⁷

This was a flawed position that had the effect of sheltering staff members from investigation and discipline by their employer for possible misconduct in the course of their employment. The position failed to recognise and compensate for the obvious limitations of criminal investigations and prosecutions. These processes not only apply different and higher thresholds of proof, but do not necessarily assess compliance with the *Youth Justice Act*, Youth Justice Regulations or internal policies and procedures. They do not assess whether actions are ethical, safe, culturally appropriate, harmful to the child or young person, or in accordance with policy, training and accepted best practice in corrections or human rights obligations.⁷⁸ Instead, they deal in proof of specific criminal offences to a standard beyond reasonable doubt. Criminal prosecutions also attract a range of substantive and procedural defences to charges, such as limitation periods, lack of intent, and mistake of fact. These matters may very well result in the dismissal of the charge even though the challenged conduct actually occurred, which may alert management to some underlying issue which should be investigated.

But those features of the criminal justice process were not recognised by Commissioner Middlebrook, who cited court outcomes as the determinative authority on complaints from detainees of assault by staff members.⁷⁹ When staff members were not found guilty, this appeared to justify not investigating further and, if necessary, taking disciplinary action.⁸⁰

By adopting a deferential position to police investigations, the Department of Correctional Services exposed itself to failing in its duty to protect adequately the children and young people in its care from mistreatment. At the least it runs the risk of unwanted practices continuing unchecked by internal review.

In the case of Mr Tasker, who was a long-term employee, he continued to be employed by the Department of Correctional Services following the conclusion of the criminal proceedings in which he was found not guilty, without any further investigation to consider whether any internal disciplinary action should be taken. That he was permitted to continue in his employment with no discipline or review of training practices in the face of the images of his physical handling of Dylan Voller in December 2010, and the Children's Commissioner's report into his conduct, demonstrated a complete failure of internal oversight and accountability.

The Commission acknowledges that the conduct of an administrative investigation by an employer simultaneously with a criminal investigation by police may, at times, encounter difficulties. For example, an employee may choose to exercise their right to silence and the employer may therefore need to conduct their investigation without obtaining the employee's side of the story. But there is no legal impediment in proceeding.

Ceasing to give casual or short-term contract staff members further shifts and relying on the outcomes of criminal proceedings were inadequate responses to complaints when they occurred. Neither course could be said to meet the reasonable expectations of complainants, their families or the community or to serve the important ancillary function of complaint oversight, that is, review of practices to suggest institutional or systemic improvements in areas such as staff recruitment and training, and the enforcement of policies and procedures.

Findings

The PSU provided limited internal oversight of youth detention centres. Its effectiveness as an oversight mechanism was constrained by inadequate management responses to its reports and findings.

The Department's position concerning matters which had been referred to Northern Territory Police abdicated the Department's responsibility to investigate complaints and assess allegations of breaches by staff members of legislative obligations and policy standards other than the criminal law.

OVERSIGHT BY THE MINISTER VIA OFFICIAL VISITORS

To inform their own oversight of departmental operations, in addition to the departmental reporting mechanisms, successive ministers relied on Official Visitors to identify and let them know about complaints and systemic issues in youth detention centres.⁸¹

Unfortunately, Official Visitors failed to detect the egregious instances of mistreatment and intolerable conditions that the Commission has found,⁸² and tended only to identify less serious complaints and systemic issues.⁸³ Most commonly, complaints were about food quality, a lack of air conditioning or fans, lack of recreation access for girls, and separation from family for children and young people from Alice Springs detained in Darwin. Complaints to Official Visitors about the conduct of staff members were rare.⁸⁴

The responsibility of Official Visitors under section 170 of the *Youth Justice Act* is to inquire into 'the treatment and behaviour of, and the conditions for detainees' and report the outcomes of those inquiries to the Minister. The capacity of the Official Visitors program to do so was impaired from the outset by structural and practical factors.

While section 171 of the *Youth Justice Act* requires visits by an Official Visitor at least each month (which did not always occur),⁸⁵ in practice the number of Official Visitors utilised meant each individual Official Visitor was only rostered to make a visit every four months.⁸⁶ Infrequent attendance is an obvious barrier to building rapport and trust with children and young people, monitoring the progress of actions in response to complaints from one month to the next, and regularly observing the goings-on of a centre to build impressions of systemic issues.⁸⁷

The effectiveness of Official Visitors was also affected by the Department staff members on the day of a visit, in terms of what and how access to children and young people would be permitted. Official Visitors' access was not unfettered, and visits could not be unannounced.⁸⁸ In this regard, Official Visitors identified practical barriers to their effective engagement with children and young people at times throughout the relevant period, including:⁸⁹

- detainees not being aware of the function of Official Visitors
- a lack of coordination between departmental staff members who arranged the visits and the centre operational staff members who facilitated them, and
- limits on the times that Official Visitors could attend detention centres – for example, they could not attend in the evenings over meals when detainees are more relaxed, and when Official Visitors attended during office hours, detainees were required to decide between speaking with an Official

Visitor or engaging in activities.⁹⁰

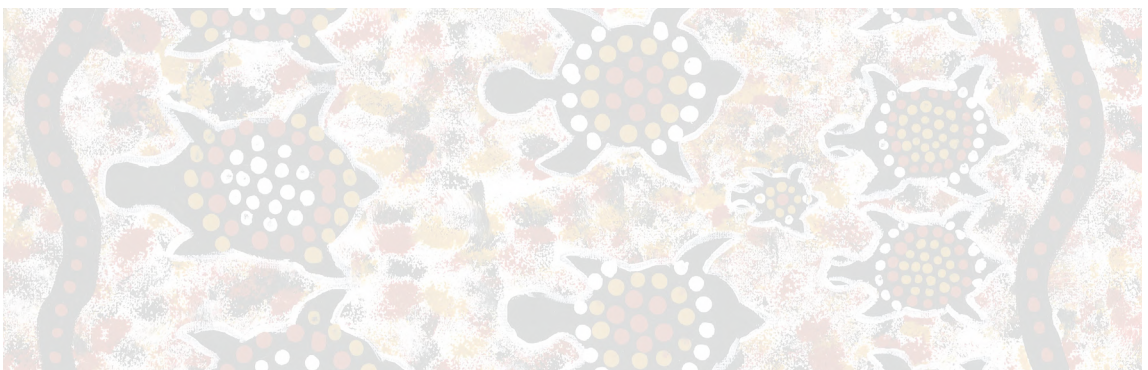
Another potential barrier includes the standard operating procedure requirement that detainees give their name to their block senior youth justice officer ahead of a visit if they wished to speak with an Official Visitor, though it is not known if this requirement was enforced.⁹¹

The manner in which Official Visitors are appointed compromises the perception of their independence. Official Visitors are appointed by the Minister, with no prerequisite qualifications or experience and no guiding human resources policy, including no requirement to disclose a conflict of interest.⁹² Nor is there any adequate training to support Official Visitors to undertake a meaningful monitoring and safeguarding role.⁹³ This was identified as a deficiency in a 2011 review of the program, which recommended a training schedule be developed, but none ever was.⁹⁴

One department staff member who had experience in human rights compliance monitoring in places of detention observed that Official Visitors' reports *'did not involve analysis of environmental suitability on detention conditions'*, which would have been expected.⁹⁵ As another example, an Official Visitor told the Commission he considered other visitors *'tend to assume that changes will be made if management says something is being done, even if this faith is not justified.'*⁹⁶

Flowing from this, there is no effective system in place for Official Visitors to seek or be provided with information about what has been done about their reports.⁹⁷ Official Visitors are only required to report to the Minister, who is not required to pass on any information to Parliament or to management. In practice, and pursuant to a standard operating procedure,⁹⁸ Official Visitors sometimes raised complaints directly with the Deputy General Manager or General Manager at the detention centre following their visit. While this was contemplated by a standard operating procedure, it was an informal process. There was no statutory requirement that Official Visitors' reports be provided to any management staff member, and no statutory or policy mechanism for following up complaints raised directly with the Deputy General Manager or General Manager.⁹⁹ One Official Visitor who has been in the role for 13 years said it was rare to receive advice that a matter had been effectively resolved or otherwise, and had not received a comprehensive ministerial response to his reports until January 2017.¹⁰⁰

There is also no mechanism by which Official Visitors can share their reports with each other to ensure continuity of monitoring and follow-up, as well as collation of information to assist identification of systemic issues. This was also identified as a deficiency in a 2011 review of the program, but has not been addressed since.¹⁰¹ The Official Visitor's reporting framework does not provide for any subsequent consultation with a child as to whether their complaint has been adequately addressed.



Findings

The Official Visitors program failed to identify serious instances of mistreatment of children and young people, and poor living conditions in youth detention.

The capacity of the Official Visitors program to deliver robust oversight was compromised by a lack of:

- prerequisite quality assurance, inspection and/or monitoring experience and training for appointed visitors
- formalised mechanisms for following up on the resolution of complaints and concerns raised in reports, and
- coordination and information sharing between appointed visitors.

The capacity of individual Official Visitors to engage effectively with children to elicit complaints and identify systemic issues was compromised by the infrequency of visits by individual visitors and, on occasions, practical barriers imposed by operational and departmental decision-makers.

THE EXTERNAL COMPLAINT AND OVERSIGHT SYSTEM

A number of oversight mechanisms operate externally to and independently of the Department of Correctional Services, which was responsible for youth detention for much of the relevant period. They include the police, the Ombudsman, and the Children's Commissioner. These external bodies possess powers to investigate responses to complaints made to them, and in the case of the Children's Commissioner and the Ombudsman, to undertake investigations on their own initiative.¹⁰²

The Northern Territory Ombudsman

The Northern Territory Ombudsman is an independent statutory office holder with a range of statutory functions under the *Ombudsman Act 2009* (NT)¹⁰³ that can be exercised on receipt of a complaint or on the Ombudsman's own motion.¹⁰⁴ The Ombudsman is to provide a timely, effective, efficient, independent, impartial and fair way of investigating and dealing with complaints about administrative action and to improve the quality of administrative decision-making.¹⁰⁵ These Ombudsman's functions include investigating and dealing with complaints about the administrative actions of Northern Territory Government officials and agencies, and police conduct, considering administrative practices and procedures, and recommending ways to make administrative actions more appropriate.

Prior to July 2011, when the powers of the Children's Commissioner were expanded (which is discussed further below), the Ombudsman was the primary external body responsible for oversight of complaints by children and young people in youth detention. This function stemmed from its general powers to monitor the administrative actions of public authorities including government departments.¹⁰⁶ Annual reports detailing the Ombudsman's investigations and oversight activities suggest that the Ombudsman herself rarely investigated complaints it received from or on behalf of children and young people in youth detention. Instead, the Ombudsman commonly referred complaints to the PSU, which at that time was part of the Department of Justice and Attorney-General (as was youth detention).¹⁰⁷ In 2010–11, for example, the Ombudsman received four complaints in relation to youth detention centres and all were referred to the PSU.¹⁰⁸ As detailed above in this

chapter, whether the PSU investigated the complaints it received was decided by the departmental manager.

The approach taken by the Ombudsman's Office to a complaint made by Dylan Voller is of particular concern. Whilst the Commission has not investigated the matter fully, the tone of a letter drafted in response lacks the necessary detachment and balance expected of such an important body.¹⁰⁹



Our Ref: D015227

17 January 2011

Master Dylan Voller
Alice Springs Juvenile Holding Centre
GPO Box 2407
ALICE SPRINGS NT 0870

Dear Master Voller

RE: COMPLAINT AGAINST ALICE SPRINGS JUVENILE HOLDING CENTRE

Thank you for your phone call to this Office on 17 January 2011 outlining your issues regarding your incarceration at Alice Springs Juvenile Holding Centre. During this phone call you said that you have not been permitted to have a pillow and this has resulted in you having a sore neck and back. You also said that [REDACTED] at the centre told you it was tough luck and you said you had not requested medical assistance in relation to the pain. You said that you were confined to one room until Thursday because you swore at staff and were ripping magazines.

You complained that on 16 January 2011 when you were served your evening meal, which was a meat pie, there was a hole on the top and you could see "spit" inside. You said that instead of returning the pie you threw it at the CCTV camera.

These allegations were forwarded to Professional Standards Unit which is the liaison body between this Office and Department of Corrections. The response received in regards to these allegations is as follows:

The reason for the removal of your pillow is that, on 15 January 2011 at 7.10pm you attempted to smash the CCTV camera in your room with your pillow, and at 7.25pm you threatened to "wipe your arse" with the sheets and pillow. This Office has been told that you have been in separate confinement since 15 January 2011 due to your unruly aggressive behaviour. You have attempted to rip sheets and your mattress previously and your bedding has been replaced with non rip bedding with the exception of your pillow. In previous outbursts you have attempted to flush your pillow down the toilet. All of these actions are either misconduct or criminal and you could be charged.

This Office has been told that at no time have you discussed your loss of pillow with the [REDACTED]. This Office has also been told that a request for painkillers to be given to you was made by the [REDACTED] and that someone from the medical department would see you.

GPO Box 1344 DARWIN NT 0801 Telephone: (08) 8999 1818 Facsimile: (08) 8999 1828

INTERNET: www.ombudsman.nt.gov.au TOLL FREE NUMBER 1800 806 380

This Office has been told that you are not on room placement for ripping up magazines as said by you. There is no time set for you to remain in your room; it is all dependent on your behaviour.

In conclusion, it is the opinion of this Office that the loss of your pillow and bedding is a direct result of your own behaviour and as such this Office will take no further action on this matter.

The issue regarding your evening meal is vehemently denied by the [REDACTED]. He has said that this is a completely fabricated allegation and that all staff are in constant range of recorded CCTV, ranging from the rooms to the kitchen and courtyards. The footage would be available for viewing; however I find your allegation of spitting in your food unfounded and as such will take no further action on this matter.

I would like to draw your attention to section 123 of the *Ombudsman Act 2009*:

Misleading information or document

(1) *A person must not give misleading information to a person acting in an official capacity.*

The person knows:

- (a) the information is misleading; and*
- (b) the other person is acting in an official capacity.*

Maximum penalty \$52000 fine or 2 years imprisonment.

The definition of misleading information is described at section (4);

misleading information means information that is misleading in a material particular because it:

- (a) does not include relevant information; or*
- (b) includes misinformation.*

When you told this Office that your pillow had been removed this was indeed a correct statement; however you failed to advise this Office the reason behind the removal. Had you informed this Office of all the details you would have been told that due to your own actions you were being punished.

Having reviewed your complaints to this Office, 5 since October 2010, it would appear that none of your complaints have provided comprehensive and complete detail. If you continue to withhold the truth you will be asked to submit any future complaints in writing setting out reasons why this Office should investigate your complaints.

Substantial time and resources are wasted when persons make false, misleading statements. This takes time away from this Office dealing with genuine matters.

Should you continue with your childish, abusive, violent and assaultive behaviour pattern, this Office is of the opinion that you will continue to receive treatment different to the other inmates. Should you wish to be treated in a pleasant manner

and receive the privileges the other youths are privy to, may I suggest you curb your anti social behaviour.

If you lodge further complaints with this Office, you may be requested to provide substantial reasons why they be investigated. Should these complaints have any relevance to the behaviour you are exhibiting and you have brought the punishment on yourself then this Office will take no action.

I appreciate you may not be happy with the outcome of your complaint, however the information supplied to this Office regarding your behavioural patterns suggests the Alice Springs Juvenile Holding Centre has no case to answer.

Yours sincerely

It was unacceptable for a government entity to consider responding to any complainant but even more to a 13 year old boy in a detention centre in such an aggressive, patronising and punitive way, including to threaten criminal sanctions. A response couched in those terms may well have deterred other young people in the detention centre bringing a complaint to the Ombudsman's office. This is the very antithesis of the purpose for which that office was created.

When the powers of the Children's Commissioner were expanded in 2011, the Ombudsman ceased to have jurisdiction over matters that the Children's Commissioner was authorised to deal with, and was required to refer those matters to the Children's Commissioner. However, if a complaint relates to an act or omission of a police officer, such as acts or omissions in the investigation or prosecution of a complaint about conduct in a youth detention centre, the Ombudsman has exclusive jurisdiction.¹¹⁰

As a result of these changes, from July 2011 the Children's Commissioner became the primary external oversight body in matters relating to the treatment of detainees.

In 2014, the Ombudsman and the Office of the Children's Commissioner entered into a Memorandum of Understanding (MOU) to help facilitate the referral of complaints and enable information to be more easily exchanged.¹¹¹ The MOU provided for referral of complaints between the two organisations upon initial assessment of the jurisdiction relating to the issues raised in the complaint, and prompt sharing of information (to the extent the organisations were lawfully able to do so). These actions were to be implemented by a contact officer in each organisation who was to be the *'first point of liaison.'*¹¹²

Current and former Northern Territory and Australian Children's Commissioners nevertheless told the Commission that the current situation of apparent multiplication of complaint investigation functions across different bodies can confuse children and young people in detention who wish to make a complaint. They also explained that separation of functions across multiple bodies can make it difficult for children to build trust in oversight bodies, because they can be required to deal with many people working within separate bodies.¹¹³

The submissions for the Northern Territory Government emphasised simultaneously the capacity of children and young people in detention to complain to either the Ombudsman or the Children's Commissioner, but also the confined jurisdiction of the Ombudsman. The submissions said, correctly from a legislative perspective, that *'complaints with respect to the NT Police...are to be handled by the Ombudsman and the balance of complaints are to be handled by the Children's Commissioner.'*¹¹⁴

While that may be the case, in practice by agreement between the two bodies, such an arrangement would not be readily apparent to or understood by children and young people in detention centres. Within youth detention centres throughout the relevant period, the telephone numbers of both the Children's Commissioner and the Ombudsman were displayed and available to be called by detainees.¹¹⁵

These matters demonstrate difficulties in the current allocation of oversight powers, and they support confining external complaint and investigation powers relating to youth detention services to a single oversight body.

THE NORTHERN TERRITORY CHILDREN'S COMMISSIONER

The Northern Territory Children's Commissioner is an independent statutory office holder that has been the primary external oversight body for the treatment of children and young people in youth detention since July 2011. Until that time, the Children's Commissioner dealt only with complaints in relation to children who were the subject of child protection orders and was situated administratively within the then Department of Health and Community Services.¹¹⁶

The Office of the Children's Commissioner was initially established under the *Care and Protection Act of Children Act* (NT) and conferred with the following functions:

- a. to investigate complaints about services required to be provided to protected children by service providers
- b. to monitor the ways in which service providers respond to reports made by the Commissioner
- c. to monitor the administration of this Act in so far as it relates to protected children
- d. to monitor the implementation of any government decision arising from the Inquiry into the Protection of Aboriginal Children from Sexual Abuse, and
- e. to report to the Minister on a matter mentioned in paragraphs (a) to (d) as requested by the Minister.¹¹⁷

The office was established in 2007 to monitor the wellbeing of protected children and the implementation of government decisions arising from the Inquiry into the Protection of Aboriginal Children from Sexual Abuse.¹¹⁸

On 18 April 2011, in response to the Board of Inquiry recommendations, legislation was passed to amend the *Care and Protection of Children Act*. The amendments, which expanded the powers of the Children's Commissioner and situated the office, more independently, outside of the child protection department, came into effect in July 2011. The amendments also included:

- expanding the Children's Commissioner complaint management responsibilities from 'protected' children to 'vulnerable' children, thereby including children under arrest, on bail or subject to an order under the *Youth Justice Act* including detention or community based orders, and
- conferring an 'own initiative' investigative power, allowing the Children's Commissioner to investigate matters without a complaint.¹¹⁹

In 2013, the government legislated further amendments to the Children's Commissioner's functions. The *Children's Commissioner Act* (NT) replaced the *Care and Protection of Children Act* as the legislative basis for the office and functions of the Children's Commissioner. Under the *Children's Commissioner Act*, the Children's Commissioner has responsibility for eight core functions:

- dealing with complaints about services provided to vulnerable children, including monitoring service providers' response to any reports
- investigating matters on the Commissioner's own initiative that may form the grounds for making a complaint
- undertaking inquiries relating to the care and protection of vulnerable children
- monitoring the implementation of government decisions relating to any inquiries into the care and protection of vulnerable children
- monitoring the administration of the *Care and Protection of Children Act* as it pertains to vulnerable children

-
- reporting to the Minister on a matter relating to the Commissioner's functions as requested by the Minister
 - promoting awareness about the rights, interests and wellbeing of vulnerable children, and
 - monitoring how the department deals with allegations of abuse in care.

The expansion of the powers of the Children's Commissioner during the relevant period enhanced the office's effectiveness as a mechanism overseeing the treatment of children and young people in detention. The Children's Commissioner conducted many thorough investigations into complaints made by and on behalf of children and young people.

Nonetheless, matters beyond its control undermined the effectiveness of the oversight work undertaken by the Children's Commissioner during the relevant period.

Investigations conducted by the Children's Commissioner were at times met with obstructionist attitudes and actions by departmental managers and detention centre staff members. This conduct slowed, and in some cases diminished, the quality of the office's investigations. (See Chapter 23 (Leadership and management)).

The Children's Commissioner has an 'own motion' investigation power.¹²⁰ She can initiate an investigation of a matter even if it has not received a complaint. However, exercise of that power is limited to circumstances where:

- a service provider failed to provide services for a vulnerable child the provider was reasonably expected to provide, or
- the services provided failed to meet the standard reasonably expected.¹²¹

The Children's Commissioner has conducted own motion investigations which have uncovered suggestions of systemic issues in youth detention services. However, the Commissioner does not have unfettered jurisdiction to monitor or investigate systemic administration and compliance with the *Youth Justice Act*, insofar as the *Youth Justice Act* applies to general practices in youth detention and not merely services to individuals.¹²²

The *Care and Protection of Children Act* confers an overarching monitoring function on the Children's Commissioner. The current Commissioner, Colleen Gwynne, expressed concern to the Commission that there is no corresponding provision to allow monitoring of the *Youth Justice Act*: 'it means that I cannot proactively monitor vulnerable children who are subject to the *Youth Justice Act* in the same way'.¹²³

Further, for an oversight mechanism to be effective, matters need to be drawn to their attention or uncovered by them. This requires having sufficient mechanism in place to encourage the flow of information to the Commissioner and sufficient resourcing to investigate complaints when they are made or resources to uncover matters not drawn to their attention. Encouraging young persons in detention to feel that they can make complaints to an external body about the system in which they reside or about officers which act as their care givers and have power and control over them is important but clearly challenging. The message that complaints can be made would need to be promoted regularly by senior persons in the detention centres and that message would need to be reinforced by all those who work in the centre. The Commission did not conduct a thorough investigation as to whether this in fact occurred. However, from the large body of evidence it received about the operations of the centres in the relevant period and the culture of the centre it doubts that this occurred. The Commission notes that following one investigation in 2014-15 the Children's Commissioner concluded that there was not even a formal process in place to inform young persons of their right to contact and make a complaint to the Children's Commissioner.¹²⁴

Additionally, the Office of the Children’s Commissioner needs to be sufficiently resourced so that it can fulfil its functions. After the expansion of jurisdiction in 2011, staff numbers at the Office increased. Ms Gwynne told the Commission that the Office currently has inadequate resources to fulfil its statutory functions. She suggested that at least four additional staff were needed.¹²⁵

THE NORTHERN TERRITORY POLICE

The core functions of the Police Force as set out in the *Police Administration Act (NT)* are to:

- uphold the law and maintain social order
- protect life and property
- prevent, detect, investigate and prosecute offences
- manage road safety education and enforcement measures, and
- manage the provision of services in emergencies.¹²⁶

Every person, whether youth or adult, is entitled to equal protection from breaches of the criminal law.

Children in detention are vulnerable to becoming victims of crime. They might suffer at the hands of staff or other detainees. In either case, the potential for exploitation may result from the disparity in authority, physical size or maturity. And victims in detention might have limited opportunities to remove themselves from threatening situations.

For a victim to receive the protection offered by criminal law, it will almost always depend upon the willingness of the victim to make a complaint. For anyone in detention, there is a powerful disincentive to do this. Making a complaint may invite victimisation and the attachment of labels such as ‘dog’ can mean an uncomfortable existence throughout incarceration. A detainee’s preparedness to complain may also be affected by their previous relationship with police, the continued presence of the alleged offender in their immediate environment, and consequent fear of retribution. These concerns might apply as much to making a complaint against a staff member as against another detainee.

The Commission heard of one instance in which a detainee did not trust the police processes and was worried about such labels. He told the Commission:

When the police asked me the questions in the interview, I didn’t want to tell them what [REDACTED] had done and what I saw happen in Don Dale because I don’t feel comfortable talking to police. Because of my experiences, I don’t trust any police and I think talking to them might get you in all sorts of trouble.

In the interview, I thought I could be in trouble if I told them what actually happened at Don Dale. I just wanted to get them off my back.

At the time the police came to see me, I had been [REDACTED]. It was hard. I was staying quiet about Don Dale and I was not comfortable talking about it. I thought that if I spoke to lawyers about what happened to me, I would be known as a snitch or a dog.¹²⁷

On the other hand, a person well versed in ‘working the system’ might understand only too well the

power that can be exercised by making a complaint about a criminal offence. Youth justice officers can find themselves in a difficult position if the alleged offence has occurred in a 'word against word' situation, such as when the offence is alleged to have occurred where CCTV is not available to resolve disputes of fact.

Police officers' training makes them astute to these difficult situations and how to motivate them.

The Commission received evidence that on a number of occasions in the relevant period police did not adequately investigate complaints of alleged possible criminal conduct in detention centres.

Investigation of an alleged assault

Constable Kirsten Engels was the corroborator of an interview with AT on 23 September 2015¹²⁸ with Senior Constable Sarah Hutchinson.¹²⁹ That interview was in the form of a statutory declaration. At the time of the interview, Senior Constable Hutchinson was Constable Engels' supervisor and had carriage of the investigation. Constable Engels became the officer in charge of the investigation in December 2015.¹³⁰

In that interview, AT alleged that he was assaulted by two youth justice officers, Conan Zamolo and Jon Walton. AT stated that:

I was having a drink and then [Mr Zamolo] hit me in the knees with the torch and stuff. I went to run out into the dining room. It's like – it has got two doors, but they both open up and one you got a door latch at the top of it but it was closed and one was open and – urn – John was – WALTON was hiding on this side of the wall and as I was coming running out this side he put his arm out and clotheslined me. And then I got back up and I ran back into my room and then – urn – [Mr Zamolo] chased me back in my room and started hitting me in the kneecaps more.¹³¹

AT described how Mr Zamolo used the other end of the torch to hit him in the kneecaps.¹³² AT said he was hit 'three times before I tried running out in the dining room, and then when I ran back into my room it was just continuously, you know. I just curled up in a ball'.¹³³ He stated that 'if you hit someone hard on the bone with metal,

it hurts ...' and that he had suffered bruises as a result.¹³⁴ After this occurred, AT stated that he told a supervisor, 'Johnsy', about what had happened.¹³⁵

Mr Zamolo, Mr Walton and 'Johnsy' were never questioned by the police about those allegations. The police did not lay any charges against Mr Zamolo or Mr Walton in relation to these matters.

On 20 September 2016, the Northern Territory Police Youth Detention Taskforce reviewed the investigation. The review memo stated that a number of follow-ups had not been completed, including speaking to Jon Walton and 'Johnsy' about the alleged assaults.¹³⁶

Why the assault allegations were not pursued

When asked by Counsel Assisting why she did not pursue charges regarding the assault allegations, Constable Engels stated that she did not believe that any charges would have been successful.¹³⁷

Constable Engels further explained that she did not pursue the assault allegations against Mr Zamolo because she thought that Mr Zamolo was acting in 'some sort of a game'. Constable Engels stated that 'AT went on to explain that he did believe – taking the investigation in its entirety, he believed that Mr Zamolo was acting in some sort of game.'¹³⁸

Under questioning by Counsel Assisting and re-examination by her counsel, Constable Engels was taken to a number of references in AT's interview to a 'game':

- (a) AT stated that 'he just come up and hit us in the kneecap for a laugh. Thought it was a game'. When asked by the interviewing officer, 'for a laugh?', AT stated, 'Yeah. It wasn't like for – we didn't do anything.'¹³⁹
- (b) AT stated, 'I don't know, but um – then three times when he hit me, before I tried running, he was laughing about it like it was a game, you know.'¹⁴⁰
- (c) In response to the question, 'Do you think he meant to hurt you?', AT stated, 'No I don't think. That's why I hadn't made a complaint'. Immediately before this, AT said, 'He's always, like, rough with us and he knows that. He's a lot bigger than most of us in there, and he just doesn't understand that he can just come to us and start hitting us and thinking it's a game.'¹⁴¹

When Counsel Assisting asked, 'There's no game that you know of that involves that, is there? The game of hitting with a torch?', Constable Engels replied, 'Yes. I believe there can be a games [sic] that occur that are taken at the time that they were at, yes, I can'.¹⁴²

Counsel Assisting then asked, 'A game between a guard and a mid-teenage boy hitting with a torch?', to which Constable Engels replied,

When I went on to talk to him later on through that statement, and I said to him, what did you think – I'm again using my words but I asked him what he thought Mr Zamolo was doing and he said, 'I think he thought it was just a game.'¹⁴³

Constable Engels later accepted that a key component of the relationship between AT and Mr Zamolo was that AT was a mid-teenage prisoner in detention, in relation to whom Mr Zamolo had duties of care.¹⁴⁴

In March 2016, following the seizure of Mr Zamolo's mobile phones, Constable Engels and another Constable interviewed Mr Zamolo. During that interview, the officers did not ask Mr Zamolo any questions about the alleged assault, or whether Mr Zamolo thought it was a 'game'.¹⁴⁵

When asked why, Constable Engels said that she had spoken with her supervisor and they had both decided that there was no intention to assault. Constable Engels stated:

My line supervisor [Senior Constable Kennon] was with me in the interview [with Mr Zamolo], and she had had carriage of the file prior to myself, so we had planned the interview and we hadn't gone there with that particular line.

Constable Engels said that this decision was also made after looking at Mr Zamolo's phones and her observations of him when she executed the search warrant for his phones. Constable Engels stated that he 'wanted to be on the level with those boys, goofing around and joking around with them all the time'.¹⁴⁶ However, Constable Engels denied that she had simply relied on a profile of him as 'a big cuddly teddy bear who didn't understand'.¹⁴⁷

Counsel Assisting and Constable Engels had the following exchange:

Counsel Assisting: *But it wouldn't matter in the least, would it, if Zamolo thought it was a game, to the question of whether the assault was made out, would it?*

Constable Engels: *Yes. I do think it would make a difference.*

Counsel Assisting: *... defence to hitting a young teenage person with a torch that the person doing the hitting thinks it's a game?*

Constable Engels: *No, I don't think for a moment – I think the behaviour that was displayed by Mr Zamolo towards these kids is appalling, absolutely appalling.*

Counsel Assisting: *Is it a defence to the charge?*

Constable Engels: *I think to prove a charge of assault I must prove someone's intent. I must prove that.*

Counsel Assisting: *What – an intent to hurt?*

Constable Engels: *An intent to assault someone. And intent to –*

Counsel Assisting: *Well, that's made by the application of force, isn't it? –*

Constable Engels: *... of force. Yes, it is.*¹⁴⁸

Counsel Assisting took Constable Engels to another part of the interview with AT, in which he said that the hitting only stopped when AT said 'me screaming, 'stop'. Constable Engels accepted that this description did not sound like a game.¹⁴⁹

In a different part of the interview, AT was asked why he ran towards the dining room, and he stated that he did that because there were cameras there.¹⁵⁰ When asked again why he was running towards an area that had cameras, he said, *'Cause they were going to belt me, I know'*. Constable Engels also accepted that this particular description did not sound like a game.¹⁵¹

When Constable Engels was asked whether she agreed that the above descriptions sounded like *'a full on assault on a kid with a torch on two occasions causing pain, suffering and fear'*, Constable Engels said that she agreed with that *'to a point'*.¹⁵²

Constable Engels was asked whether she would have charged Mr Zamolo if he had simply denied that the matters occurred, and had not offered the explanation that it was a game. She stated that she did not know and that she would *'have to think about that'*.¹⁵³

In his evidence to the Commission, Mr Zamolo denied that he ever assaulted AT with a torch.¹⁵⁴ Mr Zamolo stated *'I never used a torch as a weapon against a detainee'*.¹⁵⁵

The clotheslining incident

In relation to the clotheslining incident, Constable Engels was asked whether there was any lawful justification that allowed somebody to *'clothesline'* a prisoner. She said that it would depend on the circumstances of what actually occurred.¹⁵⁶ However, Constable Engels said that she did not look at the guidelines applicable to the use of force in youth detention.¹⁵⁷

In her statement, Constable Engels said that:

In considering Mr Walton's alleged 'clotheslining', AT later stated Mr Walton 'stuck his arm out and hit me in the throat'. AT disclosed that he was not entitled to enter the dining room at that time and Mr Walton's actions were consistent

*with enforcing this. In my view, this would speak to the 'lawfulness' of Mr Walton's actions. As a YJO, I was acutely aware that Mr Walton would be able to avail himself of an argument that he was authorised in his use of force directed at AT. Combined with the concession that AT made about breaking the rules by attempting to enter the dining room immediately before the alleged 'assault', I determined that the complaint was incapable of supporting the assault charge.*¹⁵⁸

In AT's interview, AT stated that he was *'not allowed'* into the dining room.¹⁵⁹ Constable Engel's statement omits the fact that AT said that he went there because he was running away from the alleged assault, and he knew that cameras were there.¹⁶⁰

However, in cross-examination Constable Engels accepted that AT had told her in that interview that he was running away from an assault with a torch.¹⁶¹ When asked by Counsel Assisting, *'So there could be nothing lawful about Mr Walton clotheslining him in that situation when he is simply running away, could there?'*, Constable Engels replied *'In his words'*.¹⁶²

Finalisation report

There is no mention of either the torch incident or the clotheslining incident in Constable Engels' finalisation memorandum.¹⁶³

Constable Engels accepted that she incorrectly stated in her finalisation report that 'Senior Constable Engels and Kennon interviewed Zamolo. All known matters relating to individuals and Don Dale activities were put to him'. She accepted that she omitted to put in any reference to the torch or clotheslining incident.¹⁶⁴ When asked why, Constable Engels stated, 'I don't know'.¹⁶⁵

This deficiency was specifically identified by the Youth Detention Task Force review memo, which stated:

*It is worth noting that the memorandum submitted [sic] the finalisation of the matter makes no mention of [REDACTED]'s allegations of assault by ZAMOLO or WATSON [Walton], nor does it mention what investigation was done in regards to it.*¹⁶⁶

On 14 June 2016, Senior Sergeant Scott Manley of the Northern Territory Police forwarded Constable Engels' report to David Ferguson, the Director of the PSU. The cover email stated that:

*... a comprehensive investigation has failed to provide sufficient evidence to charge any substantive offences arising from the events as described by AT either due to lack of corroboration or insufficient information being available.*¹⁶⁷

Constable Engels was asked what contact she maintained with AT between the time of the interview and when she submitted the finalisation report. Constable Engels stated that while she did not inherit the file until December 2015, she did not make any contact with him

*... for the reason that I wanted to just – the file had been sitting there for so long. I was very cognisant of that. I wanted to progress, and I wanted to be able to tell him the outcome of the file.*¹⁶⁸

Constable Engels accepted that in those circumstances, a complainant can feel abandoned, shut out, and as if the investigation is not being pursued properly. Constable Engels stated that when dealing with sexual offence complaints, she took very seriously the importance of maintaining contact with the complainant for the purposes of support and wellbeing.¹⁶⁹

She stated that she did not do that with AT because she wanted to 'press on and get to some conclusion to the file'. When asked why she treated AT differently to the way she might treat sexual offence complainants, she stated:

*I didn't treat him differently. It was just a decision I made, at that stage. I wanted to progress it. I wanted to get some conclusion before I made contact with him.*¹⁷⁰

Counsel Assisting asked Constable Engels whether she understood that there was the potential to alienate people from making complaints if they feel that they are not going to be advised of the progress of the complaint, and that an investigation may be withdrawn without any consultation with them. Constable Engels stated:

I would hope no one would feel that way, because that's what I spend my days doing, and ensuring that that doesn't happen. I am passionate about it, I love my job in that area, and I would hate to think that anyone would think that way.¹⁷¹

Counsel Assisting put to Constable Engels that AT had been a vulnerable person in custody who had finally come out and made a complaint. AT's complaint was progressed without consultation with him, and the investigation was finalised without contact with him, despite the fact that AT had sworn it was true. When asked whether this was alienating to AT, Constable Engels stated, 'It could be, though never the intention'.¹⁷²

TASKFORCE

In response to the establishment of the Commission, the Police Commissioner created a Youth Detention Taskforce to examine and review the involvement of the Northern Territory Police with youth detention centres during the relevant period (the Taskforce).

The Police Commissioner voluntarily provided the Commission with a copy of the taskforce's report, along with recommendations made by it.

The Taskforce's terms of reference were to:

- review all reports made to police of incidents involving youths in detention at Don Dale and Alice Springs Detention Centres between 2006 to July 2016
- examine all information relating to allegations of criminal offending by Correctional Services employees, staff and management at Northern Territory Detention facilities since 2006, including information and images contained in the *Four Corners* program
- review any inquiries or reports conducted into Youth Detention Centres in the Northern Territory since 2006, including those conducted by the Northern Territory Children's Commissioner, which may relate to criminal conduct by any person
- review all previous police investigations involving alleged assaults on youths while in detention since 2006
- identify instances of criminal offending by any person and where appropriate, investigate and prepare prosecution files as necessary
- review all intelligence held by the Northern Territory Police in relation to youth detention in the Northern Territory since 2016, and
- prepare reports and make recommendations as necessary relating to any amendments to Northern Territory, Police, Fire and Emergency Services policies and procedures.¹⁷³

There were 377 incidents identified for review, of which 71 matters were investigated more extensively.¹⁷⁴

The Taskforce identified defects in previous police investigations. Certain themes emerged. The Taskforce identified 33 occasions where police should have, but did not, attend youth detention facilities and attempt to make contact with detainees.¹⁷⁵ Most of these incidents involved a potential complaint by one detainee against another. In two cases, an initial complaint had been made about a staff member and the failure to follow up was the result of communication to police by another staff member.¹⁷⁶

While the Northern Territory Police are conducting follow-up with respect to certain historical cases as a result of the Taskforce report, it is to be expected that some complainants may not be willing to revisit and continue with their complaint because of the delayed response. In some cases, the delay could be as long as seven years.¹⁷⁷

Apart from the failure even to make contact with a complainant, there were other cases in which logical avenues of investigation could have been pursued, but were not. In a minority of those cases, this may have had a substantive effect on the outcome of the investigation, such as when CCTV footage was not obtained before it was routinely 'overwritten'.¹⁷⁸

The other significant issue identified by the Taskforce was the failure by some police to comply with their obligations under the *Care and Protection of Children Act*.

Section 26 of the *Care and Protection of Children Act* imposes an obligation on any person who forms a reasonable belief that a child has suffered, or might be likely to suffer, detriment by reason of any one of a number of stipulated causes – such as exploitation or sexual abuse. That person must report the belief and the reasons for it, as soon as possible, to the Chief Executive Officer of Territory Families or the police. If reported to police, section 33 of the *Care and Protection of Children Act* provides that the officer who receives a report may, if concerned about the child's wellbeing, make enquiries and provide a report on those enquiries to the Chief Executive Officer.

In 28 cases investigated by the Taskforce, these obligations were not fulfilled. There were associated failures of record-keeping.¹⁷⁹

Even in cases where the police investigation might not yield evidence for a criminal prosecution, further enquiries by Territory Families may be warranted. A child might complain that some harm has occurred, or is likely, but discontinue the complaint. Nonetheless, the complaint might reveal circumstances that warrant administrative intervention.

The Commission is unable to determine whether these failures identified by the Taskforce were as a result of a culture within the force or arose from a lack of training.

The Commission acknowledges the positive actions taken by Northern Territory police in response to the Taskforce report, including:¹⁸⁰

- conducting a follow-up with respect to certain historical cases to ascertain whether the alleged victim wishes to make a complaint
- changing the systems relating to the making of notifications under the *Care and Protection of Children Act*
- changing the training provided through the police college

- communicating with all staff in relation to the use of the PROMIS case management system;
- upgrading the case management system,
- making changes to the Joint Emergency Services Communication Centre instruction, and
- considering making changes to the role of the NT Police Intelligence Officer.

The Taskforce recommended that where reports of assault occasioning harm against young people in detention were received the police should attend correctional facilities in person and have direct contact with the young people reported to be involved.¹⁸¹

There is no reason why this policy should be limited to cases of assault occasioning bodily harm. It should extend to any potential breach of the criminal law. A child in detention should not be in a different position from a child who is at liberty to attend a police station and make a complaint, directly to a police officer, about an offence committed against that child.



An example of a complaint that should have been referred to the Northern Territory Police

In November 2012, a female detainee made a complaint to the Acting General Manager about excessive use of force by Senior Youth Justice Officer Hansen. While this complaint was investigated by the PSU, it appears that the matter was not reported to the police – it did not appear on a list of all police complaints made by youth detainees during the relevant period.¹⁸² Medical records indicated the detainee sustained bruising to both upper arms, her left abdomen, and inside both thighs just above the knees.¹⁸³ The PSU investigation found that the force used was not excessive, but nonetheless concluded that not all of the restraint techniques applied were consistent with restraint procedures and:

*the injuries sustained by the detainee are considered to have resulted from being forcibly and effectively restrained, ground stabilised several times with no application of mechanical restraints and while the detainee was violently resisting those restraints.*¹⁸⁴

Recommendation 22.1

Police Standing Orders include a directive that when police receive a report from any source of an alleged criminal offence against a young person in detention, police are required to attend the detention facility and have direct contact with the detainee. This should take place as promptly as operational matters permit, but in any case within 72 hours of receipt of the report.

Police Standing Orders include a directive that when interviewing a detainee who is potentially a complainant in a criminal matter, police ensure that communication with the detainee is conducted privately from detention centre staff members and other detainees and if the complaint is against a staff member, at times when the relevant officer is not on duty. If practicable, police should arrange for an independent person to be present to support the detainee.

INSUFFICIENT POWERS

The Northern Territory Children's Commissioner does not have free and unfettered access to children and young people in detention, or to youth detention centres and relevant documents.¹⁸⁵ The current Children's Commissioner, Colleen Gwynne considered the legislation concerning access to children and young people, in particular, 'falls short of what's required to be able to monitor the wellbeing' of children and young people in detention.¹⁸⁶

The Inspector of Custodial Services in Western Australia, Neil Morgan, provided evidence to the

Commission about the functions of the Office of the Inspector of Custodial Services (OICS). The OICS is an independent statutory body that oversees custodial services, including youth detention, in Western Australia. It has two main limbs, inspecting and monitoring places of custody, and conducting reviews of thematic issues.¹⁸⁷ Under sections 28–30 of the *Inspector of Custodial Services Act 2003* (WA) the Inspector, or any other person authorised by the Inspector, has ‘free and unfettered access’ to:

- custodial facilities and any part of such facilities
- people in custody
- people whose work is concerned with custodial facilities and services (on site, in the Department of Corrective Services, and contractors), and
- documents and records in the possession of the Department and its contractors.

Inspector Morgan told the Commission that to facilitate this, the relevant OICS staff members have access to the Department’s offender management database.¹⁸⁸

The *Inspector of Custodial Services Act* (WA) also provides a number of protections for the OICS and for people assisting the OICS.

The Inspector of Custodial Services has a broader ambit of powers and functions than the Northern Territory’s Children’s Commissioner or Ombudsman currently possess. However, bodies in the Northern Territory, particularly the Children’s Commissioner, could have their jurisdiction expanded to undertake such a function. National Children’s Commissioner Megan Mitchell told the Commission:

But obviously we need some independent level of an inspection. So the community visitors, the Official Visitors in this state, I understand, are appointed by the Minister for Corrections and so they don’t really have the functional independence that you would want of a visiting body. I know the Northern Territory Children’s Commission does visit on a regular basis, but it isn’t in the face of her powers. So we do need to have that sorted, I think.¹⁸⁹

The Commission considers it would enhance the capacity of the Northern Territory Children’s Commissioner to expand its powers of access in line with the Western Australian model. This is discussed further at Chapter 40 (A Commission for Children and Young People).

One of the benefits of having the oversight function of the Children’s Commissioner expanded to allow unfettered access is that it would streamline the oversight process and provide youth in detention with a centralised reporting mechanism. This would help to provide opportunities for youth to build rapport with Children’s Commissioner staff members and minimise the possibility of confusion about with whom who they should lodge a complaint.

Further, as noted above, and in summary, the investigative powers of the Children’s Commissioner are currently limited to complaints and matters which could be the subject of a complaint. These are generally matters concerned with a service provider’s delivery of services to a child.¹⁹⁰ As the Northern Territory Government suggested in its submissions, the legislation does not necessarily prevent investigation of issues or concerns that are systemic in nature.¹⁹¹ However, the Commission considers it would be beneficial if the Children’s Commissioner was expressly empowered to investigate matters of a systemic nature, thereby serving an overall monitoring function rather than a complaint driven function over youth detention services.

Findings

The effectiveness of external oversight mechanisms can be assessed individually or collectively. Individually:

- The Northern Territory Ombudsman did not itself oversee youth detention in any meaningful way, and its relevant powers and functions were largely transferred to the Children’s Commissioner in 2011, after which the Ombudsman had a minimal role.
- The establishment of the Children’s Commissioner in 2007 and the expansion of its role in 2011 are welcome developments. However, the effectiveness of the Children’s Commissioner in fulfilling these duties has been constrained by a lack of general power to investigate matters of a systemic nature rather than individual complaints.
- The Northern Territory Police has demonstrated failings to investigate, uncover and prosecute potential criminal behaviour in the youth justice system throughout the relevant period.

Any system of oversight and monitoring is only effective if those who receive reports from those bodies, both internal and external, pay due regard to the findings and recommendations. There was a failure by superintendents, Executive Directors, the Commissioner of Corrections and Ministers to do this during the relevant period.¹⁹² The effectiveness of the oversight of youth detention was compromised by inadequate responses from those to whom the reports were provided.

Recommendation 22.2

Regulation 66 of the Youth Justice Regulations (NT) be amended to require:

- the Commission for Children and Young People provide children and young people in detention with assistance to make complaints, and
- all complaints made by detainees in youth detention must be forwarded to the Commission for Children and Young People.

Recommendation 22.3

The Official Visitors Program, including recruitment, training and reporting, be a function of the Commission for Children and Young People and the Commission for Children and Young People be required to report regularly to the relevant Minister on the program’s activities.

Recommendation 22.4

The powers of the Commission for Children and Young People be expanded to:

- a. allow free and unfettered access to:
 - youth detention facilities and any part of such facilities
 - children and young people in youth detention
 - people whose work is concerned with youth detention facilities and services
 - documents and records in the possession of the department and its contractors, and

- b. allow investigation of matters of a systemic nature.

Recommendation 22.5

Territory Families introduce a Detainee Representative Group program to enable detainees to meet formally each fortnight with the superintendent of youth detention.

CHANGES TO THE LEGISLATIVE FRAMEWORK

Legislative barrier to effective oversight

Section 215 of the *Youth Justice Act* provides that a person, including the Commissioner, the superintendent, a probation or parole officer or an employee under the *Youth Justice Act*, is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function.

The Commission considers this defence provision is drafted too broadly and does not take into account any qualifications regarding reasonableness. The Commission acknowledges that there may be good reasons to include a section restricting liability and understands that this is reflected in the Western Australian and Australian Capital Territory jurisdictions.¹⁹³

It is the Commission's view that the test should be tempered from the broad discretion of '*purported exercise of power*' and should include an element of reasonableness. The Commission also recommends that the conduct for which immunity is provided should be conduct that is engaged in good faith and without recklessness.

Section 215B of the *Youth Justice Act* creates a six month limitation period on the commencement of civil proceedings ‘in relation to acts done or omitted to be done by a person under this Act’. While a court may extend the time pursuant to section 44 of the *Limitation Act* (NT), the power to do so is limited to certain circumstances.

The Commission agrees with the submission of the Northern Territory Legal Aid Commission¹⁹⁴ that the six month limitation period should be amended to recognise, as the *Limitation Act* recognises,¹⁹⁵ that by reason of age or sentenced imprisonment status a person may be incapable of managing their affairs in respect of legal proceedings.

Recommendation 22.6

The Northern Territory Government amend section 215 of the *Youth Justice Act* (NT) to the effect that the person is not civilly or criminally liable for an act reasonably done or omitted to be done by the person in good faith and without recklessness in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

Recommendation 22.7

Section 215B of the *Youth Justice Act* (NT) be amended to reflect the provisions of sections 4 and 36 of the *Limitation Act* (NT), to recognise that by reason of age or sentenced imprisonment status a person may be incapable of managing their affairs in respect of legal proceedings.

The Optional Protocol to the Convention Against Torture

As discussed further at Chapter 40 (A Commission for Children and Young People), the Commonwealth Government indicated that Australia will ratify the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) by December 2017.¹⁹⁶

To achieve the goal of preventing torture and ill treatment, the OPCAT requires a monitoring system that consists of visits by two complementary and independent expert bodies at the international and national level:

- Australia would be obliged to permit visits from the United Nations Sub-committee on the Prevention of Torture (SPT) to any place of detention within Australia. The SPT is an independent body comprised of independent experts from countries party to the OPCAT treaty.
- Domestically, Australia must establish a National Preventive Mechanism (NPM), which is a body charged with overseeing monitoring processes for all places of detention nationally.

The Commonwealth Government has decided to vest the National Preventative Mechanism (NPM) functions required by OPCAT across multiple federal, state and territory bodies, as distinct

from a single NPM covering all places of detention.¹⁹⁷ These bodies will be coordinated by the Commonwealth Ombudsman.

Chapter 40 (A Commission for Children and Young People) considers the requirements of an NPM in the context of the Commission's recommendation for a Commission for Children and Young People.

ENDNOTES

- ¹ Exh.608.000, Statement of Neil Morgan, 25 May 2017, tendered 27 June 2017, paras 43-44.
- ² Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, Rules 72-74.
- ³ Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, Rule 73 (recommending that medical officers should also participate in the inspection, evaluating physical environment, hygiene, accommodation, food, exercise and medical services as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles).
- ⁴ Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, Rule 74.
- ⁵ Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, Rules 75-78.
- ⁶ Exh.283.232, Juvenile Justice Standards 2009, 1 July 2005, tendered 31 March 2017, Standard 1.8.
- ⁷ Australian Juvenile Justice Administrators, 1999, *Standards for Juvenile Custodial Facilities*, <<https://www.humanrights.gov.au/sites/default/files/Annexure%20H%20-%20AJJA%20Standards.pdf>, standard 2.7>, p. 21.
- ⁸ *Youth Justice Act 2005 (NT)* s 163.
- ⁹ *Youth Justice Regulations 2006 (NT)* reg 66.
- ¹⁰ *Youth Justice Regulations 2006 (NT)* reg 66.
- ¹¹ Exh.741.072, Annexure 072 to Statement of Mark Payne - 23 February 2017, tendered 25 July 2017, section 3.6 p. 2786.
- ¹² Exh.741.031, Annexure 031 to Statement of Mark Payne – 23 February 2017, tendered 25 July 2017, section 3.6 p. 3261.
- ¹³ See Chapter 11 (Detention centre operations).
- ¹⁴ Exh.311.145C, Letter from the Solicitor for the Northern Territory to the Solicitor Assisting the Commission, 17 November 2016, tendered 31 March 2017, p.1. Some documents referred to as complaint registers were produced from the former Don Dale Youth Detention Centre for the months of April and September 2013. No complaints registers in respect of Aranda House were produced, and complaints registers for the Alice Springs Youth Detention Centre were produced for the years 2012-2014.
- ¹⁵ Exh.741.067, Annexure 067 to Statement of Mark Payne – 23 February 2017, tendered 25 July 2017.
- ¹⁶ Exh.741.067, Annexure 067 to Statement of Mark Payne – 23 February 2017, tendered 25 July 2017, pp. 1-4. The procedure was updated in December 2014 to include a requirement that a copy of the form be placed in the complainant's property locker (which they did not have access to until released); Exh.741.068, Annexure 068 to Statement of Mark Payne – 23 February 2017, tendered 25 July 2017, p. 4.
- ¹⁷ Submissions of the Northern Territory Government, 29 September 2017, para 20.
- ¹⁸ Exh.741.069, Annexure 069 to Statement of Mark Payne – 23 February 2017, tendered 25 July 2017, pp. 1-4.
- ¹⁹ Transcript, Megan Mitchell, 11 October 2016, p. 42: lines 10-41; Transcript, Colleen Gwynne, 12 October 2016, p. 137: lines 5-14.
- ²⁰ Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para 36.
- ²¹ Exh.068.001, Statement of BF, 20 February 2017, tendered 13 March 2017, para 24; Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, paras 55-56.
- ²² Closed court transcript, AS, 22 March 2017, p. 22: lines 39-45; Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para 55; Exh.053.027, Annexure 17 to Statement of Dylan Voller [CONFIDENTIAL], 12 February 2015, tendered 14 December 2016, p. 56.
- ²³ Transcript, Colleen Gwynne, 12 October 2016, p. 140: lines 25-33.
- ²⁴ A management plan for AJ provided that while AJ would have access to the telephone system to make calls to the Children's Commissioner, these calls would be 'actioned at the discretion of the Shift Supervisor taking into consideration operational requirements': Exh.283.169, Intensive Management Plan, 12 September 2013, tendered 31 March 2017, p. 4.
- ²⁵ Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, para 243; Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para 68.
- ²⁶ Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para 57-58.
- ²⁷ Exh.162.001, At Risk File, tendered 24 March 2017: p. 1; Closed court transcript, AN, 24 March 2017, p. 13: line 14-p. 14: line 13.
- ²⁸ Submissions of the Northern Territory Government, 29 September 2017, para 25.
- ²⁹ Exh.241.001, Statement of BV, 19 February 2017, tendered 31 March 2017, paras 55-56.
- ³⁰ Exh.270.001, Statement of AM, 11 February 2017, tendered 31 March 2017, para 36.
- ³¹ Exh.139.001, Statement of AB, 1 March 2017, tendered 23 March 2017, para 55.
- ³² *Youth Justice Regulations* reg 67. See also *Information Act (NT)*, ss 133-134.
- ³³ Exh.064.165, Deferred – Detainee Complaints Register DDYDC, 28 March 2014, tendered 31 March 2017, pp. 1-2.
- ³⁴ Exh.064.165, Deferred – Detainee Complaints Register DDYDC, 28 March 2014, tendered 31 March 2017, p. 2.
- ³⁵ Exh.064.165, Deferred – Detainee Complaints Register DDYDC, 28 March 2014, tendered 31 March 2017, p. 2; Exh.311.145C, Letter from SFNT to Commission – Missing documents for production, 17 November 2016, tendered 28 April 2017, p. 2.
- ³⁶ Exh.064.126, Audit 26.07.2012, 29 November 2012, tendered 15 March 2017, p. 1.
- ³⁷ Exh.283.196, Signed Memo – ASYDC Audits November 2014, 8 December 2014, tendered 31 March 2017, pp. 4-5.
- ³⁸ Exh.269.001, Statement of Victor Williams, 28 February 2017, tendered 31 March 2017, para 15; Transcript, Colleen Gwynne, 12 October 2016, p. 137: lines 23-27. This is not a requirement of any legislation.
- ³⁹ Transcript, Salli Cohen, 30 March 2017, p. 2781: lines 9-19.
- ⁴⁰ Exh.105.001, Statement of Andreea Lachs, 10 December 2016, tendered 20 March 2017, paras 17, 20, 28.

41 Exh.105.006, Annexure E to Statement of Andreea Lachs, 10 December 2016, tendered 20 March 2017.
42 Transcript, Lisa Coon, 21 April 2017, p. 2742: lines 31-41.
43 Exh.105.005, Annexure D to Statement of Andreea Lachs, 10 December 2016, tendered 20 March 2017, p. 2.
44 Exh.105.005, Annexure D to Statement of Andreea Lachs, 10 December 2016, tendered 20 March 2017, pp. 2-3.
45 Transcript, Lisa Coon, 21 April 2017, p. 2742: lines 1-3.
46 Exh.309.012, Email correspondence, 23 July 2015, tendered 21 April 2017.
47 Exh.124.001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 8.
48 See list of Correctional Services directives setting out policies and procedures for PSU audits and investigation: Exh.124.001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 9.
49 Exh.124.004, Annexure 3 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, paras 4.3-4.4.
50 Exh.124.001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 18.
51 Exh.124.001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 10.
52 Exh.124.001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, paras 38-43.
53 Transcript, David Ferguson, 24 March 2017, p. 1838: lines 20-45.
54 Exh.124.001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 10.
55 Exh.124.001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 16; Transcript, David Ferguson, 24 March 2017, p. 1861: line 2.
56 Exh.124.001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 12; Exh.124.003, Annexure DF-2, 'Internal Audit Charter', September 2016, tendered 23 March 2017, p. 1.
57 Transcript, David Ferguson, 24 March 2017, p. 1860: lines 46-47; Exh.124.001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 7.
58 Exh.318.015, Appendix 11 to Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, p. 4.
59 Exh.124.001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 17.
60 See, for example, Exh.124.005, Annexure DF-4 to Statement of David Ferguson, 29 August 2016, tendered 23 March 2017, p. 1; Exh.124.009, Annexure DF-8 to Statement of David Ferguson, 29 August 2016, tendered 23 March 2017, p. 1.
61 Transcript, David Ferguson, 24 March 2017, p. 1825: lines 40-45, and p. 1831: lines 25-30.
62 Exh.236.001, Response – BMU Register audit, 2 April 2014, tendered 30 March 2017, pp. 1-2; Exh.124.007, Annexure DF-6 to Statement of David Ferguson, 3 May 2016, tendered 23 March 2017, pp. 1-4; Exh.124.008, Annexure DF-7 to Statement of David Ferguson, 6 October 2016, tendered 23 March 2017, pp. 1-6; Exh.774.001, Signed memorandum: At risk (self harm) audit Don Dale Youth Detention Centre, 14 July 2015, tendered, 22 August 2017, pp. 1-2; Exh.124.008, Annexure DF-7 to Statement of David Ferguson, 6 October 2016, tendered 23 March 2017, pp. 5-6; Exh.124.009, Annexure DF-8 to Statement of David Ferguson, 6 October 2016, tendered 23 March 2017, pp. 4-5; Exh.064.126, Audit 26.07.2012, 29 November 2012, tendered 15 March 2017; Exh.1139.001, Compliance Audit of Alice Springs Juvenile Detention Centre, tendered 4 November 2017, pp. 1-3; Exh.064.166, Response – Use of Force Register at Don Dale Youth Detention Centre audit, 2 April 2014, tendered 29 March 2017, pp. 1-2; Exh.843.001, Signed Memo – Use of Force Don Dale Youth Detention Centre, 3 September 2015, tendered 24 October 2017; Exh.1066.0011, Memo – Audits – Alice Springs Juvenile Detention Centre, 11 August 2015, 28 October 2017; Exh.124.008, Annexure DF-7 to Statement of David Ferguson, 6 October 2016, tendered 23 March 2017, p. 4; Exh.124.005, Annexure DF-4 to Statement of David Ferguson, 29 August 2016, tendered 23 March 2017, pp. 4-5.
63 Examples: Exh.236.001, Response – BMU Register STB Tab 178, 2 April 2014, tendered 30 March 2017, pp. 1-2: 'Consistent omissions were found for details that were not entered into the BMU register', 'Recommendation: Shift supervisors are to be reminded of their responsibility to ensure that the required register entries are fully and correctly completed'; Exh.774.001, Signed memorandum: At risk (self harm) audit Don Dale Youth Detention Centre, 14 July 2015, tendered 22 August 2017, pp. 1-2: 'Some "At Risk" information recorded in IOMS was found to not be fully or accurately completed', 'Recommendation: Shift Supervisors / Senior Youth Justice Officers are reminded by the General Manager to check that all information for 'at risk' episodes in IOMS is fully and correctly completed'; Exh.124.001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 26.
64 Exh.124.001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 26.
65 Transcript, David Ferguson, 23 March 2017, p. 1725: lines 15-20.
66 Transcript, David Ferguson, 23 March 2017, p. 1726: lines 1-5. As to other management personnel knowledge or acceptance of this issue, see Chapter 10 (Detention facilities).
67 Exh.311.002, Directive 2.4.5 Intensive Management Plans, 31 August 2011, tendered 28 April 2017; Transcript, David Ferguson, 23 March 2017, p. 1726: lines 7-10.
68 Transcript, David Ferguson, 23 March 2017, p. 1725: lines 10-32. Nor did PSU audits identify any mental health concerns for children and young people the subject of isolation: Transcript, David Ferguson, 24 March 2017, p. 1838: lines 44-45.
69 Exh.437.002, Annexure 2 to Statement of Michael Vita, 11 January 2017, tendered 12 May 2017, p. 33.
70 Transcript, Colleen Gwynne, 12 October 2016, p. 137: lines 30-40.
71 For example, when Mr Zamolo's employment was terminated following investigation of his involvement in the incident in which Mr Kelleher threw a piece of fruit at Dylan Voller while he was in the Behaviour Management Unit in August 2014.
72 See the handling of Mr Morgan's continued employment and then re-employment and further alleged misconduct following the PSU being informed by management that he would not be offered any more shifts: Exh.064.028, PSU Investigation YW Harold Morgan, 31 May 2010, tendered 14 March 2017; Exh. 203.001-006, casual timesheets, various dates 2010, tendered 29 March 2017; Exh.064.029, Contract Extension Casual Supernumerary, 14 July 2010, tendered 14 March 2017; Exh.071.004, Annexure JF-3 to

statement of John Fattore, PSU file records regarding Harold Morgan conduct towards Dylan Voller on 20 October 2010, tendered 14 March 2017. Another staff member, Mr Knipsel, who was referred to police for an alleged assault upon Dylan Voller but was later re-employed: Transcript, Ken Middlebrook, 28 April 2017, p. 3371: lines 1-47. The Commission notes that in both instances upon the circumstances of the individual's rehiring becoming known to senior management their employment was terminated.

⁷³ Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017.

⁷⁴ Transcript, Ken Middlebrook, 26 April 2017, p. 3016: lines 18-20.

⁷⁵ Transcript, Ken Middlebrook, 26 April 2017, p. 3016: lines 10-14.

⁷⁶ Transcript, Ken Middlebrook, 26 April 2017, p. 3015: line 19 – p.3016: line 16.

⁷⁷ Transcript, David Ferguson, 23 March 2017, p. 1817: lines 1-6; Exh.741.009, Annexure 009 to Statement of Mark Payne, 7 January 2013, tendered 25 July 2017, pp. 2 - 3: the policy provides for internal investigation of assaults on detainees by other detainees only if the matter is not referred to NT Police, and there is no provision whatsoever for internal investigation of allegations of assault on detainees by staff; Exh.053.027, Annexure 17 to Statement of Dylan Voller [CONFIDENTIAL], 12 February 2015, tendered 14 December 2016, p. 56; 'The only information that NTDCS requests from Police in an alleged criminal matter against a staff member are whether charges are laid and what charges are, as well as the result of any court case. This allows NTDCS as the employer to determine what action, if any, needs to be taken against the employee.'

⁷⁸ Exh.335.001, Further Statement of Dr Howard Bath, 20 April 2017, tendered 28 April 2017, paras 13, 23.

⁷⁹ Exh.211.003, Annexure SC-2, Statement of Salli Cohen, tendered 31 March 2017 Exh.1147.001 Annexure B to Statement of Colleen Gwynne, 19 June 2015, tendered 4 November 2017 p. 1.

⁸⁰ Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 230.

⁸¹ Transcript, Gerald McCarthy, 17 March 2017, p. 1377: lines 35-39; Exh.311.090, 2014-15 CEO Performance Agreement – K Middlebrook – End of year review, 22 June 2015, tendered 28 April 2017, p. 2.

⁸² See Chapters 12 (Abuse and humiliation), 13 (Use of force) and 14 (Isolation).

⁸³ Transcript, John Elferink, 27 April 2017, p. 3192: lines 15-20; Exh.321.001, Statement of John Elferink, 31 March 2017, tendered 27 April 2017, para 38; Exh.311.143, 2.21 – Official Visitors Program, 8 September 2016, tendered 28 April, p. 1.

⁸⁴ Exh.263.001, Statement of Keith Williams, 13 February 2017, tendered 31 March 2017, paras 35-42.

⁸⁵ Exh.264.001, Statement of Kyla Raby, 16 February 2017, tendered 31 March 2017, paras 60, 66; Transcript, Ken Middlebrook, 28 April 2017, p. 3354: lines 5-10; Exh.318.002, Annual Report 2012-2013, 3 March 2017, tendered 26 April 2017, p. 23; Exh.318.003, Annual Report 2013-2014, 3 March 2017, tendered 26 April 2017, p. 28; Exh.318.004, Annual Report 2014-2015, 3 March 2017, tendered 26 April 2017, p. 47; Exh.283.164, PCD11 6777 Report of the Review of the Official Visitors Program (3), 4 October 2011, tendered 31 March 2017, p. 10; Exh.283.196, Signed Memo – ASYDC Audits Nov 2014, 8 December 2014, tendered 31 March 2017, p. 5.

⁸⁶ Exh.263.001, Statement of Keith Williams, 13 February 2017, tendered 31 March 2017, para 13; Exh.283.164, Report of the Review of the Official Visitors Program, October 2011, tendered 31 March 2017, p. 10.

⁸⁷ Exh.263.001, Statement of Keith Williams, 13 February 2017, tendered 31 March 2017, para 14.

⁸⁸ Exh.263.001, Statement of Keith Williams, 13 February 2017, tendered 31 March 2017, para 11, 17.

⁸⁹ Exh.321.017, Annexure 16 to Statement of John Elferink, various dates, tendered on 27 April 2017, pp. 45, 56, 86, 97, 98, 102; Exh.263.001, Statement of Keith Williams, 13 February 2017, tendered 31 March 2017, paras 31-34; Exh.311.017, MC 2013/2435-JWE After Hours Visits – Mr Keith Williams, Official Visitor, 17 October 2013, tendered 28 April 2017, p. 4.

⁹⁰ This is reportedly now permitted again: Exh.263.001, Statement of Keith Williams, 13 February 2017, tendered 31 March 2017, para 33.

⁹¹ Exh.283.168, SOP 14.1 – Official Visitor, 3 May 2013, tendered 31 March 2017, p 2, para 5.4.

⁹² *Youth Justice Act 2005* (NT), s 169; Exh.264.001, Statement of Kyla Raby, 16 February 2017, tendered 31 March 2017, para 67; Transcript, Megan Mitchell, 11 October 2016, p. 41: lines 10-25; Exh.311.143, 2.21 – Official Visitors Program, 8 September 2016, p. 1; Exh.283.164, PCD11 6777 Report of the Review of the Official Visitors Program (3), 4 October 2011, tendered 31 March 2017, p. 19.

⁹³ Exh.264.001, Statement of Kyla Raby, 16 February 2017, tendered 31 March 2017, para 67.

⁹⁴ Exh.283.164, PCD11 6777 Report of the Review of the Official Visitors Program (3), 4 October 2011, tendered 31 March 2017, p. 11 and Appendix 4.

⁹⁵ Exh.264.001, Statement of Kyla Raby, 16 February 2017, tendered 31 March 2017, para 63.

⁹⁶ Exh.263.001, Statement of Keith Williams, 13 February 2017, tendered 31 March 2017, para 29.

⁹⁷ Exh.263.001, Statement of Keith Williams, 13 February 2017, tendered 31 March 2017, para 29.

⁹⁸ Exh.283.168, SOP 14.1 – Official Visitor, 3 May 2013, tendered 31 March 2017, pp. 2-3; Exh.311.143, 2.21 – Official Visitors Program, 8 September 2016, tendered 28 April 2017, p. 1.

⁹⁹ Statement of Keith Williams, 13 February 2017, tendered 31 March 2017, paras 25-26.

¹⁰⁰ Statement of Keith Williams, 13 February 2017, tendered 31 March 2017, paras 27, 30.

¹⁰¹ Exh.283.164, PCD11 6777 Report of the Review of the Official Visitors Program (3), 4 October 2011, tendered 31 March 2017, pp. 15-16; Exh.264.001, Statement of Kyla Raby, 16 February 2017, tendered 31 March 2017, para 69; Statement of Keith Williams, 13 February 2017, tendered 31 March 2017, paras 25-26.

¹⁰² *Children's Commissioner Act* (NT) s. 28 (2); *Ombudsman Act* (NT) s 14.

¹⁰³ See *Ombudsman Act 2009* (NT) s 10(1).

¹⁰⁴ Memorandum of Understanding between the Children's Commissioner and the Northern Territory Ombudsman <https://www.ombudsman.nt.gov.au/sites/default/files/downloads/2013-14_annual_report_for_web.pdf>, accessed 7 November 2017.

¹⁰⁵ See *Ombudsman Act 2009* (NT) s 3.

¹⁰⁶ *Ombudsman Act 2009* (NT) ss 10, 5 and 4 and *Public Sector Employment and Management Act* s 3(1).

- ¹⁰⁷ Northern Territory Ombudsman, Annual Reports between 2006 to 2011, <<http://www.ombudsman.nt.gov.au/publications?tid=3&leaveblank=>. The reports appear to indicate that one complaint was received in 2006-07> accessed 11 October 2017. Other documents obtained by the Commission indicate that complaints received in 2009 and following were sent to the Professional Standards Unit. Exh.905.001, [REDACTED] - PAE [REDACTED] – Complaint Summary, tendered 24 October 2017; Exh.053.015, Annexure 14.1 – Ombudsman NT Complaint Enquiry [REDACTED], tendered 14 December 2016; Exh.053.017, Annexure 14.3 – NT Ombudsman Complaint Enquiry [REDACTED], tendered 14 December 2016; Exh.903.001, [REDACTED] - PAE [REDACTED] – Complaint Summary, tendered 24 October 2017 Exh.904.001, [REDACTED] - PAE [REDACTED] – Complaint Summary, tendered 24 October 2017; Exh.053.019, Annexure 14.5 – Ombudsman NT Complaint [REDACTED], tendered 14 December 2016; Exh.064.038, [REDACTED] - Complaint summary, tendered 31 March 2017.
- ¹⁰⁸ Northern Territory Ombudsmen, Annual Report 2010 – 11, 30 September 2011, <<http://www.ombudsman.nt.gov.au/sites/default/files/downloads/2010-11-annual-report.pdf>>, pp. 38, 41, accessed 11 October 2016.
- ¹⁰⁹ The Northern Territory Government was unable to locate a signed copy of the letter however confirmed that correspondence was sent to Mr Voller on or about 18 January 2011 (one day after the date of the letter) in relation to the complaint the subject of the letter: Submissions for the Northern Territory Government, 3 November 2017, p. 2. An unsigned version of the letter was produced to the Commission by Mr Voller. The person identified as the author of the letter in the version produced by Mr Voller informed the Commission that the wording of the letter made it clear that a more senior employee had amended and settled the letter: Submissions for the Northern Territory Government, 3 November 2017, p. 2.
- ¹¹⁰ Memorandum of Understanding between the Children’s Commissioner and the Northern Territory Ombudsman <https://www.ombudsman.nt.gov.au/sites/default/files/downloads/2013-14_annual_report_for_web.pdf> accessed 7 November 2017; *Ombudsman Act 2009* (NT), s 10(2); *Children’s Commissioner Act 2013* (NT) s 24(1)(b).
- ¹¹¹ Memorandum of Understanding between the Children’s Commissioner and the Northern Territory Ombudsman <https://www.ombudsman.nt.gov.au/sites/default/files/downloads/2013-14_annual_report_for_web.pdf>, accessed 7 November 2017.
- ¹¹² Memorandum of Understanding between the Children’s Commissioner and the Northern Territory Ombudsman <https://www.ombudsman.nt.gov.au/sites/default/files/downloads/2013-14_annual_report_for_web.pdf>, pp. 2-3, accessed 7 November 2017.
- ¹¹³ Transcript, Colleen Gwynne, 12 October 2016, p. 138: lines 20-25; Transcript, Megan Mitchell, 11 October 2016, p. 40: lines 40-50; Transcript, Howard Bath, 12 October 2016, p. 114: lines 35-40
- ¹¹⁴ Submissions for the Northern Territory Government, 29 September 2017, para 25, 87.
- ¹¹⁵ The fact of the telephone calls was recorded, but not the actual audio of the call.
- ¹¹⁶ Exh.011.001, Statement of Dr Howard Bath, 5 October 2016, tendered 31 March 2017, para 6; *Care and Protection Act 2009* (NT) s 260(2)(a) (as in force 18 August 2010).
- ¹¹⁷ *Care and Protection Act 2007* (NT) ss 259, 260 (as in force 7 May 2008).
- ¹¹⁸ *Care and Protection Bill 2007* (NT), Explanatory Memorandum Cl. 257.
- ¹¹⁹ Exh.011.001, Statement of Dr Howard Bath, 5 October 2016, tendered 31 March 2017, para 50.
- ¹²⁰ *Children’s Commissioner Act 2013* (NT) s 28(2).
- ¹²¹ *Children’s Commissioner Act 2013* (NT) s 21.
- ¹²² Exh.011.001, Statement of Dr Howard Bath, 5 October 2016, tendered 12 October 2016, para 99(k); Transcript, Howard Bath, 12 October 2016, p.144: lines 20-23; Transcript, Colleen Gwynne, 12 October 2016, p. 129: lines 5-11, p. 138: lines 1-5.
- ¹²³ Exh.520.000, Statement of Colleen Gwynne, 29 May 2017, tendered 19 June 2017, paras 79-80.
- ¹²⁴ Exh.053.028, Annexure 18 to Statement of Dylan Voller, ‘Own Initiative Investigation Report: Services Provided by the NTDCS to Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre’, 20 August 2015, tendered 14 December 2016, pp. 40-41, 50.
- ¹²⁵ Transcript, Colleen Gwynne, 19 June 2017, p. 4486: line 91.
- ¹²⁶ *Police Administration Act 1979* (NT) s 5.
- ¹²⁷ Exh.341.001, Statement of AY, 28 February 2017, tendered 9 May 2017, paras 93-95.
- ¹²⁸ Exh.064.276, Transcript-Conversation-[REDACTED]-5- 329.pdf, 23 September 2016, tendered 31 March 2017.
- ¹²⁹ Exh.064.276, Transcript-Conversation-[REDACTED]-5- 329.pdf, 23 September 2016, tendered on 31 March 2017; Transcript, Kirsten Engels, 9 May 2017, p. 3557 lines 41-42.
- ¹³⁰ Transcript, Kirsten Engels, 9 May 2017, p. 3557: lines 28-29.
- ¹³¹ Transcript, Kirsten Engels, 9 May 2017, p. 3575: lines 10-16; Exh.064.276, Transcript-Conversation-[REDACTED]-5- 329.pdf, 23 September 2016, tendered 31 March 2017, p. 3.
- ¹³² Transcript, Kirsten Engels, 9 May 2017, p. 3575: lines 45-47.
- ¹³³ Transcript, Kirsten Engels, 9 May 2017, p. 3578: lines 19 -21.
- ¹³⁴ Transcript, Kirsten Engels, 9 May 2017, p. 3576: lines 12-14.
- ¹³⁵ Transcript, Kirsten Engels, 9 May 2017, p. 3577: lines 12 - 29.
- ¹³⁶ Exh.348.001, Review Document, 20 September 2016, tendered on 9 May 2017.
- ¹³⁷ Transcript, Kirsten Engels, 9 May 2017, p. 3583: lines 2-3.
- ¹³⁸ Transcript, Kirsten Engels, 9 May 2017, p. 3576: lines 31-33.
- ¹³⁹ Transcript, Kirsten Engels, 9 May 2017, p. 3575: lines 36-37.
- ¹⁴⁰ Transcript, Kirsten Engels, 9 May 2017, p. 3577: lines 41-42.
- ¹⁴¹ Transcript, Kirsten Engels, 9 May 2017, p. 3588: lines 8-18.
- ¹⁴² Transcript, Kirsten Engels, 9 May 2017, p. 3577: lines 29-30.
- ¹⁴³ Transcript, Kirsten Engels, 9 May 2017, p. 3577: lines 32-35.
- ¹⁴⁴ Transcript, Kirsten Engels, 9 May 2017, p. 3582: lines 24-26.

- 145 Transcript, Kirsten Engels, 9 May 2017, p. 3581: lines 1-43.
- 146 Transcript, Kirsten Engels, 9 May 2017, p. 3581: lines 20-33.
- 147 Transcript, Kirsten Engels, 9 May 2017, p. 3581: lines 31-33.
- 148 Transcript, Kirsten Engels, 9 May 2017, p. 3578: lines 1-15.
- 149 Transcript, Kirsten Engels, 9 May 2017, p. 3579: line 39.
- 150 Transcript, Kirsten Engels, 9 May 2017, p. 3578: lines 43-47.
- 151 Transcript, Kirsten Engels, 9 May 2017, p. 3579: lines 10-11.
- 152 Transcript, Kirsten Engels, 9 May 2017, p. 3579: lines 41-44.
- 153 Transcript, Kirsten Engels, 9 May 2017, p. 3582: lines 1-2.
- 154 Exh.436.001, Statement of Conan Zamolo (Responsive to various documents), 16 March 2017, tendered 12 May 2017, para 62.
- 155 Exh.436.001, Statement of Conan Zamolo (Responsive to various documents), 16 March 2017, tendered 12 May 2017, para 63.
- 156 Transcript, Kirsten Engels, 9 May 2017, p. 3578: lines 24-26.
- 157 Transcript, Kirsten Engels, 9 May 2017, p. 3578: line 28.
- 158 Exh.347.001, Statement of Kirsten Engels, 22 March 2017, tendered 9 May 2017, para 56(d).
- 159 Exh.064.276, Transcript-Conversation-[REDACTED]-5- 329.pdf, 23 September 2015, tendered 31 March 2017, p. 18.
- 160 Exh.064.276, Transcript-Conversation-[REDACTED]-5- 329.pdf, 23 September 2015, tendered 31 March 2017, p. 16.
- 161 Transcript, Kirsten Engels, 9 May 2017, p. 3580: lines 25-26.
- 162 Transcript, Kirsten Engels, 9 May 2017, p. 3580: lines 28-29.
- 163 Exh.064.303, Engels case closure memo, 27 April 2016, tendered 31 March 2017.
- 164 Transcript, Kirsten Engels, 9 May 2017, p. 3581: lines 39-42.
- 165 Transcript, Kirsten Engels, 9 May 2017, p. 3581: line 6.
- 166 Exh.348.001, Review Document, 20 September 2016, tendered 9 May 2017, p. 11.
- 167 Exh.064.308, RE: Don Dale Centre allegations – child abuse. CONFIDENTIAL, 14 June 2016, tendered 31 March 2017.
- 168 Transcript, Kirsten Engels, 9 May 2017, p. 3584: lines 40-47, p. 3585: lines 1-7.
- 169 Transcript, Kirsten Engels, 9 May 2017, p. 3585: line 18.
- 170 Transcript, Kirsten Engels, 9 May 2017, p. 3585: lines 34-36.
- 171 Transcript, Kirsten Engels, 9 May 2017, p. 3585: lines 42-45.
- 172 Transcript, Kirsten Engels, 9 May 2017, p. 3586: lines 1-6.
- 173 Exh.349.001, NT Police Youth Detention Task Force: Review of Northern Territory Police involvements in Youth Detention Centres 2006-2016, 16 September 2016, tendered 9 May 2017, p. 3.
- 174 Exh.390.000, Statement of Kieran Wells, 17 March 2017, tendered 12 May 2017, para 12.
- 175 Exh.390.000, Statement of Kieran Wells, 17 March 2017, tendered 12 May 2017, para 18.
- 176 Exh.706.004, Youth Detention Taskforce review Memo, 15 September 2016, tendered 10 July 2017, p. 2; Exh.706.011, Youth Detention Taskforce review Memo, 16 September 2016, tendered 10 July 2017, p. 2.
- 177 Exh.706.011, Youth Detention Taskforce review Memo, 16 September 2016, tendered 10 July 2017.
- 178 Exh.390.000, Statement of Kieran Wells, 17 March 2017, tendered 12 May 2017, para 39.
- 179 Exh.349.001, NT Police Youth Detention Taskforce: Review of Northern Territory Police involvements in Youth Detention Centres 2006–2016, 16 September 2016, tendered 9 May 2017, p. 6.
- 180 Exh.389, Statement of James O'Brien, 10 May 2017, tendered 12 May 2017, para [44], [59].
- 181 Exh.349.001, NT Police Youth Detention Taskforce: Review of Northern Territory Police involvements in Youth Detention Centres 2006–2016, 16 September 2016, tendered 9 May 2017, p. 8.
- 182 Exh.895.001, Complaints by Youth (Confidential Exhibit), tendered 24 October 2017. The Northern Territory Government complaint it did not receive notice of this matter, including during the Hearing. The Commission notes that relevant documents were included in the tender bundle and the Senior Youth Justice Officer was cross-examined on this topic. Notice was given about these conclusions and the Northern Territory Government had the opportunity to respond.
- 183 Exh.064.132, Discipline – 1, tendered 13 March 2017, p. 1.
- 184 Exh.064.132, Discipline – 1, tendered 13 March 2017, p.2.
- 185 The current Northern Territory Children's Commissioner, Colleen Gwynne stated that there is a 'significant gap' between the powers given to the Commission to access children under the Children's Commissioner Act (NT) and that is required. See transcript, Colleen Gwynne, 12 October, 2016, p. 128: Lines 1-2
- 186 Transcript, Colleen Gwynne, 12 October 2016, p. 129: lines 1-45.
- 187 Transcript, Kirsten Engels, 9 May 2017, p. 3582: lines 24-26.
- 188 Exh.608.000, Statement of Neil Morgan, 25 May 2017, tendered 27 June 2017, para 15.
- 189 Transcript, Evidence of Megan Mitchell, 11 October 2016, p. 41: lines 16-26.
- 190 *Children's Commissioner Act 2013* (NT) s 21.
- 191 Submissions of the Northern Territory Government, 29 September 2017, para 110.
- 192 See also Chapter 23 (Leadership and management) for discussion of inadequate responses by the Commissioner for Corrections and Ministers to reports and advice from internal and external bodies across the relevant period.
- 193 *Young Offender Act 1994* (WA) s 182; *Children and Young People Act 2008* (ACT) s 878.
- 194 Submissions of the Northern Territory Legal Aid Commission, May 2017, p. 29.
- 195 See definitions of 'disabled person' and 'person under a disability' in s 4. See also s 36 which provides for the limitation period for causes of action under the *Limitation Act* (NT) to be extended to a maximum of three years total, where the person with the cause of action is under a disability.
- 196 Joint media release regarding OPCAT by the Minister for Foreign Affairs, the Hon. Julie Bishop MP and the Attorney-General,

Senator the Hon. George Brandis QC, 9 February 2017, <http://foreignminister.gov.au/releases/Pages/2017/jb_mr_170209.aspx?w=1CaGpkPX%2FIS0K%2Bg9ZKEg%3D%3D>. Crime and Community Safety Council, Communiqué from the Law, 19 May 2017>, p. 2, accessed 23 June 2017.

¹⁹⁷ Australian Human Rights Commission, OPCAT in Australia [consultation paper], May 2017, viewed at <http://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_OPCAT_Implementation_Consultation_Paper_2017.pdf>, para 38, accessed 7 November 2017.

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LEADERSHIP AND
MANAGEMENT

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LEADERSHIP AND MANAGEMENT

INTRODUCTION

The management of detention centres in the Northern Territory during the relevant period was fraught with challenges including, a growing detainee population, failing infrastructure, and an outdated mode of operation based on a punitive rather than a rehabilitative approach.

The youth justice system more broadly was also struggling to deal with an increasingly younger cohort, escalating offending rates and the massive over-representation of young Aboriginal people from areas as diverse as Darwin, Alice Springs, Tennant Creek, Katherine, Nhulunbuy and nearly 1,000 communities with populations ranging from a few dozen people to more than 800.

Additionally, the political environment encouraged a fluid approach to youth justice. At times, the focus was on rehabilitation, which resulted in the enactment of the *Youth Justice Act (NT)*. At other times, the approach was to be tough on crime, demonising young offenders in the hope of making communities safer.

Together these issues set the environment for challenges at all levels of the youth justice system, but particularly in how young offenders were handled in the detention system. Any organisation tasked with managing in these circumstances requires highly innovative, inclusive leadership at the ministerial, executive and operational levels. This chapter examines the leadership within the youth detention centres in the Northern Territory at each of these levels.

Throughout the relevant period, the Northern Territory had adequate legislation, parliamentary conventions and administrative guidelines to make good governance of the youth detention system feasible. Senior administrators and ministers had, or should have had, oversight of the evolving problems in youth detention.

This chapter addresses ministerial and public sector responsibilities and accountabilities for the

operation of detention centres.

The standards of responsibility and accountability for these two areas are vastly different.

A minister is accountable to his or her government, then to parliament and, finally, to the voting public.

Public sector managers have codes of conduct and powers conferred by the *Youth Justice Act*. In their general role as public servants, their overall behaviour and conduct is guided by the *Public Sector Employment Management Act* (NT).

To identify the management failures in the detention system, the actions or inaction of ministers and managers need to be judged against certain established standards. There are two overarching questions:

- were there systems in place that would enable the ministers and management to be aware, broadly, of matters which were, or ought to have been, of concern within the detention centres?
- if so, what actions did the ministers and management take to address these concerns?

If there were systems in place and the ministers and management took no action or took inappropriate or inadequate action, that should be the subject of a finding of a failure of responsibility.

The Ministers

The Northern Territory Ministerial Code of Conduct outlines guidelines to assist ministers to understand their responsibilities and obligations within the Westminster system of government and as a minister generally. The guidelines state:¹

Ministers are answerable to the Legislative Assembly (and through the parliament to the people of the Northern Territory) for the administration of their portfolios, including in relation to the expenditure of public money, in keeping with accepted conventions of Westminster system parliaments. Ministers have individual and collective responsibilities. Individual responsibilities relate to their personal decisions and conduct and the management of their portfolios. Collective responsibilities relate to the decisions of the Cabinet.

Public Sector managers

Those administering youth justice in the Northern Territory are bound by the *Public Sector Employment Management Act* (NT) (PSEMA).² The Chief Executive Officer of any department is subject to the direction of the minister.³ Section 5B of PSEMA requires that the administration and management of the public sector must be directed towards:

- informing, advising and assisting the government objectively, impartially and with integrity⁴
- ensuring that in carrying out their functions Agencies [...] work cooperatively with each other⁵
- ensuring the public sector is structured and administered so that responsibilities are clearly defined⁶ and appropriate levels of accountability are in place.⁷

Section 5C, the human resource management principle, requires that human resource management in the public sector be directed towards promoting working environments in which employees:

- are treated fairly, reasonably and in a non-discriminatory way
- are remunerated at rates appropriate to their responsibilities, and
- have reasonable access to training and development.

The responsibilities of senior departmental officials in the administration of detention centres are set out in the *Youth Justice Act*. The framework for good policy and implementation setting out the objects and principles of the *Youth Justice Act* are found in sections 3 and 4. The purpose of the *Youth Justice Act* includes:

- to specify the general principles of justice in respect of youth
- to provide for the administration of justice in respect of youth, and
- to ensure that a youth who has committed an offence is given appropriate treatment, punishment and rehabilitation.

The *Youth Justice Act* develops the general principles in a number of specific directions applicable to youth justice generally and to the management of detention centres including:⁸

- a youth who commits an offence should be dealt with in a way that allows him or her to be re-integrated into the community
- a decision affecting a youth should, as far as practicable, be made and implemented within a time frame appropriate to the youth's sense of time
- punishment of a youth must be designed to give him or her an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways
- if practicable, an Aboriginal youth should be dealt with in a way that involves the youth's community, and
- as far as practicable, proceedings in relation to youth offenders must be conducted separately from proceedings in relation to adult offenders.

The Terms of Reference for the Commission require inquiry into the:

failings in the child protection and youth detention systems of the Government of the Northern Territory during the period since the commencement of the Youth Justice Act of the Northern Territory (the relevant period).

With reference to the framework mentioned above for ensuring the accountability of ministers and senior managers within the youth detention system, the following structure will be used here to inquire into the failings of the youth detention system:

- were systems in place to alert the ministers and senior managers to the failings of the youth detention system?
- were the identified failings brought to the attention of the ministers and senior managers?
- what actions to rectify those failings were undertaken?
- were those actions adequate to address the failings?

Were there systems in place?

During the relevant period there was a system of formal briefing, including urgent 'flash briefs' and non-urgent 'ministerial briefings', for the Commissioner of Corrections to inform the Minister of any concerns within the youth justice detention system and support the Minister in advocating for his portfolio within Cabinet. There were also informal systems of email, face-to-face conversations and phone calls, which would usually be expected to take place between a minister and the head of an agency.

The Commission heard evidence about, and received numerous copies of, flash briefs and ministerial briefings advising the Minister of shortcomings identified within the detention centres.

The management structure overseeing youth detention within the Department of Correctional Services was headed by the Commissioner of Corrections, an Executive Director Youth Justice and detention centre superintendents. There were formal processes the Commissioner, Executive Director and superintendents could use for the upward and downward passage of information within their ranks. As with the minister, there were also informal processes involving emails, phones calls, meetings and casual conversations.

There were internal oversight mechanisms such as the Professional Standards Unit (PSU) that reported directly to the Commissioner. External oversight mechanisms included the Children's Commissioner, the Ombudsman and a series of reviews and inquiries commissioned by the Northern Territory Government.

Staff members at all levels within youth detention centres could raise concerns about policies and practice. Staff members were required to document practices that could affect the rights of the children and young people being held in detention. For example, the use of isolation pursuant to the statutory regime was to be appropriately recorded and justified in an '*isolation placements journal*' and later the Behaviour Management Unit placements journal.⁹ Likewise the Use of force was to be appropriately recorded and justified in the 'Use of force register'.¹⁰ Relevant staff members were required to:

- make a written record of their observations of children and young people designated as 'at risk'¹¹
- create reports on major incidents in the Integrated Offender Management System (IOMS), the primary tool for the electronic recording and storage of information relating to the management of detainees¹²
- keep a register of all searches conducted, including the name of the person searched and the reasons for, and results of, the search,¹³ and
- keep a register of complaints made at the detention centre, including the name of the complainant, the nature of the complaint and details of any action taken.¹⁴

There is little doubt there were systems and processes in place to ensure any concern within the youth detention centres could find its way via the ascending levels of management to the Commissioner and then through to the Minister.

RECORD KEEPING

The quality of record keeping within detention centres, and compliance with record keeping directives, were a subject of concern during the relevant period, as detailed in Chapter 21 (Record keeping). The inadequacy of record keeping at both the Alice Springs Youth Detention Centre and the current and former Don Dale Youth Detention Centre was a consistent theme across many of the PSU audits and internal audits between at least 2012 and 2016. The head of the PSU, Mr Ferguson, said *'over a number of years the audits and the various investigators have shown that there has been quite often poor record keeping within juvenile detention.'*¹⁵

These audit reports were provided to management for action.¹⁶ Accordingly, it fell on management to ensure that poor record keeping was addressed so that compliance could be properly monitored.

From 2012 to 2016, the Commission is aware of the receipt by management of 13 audits regarding poor recording keeping at the current and former Don Dale Youth Detention Centres and the Alice Springs Youth Detention Centre.¹⁷ The Executive Director approved or noted the recommendations arising out of eight audits,¹⁸ and the Commissioner approved or noted the recommendations arising out of four audits.¹⁹ Further, the Assistant General Manager made recommendations to remedy operational issues in Alice Springs arising from an internal audit.²⁰

Despite management approving many of the recommendations proposed in these audits, substandard record keeping continued, as the same issues were raised in subsequent audits. This was acknowledged by management. Former Corrections Commissioner Ken Middlebrook agreed that Behaviour Management Unit placement records were part of his overarching concern about poor record keeping. He said, *'I recognise since looking back at this process, what was missing out of this was a proper documented procedure in authorising that cell placement.'*²¹ Mr Middlebrook acknowledged that improved record keeping was something that he should have addressed, but that *'there were just so many issues that we were addressing in one time that just didn't happen.'*²²

As outlined in Chapter 21 (Record keeping), staff members had inadequate knowledge of, and training in, record keeping systems. They were not trained to use the record keeping system, and management knew this.

Salli Cohen, who became Executive Director of Youth Justice in 2013, told the Commission that record keeping was very poor. She said it was *'not surprising'* that records were not well kept, as staff members were not trained appropriately in record keeping.²³

Further, Mr Middlebrook said the introduction of the IOMS to NT Corrections in 2005 or 2006 was *'flawed'* and that no money was allocated for change management or training.²⁴ Additionally, the youth justice portfolio was not considered in the initial planning for the IOMS as it was thought the computer system used by the Department Children and Families, now Territory Families, was going to be used within youth justice.²⁵ Mr Middlebrook agreed that as a result of poor training, many youth justice officers, particularly casual staff members, did not know how to use the IOMS properly.²⁶

In addition to internal audits, management received reports from the Children's Commissioner concerning poor record keeping in 2014,²⁷ 2015²⁸ and 2016,²⁹ and was informed about significant inaccuracies in the records in 2015.³⁰

Other reports received by management and the Department identified poor record keeping. Salli Cohen gave evidence that a memorandum regarding the Western Australia Banksia Hill Detention Centre,³¹ prepared at the request of Minister Elferink and Commissioner Middlebrook,³² warned in

2013 of similar conditions between the former Don Dale Youth Detention Centre and those existing prior to a riot at Banksia Hill. The memorandum stated that there was a lack of centralised record keeping at the former Don Dale Youth Detention Centre.³³ In evidence, Mr Elferink stated that he did not recall ever receiving the memorandum.³⁴

Further, in December 2013, an internal report to the Department of Correctional Services, *Investigating the Operational Validity of the Recommendations from the Youth Justice Review conducted in September 2011* prepared by Jude Ellen and Trisha Dolphin (the Dolphin Report) was commissioned by Minister Elferink's Chief of Staff³⁵ to seek feedback from operational staff members about the continuing validity of the 2011 Carney Report recommendations. The report outlined that training in operating the IOMS was not a routine part of induction training for youth justice officers and was often taught by supervisors or peers.³⁶

In 2015, poor record keeping was raised again, in the independent *Review of the Northern Territory Youth Detention Report*, by Michael Vita (the Vita Report). The Vita Report stated that record keeping practices should be monitored, particularly with regard to formulating behaviour management plans for detainees and any significant periods of segregation or confinement.³⁷

As is detailed in Chapter 21 (Record keeping), youth justice officers required further training in record keeping procedures. In August 2015, a new recruitment model stipulated that youth justice officers undertake a Certificate III in Correctional Practice, including a core unit on report writing.³⁸ This was introduced alongside revised induction training that included sessions on record keeping and using the IOMS system.³⁹ Despite this training, PSU audits conducted in 2016 continued to identify record keeping issues. In a submission to the Commission, the Northern Territory Government contended that the audits reflect a delay in the training being rolled out to all staff, rather than on-going problems with record keeping per se.⁴⁰

An audit of de-escalation room procedures conducted in May 2016 at the current Don Dale Youth Detention Centre found that while there had been an improvement in journal upkeep since previous audits, not all entries had been signed off by a senior youth justice officer at the completion of each shift, as was required. Two entries identified that the period spent by two detainees in the de-escalation rooms exceeded the 24-hour limit by approximately 15 minutes each, and not all activities and decisions made regarding detainee's access to activities while in a de-escalation room were recorded.⁴¹

An audit of the Use of force and restraint procedures conducted at the current Don Dale Youth Detention Centre in August 2016 identified that some entries in the Use of force register were incomplete. Additionally, when filling out the register, officers recorded that CCTV footage was available but when the PSU requested the footage, there was none.⁴²

An audit of 'at risk' observation records conducted in August 2016 identified that the at-risk observation sheets did not record when food, water and hygiene opportunities were provided to the detainee. Further, not all recordings were made at 15-minute intervals, as required by regulation 42(2)(c) of the Youth Justice Regulations (NT).⁴³

An audit of de-escalation room procedures at the Don Dale Youth Detention Centre in October 2016 identified the same record keeping issues raised in the May 2016 audit, which are discussed above.⁴⁴

In March 2017, Territory Families implemented a new recruitment training course which also incorporates record keeping procedures, including how to use the IOMS.⁴⁵ Additionally, Territory Families has issued directives to strengthen record keeping. For example, a revised use of restraints

directive, which was authorised in November 2016 and implemented on 15 February 2017,⁴⁶ requires the General Manager of Youth Justice to provide the Children’s Commissioner with a monthly report documenting the use of restraints along with the particulars that must be recorded in the register.⁴⁷

While these changes are important steps to address poor record keeping, they have only been implemented recently. It is reasonable to assert that all of the reviews, reports and inquiries by both internal and external oversight mechanisms provided the Minister, Commissioner and Executive with the information and knowledge of poor record keeping within detention centres. Despite management’s knowledge of poor record keeping, the Commission had little evidence to suggest that shortcomings in record keeping were adequately addressed prior to the roll out of revised training in 2015. While management approved recommendations to remind shift supervisors and youth justice officers to ensure that the registers were fully and correctly completed,⁴⁸ as outlined above, substandard record keeping continued.

Finding

From 2012, management repeatedly failed to address poor record keeping practices at the current and former Don Dale Youth Detention Centres and the Alice Springs Youth Detention Centre.

This poor record keeping hindered proper oversight of the youth detention centres.

RECRUITMENT AND TRAINING

Recruitment of senior management

By late 2013, almost all key management roles in youth detention were held by people with no direct experience or qualifications in working with children and young people either in detention or any other area.

In August 2013, when Salli Cohen became Executive Director of Youth Justice,⁴⁹ she did not have any prior experience in youth detention despite having a great deal of experience in high-level administration.⁵⁰ Ms Cohen agreed that she was ‘learning on the job’ about detention centres and how they operated.⁵¹ She held this role in the crucial period between July 2013 – July 2015.

Superintendents were likewise untrained and inexperienced in working with children and young people in detention. Peter Rainbird was appointed superintendent at the former Don Dale Youth Detention Centre in December 2012 after 25 years’ experience in adult corrections.⁵² His lack of experience in youth corrections generated adverse comment in May 2013, in these terms

‘Mr Rainbird has over two and a half decades of experience in the adult custodial system, however, had no experience working with teenagers in a detention environment prior to his direct appointment to the position of General Manager, Youth Detention on 19 December, 2012.’⁵³

Russell Caldwell followed Mr Rainbird in being appointed superintendent. He, too, had little youth-specific training or experience, coming from a policy role in adult corrections in New Zealand and undergoing minimal briefing prior to commencement in the role.⁵⁴ During this time, he had all the responsibility but not the information he needed to discharge it.⁵⁵ He spent 10 months as Director of Youth Justice Programs and Services, between September 2012 and August 2013, before assuming Mr Rainbird's functions.⁵⁶ In April 2014, the role of superintendent was combined with his position as Director of Youth Justice.⁵⁷

He said it was a 'very unclear time', and he told the Commission he was:

*'... trying to effect the various requirements as I discovered them but I had no handover brief or information. Some of the aspects I was trying to deal with, as I became aware of them, learning on the job, so to speak.'*⁵⁸ [emphasis added]

Michael Yaxley was Deputy Superintendent at the former Don Dale Youth Detention Centre between October 2009 and November 2013, with a period as Acting General Manager of Youth Justice between October 2011 and November 2012. He did have many years' experience as a youth justice officer before these appointments, but limited experience in management positions.⁵⁹

James Sizeland was Deputy Superintendent of the current Don Dale Youth Detention Centre between February 2014 to May 2015 and acted as Superintendent of the current Don Dale Youth Detention Centre for a period of time in March 2014 and again in April 2015.⁶⁰ Mr Sizeland had almost 20 years' experience in adult corrections,⁶¹ and this appointment was his first in youth detention. He had no previous training working with children.⁶²

Derek Tasker, a casual youth worker at Aranda House and the Alice Springs Youth Detention Centre for 15 years, was appointed as Acting Officer in Charge in Alice Springs in early 2012.⁶³ The only training he had received at that time was three days Predictive Assault Response Training provided to all youth justice officers.⁶⁴ He did not receive any training on how to manage staff nor any updates on policies and procedures.⁶⁵

In November 2012, a damning internal review of conditions at the Alice Springs Youth Detention Centre found 'problems of such magnitude' that Mr Tasker was directed to take leave.⁶⁶ Mr Yaxley, who was responsible for putting Mr Tasker into the position, agreed that during the period of Mr Tasker's leadership there was a complete lack of regard for the basic human needs of children.⁶⁷ Notwithstanding these criticisms, Mr Tasker again assumed the role as Deputy Superintendent of Alice Springs Youth Detention Centre between February and November 2016.⁶⁸

Barrie Clee held the role of Officer in Charge and later Deputy Superintendent at Aranda House and Alice Springs Youth Detention Centre for most of the period between October 2009 and late 2015.⁶⁹ Mr Clee had experience as a youth justice officer before his appointment. However, there was no evidence before the Commission that he received any specific management training for the job.⁷⁰

Following the departure of Mr Caldwell and Mr Sizeland in about April 2015, candidates from the adult custodial division of Correctional Services assumed the roles of superintendent and deputy superintendent at the current Don Dale Youth Detention Centre.⁷¹ For a period in 2016, responsibility for the physical management of youth detention sat within adult corrections⁷² until it was transferred to Territory Families in November 2016.⁷³

The lack of experience and qualifications in youth detention held by senior managers contributed to a security-focused and punitive approach to the treatment of children and young people in detention from 2013.

For example, on 31 August 2011, Commissioner Middlebrook issued a directive that was adapted from an adult directive, which allowed children and young people in detention to be ‘housed in an area of the institution that enables management away from others prisoners’ pursuant to the formulation of an Intensive Management Plan (IMP).⁷⁴ Commissioner Middlebrook agreed that the IMP directive sought to confer broad discretionary powers to the Officer in Charge of a detention centre to isolate children and young people without privileges for up to two months.⁷⁵

In September 2013, in response to warnings of the likelihood of a major incident at the former Don Dale Youth Detention Centre, Commissioner Middlebrook suggested that prison officers assist youth justice staff ‘to build up some security awareness’.⁷⁶ In the same letter he noted that care needed to be taken to get the right people from the prison officer ranks.⁷⁷ Ms Cohen agreed that this was part of a tougher regime of using prison guards and more prison guard approaches to improve the security of the detention centres.⁷⁸

In April 2015, Commissioner Middlebrook approved a directive authorising the use of approved restraints, including restraint chairs, in youth detention centres in the Northern Territory.⁷⁹

Punitive and security focused approaches are inconsistent with the rehabilitation of children and young people in detention.⁸⁰ Further, an external reviewer in 2016 said:

*flaws in the Northern Territory Department of Corrective Services approach to the management and rehabilitation of youth offenders...a lack of leadership and supervision of staff; complacency and/or lack of staff training and understanding in the management of youth offenders’ contributed to the incidents in youth detention rather than the incidents being a reflection on the increased dangerousness of the youth offenders.*⁸¹

Findings

From late 2013, senior managers were appointed to the Northern Territory youth detention system who, in the main, lacked experience and/or qualifications in youth detention.

The lack of experience and qualifications in youth detention of senior managers contributed to a punitive and security-focused approach to the treatment of children and young people in detention.

Derek Tasker was appointed to the role as Deputy Superintendent of Alice Springs Youth Detention Centre between February and November 2016 despite an internal review in 2012 identifying his incompetence in his role as Acting Officer in Charge Alice Springs and found problems of such magnitude that he was directed to take leave.

Recruitment – Youth Justice Officers

Recruitment policy matters greatly in youth detention. On the ground staff members who administer a youth detention centre must be a primary focus of management. Staff members interact, guide, comfort and discipline the vulnerable and often traumatised young people in detention. Most of the principles in sections 4 and 151(2) of the *Youth Justice Act* apply directly to how the youth justice officers perform their duties. These principles are supported by international human rights rules,

which prescribe minimum recruitment standards. Staff members should be selected for their integrity, humanity and professional capacity to deal with young people, and for their personal suitability for the work.⁸² They should also be demographically representative of the young people being detained.⁸³

The report of a 2013 review of a Canadian youth detention centre stated: ‘Staff are the “makers or breakers” of youth experience’.⁸⁴ The Commission’s own investigations have confirmed that this is the case.⁸⁵ Proper staff recruitment is the absolute foundation of a successful youth detention system.

As shown in Chapter 20 (Detention centre staff), staff recruitment and training in the Northern Territory’s youth detention centres during the relevant period was, for the most part, poor. Training was brief, not mandatory and not properly refreshed. The workforce were under qualified and overcasualised. There were few Aboriginal and female staff members. High staff turnover and ‘burn-out’ was endemic.⁸⁶

The need for a good staffing model and recruitment policy

Establishing and implementing a recruitment policy is a high-level management function, while detention centre is operated by the superintendent, who bears the ultimate responsibility for recruitment and rostering.

From 2009, there was no coherent recruitment policy, which led to the evolution of a heavily casualised, poorly trained workforce.⁸⁷ Insufficient attention was paid to drafting and implementing a good detention centre workforce model before 2015.⁸⁸ This had an obvious impact on staff performance in that time.⁸⁹

The failure to adopt good staffing and recruitment models is evident, as workforce issues were well known to senior executives for many years. In 2004, recommendations were made to the Department of Justice to improve recruitment and training, *inter alia* by enhancing recruitment processes, using formal selection criteria for casual staff, and preferring candidates with skills to contribute to rehabilitation programs.⁹⁰ A decision about the future role, functions and staffing of the Alice Springs Youth Holding Centre (Aranda House) was also recommended.⁹¹ But none of the recommendations in relation to staff development and training from the 2004 review were implemented.⁹² A subsequent PSU investigation into this failure found that momentum to implement the findings stalled in 2006 in part due to the departure of a number of key staff members in human resources and because the will to implement change was lacking.⁹³

By 2009, when Dr Gary Manison, an external corrections and security consultant, reviewed human resource practices, he noted that the lack of appropriate recruitment and selection procedure was due to the cost. Dr Manison indicated that the high proportion of casual workers was related to the significant fluctuation in detainee numbers and consequent staffing levels needed.⁹⁴ He said it was apparent that recruitment in youth detention was by word of mouth and ‘*all that seemed to be required to obtain a job was to know someone who already worked there.*’⁹⁵ The Northern Territory Government in a submission to the Commission refute that this was the case, citing the evidence of Mr Sizeland that recruitment was undertaken via an advertisement and panel process and Mr Yaxley that there was only one occasion when he was contacted directly by an individual seeking employment.⁹⁶ What ever the case, the negative effects of the predominantly casualised workforce were apparent. Notably, training was hindered and disrupted.⁹⁷

Deputy superintendents from the former Don Dale Youth Detention Centre gave evidence that at least after 2009, some recruitment was through newspaper advertising, job descriptions and interview

by a selection panel.⁹⁸ Minister for Correctional Services Gerald McCarthy suggested that staff recruitment and turnover were issues he tried to address during his time as Minister for Correctional Services, between 2009 and 2012.⁹⁹ He said he had some limited success initiating a staged increase in youth worker pay and conditions.¹⁰⁰

Despite these attempts to address recruitment issues, the Commission heard evidence that the problems continued. As detailed further in Chapter 20 (Detention centre staff), the workforce at the former Don Dale Youth Detention Centre became increasingly casualised from 2010 onwards following an increase in detainee numbers and consequent demand for additional staff to maintain the 1:5 staff-to-detainee ratio.¹⁰¹ The staffing issues in Alice Springs following the opening of the Alice Springs Detention Centre in March 2011 are detailed below.

In 2011, staff recruitment and training was in a *'parlous state'*, which was apparent to former Executive Director of Youth Justice with the Department of Justice, Margaret Anderson.¹⁰² Selection of youth justice officers was *'for the most part, based on the number of applicants and the spaces to be filled within the centres to safely run them.'*¹⁰³ In 2012, Mr Middlebrook who was then Executive Director of Correctional Services, and Deputy Director of Custodial Operations Phil Brown, were informed that in some instances, casual staff members with no prior experience in youth detention were being recruited at Alice Springs, staff members with no formal training were being rostered and insufficient or no background checks were being conducted on prospective staff members.¹⁰⁴ Both endorsed a recommendation by the PSU that a *'full and formal recruitment process ... be implemented'* as well as a Certificate II qualification for staff.¹⁰⁵

However, it appears that as of December 2013 nothing had been done, and little had changed despite continuing awareness. The 2013 Dolphin Report, which considered operational requirements in youth detention, found that many staff members at the Alice Springs Youth Detention Centre had been in their job for less than 12 months and had *'little or no experience in detention or youth services.'*¹⁰⁶

By 2011 and 2012, Mr Yaxley said he had a pool of 40 to 45 casual staff members available for roster at the former Don Dale Youth Detention Centre,¹⁰⁷ and that this over-casualisation was detrimental to the financial management of the centre.¹⁰⁸ At the Alice Springs Youth Detention Centre, there was only one full-time employee, and all casual positions were unfunded.¹⁰⁹ The complexity of rostering was time-consuming. It was made more challenging by the *'massive turnover in casual staff'*. There were occasions when the 1:5 ratio of staff to detainees could not be met.¹¹⁰ There were *'huge challenges'* in being able to recruit casual staff quickly enough, making it difficult at times to ensure there were enough staff members to fill each shift.¹¹¹ This led to *'long-term staff stress'* as many youth workers would undertake back-to-back shifts, with the second shift performed as overtime. This also led to a *'blow-out'* in the budget.¹¹²

Senior management was repeatedly made aware of issues caused by short-staffing and the high staff turnover.¹¹³ The difficulties included, recruiting casuals quickly enough for them to be trained and to start work, ensuring there were enough staff to cover each shift, long term stress for workers doing overtime due to lack of staff, and high staff turnover.¹¹⁴ Mr Yaxley said he reported the ongoing problems with recruitment and the high dependency on casual youth justice officers to his direct managers and to the Commissioner. He said he included reference to the matters in his monthly reports to the Executive Management group meetings.¹¹⁵ Mr Brown made similar reports to the Executive Directors meetings when he was Deputy Director of Operations between March 2011 and August 2012.¹¹⁶

Senior management also knew that staffing issues contributed to, or might contribute to, problems at the youth detention centres. In September 2014, senior management was aware that the failure

to implement adequate recruitment procedures had contributed to incidents at the centre.¹¹⁷ Management was aware that staffing at the Alice Springs Youth Detention Centre barely met duty of care requirements for the supervision of detainees.¹¹⁸ Management was also aware of allegations of assault by staff members.¹¹⁹ Ms Cohen warned Commissioner Middlebrook that they were *'very close to a major incident'* at the former Don Dale Youth Detention Centre.¹²⁰ He responded that the staff training and provision of adequate numbers of permanent staff members required immediate attention and that staffing was well and truly on the agenda.¹²¹

Detention centre management tried to engage interest in improving the staffing model. In 2013, the then Superintendent Peter Rainbird developed a new staffing model for youth detention in consultation with senior staff members in Darwin and Alice Springs.¹²² He provided the model to the Executive Director and the Commissioner, but was informed *'there was insufficient funding for it at this time'*.¹²³ He also prepared written reports for the Corrections Leadership Group (CLG), as well as reports on various staffing models.¹²⁴ In a report to the CLG in June 2013, Mr Rainbird identified *'staff burn out due to too many hours'* as a risk for youth detention and the *'staffing model for both Don Dale and Alice Springs Detention Centres'* as a priority.¹²⁵

The rise and fall of a 2013 Cabinet submission aimed at rescuing recruitment and training illustrates the lack of action on the part of senior management and Ministers. Russell Caldwell assumed the role of Executive Director of Youth Detention for a short period in June 2013. He reviewed and revised a draft Cabinet submission on youth detention, at Commissioner Middlebrook's request. This submission was *'an attempt to address the real time issues we were facing on a daily basis'*,¹²⁶ which included the inadequacy of staffing in the detention centres, including an over-reliance on casuals, the lack of recruiting and selection criteria, and the *'paucity of training'* for youth justice officers.¹²⁷ He said many of the issues dated back a number of years.¹²⁸ After revision, primarily *'to make the cost of the recommendations fit within likely available resources'*,¹²⁹ the Cabinet submission was redrafted. A draft dated September 2013 included \$2 million for staffing in the current year and \$4.14 million ongoing in future years¹³⁰ to reduce reliance on casual staffing.

However, in October 2013, Mr Caldwell circulated a revised draft, which dropped the request for the staffing model funds, apparently at Commissioner Middlebrook's behest. He noted in an email to recipients, including the Commissioner and Executive Director Ms Cohen: ¹³¹

'Following direction from the Commissioner the \$2M bid for the staffing model has been removed from the submission and will form part of a future submission following the completion of the review of youth detention and or the wider youth justice framework.'

This occurred despite Ms Cohen's express warning to Commissioner Middlebrook one month earlier that they were *'very close to a major incident'* and *'the reality of DD is not captured and will not be "fixed" by the current scope of the submission'*.¹³² He responded that *'the training of staff and adequate numbers of permanent staff requires immediate attention'*.¹³³ He agreed the issue of staffing was *'well and truly on the agenda'* at the time he sent that email.¹³⁴

Before the end of 2013, Minister John Elferink who was Minister for Correctional Services from 2012 to July 2016 *'made it clear'* there was no way Cabinet would support spending \$12 million on the refurbishment of the detention centres and the staffing model in 2013.¹³⁵ Mr Middlebrook said that around this time he met with Minister Elferink about the Cabinet submission and Minister Elferink encouraged him to strengthen the bid for staff improvements by putting forward a submission at a later date that was backed by an external consultant's report.¹³⁶ Commissioner Middlebrook did so, however, the request for additional funding for staff improvements was not approved by Cabinet in March 2014. Instead, following a revision of the draft submission on Treasury advice, Cabinet

approved the re-direction of existing Department of Correctional Services funds in the amount of \$1.32 million to cover a youth detention budget shortfall in existing staff costs¹³⁷

Despite two reviews in 2013, the Banksia Hill memorandum and the Dolphin Report, which both warned of inappropriate recruitment methods, nothing was actioned until after the Vita report. A year later, the PSU's report of 19 September 2014 noted that the failure to implement adequate recruitment procedures had contributed to incidents at the former Don Dale Youth Detention Centre.¹³⁸

It was not until 2015, following a further review that a new recruitment process was implemented. In 2015, a bulk recruitment process commenced with the aim of transitioning from a predominantly casual workforce to a permanent staffing model.¹³⁹ However, in May 2015, Ms Cohen noted in an email to Commissioner Middlebrook that while changes could be made, she did not believe things could be done quickly 'or without measures such as the right amount and the right staff'.¹⁴⁰ In May 2015, the then Deputy Superintendent of the current Don Dale Youth Detention Centre told Commissioner Middlebrook after his first week at the centre of an operational review that warned:

*The centre appears to be short staffed and a strategic HR and training initiative needs to be commenced so that there is a staff recruitment and retention plan. Due to an over reliance on casual staff there is a lack of experience and working knowledge which impacts on the operation and running of the centre.*¹⁴¹

Recruitment problems in Alice Springs

As detailed in Chapter 20 (Detention centre staff), there was a range of problems at the Alice Springs Youth Detention Centre, including a casualised workforce.

After the Alice Springs Youth Detention Centre was opened in March 2011, the then Superintendent of Youth Detention, John Fattore, informed Commissioner Middlebrook and the Deputy Director Strategic and Executive Services, Margaret Anderson, that the existing staffing model in Alice Springs would not meet the requirements for basic supervision. Aside from the Officer-in-Charge, all other staff members were low-level (AO3) youth workers.¹⁴² He drafted a Cabinet submission, on instructions, forwarding a draft to Phil Brown and Ms Anderson in July 2011.¹⁴³ However, he was told, after August 2011, that a decision had been made not to forward the submission for Cabinet's consideration. He was not told why.¹⁴⁴ Despite this, in October 2011, Mr Fattore drafted a business case calling for a reallocation of internal funds 'to address current operational risks associated with the staffing structure of the Alice Springs Youth Detention Centre'.¹⁴⁵ His opinion then was that staffing levels in Alice Springs were below that required to meet the bare minimum standards of care for children held in detention.¹⁴⁶ Soon after he prepared the business case, Mr Fattore left his role and could not progress the matter further.¹⁴⁷

However, Barrie Clee raised the matter 'many times' with management when he was based at the former Don Dale Youth Detention Centre in 2012.¹⁴⁸ He raised it with the then Superintendent of Youth Detention, Michael Yaxley and with the training department.¹⁴⁹ Mr Clee said the general response from Mr Yaxley was that permanent staff members could not be appointed until a permanent staffing model was approved for the Alice Springs Youth Detention Centre.¹⁵⁰ This did not occur and problems continued when he returned to Alice Springs in 2013. Staff members on casual contracts were not being paid for 'weeks and weeks and weeks', which forced some good employees to leave.¹⁵¹ Mr Clee said he knew of one officer who was not paid for eight weeks and another who was not paid for 11 weeks.¹⁵²

As noted above, Mr Yaxley said he reported the ongoing recruitment problems and the high dependency on casual youth justice officers to his direct managers and to the Commissioner. He said he also included reference to the matters in his monthly reports to the Executive Management group meetings.¹⁵³

Throughout 2012, a number of escapes occurred at the Alice Springs Youth Detention Centre, and also at Aranda House, which continued to operate despite the youth detention centre having opened.¹⁵⁴ When briefed about these matters by the Department of Justice, Minister McCarthy was informed of the inadequacies of the centres in terms of security, the accommodation of female detainees and the delivery of education and rehabilitation programs.¹⁵⁵ Similar advice was given to the Minister at this time by the Youth Justice Advisory Committee.¹⁵⁶

Commissioner Middlebrook said he was reminded *'on a regular basis'* by Minister Elferink, that the Chief Minister and the Treasurer were highly critical of the cost of Corrections and were *'looking for a substantial efficiency saving from the department'*. He was aware that *'the department was never really able to keep Alice Springs Correctional Centre or the Youth Justice Detention centres fully staffed due to the delay in recruitment and training and the consistent pressure from the government to contain staff numbers'*.¹⁵⁷

Even with the bulk recruitment process in 2015, staffing problems at the Alice Springs Youth Detention Centre remained *'critical'* in October 2015, and this was raised with senior management.¹⁵⁸ Mr Clee said he raised concerns about staff shortages with Human Resources, the Executive Director and the Superintendent via phone and email, particularly in 2014 and 2015, but *'did not get a satisfactory response or more staff from the Department'*.¹⁵⁹ In an email sent in October 2015, Mr Clee told the head of the PSU, David Ferguson, that the bulk recruitment had not addressed staff shortages in Alice Springs and:¹⁶⁰

'This was raised at meetings with Salli [Cohen], and outcomes or further staffing issues were either ignored or discussed further without my involvement.'

Mr Ferguson raised the issues in Alice Springs with Commissioner Middlebrook, noting *'I don't think you are being kept informed about the issues down there in Youth Detention'* and *'the current feeling is that no one wants to tackle the problem, even though they are constantly reminded of the issue'*.¹⁶¹

The Commission was struck by the lack of effective action on recruitment at the senior executive and ministerial levels during the relevant period. This was despite the problem being clearly identified by independent reports and in communications at all levels over several years. The Commission has concluded that the recruitment problems were well known to senior management and at the ministerial level, from 2009 at the latest. A paralysis of will appears to have afflicted the Northern Territory Government, leading to the deployment of a workforce containing many unsuitable workers.

Findings

During the relevant period, ministers and senior staff members received numerous internal and external reports, reviews, advices and briefings on the failure to develop and implement a comprehensive workforce model for detention centres in the Northern Territory.

During the relevant period, ministers and senior management were aware of

the risk implications for detainees, staff and the operations of detention centres due to the lack of a comprehensive workforce model for youth detention centres in the Northern Territory.

Despite clear warnings, senior management failed to act on those reports, reviews, advices and briefings, to develop, resource and implement a comprehensive workforce model for youth detention centres in the Northern Territory. This resulted in a predominantly unskilled and casual workforce.

The failure by ministers and senior management to act led to a deterioration in the application of the objects and principles of the *Youth Justice Act (NT)* as it related to youth detention.

Training

The deficiencies in staff training in detention centres was known to senior management and should have been known at the ministerial level as far back as 2004 when a departmental review of human resources in juvenile detention identified the need for a complete overhaul of the staffing and recruitment model. The recommendations from that review included that:¹⁶²

- planning commence for the development of a Senior Youth Worker and Youth Worker salary structure tied to the attainment of appropriate qualifications
- the Certificate IV in Youth work (Juvenile Justice) be adopted as the minimum qualification for Youth Workers ,and
- a more comprehensive training and induction package be introduced.

Recommendations made in 2004 had still not been implemented by the time a further review was conducted in 2009.¹⁶³ The 2009 review concluded that the youth detention system left ‘under-qualified, unskilled and undertrained staff’ responsible for children in the care of Northern Territory Correctional Services and that there was a ‘high risk’ of breaches of duty of care.¹⁶⁴ The recommendations in this report, which reflected many of those made in 2004, were largely not implemented.¹⁶⁵

As outlined in Chapter 20 (Detention centre staff), the workforce was increasingly casualised, untrained or poorly trained. Those who did receive training only received a 2–3 day induction on restraint techniques, called PART, and the basics of handcuffing. Sometimes this was supplemented by ‘shadow shifts’ with ‘more experienced’ staff members. At times, casual staff members were allowed on the floor with no training at all. The training deficiencies, combined with poor recruitment practices and the lack of standard operating procedures (Standard Operating Procedures) contributed to the increasing problems within the detention centres— see the discussion in ‘Operations’ section below.

The Ministers, the Commissioner and other senior management knew the deficiencies in training were contributing to the problems experienced in detention. The Banksia Hill memorandum,¹⁶⁶ which Ms Cohen says was prepared at the request of Minister Elferink and Commissioner Middlebrook¹⁶⁷ in September 2013, identified training and organisational issues at the former Don Dale Youth Detention Centre and warned of a riot-type incident at the detention centre if action was not taken.¹⁶⁸

The Dolphin Report which was released in December 2013 again raised problems with staff training and morale, and the lack of management and strategic direction.¹⁶⁹

Minister Elferink told the Commission he had no recollection of the Banksia Hill memorandum or the Dolphin Report.¹⁷⁰ He accepted, however, that he would have expected Commissioner Middlebrook to raise the issues in the reports with him,¹⁷¹ that Commissioner Middlebrook expressed to him concerns about the former Don Dale Youth Detention Centre on a number of occasions¹⁷² and that he had his own concerns about staff training and reactive detainee management.¹⁷³ He also accepted it was highly likely that Commissioner Middlebrook discussed with him the notion that a hardening or toughening approach would not yield improvement, but rather a holistic approach underpinned by rehabilitation and positive relationships was required, as stated in the Banksia Hill memorandum. Mr Elferink told the Commission that he agreed with this approach.¹⁷⁴

From 24 October 2014, Minister Elferink was also aware of the concerns held by the Children's Commissioner in relation to inadequate staff training. Crucially, there was complaint of the inadequacy of staff training with respect to managing detainees' challenging behaviours, the ongoing monitoring and certification of staff members for using crisis management techniques, and the overall adequacy of policies and procedures for managing challenging behaviours.¹⁷⁵

Other evidence showed that he favoured a *'tough on crime'* approach and considered implementing stricter regimes and punitive measures. In general, he accepted that he had hundreds, if not thousands of conversations with Commissioner Middlebrook on a wide range of topics across the portfolio and said that he was *'never backward in coming forward in terms of the issues he faced as Commissioner'*.¹⁷⁶

In March 2016, Minister Elferink sent an email to the Chief Minister's Chief of Staff outlining potential matters to advance as part of an electoral campaign. The list included potential *'tough on crime'* measures such as allowing *'greater restraint powers in juvenile detention'*, amending the youth justice legislation *'to remove the notion that custody for a child is a last resort'*, and creating a *'substantially enhanced juvenile squad to target known ratbag families'*.¹⁷⁷ In evidence Mr Elferink explained that the list was a *'brainstorming'* exercise and were not necessarily endorsed by him or his government as policy.¹⁷⁸ Mr Elferink could not point to any evidentiary basis to support the efficacy of tough on crime policies such as increases in sentences imposed but agreed that this stance reflected the opinion of the public.¹⁷⁹

Mr Middlebrook told the Commission he was sceptical about the efficacy of tough on crime policies and acknowledged that there was no evidence to suggest that this political agenda had any benefits for the rehabilitation of children and young people in detention. Rather, he said that *'tough on crime'* means more numbers, overcrowding and stress on the system.¹⁸⁰

Designing and delivering a training program is a strategic matter. Ministers had responsibility for funding it and championing it in an environment which the Commission accepts had significant fiscal restraints.¹⁸¹ Responsibility for delivering it rested with the Commissioner and senior management, and they had the obligation to ensure training was adequately implemented in youth detention at the time.¹⁸²

Responsibility for facilitating it and supporting it lay with the superintendents. While some superintendents called for more and better training, sometimes staff members were unable to attend training as it interfered with shift management – as outlined in Chapter 20 (Detention centre staff). It appears superintendents were torn between support for much-needed training and a reluctance to release staff from on-site duties for further training.¹⁸³ For example, in 2011, a four-week induction program for youth justice officers was offered, involving Leonard de Souza, but the program was only delivered once in around March 2011.¹⁸⁴ A report produced by the Children's Commissioner regarding training in May 2012 records that a three-week induction program was delivered only twice, in March 2011 and August 2011.¹⁸⁵ Mr Yaxley said a three-week program was delivered in

August 2011.¹⁸⁶ The program was subsequently cut back to two weeks, then to one week.¹⁸⁷ Another said the program was cut due to operational requirements as it was not feasible for youth justice officers to be absent from the centre floors for more than two-and-a-half weeks.¹⁸⁸

The inability to provide training in these circumstances was symptomatic of a crisis-driven management model.

The importance of the training shortfall must have been known to senior management by developments within the detention centres. From 2010 onwards, detainee numbers increased. Staff members were observed '*running things as they saw fit*'. There was a lack of consistency and a sense of chaos for both the staff and the detainees.¹⁸⁹ An escalation in bad behaviour and violent incidents among detainees was also noticed by those on the floor. By mid-2011, poor recruitment and training practices were obviously affecting detention centres in the Northern Territory.

Minister McCarthy accepted that he became aware, through flash briefs, ministerial briefings and his own visits to detention centres, of issues demonstrating low skill sets, low morale and a lack of motivation among detention centre employees. He believed that the matters could be addressed through improved training, professional enhancement and better pay and conditions.¹⁹⁰ He said he achieved some success in those areas during his time as minister.¹⁹¹ However, as outlined above, problems with training continued to be raised in internal and external reviews after Minister McCarthy ceased his term as Minister for Correctional Services in 2012.

The problems with training remained untreated despite clear warnings. Between 2011 and the beginning of 2015, Mr de Souza repeatedly raised his concerns with superintendents, deputy superintendents¹⁹² and other senior executives¹⁹³ about the adequacy of training and the failure of staff members to attend training.

Early in 2013, Superintendent Peter Rainbird reported on the issue of training and recruitment, including the need for Certificate III and IV qualifications, at fortnightly meetings with Executive Directors of Youth Justice, Ms Anderson and Ms Cohen. He met with the Director of Youth Justice Russell Caldwell to discuss the restructure of the youth justice system.¹⁹⁴ Ms Anderson, with Mr Yaxley, Mr Clee, Mr Rainbird and Mr de Souza, developed a curriculum for a Certificate IV in Youth Justice, and Ms Anderson understood trainer Jenni Gannon started the process of obtaining accreditation for the course by the time she left her role in June 2013.¹⁹⁵ In a report to the Corrections Leadership Group in June 2013, Mr Rainbird noted that 'Certificate IV' in Juvenile Detention was approved to commence.¹⁹⁶ Yet, the first course was not provided to new recruits until August 2015 and this was a Certificate III qualification, not the Certificate IV.¹⁹⁷

Throughout 2013 it became even more acute. After assuming the role of Executive Director of Youth Detention in June 2013, as discussed above Mr Caldwell began, at Commissioner Middlebrook's behest, to review and revise a draft Cabinet submission on youth detention that included improvements to training. This submission was an attempt to address '*the real time issues*' that were being faced '*on a daily basis*'¹⁹⁸ which included the adequacy of staffing in the detention centres, including the over-reliance on casuals, the lack of recruiting and selection criteria, and the '*paucity of training*' for youth justice officers.¹⁹⁹ Mr Caldwell said many of the issues were longstanding and dated back a number of years.²⁰⁰ However the funding to improve staffing issues was ultimately abandoned.

By 2013, the issue of lack of formal training had been on the agenda at the highest levels of management for several years.²⁰¹

In May 2015, Minister Elferink authored a reflection on Commissioner Middlebrook's resignation,

in which he expressed regret at not having done more to address the training problem which Commissioner Middlebrook had identified to him.²⁰² In these circumstances, whatever he now recalls or does not recall,²⁰³ the Commission concludes that Minister Elferink had information of the training shortfall crisis by late 2013. Further, the Commission is satisfied that the Minister was aware, or ought to have been aware, by December 2013 that youth detention in the Northern Territory was strategically and philosophically directionless and under-resourced and this was characterised, in part, by the existence of staff with wholly inadequate training and low morale.

Incidents in the Behaviour Management Unit at the Don Dale Youth Detention Centre in August 2014, which culminated in the tear-gassing of detainees, represented the culmination of the longstanding and well-understood problems facing youth detention, including the failures in recruitment, training and staff leadership. Mr Caldwell agreed there was a lack of training for those working with the children and young people in the Behaviour Management Unit in the lead-up to those events and that none of the employees involved would have had training in de-escalation techniques, cross-cultural awareness or taking a trauma-informed approach.²⁰⁴ Mr Ferguson's report of 19 September 2014 concluded:

*'It should be obvious to anyone that if you treat youths like animals by not communicating, threatening, belittling them, withholding food and other entitlements they will react in an aggressive way. Most of these incidents were probably entirely preventable with the use of appropriate communication and open interaction with the detainees combined with a regular routine to keep them occupied.'*²⁰⁵

From at least 24 October 2014, Minister Elferink was aware of the concerns held by the Children's Commissioner in relation to inadequate staff training. A draft report received on that day drew an alarming picture of training in youth detention and pointed to inconsistencies in the information provided to the Children's Commissioner about the level of training provided.²⁰⁶ On the same day, Minister Elferink received a letter which provided a high-level summary of these concerns.²⁰⁷ They included the use of inappropriate and excessive force against a child in a youth detention facility on multiple occasions and the use of excessive periods of isolation to manage behaviour. There were complaints of staff misconduct regarding the documentation of incidents, including failures to produce video material and other evidence, and of apparent failures to report abusive incidents to the police, to conduct internal investigations into allegations of assault against detainees and to comply with internal policy directives.

Crucially, there was complaint of the adequacy of staff training with respect to the management of challenging behaviours, the ongoing monitoring and certification of staff members for using crisis management techniques, and the overall adequacy of policies and procedures for managing challenging behaviours. The letter also noted that the confidential report included 'portions of three video tapes that were acquired as evidence in the course of the investigation'.

In late 2014 and 2015, it was the same staff, untrained and without any direction in the absence of up to date Standard Operating Procedures and leadership, who were left to manage the ad hoc detention centre at Holtze Youth Detention Centre and the premature move in December 2014 of the entire centre to the old Berrimah goal. On 8 January 2015, a PSU review of the cell placements imposed on detainees at the current Don Dale Youth Detention Centre found, among other things, that staff members were not aware of the minimum requirements for out-of-cell time. None of the eight detainees on placements had received sufficient out-of-cell time on certain days.²⁰⁸ In a response to a 'please explain' letter from the Commissioner, Mr Caldwell said it was clear that staff members had a varying understanding of the newly introduced Standard Operating Procedures.²⁰⁹

Documents before the Commission indicate the policy regarding the minimum out-of-cell time was not new, and had in fact been unchanged since before the move to the Holtze Youth Detention Centre in August 2014.²¹⁰ In submissions to the Commission, the Northern Territory Government stated that it was a procedure and not a policy and that the procedure provided that staff should endeavour to provide one hour outside the cell on each shift but that it was dependent on an individual detainee's behaviour and/or the requirements of their management plan.²¹¹ In the circumstances, the lack of knowledge, whether it be of a policy or a procedure, can only reflect poor training.

In the Own Initiative Investigation Report, released in August 2015, the Children's Commissioner noted that the 'GM', Russell Caldwell, told the Commissioner it was *'no secret there has been a paucity of training in youth justice'*, while the 'A/GM', James Sizeland, said *'there is no way in the world the training is adequate'*.²¹²

The Vita report reached clear conclusions²¹³ consistent with those of the PSU noted above.²¹⁴ Mr Vita found training was *'grossly inadequate'* and there was a *'lack of appropriate initial and ongoing training/development, especially training to keep in step with a larger and more challenging detainee population'*.²¹⁵ Further, Mr Vita had *'no doubt that the lack of appropriate training has contributed to poor decision-making during recent incidents in the detention system'*.²¹⁶

Findings

Throughout the relevant period until at least March 2015, successive superintendents of detention centres in the Northern Territory failed to ensure that appropriate staff training was in place.

While superintendents were limited in what they could achieve by fiscal restrictions imposed by government, at times they:

- **failed to ensure staff members could be released from work to attend training**
- **allowed casual employees to be rostered on with little or no training**
- **allowed 'shadowing' in the absence of adequate training in circumstances where many of the staff members being shadowed had little experience themselves**
- **knew lack of training was a problem in the detention centres and failed to advocate effectively for adequate staff training.**

Throughout the relevant period until at least March 2015, successive executive directors and the Commissioner of Correctional Services failed to ensure that appropriate staff training was in place in youth detention centres in circumstances where they were repeatedly warned that they needed to act.

Throughout the relevant period until at least March 2015, the relevant Minister and the Northern Territory Government failed to ensure that appropriate staff training was in place in youth detention centres in circumstances where they were informed that funds would need to be allocated for this purpose.

Recommendation 23.1

The Deputy Chief Executive Officer of Territory Families ensure that training programmes for all management and operational workers in youth detention centres meet the following minimum standards:

- a. that such training programmes ensure that the physical, psychological and emotional welfare of children and young people, as well as their rehabilitation, is a principal focus
- b. that, in accordance with Regulation 64 of the Youth Justice Regulations (NT), workers are trained in ways to exercise understanding, restraint and patience in the care, control and supervision of children and young people and in the maintenance of discipline among children and young people, and to encourage positive behaviour among children and young people consistent with increasing their responsibility and independence
- c. that workers comply with, and understand, the sections of the *Youth Justice Act* (NT) and the Youth Justice Regulations (NT) concerning the use of force, restraint, searches and isolation
- d. that such training is consistent with Australia's human rights obligations with respect to children and young people held in detention, and
- e. that such training applies principles and standards of the Australasian Juvenile Justice Administrators.

One of the criteria for the assessment of the Deputy Chief Executive Officer of Territory Families work-place performance be ensuring compliance with the above obligation.

Recommendation 23.2

Territory Families develop, in conjunction with Australian Juvenile Justice Administrators and an appropriate training institute, a course on managing youth detention whose content reflects best practice internationally and from other Australian jurisdictions, to be undertaken by those in senior management positions in youth detention centres in the Northern Territory.

OPERATIONS

Stability and leadership are crucial to the fulfilment of the statutory duties described in the *Youth Justice Act*. The Commission heard evidence to this effect. Mike McFarlane, superintendent of Queensland's Lotus Glen Correctional Centre, told the Commission that for a facility to run effectively, there needs to be a clear philosophy, managers who believe in that philosophy and who will reinforce it with staff, and multiple champions in the senior management and executive who support that philosophy and will help overcome opposition to it.²¹⁷

This was well understood at every level, in theory. Mr Elferink said, '*places of detention are not about bars, wire, concrete and locks. What they are is about systems.*'²¹⁸ Senior management were well aware, for example, of the Banksia Hill memorandum which stated:

Stability in a custodial environment is achieved through striking the right balance between order, control and justice. Centres that are able to achieve the right balance have strong leadership and positive proactive management which provide the Centre with a clear sense of direction and purpose. As a result, staff know what they are doing, why they are doing it and are familiar with the governing rules. There is a strong emphasis on keeping detainees occupied through appropriate, consistent and ongoing programs and services, and on positive staff detainee relationships and interactions.²¹⁹

Staff members said they needed consistency and guidance from leaders. One said: 'What's our philosophy? How do we understand where we have been and what hasn't worked?'²²⁰

Other chapters in this report have identified systemic issues with the way youth detention centres were run. These include the following areas:

- **daily routines:** Staff members gave evidence about how a lack of up to date standard operating procedures contributed to the failure to provide consistency in daily routines.²²¹
- **detainees' knowledge of rules and daily routines:** There was an over-reliance on written information, admissions handbooks were generic and did not sufficiently provide all detainees with the opportunity to understand the rules and their rights and responsibilities within the detention centres.²²²
- **unstable program delivery:** A range of programs existed throughout the period, relating to activities such as music, gardening and electronics. Some were ad hoc and were discontinued under different managers. Some were completely inappropriate, such as teaching detainees how to fight. This is discussed further below.
- **an unreliable and ill-equipped medical regime:** A reactive system of health care was in place in the detention centres, offering minimal ongoing medical assessments and treatment. The system relied on detainees self-referring for medical attention by asking and relying on youth justice officers for assistance to access the health services. The Commission heard of the risks associated with a system where youth justice officers were the gatekeepers of medical attention. These officers were not trained to identify medical issues, and at times did not take seriously some requests for medical assistance from detainees unless, or until, the need was visibly obvious. A lack of mental health services also meant that for most of the relevant period, youth justice officers were working with children and young people with complex mental health needs with no on-site expert support and little to no training.²²³

Inconsistent individual approaches by staff members and centre management fuelled each of these problems. Fundamental aspects of operations were subject to the discretion of individual staff members.

The chief problems were a lack of adequate leadership and lack of proper procedures. Superintendents needed to lead, to be a presence on the floor, be available to detainees and youth justice officers, develop and enforce procedures, and discourage and discipline staff misconduct.²²⁴ Such leadership was not always evident, however, and when it failed, an operational vacuum developed.²²⁵ An illustration of this is the evolution of 'Jimmy's boys' under Mr Sizeland's leadership. A group of staff members, some of whom were inappropriately recruited, apparently favoured by Sizeland behaved in an unaccountable, inconsistent and sometimes unlawful manner. For example, evidence before the Commission suggested the use of excessive force and acts of bastardisation by some youth justice officers. Swearing at detainees by youth justice officers was widespread, but

detainees were subject to sanctions and punishments for doing the same thing. Management claimed ignorance of this conduct, and when major incidents of detainee misbehaviour occurred, Minister Elferink vigorously and blindly defended staff members while demonising the children and young people involved.²²⁶

On 28 August 2014, after the tear-gassing incident, Minister Elferink emailed adult corrections operational staff and said,

*'If you act in good faith and remain on the right side of gross negligence or criminality I will support you.'*²²⁷

At that time, Minister Elferink said publicly, *'These children are not the kind that bring home apple pie for parents, they have the ability to be very violent and extremely dangerous.'*²²⁸

In September 2014, Minister Elferink publicly referred to children and young people in detention as *'villains'* and *'the worst of the worst.'*²²⁹ In October 2015, he referred to them as *'ratbag children.'*²³⁰ In 2015, in an email to Commissioner Middlebrook, John Fattore referred to the children and young people in detention as *'our current crop of ratbags.'*²³¹

Senior management needed to provide relevant and appropriate standard operating procedures and ensure that operational noncompliance was addressed and repetition avoided. The absence of up-to-date Standard Operating Procedures for example, remained unfixed for several years.²³²

Standard Operating Procedures

The consistent application of Standard Operating Procedures (SOPs) is integral to the efficient and humane operation of a youth detention centre. SOPs provide rules and guidance on operational issues such as emergency management, detainee management, daily routines, case management, education, complaints and record keeping. SOPs should *'form the direction for all operations in the detention centres.'*²³³ Having up-to-date operational manuals which dictate how a centre should be run is central to discharging the superintendent's core duties stipulated in section 151 of the *Youth Justice Act*. Under the *Youth Justice Act*, the superintendent is bound to:

- promote programs to assist and organise activities
- supervise the health of detainees
- encourage their social development and welfare
- maintain order, safe custody and protection, and
- maintain the efficient conduct of the centre.

Ms Cohen acknowledged this when she said: *'Detention centres must have operational manuals and Standard Operating Procedures. They provide the structure as to how a facility is run and provide the conduit of continuity between and across shifts so as to ensure uniformity and a shared understanding of the running of a facility.'*²³⁴

Youth justice officers complained to the Commission of a lack of consistency between shifts, which would have been addressed had Standard Operating Procedures been enforced, and had training in their application been carried out with superintendents monitoring compliance. The different styles and inconsistent treatment of detainees by various senior youth justice officers made working shifts very difficult.²³⁵ Findings of the PSU in 2014 reflected this:

*Detainees and staff inform that there is no consistency between different shifts; one will allow you to do something while the next one doesn't. This not only makes it hard for the offenders to know what they can and can't do, it allows them to be manipulative and play one shift off against another.*²³⁶

In fact, for some nine years, between 2007 and 2014, the standard operating procedures for Don Dale Youth Detention Centre were not updated.²³⁷ The chronology of events during a period of seven years illustrates a clear management shortcoming.

In 2006, an operations manual was signed off by the Commissioner. The youth justice trainer, Mr de Souza, said that when he commenced in 2007, the manual *'didn't really reflect the current operations of the day-to-day business at Don Dale.'*²³⁸

In around 2011, Mr de Souza commenced redrafting the manual and after eight months, despite a draft being in working order, no progress was made to finalise it. In 2012, it was still in a *'comprehensive first draft form.'*²³⁹

The Alice Springs Youth Detention Centre also experienced similar issues. In 2011, a brief from Mr Shanahan, the then Chief Executive Officer of Corrections to Minister McCarthy stated:

*'The review of the procedures manual to align it with the new Alice Springs juvenile holding facility is currently underway and a Shift Supervisor from DDJDC will be tasked with ensuring its completion by October 2011.'*²⁴⁰

However, in 2013, staff members were still saying that they *'needed an operations manual that reflects what we are supposed to do within the limitation of our resources and facilities.'*²⁴¹

The lack of progress continued and it was not until 2014, some three years after the development of the Standard Operating Procedures commenced, that a manual appeared on the Don Dale Youth Detention Centre staff intranet.²⁴² However, the Standard Operating Procedures were not adequately explained to the staff at this time.²⁴³

A former youth justice policy officer within the Department of Correctional Services was given the task of drafting another procedures manual after the tear-gassing incident in August 2014, but said that she experienced a complete lack of guidance, no resources and had no operational experience.²⁴⁴

The Executive Director of Youth Justice between August 2013 and June 2015, Salli Cohen, said there was no *'comprehensive suite of procedures'* in youth detention when she commenced in the role. She said recourse was often made to the adult prison policies, with some attempt to modify them to the sphere of youth detention. Ms Cohen accepted that it was her responsibility, acknowledging that resourcing decisions rested with the Commissioner and ultimately with Cabinet, to ensure such procedures were in place, and that she did not fulfil that duty during her time.²⁴⁵

A statement of the present Commissioner for Correctional Services, Mark Payne, illustrates the administrative chaos that resulted from the failure to issue a standardised, comprehensive manual for the Darwin and Alice Springs facilities. A table prepared by Commissioner Payne in his statement shows that between 2011 and 2016, more than 170 separate, standalone directives and standard individual procedures were issued, and re-issued, relating to a wide range of aspects of youth detention centres.²⁴⁶ It was wholly unsurprising in this landscape that some staff members

demonstrated little or no knowledge of standards of conduct and procedures for their work.

The director of the PSU, Dave Ferguson, commented that it is *'difficult to run any institution without clear procedures'*.²⁴⁷ The lack of standard operating procedures at Don Dale Youth Detention Centre was described as *'abhorrent'* by the Deputy Superintendent of Don Dale Youth Detention Centre Kevin Cooper in May 2015.²⁴⁸

The void at the executive level could have been filled by leadership *'on the floor'* in the detention centres. However, this too, was lacking.

Operational issues made public on Four Corners

Ministers and the Commissioner were for some time aware of the incidents involving Dylan Voller as disclosed on the ABC TV program Four Corners, under the title of *'Australia's Shame'*. In 2010, Minister McCarthy received flash briefs about escapes; disturbances; assaults on youth workers and detainees by detainees; and assaults by youth workers on detainees.²⁴⁹

- One flash brief, dated 1 November 2010, related to an alleged assault on Dylan Voller by a staff member at the former Don Dale Youth Detention Centre on 21 October 2010 where CCTV footage had been retrieved. The Superintendent had reported the matter to police notwithstanding that Mr Voller did not wish to make a formal complaint.²⁵⁰
- Another, dated 7 April 2011, related to an alleged assault on Dylan Voller by a staff member at the Alice Springs Youth Detention Centre on 7 April 2011. It was alleged the staff member slapped Mr Voller across the face.²⁵¹

The CCTV footage of those and other incidents formed part of the Four Corners program aired six years later.

Minister McCarthy said that the first time he saw the CCTV footage was on Four Corners, and that he was shocked by it. However, after reading the November flash brief six years earlier, he must have known that CCTV footage from Don Dale Youth Detention Centre on 21 October 2010 existed. Had he watched it, he would have seen images of Dylan Voller being picked up by the neck by a youth justice officer and thrown through the air onto a mattress on the ground. Minister McCarthy agreed the allegations made in the November flash brief were *'very serious'*; but he could not explain why he had not asked to see the footage. He said he was *'at fault'* for not having done so.²⁵²

In April 2012, the Children's Commissioner, Dr Howard Bath, saw footage collected by his investigators. He met with the Chief Executive Officer Greg Shanahan, the General Manager of Youth Justice, John Fattore and Deputy Director of Youth Justice Margaret Anderson. He showed video footage of some key incidents parts of which were later aired on Four Corners.²⁵³ The video disclosed treatment which appeared to him *'abusive, dangerous and did not align with either Correctional Services' own policies or the staff training that was provided.* He further said the footage:

*'...showed that children were being restrained when they were not harming themselves or others, they were being grabbed by the neck, thrown to the ground, and then restrained using methods that put intense pressure on their lower backs, which are practices that are prohibited because of the well-known risk that they might cause serious injury or death.'*²⁵⁴

Other detainees told the Commission they were subjected to similar treatment by other youth justice officers during the relevant period, see Chapter 13 (Use of force).

Those present agreed that the practices were inappropriate and did not align with training. Dr Bath received an assurance they would not continue. He said he further raised the *'inappropriate, extended use of isolation'* in the detention centres at the meeting.²⁵⁵ Commissioner Middlebrook said that while he was not at the meeting, he received a telephone call later than evening and was briefed on it.²⁵⁶

Minister McCarthy said he was not aware that isolation outside the terms of the *Youth Justice Act* was among the matters being investigated by the Children's Commissioner in 2011, and that if it was happening at detention centres in the Northern Territory, it was something his staff should have told him about.²⁵⁷

Minister Elferink said he first saw still frames of a number of incidents which were ultimately aired on Four Corners in the days following the tear-gassing incident, and was *'quite shocked'*.²⁵⁸ He told the Children's Commissioner to report the matters to police.²⁵⁹ Dr Bath told him of concerns of a *'systemic issue of violence'*, but Commissioner Middlebrook assured him they were *'isolated incidents'*.²⁶⁰

Former Chief Minister Giles

The Commission heard the evidence of former Chief Minister Adam Giles of his apparent ignorance of the crises that had beset youth detention during his leadership of the government. Mr Giles answered *'I don't know'* to many questions from Counsel Assisting, and denied that he knew of the crises of 2014, including the matters set out in Mr Ferguson's report to Commissioner Middlebrook in September 2014 indicating failings by staff over a prolonged period of time leading up to the tear gassing incident.²⁶¹ Further, Mr Giles said that he was not aware that in April 2012 the Children's Commissioner had met with senior staff members of the Department of Justice to discuss serious problems occurring in youth justice, as he was in opposition at the time and was not subsequently made aware of this when he became Chief Minister.²⁶² While a detailed knowledge of operational matters would not always be required of a Chief Minister, the problems were serious and well-known amongst senior management at the highest level. If Mr Giles is correct, then there was a reprehensible failure of government.

Findings

For most of the relevant period, no up to date standard operating procedures were put in place to operationalise the objects, rights and obligations of the *Youth Justice Act* (NT) in relation to youth detention.

The absence of up to date standard operating procedures is attributable to the failure of senior management, including Commissioner Middlebrook and, for a more limited period, Ms Salli Cohen.

In the absence of up to date standard operating procedures, superintendents of detention centres oversaw regimes that did not, on many occasions, comply with their obligations under the *Youth Justice Act* (NT).

Ministers and senior management should have been aware of the deficiencies in the standard operating procedures and did not adequately address the issue.

A PARTICULAR CLOSED HEARING

In the course of its inquiries the Commission conducted hearings in closed session concerning the conduct of one former youth justice officer. For reasons of confidentiality and any possible prejudice to future police investigations, the identity of that youth justice officer, the particulars of the conduct, and the Commission's adverse findings against individuals will not be published. However the Commission considers it is important to make known that its inquiries supported findings of deficiencies in the Department of Correctional Services' internal oversight and management processes. These events occurred well prior to the announcement of the Commission.

Departmental records and the evidence of former youth detention staff and managers established a clear failure on the part of management staff, at the levels of General Manager/Superintendent, Assistant General Manager/Deputy Superintendent and Commissioner, to respond to information about staff misconduct of a potentially serious criminal nature, outside and possibly also inside a particular youth detention centre, which required prompt and thorough investigation and potential referral to police. Individuals in those roles also failed to consider information they received on subsequent occasions in the context of the earlier information which they had failed to investigate properly, and when the matter finally came to the attention of the PSU, failed to provide the PSU with all relevant information.

During the course of the Commission's inquiries into the matter, the extent of documents produced to the Commission in response to Notices to Produce (which compel the production of documents under the *Royal Commissions Act 1902 (Cth)*), and the manner in which some documents were subsequently provided, also demonstrated serious inadequacy of record-keeping within the Department. The inadequacy of record keeping included:

- the reliance by management and staff on emails between individuals as a means of reporting and recording incidents of misconduct, without any corresponding creation of records on the IOMS system
- a directive to all Northern Territory Department of Correctional Services staff to reduce the number of e-mails in their inboxes by deleting those that were no longer required, however the back-up of e-mail accounts did not commence until some months after this directive. As a result, at least one e-mail relevant to this matter was lost
- an incomplete documentary record of management's responses to and communications about reports of misconduct, and
- an absence of documents recording the decision-making process leading to the non-renewal of the youth justice officer's contract.

Ultimately, the inaction of management appeared to enable the former youth justice officer to continue the conduct, in increasingly serious ways, at least outside, but also possibly inside the youth detention centre, until the information received became impossible to ignore. The youth justice officer's employment was terminated by way of contract non-renewal, however no investigation to inform a proper assessment as to whether the matter should be reported to police was carried out and no mandatory report was made, as it should have been. By this point, it appears possible to the Commission, the youth justice officer had committed a criminal offence.

The Commission makes the following publishable findings as a result of its inquiries.

Findings

Youth detention management failed to investigate adequately, or ensure adequate investigation, in response to information provided to it concerning potential breaches of the Northern Territory Department of Correctional Services (NTDCS) Code of Conduct and potential serious criminal conduct to ascertain whether the matter should have been referred to Northern Territory Police.

In relation to these incidents, procedures and allocations of responsibility for the reporting and investigation of information disclosing potential breaches of the NTDCS Code of Conduct and of the criminal law were inadequate or not adequately implemented.

In relation to these incidents, youth detention staff, and the Professional Standards Unit did not make any mandatory reports or report any of these matters to the Northern Territory Police.

At the time of these events some staff did not feel comfortable reporting to management information about potential breaches of the NTDCS Code of Conduct or potential criminal conduct.

In relation to these incidents, records of information reported by staff to management and management's responses to those reports of information were inadequately made and maintained.

COMPLIANCE WITH THE LAW

It was the obligation of the Minister and the Commissioner of Correctional Services to ensure administration of the *Youth Justice Act* in accordance with law. It was also crucial for them to encourage an attitude of compliance amongst management and staff at all levels.

A failure to foster a culture of compliance with the law is demonstrated in the introduction of the Intensive Management Plan directive in 2011 (the IMP Directive), whereby isolation placement approvals could be 'rolled over' into a new period of isolation in response to legal advice received in 2014 and authorisation of the use of the restraint chair in a restraints directive in 2015.

Isolation: the IMP Directive and s 153(5) Youth Justice Act

Documents and evidence presented to the Commission suggest the use of isolation in youth detention was under increasing scrutiny in August 2011. The Children's Commissioner had begun an investigation into the treatment of a detainee, including allegations that he had been kept in isolation for lengthy periods, and the Department had been informed of this investigation.²⁶³ The Central Australian Aboriginal Legal Aid Service (CAALAS) wrote to Minister McCarthy on 15 August 2011, raising concerns about the extended use of seclusion at the Alice Springs Youth Detention Centre.²⁶⁴

On 31 August 2011, Commissioner Middlebrook signed a directive that, amongst other things, allowed detainees to be *'housed in an area of the institution that enables management away from other prisoners to ensure his/her safety, staff and other prisoners health and safety'* pursuant to an Intensive Management Plan (IMP).²⁶⁵ The regime was said to be for *'management purposes'*, in circumstances where a detainee *'through his or her attitude, conduct and behaviour continually jeopardises the good order and security of a prison, threatens the health and safety of staff, other prisoners or themselves'* and could not be managed in the mainstream population.²⁶⁶

Mr Middlebrook agreed that the effect of the IMP Directive was to seek to give broad powers to the officer in charge of a youth detention centre to isolate children and young people without privileges for periods up to two months, albeit clause 5.8 gave the General Manager the discretion to amend the plan in response to favourable behaviour.²⁶⁷ He could not recall any particular reason why the regime was introduced, other than it being an attempt to address a lack of processes and procedures across youth justice.²⁶⁸

Then Assistant General Manager of the former Don Dale Detention Centre, Mr Yaxley, said this directive allowed him to keep some detainees in the Behaviour Management Unit longer than the 72 hours set out in the *Youth Justice Act*.²⁶⁹ He said he was aware of the requirements under the *Youth Justice Act* but he did not query the directive or obtain any legal advice about it.²⁷⁰ He said he followed the directive he was given and *'that's just what...happened'*.²⁷¹

Some managers appeared to acknowledge the directive covered an area that was otherwise problematic and said in correspondence in 2012 that, notwithstanding flak from external agencies and complaints from detainees, *'the directive fully covers us with these flexible plans'*.²⁷² Commissioner Middlebrook said he could see how the directive could give rise to such a broad interpretation but at the time did not think it would be used in this way.²⁷³

In circumstances where section 153(5) of the *Youth Justice Act* already offered a 72-hour regime for isolation, it is of great concern that the directive sanctioned the isolation of detainees for periods longer than the period mandated under the *Youth Justice Act*. Given that it was Commissioner Middlebrook himself who had the statutory responsibility to authorise placements exceeding 24-hours, ensuring compliance with the terms of the *Youth Justice Act* should have been at the forefront of his consideration and required his close attention.

The Commission cannot determine on the evidence before it, whether the failure of superintendents to exercise more caution about the legality of the directive was an act of wilful blindness, or a consequence of the lack of training around the basic legislative requirements of the *Youth Justice Act*, as outlined above. It is of note however that Ms Cohen made an inquiry from the lawyers for the government after being asked to sign off on an IMP to house a young person in the Behaviour Management Unit in March 2014.²⁷⁴

The advice sought concluded, among other things, that sub sections (a) and (b) of section 153(5) of the *Youth Justice Act* 'provide the exclusive grounds upon which isolation can be imposed and justified'. These subsections required the superintendent to be satisfied that a detainee should be isolated from other detainees (a) for the protection of other persons or (b) to maintain good order and security. The Commission does not accept there are any other circumstances in which a child or young person can be isolated in a detention centre. The view of the then Solicitor for the Northern Territory Government was that unless the statutory criteria in subsection (5) were met, the young person could not be isolated and that the superintendent must consider 'afresh' each isolation.²⁷⁵

Ms Cohen repeatedly raised concerns that this was a means of permitting repeat placements in the absence of any contrary express words in the legislation.²⁷⁶

In April 2014, the Superintendent Caldwell also referred to the practice at the former Don Dale Youth Detention Centre of detainees being housed in the Behaviour Management Unit and not in a regular cell, purportedly under the authority of the directive, as a 'longstanding practice'. He informed Ms Cohen and Commissioner Middlebrook that, based on the legal advice, discussed in full in the Chapter 14 (Isolation), there was some doubt about the lawfulness of this practice. Commissioner Middlebrook endorsed the concept of 'rolling 72-hour approvals', whereby a detainee could be returned to the Behaviour Management Unit for a further placement after release of a few hours.²⁷⁷

As has been detailed in Chapter 14 (Isolation), detainees were held in the Behaviour Management Unit for extended periods after the March 2014 legal advice was received. This included periods in April 2014 and August 2014 when a number of young people spent 17 days consecutively in the Behaviour Management Unit without fresh authorisations every 72 hours, in the lead-up to the tear-gassing incident at the former Don Dale Youth Detention Centre.

The Northern Territory Government, in its submission to the Commission, suggested that by reason of both the degree of separation and the purpose, the placement of a detainee in the Behaviour Management Unit at the former Don Dale Youth Detention Centre was not 'isolation within the terms of section 153(5)'. This includes the detainee being placed:²⁷⁸

- a. in a cell with another detainee, or in a cell on their own when another detainee or other detainees are placed in other cells in the BMU
- b. taken out of the cell for only a limited, including a short, period each day
- c. with the placement duration either defined at the outset, or undefined but not intended to be indefinite, for example, contingent upon making works to render other accommodation secure and/or suitable, or upon securing an alternative detention location, and
- d. because the detainee has demonstrated, by their behaviour, that they cannot be securely or safely held in any other part of the centre, for example, by escaping from the centre or by breaking into the roof cavity and thereby accessing other parts of the centre, including the rooms of other detainees.

As outlined in Chapter 14 (Isolation), the Commission does not accept this interpretation of the *Youth Justice Act*. Such an interpretation seeks to see the terms of section 153(5) as limiting the application of the section. In other words, if the placement of the young person in the Behaviour Management Unit is not for the purpose outlined in section 153(5), then it is not considered 'isolation' under the *Youth Justice Act*, and the placement need not comply with section 153(5). However, the Commission considers that the section limits the use that can be made of isolation itself. In other words, if the purposes outlined in section 153(5) cannot be met, then the isolation of the young person cannot occur. Where those purposes are met, the isolation can only occur on such terms as outlined in the *Youth Justice Act*. The Commission's view is consistent with the interpretation set out in the advice of the Northern Territory's lawyers in March 2014.

Commissioner Middlebrook suggested that as Commissioner and the head of the agency, he was not involved in drafting directives,²⁷⁹ and that he could not recall taking legal advice about the lawfulness of the directive but that he expected those who drafted the directive would have.²⁸⁰ He further said that in hindsight the directive should have referred to the time limits set out in the *Youth Justice Act* and that the failure to do so was an omission.²⁸¹

Given that one of the most important responsibilities of a head of an agency is to ensure and maintain compliance with the relevant legislation, this omission was an abrogation by Commissioner Middlebrook of those responsibilities. At a minimum, prior to the issue of the directive, Commissioner Middlebrook should have turned his mind to the legislative and legal implications of permitting the placement of detainees in the Behavioural Management Unit for up to two months at the discretion of the superintendent.

The 2015 restraints directive

Another example of the failure to ensure compliance with legislation by some members of senior management in the Department is the restraints directive introduced in 2015. On 6 May 2015, Commissioner Middlebrook signed off on a directive authorising the use of approved restraints including restraint chairs, spit hoods and shackles in youth detention centres in the Northern Territory.²⁸² This decision was made despite warnings that it was inconsistent with the *Youth Justice Act*.

While the Commission received evidence that restraint chairs were not used in youth detention centres during the relevant period,²⁸³ as outlined in the Chapter 13 (Use of force), restraint chairs were used on two detainees in adult prisons during the relevant period. One incident occurred prior to issuing the directive on 6 May 2015.²⁸⁴ It is unclear how this incident was authorised.

In April 2015, in response to an inquiry made from staff members at the adult facility, Ms Cohen advised that the use of the 'at risk chair' would conflict with the *Youth Justice Act* and, in particular, section 153 regarding discipline. She further noted in an email copied to Commissioner Middlebrook and Superintendent Russell Caldwell, that children held in adult facilities were still subject to the requirements of the *Youth Justice Act*.²⁸⁵

Ms Cohen, who was the chair of the Australian Juvenile Justice Administrators (AJJA) forum in April 2015,²⁸⁶ told the Commission that she fundamentally did not believe that the use of such aggressive restraints was appropriate for young people.²⁸⁷ She said: 'If a detention centre is operating appropriately you wouldn't have had to go to that length...it wasn't accounted for in the legislation.'²⁸⁸

Notwithstanding those objections, on 29 April 2015, Commissioner Middlebrook approved the use of the restraint chair at the current Don Dale Youth Detention Centre and noted that a directive regarding the use of restraints would be issued that day.²⁸⁹ That afternoon a draft directive, which had been adapted from the adult use of restraints directive, was circulated. Ms Cohen noted in her response to the draft directive that 'restraint equipment is potentially in conflict with the legislation, so I would recommend we run this by legal, recognising this has been used under the emergency procedure protocols.'²⁹⁰ Despite this warning, the final directive was issued on 6 May 2015.

When questioned about the May 2015 directive, Commissioner Middlebrook acknowledged that on 29 April 2015, when he authorised the use of the restraint chair, he knew it was 'a very grey area'²⁹¹ and acknowledged that he 'wasn't absolutely sure that it wasn't lawful'.²⁹² Further, he admitted that he did not seek a legal opinion on which to base authorisation for the use of restraint chairs on detainees but refuted that he made this decision because he suspected that the advice was going to

be unfavourable.²⁹³ When asked why he chose not to seek legal advice about the lawfulness of the restraint chair, Mr Middlebrook said:

*'I asked to make some changes in legislation to make it pretty clear that – the Act was not very clear. Yes, I could have got legal interpretation, yes I should have done that. No, I didn't. What I was trying to do was to give some clarity to staff to make sure at least they had some restrictions around using the chair because I didn't want the chair to be used as a punishment. I wanted the chair to be used only in those cases where there was a genuine concern for the inmate.'*²⁹⁴

Mr Middlebrook said that the restraint chair was introduced to help staff to deal with detainees self-harming. He said *'yes, the restraint chair is not a good thing, but to prevent somebody from self-harming for a period of time until they settle down, it's all we really had.'*²⁹⁵

When asked whether the Minister was aware of the directive, Ms Cohen said that she was not sure but she did not believe that the issue of a new directive was a matter that the Minister had to be aware of as it fell under the Commissioner's responsibilities.²⁹⁶ Regardless of whether Minister Elferink was aware of the directive in May 2015, he was aware of the proposal to use restraint chairs in youth detention centres by June 2015. In an email on 20 June 2015, Commissioner Middlebrook stated that he had met with the Minister and suggested that the department purchase two restraint chairs for the current Don Dale Youth Detention Centre, and that these be referred to as *'safety chairs'* in the procedures.²⁹⁷ Mr Middlebrook acknowledged that there was never any change to the chair but the name was changed to *'safety chair'*.²⁹⁸ This was seemingly another attempt to use language to minimise deeply troubling practices.

As detailed in Chapter 13 (Use of force), following the issue of the directive, the Northern Territory Legislative Assembly passed amendments to the *Youth Justice Act*. These amendments included the insertion of *'approved restraint'*, a term defined in the directive to include the restraint chair.

When the amendments to the *Youth Justice Act* were considered in July 2015, Ms Cohen again raised her opposition to the use of the restraint chair on children and young people in detention. In response to a memorandum regarding instructions on seeking ministerial approval to the proposed amendment to the *Youth Justice Act*, Ms Cohen wrote:

*'Ken I recognise this direction has come from you, however I respectfully note that I do not agree with either the use of restraint chairs or chemical restraints in youth detention centres.'*²⁹⁹

Notwithstanding this comment, the amendments were introduced in April 2016, passed, and took effect on 1 August 2016.

Mr Middlebrook said that the changes to the *Youth Justice Act* were introduced to provide guidance to staff on the use of the restraint chair. When Mr Elferink was asked about the legislative amendments, he said they *'sought to create greater clarity around the powers of restraint.'*³⁰⁰ He said he was advised the existing legislation was *'broad and unhelpful'*³⁰¹ and consequently *'the Department wanted it tightened up.'*³⁰²

Although these amendments did not take effect until 1 August 2016, as detailed in Chapter 13 (Use of force) in the intervening period, the images of Mr Voller in the restraint chair were released to the

media, and in late July 2016, the Northern Territory Government announced a temporary ban on the use of restraint chairs.

Ultimately, the steps taken by management to introduce the restraints directive despite warnings that this was inconsistent with the *Youth Justice Act*, and then taking steps to seek the amendment of the *Youth Justice Act* to ensure a legislative basis for the directive,³⁰³ emphasise a disregard for the protective intent of legislative provisions which impose limits on the actions of youth detention staff members towards children and young people in their care. These actions are another example of management's recourse during the relevant period to measures of control and security in response to challenging behaviours, rather than interventions that sought to address the causes of behaviour and to improvements to staffing and training to reduce the likelihood and escalation of that behaviour.

Finding

In relation to isolation and authorising the use of the restraint chair, the Commissioner, the executives and managers had insufficient regard to the statutory restrictions on powers conferred by the *Youth Justice Act (NT)*. This had the consequence that children and young people in detention were not always afforded the statutory protections to which they were entitled.

Attitude to oversight and scrutiny

Under Commissioner Middlebrook's leadership, the Department did not foster constructive engagement with external oversight bodies and stakeholders with an interest in the protection and wellbeing of children and young people in detention. Commissioner Middlebrook appeared to hold the view that these bodies and stakeholders failed to recognise the resourcing limitations the department faced, and failed to assist the department in looking for practical solutions. Commissioner Middlebrook stated that the Children's Commissioner failed to take into account *'the difficulty in obtaining individual specialists, and cost associated with bringing these specialists to the Northern Territory.'*³⁰⁴ He was critical of Dr Bath for not advocating additional resources for youth protection to the Minister.³⁰⁵

Commissioner Middlebrook's communications both to internal colleagues and to the Children's Commissioner demonstrated he did not sufficiently value their input. In an email to an investigator from the Children's Commissioner during investigations into the events of August 2014, Commissioner Middlebrook said, *'why don't you start the enquiry by looking at why these young people were in the BMU in the first place, or is that irrelevant.'*³⁰⁶

In June 2015, in correspondence with the Tivendale School principal, Ms Coon, Commissioner Middlebrook thanked her for expressing the view that *'NAAJA overstepped their boundaries during what should have been an information and educational session with our students'* when attempting to deliver legal rights education to detainees at the school.³⁰⁷ Mr Middlebrook told the Commission that the department considered the possibility of alternative organisations providing legal rights education to the detainees as Mr Middlebrook did not then think NAAJA was *'serving our best interests.'*³⁰⁸

Dr Bath observed of his experiences engaging with the Department of Correctional Services as Children's Commissioner: *'My experience of youth detention was that there was a strong culture of resisting external oversight and accountability and seeking to do no more than the minimum necessary to assist external reviews.'*³⁰⁹

Commissioner Middlebrook's immediate response to the allegations of mistreatment and misconduct by staff members (involving allegations of staff inciting detainees to fight and eat animal faeces which are further discussed in Chapter 12 (Abuse and Humiliation)), raised by a former detainee at a public forum in September 2015 hosted by NAAJA, NTCOSS, The Power of Humanity and Australian Red Cross, was further evidence of this stance. He told the media *'I put no validity in it unless it's backed up by some evidence'*. He said that he was disinclined to investigate it because if it was true he would have expected to hear about it by some other means.³¹⁰ Commissioner Middlebrook stated that he felt he was *'set up'* by NAAJA who had hosted that particular session as part of the forum because NAAJA had not informed him of the allegations before they were made public. He stated that *"this was a deliberate action by the organizer's [sic] to embarrass me as Commissioner, The Northern Territory Department of Corrective Services and the Northern Territory Government."*³¹¹

The Commission was shown evidence in the form of a video recording that a detainee was incited to eat animal faeces, which corroborated the allegations made and dismissed almost two years earlier. Commissioner Middlebrook acknowledged to this Commission that in hindsight he should have asked the PSU to investigate the allegations at the time.³¹²

The Northern Territory Government submitted that the above example *'cannot sensibly be portrayed as a typical situation representative of Commissioner Middlebrook's general attitude.'*³¹³ However, the quality of senior leaders is tested by their responses to extraordinary situations, and their responses to serious matters such as these set an example for the organisation as a whole.

In this case, his dismissive attitude to serious allegations was a failure of leadership.

FACILITIES

As outlined in Chapter 10 (Detention facilities), only two of the five youth detention facilities in the Northern Territory, the former Don Dale Youth Detention Centre in Darwin, and Aranda House in Alice Springs, were designed for youth detention. The remaining three were converted from facilities designed or used for adult prisoners.

During the relevant period, the conditions under which children were held in Alice Springs and the Northern Territory fell well short of acceptable international and Australian standards.³¹⁴

Responsibility for the provision of detention centre infrastructure rests with the Northern Territory Government, while detention centre management is the duty of the Department of Corrections. Before 2009, the shortcomings of the facilities were less of a concern as the detention centres were not at capacity and were run by well-motivated staff members who implemented productive programs for the detainees. However, in the following years, an increased numbers of male and female detainees put the inadequate conditions under strain. This coincided with a more punitive style of management. Detainees were increasingly held in isolation in the *'back cells'*, later referred to as the Behavioural Management Unit. This meant already unsuitable cells were used more frequently, see Chapter 14 (Isolation).

From 2009 onwards, the need for vastly improved youth detention facilities was well understood by different levels of management within the department.³¹⁵

Ministers responsible for Corrections during the relevant period acknowledged the former Don Dale Youth Detention Centre had become inadequate. Minister McCarthy, acknowledged that new and upgraded facilities were required³¹⁶ and said of the Behavioural Management Unit: *'[i]hose cells*

are quite confronting to a person for the first time'.³¹⁷ Mr Elferink, said he was 'disturbed by the state of the juvenile facilities'.³¹⁸ He told the Commission 'I don't believe that the physical structure of Don Dale enabled it for the most basic human functions'.³¹⁹

As outlined below, the department recommended that the facilities be upgraded and identified potential risks if this did not occur. The department, led by Commissioner Middlebrook, called for the allocation of resources sufficient to make necessary improvements to the detention facilities.

However, as discussed below, the political will to invest in facilities was lacking. Governments in the relevant period prioritised funding of infrastructure and services to adult prisoners rather than youth detention. The failure to act on advice and invest as recommended led to a pattern of ad hoc and unbudgeted payments for immediate and urgent repairs to existing infrastructure.³²⁰ This was inefficient, ineffective, expensive³²¹ and did not improve the facilities at Darwin or Alice Springs. During the Commission, Territory Families acknowledged that:

'it's really clear that the current two detention centres are not suitable, and they have no therapeutic value and we have to do things vastly differently'.³²²

2006 to 2012

Despite knowledge of the poor state of youth justice facilities,³²³ between 2009 and 2012 the Government prioritised the funding of infrastructure and services for adult prisons and to a lesser extent youth diversion.

In February 2009, the government's *New Era in Corrections* policy was launched. Minister McCarthy's announcement made no reference to youth detention, and apart from an extension to the Elders Visiting Program, the policy did not include any specific reference to youth detention.³²⁴ Minister McCarthy acknowledged that the establishment of a new Darwin Correctional Centre was a priority and that, as a result, improvements to youth facilities were projected to take place years later.³²⁵ He said that with record adult prison numbers with extreme circumstances around management and wellbeing, Cabinet had to prioritise the Government's limited investment.³²⁶

It is not that the Minister for Correctional Services would or should be across the day-to-day operations of youth detention centres but from 2009 he was aware of the inadequacy of the youth detention facilities in Darwin and Alice Springs.³²⁷ Throughout 2009 to 2010, Minister McCarthy received reports from Official Visitors raising concerns about the poor state of the youth detention facilities at Alice Springs³²⁸ and overcrowding and the inadequacy of female accommodation at the former Don Dale Youth Detention Centre.³²⁹

In May 2009, the Minister established the New Prison Steering Committee (the Committee), which was responsible for informing Cabinet of procurement options and the overall scope of the new prison project.³³⁰ The Committee would also consider a proposal for the development of two new purpose-designed youth detention facilities in Darwin and Alice Springs.³³¹ The department cited the increasing number of female detainees and projected continuing increases in the general detainee population well beyond the capacity of the existing facilities.³³² The Committee recommended that the current facilities be replaced with two new youth detention centres: a 65-bed facility in Darwin and a 20-bed facility in Alice Springs.³³³ Minister McCarthy endorsed this recommendation.³³⁴

The proposal was amended in June 2009 to emphasise growing accommodation needs and the

existing facilities' incapacity to promote the rehabilitation and reintegration of children and young people in detention. The amended proposal sought a 75-bed youth detention centre in Darwin and a 25-bed facility in Alice Springs.³³⁵ This was also endorsed by the Minister.³³⁶ A report prepared in 2010 by the Expert Review Panel included provision for a secure 75 bed 'Youth Training Facility' on the site of the new prison in Darwin or on the site of the Berrimah adult prison after the planned demolition of the site.³³⁷ The capital cost of this project was estimated at \$52 million.³³⁸ Ultimately, the project that went ahead was an 800-bed adult prison. It included a mental health facility at Holtze, south of Darwin, which was to be built by 2014 at an estimated cost of \$300 million.³³⁹ The final design and delivery did not include the proposed youth detention facilities.

When asked to explain why the youth facility was removed and whether any documents revealed the reason for this, Minister McCarthy said there was no single point at which a decision was made not to proceed with the 75-bed facility, and that the *New Era in Corrections* policy was a staged process.³⁴⁰ He told the Commission that a decision to build a new facility was 'never taken off the table'³⁴¹ and insisted that the new youth detention facility had been deferred rather than rejected.³⁴² A review of the records conducted by an officer of the Department of Correctional Services in 2013 suggested the paper trail on the new facility 'had gone dead' and there was 'nothing to indicate anyone rejected/was not happy with it'.³⁴³ The Northern Territory Government's reform of youth detention infrastructure stalled and the opportunity to build a new youth detention facility was overshadowed by the demands of the adult correctional system.

Concerns about youth detention facilities continued. Between December 2010 and March 2011, Minister McCarthy received a series of flash briefs from the department on the subject of 'Record Detainee Numbers', which again identified overcrowding issues at both the Don Dale and Alice Springs youth detention centres. Minister McCarthy was expressly told that overcrowding at both detention centres increased the risk of serious incidents of aggressive or assaultive behaviour, and the infrastructure constraints risked the delivery of the education program to all detainees.³⁴⁴

Aranda House, the only youth detention centre in Alice Springs before 2011, had very limited amenities and no external recreation facilities. Despite it being a 10-bed facility, it could only hold five detainees due to the deteriorated conditions.³⁴⁵ The facility was not sufficient to meet youth detention needs in Alice Springs.³⁴⁶ The Alice Springs Youth Detention Centre, established in March 2011, was also incapable of meeting capacity needs. This should have been known from the time of its commissioning. During the relevant period, attempts by management to improve the substandard facilities in Alice Springs were not successful.

In January 2011, a proposal to convert a vacant 24-bed cottage which previously formed part of the Alice Springs Correctional Centre, known as W Block, into a 16-bed youth detention centre was announced. W Block had been used to hold low security prisoners.³⁴⁷

It was envisaged that the new youth detention centre would provide full-time fit-for-purpose housing for detainees in Alice Springs, facilitate appropriate access to educational programs and provide improved recreational space.³⁴⁸ The proposal sought to convert two wings of the facility. One was to be used to house a maximum of 16 children and young people, maintaining an existing recreation room. The other wing was to be used for staff administration and to house at-risk detainees and female detainees, if required, with a second recreation room converted into a classroom.³⁴⁹

The capital cost of the conversion was \$276,846.³⁵⁰ The refurbishment focused on security measures and included the construction of a fence to separate the youth detention centre from the adult prison, installation of a CCTV system, screening of external and internal windows in at-risk rooms, replacement of all glass louvres and the provision of air conditioning in the classroom and administration spaces.³⁵¹ There was no renovation or conversion done to give effect to the therapeutic

or rehabilitative aims of a youth detention centre.³⁵²

Even before the new Alice Springs Youth Detention Centre opened, all levels of management were aware that the facility would not meet capacity needs. The Acting General Manager involved in preparing the business case said he initially considered the proposal a good short-term measure.³⁵³ However, on 6 March 2011, before the facility opened, he warned executive management that the numbers of detainees had increased to a point where the facility would already be at capacity.³⁵⁴ The following day, Minister McCarthy was similarly informed.³⁵⁵ Commissioner Middlebrook acknowledged that the establishment of the facility was *'not purpose built'*, was a *'Band-Aid action'* to provide much-needed relief to overcrowding, and was only ever intended as a short-term solution to get out of Aranda House.³⁵⁶

However, despite these warnings, Minister McCarthy approved the plan to establish the Alice Springs Youth Detention Centre,³⁵⁷ and it opened on 27 March 2011.

It was evident that the Alice Springs Youth Detention Centre had serious limitations. Shortly after the facility opened, significant work was undertaken to upgrade the fencing following a number of escapes.³⁵⁸ Further, in August 2011, CAALAS raised concerns with Minister McCarthy about the infrastructure of the detention centre. CAALAS noted that detainees in the at-risk cells were deprived of natural light, medium-to-high security detainees did not have access to toilets in their cells, and there was no appropriate interview space for professional visits.³⁵⁹ Commissioner Middlebrook acknowledged that the space for recreational activities and professional visits was *'totally inadequate'* and that the detention centre could be *'brought up to an acceptable level with a modest investment.'*³⁶⁰

Throughout 2012, the Department of Justice and the Youth Justice Advisory Committee informed Minister McCarthy about the inadequacies of the detention centre. They cited poor design and facilities, the inability to accommodate appropriately female detainees, and the inability to deliver education and rehabilitation programs, which led to an increase in the number of lock-downs.³⁶¹

Minister McCarthy agreed that the conversion of W Block into a youth detention centre was a short-term response to the increase in detainees, and was not designed to be a long-term option to detain children and young people in Alice Springs. He accepted that the conversion design did not facilitate the delivery of programs or other services to children and young people. He said *'it was a conversion of infrastructure and then it became the challenge to apply the programs that would operate out of that centre.'*³⁶²

While the Alice Springs Youth Detention Centre was intended to be a short-to-medium term measure³⁶³, and despite its recognised failings, the centre remains open. After it was opened, Aranda House continued to be used in 2012 to hold detainees in Alice Springs, even though it had been deemed not fit for that purpose.³⁶⁴ Consequently, the inadequate infrastructure at both Alice Springs facilities continued to contribute to a more punitive experience for the children and young people detained there.³⁶⁵

In or about 2010 or 2011, the Government identified challenges in juvenile justice including:

- *rising incarceration rates of young men and women exhibiting complex behaviours*
- *a significantly compromised government fiscal environment focussed on adult correctional services; [and]*
- *rising youth crime rates in Alice Springs.*³⁶⁶

On 29 March 2011, the Northern Territory Attorney General commissioned Ms Jodeen Carney to review the youth justice system.³⁶⁷

The Carney review made no recommendations relating to youth detention facilities. Rather, the recommendations concerned increasing resources for youth diversion and rehabilitation.³⁶⁸ In February 2012, the Department of Justice prepared a Cabinet submission to fund the implementation of the Carney Report recommendations. A draft of that submission, which discussed the implementation of a centralised model of youth justice within the Department of Attorney-General and Justice, identified the opportunity to consider the future location, operation and size of youth detention facilities in Darwin. That opportunity was said to arise from the forthcoming relocation of the Berrimah Darwin Correctional Centre, which meant that the former Don Dale Youth Detention Centre would no longer have access to essential services and support provided by the adult facility.³⁶⁹

However, the submission for improvements to the former Don Dale infrastructure did not appear to be taken up by the Minister or Cabinet.

Consequently, changes to youth detention infrastructure were minor and ad hoc. They did little to improve substandard facilities or the daily life of detainees, and in some instances made the conditions worse. The establishment of the Alice Springs Youth Detention Centre, while an improvement on Aranda House, was known by the Government to be an inadequate long-term solution even before it opened. Minister McCarthy failed to respond adequately to the warnings and advice he received. This compounded the government's collective inaction following the 2009 Cabinet submission and the 2010 Expert Review Panel report.

There was a change of government in August 2012 without any funding commitments for youth detention infrastructure or services having been entered into.³⁷⁰

2012 to 2016

With the change of government, the focus of funding and resources continued to be on the delivery of the new adult prison in Darwin, notwithstanding the fact that the new government continued to receive advice about the worsening conditions in youth detention facilities. This failure to act in the face of that advice contributed to the continued deterioration of the facilities and the treatment of detainees. By July 2016, when Minister Elferink was replaced as Corrections Minister following the airing of the Four Corners program *'Australia's Shame'*, the facilities in which children and young people were held remained harsh and inconsistent with the rehabilitation of detainees.

Early in this period, several proposals to improve facilities were explored by management but they were rejected by the department.

In October 2012, Mr Yaxley, then Acting General Manager, prepared a proposal to develop a unit of the Darwin Correctional Centre for use as additional accommodation for the Don Dale Youth Detention Centre. The proposal sought to address overcrowding, and recommended that new admissions as well as detainees with medium, low and open security classifications be housed in a modified version of the Living Skills Unit and that maximum-security and female detainees remain at the former Don Dale Youth Detention Centre.³⁷¹

Commissioner Middlebrook rejected the proposal. One of his hand-written comments on the proposal said *'this is rubbish!*³⁷² He said: *'We were struggling to get money in previous submissions and these guys were putting this up as a Rolls Royce model'*.³⁷³

In January 2013, a proposal was developed to use the secure mental health facility at the Alice Springs Corrections Centre as a youth detention centre. A ministerial brief was prepared, showing how the mental health facility could be converted into a youth detention centre with capacity to hold 24 male and 24 female detainees in general accommodation, as well as four specialist accommodation rooms for detainees who were deemed at-risk or were on a behaviour management plan.³⁷⁴ The brief stated that this proposal would *'remove the urgency for the Government to consider the replacement of the juvenile detention infrastructure for the next three years.'*³⁷⁵ No information can be found to show that a formal decision was made about this proposal,³⁷⁶ and the proposed changes did not go ahead.

As noted earlier, the Banksia Hill memorandum,³⁷⁷ which was prepared at the request of Minister Elferink and Commissioner Middlebrook,³⁷⁸ warned of a raft of similarities between former Don Dale Youth Detention Centre and the Banksia Hill Detention Centre in Western Australia prior to a riot at the Banksia Hill facility.

The memorandum identified current *'significant challenges'* at the former Don Dale Youth Detention Centre due to significant increases in detainee numbers, including female detainees; the number and serious nature of offences being committed; the proportion of youth held on remand; and the frequency and severity of incidents at the detention centre.³⁷⁹ Further, the memorandum acknowledged that the failings and unsuitability of the buildings and structures at the detention centre were well known and recommended that these be addressed in a budget submission to Cabinet.³⁸⁰

The memorandum also advised that where instability existed, improvement would not come from *'target hardening a centre, for example, installing bars, grills and fences.'*³⁸¹ It advised, rather, that a holistic approach was required, recognising security and safety and underpinned by an *'active rehabilitative regime'*. The memorandum referred to 35 recommendations following the Banksia Hill riot being applicable to the former Don Dale Youth Detention Centre, and recommended they be followed closely.

Following an incident in September 2013 involving eight detainees breaking into the ceiling at the former Don Dale Youth Detention Centre, Commissioner Middlebrook was advised, by reference to a report on Banksia Hill, that a complete overhaul of youth detention was *'essential'*. He was advised that the current Cabinet submission did not adequately highlight the major concerns, and the scope of the funding sought would not *'fix'* the reality of the former Don Dale Youth Detention Centre.³⁸²

The Dolphin Report also gave a scathing account of the day-to-day experience of detainees and staff members.³⁸³ Staff complaints and feedback for reform recorded in the report were stark and revealing. Comments from staff members in Alice Springs and Darwin were identified separately, but were of the same tenor. They were overwhelmingly negative about the standard of the facilities. Comments included:

*we need a purpose built facility with more space. The facilities are not suitable for either detainees or staff.*³⁸⁴

The Banksia Hill memorandum and the Dolphin Report presented an unequivocal picture of a system in crisis. As noted earlier, Minister Elferink denied any recollection of having seen either of them,³⁸⁵ but accepted that he would have expected Commissioner Middlebrook to raise the issues in the reports with him, although he could not remember the specifics of what was discussed.³⁸⁶

The 2013 Cabinet submission

The 2013 Cabinet submission, which initially sought funding for infrastructure improvements to both the former Don Dale Youth Detention Centre and Alice Springs Youth Detention Centre, was whittled down to a redirection of a much smaller amount of funding to refurbish the Berrimah site in Darwin. This represented a lost opportunity for the Northern Territory Government to address issues in youth detention.

Commissioner Middlebrook asked Mr Caldwell, who took over the role of Executive Director for a short time in June 2013, to review and revise a draft Cabinet submission on youth detention. The submission was to address a range of *'long standing issues and problems'* in youth detention, including the *'chronic infrastructure problems at the detention centres'*.³⁸⁷ Mr Caldwell said that he worked on more than 30 different versions of this submission and considered costing options of between \$8 million and \$32 million.³⁸⁸

A version of the draft from September 2013 requested that Cabinet approve one-off capital funding of \$9.2 million in 2013-14 for:

- the redevelopment of infrastructure at the former Don Dale Youth Detention Centre
- the addition of dedicated facilities for female detainees, and
- the refurbishment of the facilities at the Alice Springs Youth Detention Centre.³⁸⁹

The draft submission stated:

- long term infrastructure development for the safe housing of detainees at the former Don Dale Youth Detention Centre was critical
- the existing fire safety management system at the centre was non-compliant with Australian Building Code standards the education area was *'unsuitable'*, and
- the case management and music areas consisted of converted sea containers.³⁹⁰

The submission noted that improvements to the Alice Springs facility would provide a *'more appropriate youth custody environment that meets current Building Codes of Australia standards and operational needs'*.³⁹¹

In October 2013, Commissioner Middlebrook directed that the funding scope be reduced. On 18 October, he received direction from the Chief Minister, via Minister Elferink's Chief of Staff, about the expectations upon him as Commissioner of Corrections, which included a 20% reduction in the costs of Corrections.³⁹² By the end of October, Ms Cohen and Mr Caldwell had, at Commissioner Middlebrook's direction, visited the adult prison facility at Berrimah to identify parts that could be used by youth detention, as alternatives to *'a costly new build or refurbishment options at Don Dale'*.³⁹³

In his evidence to the Commission, Mr Middlebrook recalled a conversation at some point in late 2013

in which Minister Elferink asked him what sum of money was being sought in the submission. When Commissioner Middlebrook told him it was around \$12 million, the Minister told him to *'forget it'*.³⁹⁴

Despite the warnings in the Banksia Hill memorandum and the Dolphin Report, by February 2014 the infrastructure funding sought in the draft Cabinet submission had been drastically reduced, and the request for funding for the Alice Springs Youth Detention Centre had been removed entirely. Instead, the closure of Aranda House and the use of the Alice Springs Youth Detention Centre for remand only was proposed, with all sentenced youth in the Northern Territory to be accommodated at a \$5.8 million refurbished adult prison facility at Berrimah, referred to as a *'Youth Justice and Training Centre'*.³⁹⁵ This approach to managing children and young people from Alice Springs attracted criticism from the Department of Justice in comments on the draft submission in February 2014.³⁹⁶ Commissioner Middlebrook's response was that the proposal relieved the Government of committing to *'substantial short term expenditure on Don Dale and Alice Springs'*, and provided an opportunity to *'create a Youth Justice Precinct over an extended period.'*³⁹⁷

The Department of Justice also raised a concern that the submission did not fit with the Government's *Pillars of Justice Law Reform Initiative*, which did not identify the prospect of youth detention infrastructure reform.³⁹⁸

Notwithstanding those concerns, Minister Elferink sent the draft submission to Cabinet on 14 February 2014. Unsurprisingly, the submission was withdrawn during the Cabinet budget meeting. On advice from the Treasury the funding requests were *'revisited'* and the submission was re-submitted as a memorandum, titled *'Youth Justice Framework – Phase 1: Detention Centre Infrastructure and Operating Model Budget'*. This was circulated to Cabinet on 18 March 2014.³⁹⁹ Instead of any new funding, redirection of existing funds from the adult corrections budget was sought and granted, and a reduced sum of \$796,000 capital was allocated for the refurbishment of the Berrimah facility.⁴⁰⁰ Minister McCarthy had previously described this facility as an *'overflowing, archaic aged detention facility'*⁴⁰¹ and Commissioner Middlebrook had said it was *'fit for a bulldozer.'*⁴⁰² Commissioner Middlebrook sought to explain the context for this statement, and he said that he made the comment *'at a coronial inquest, and it was in response to a question on how I was going to stop future deaths in C Block in Berrimah and I said at the time the only way that I could prevent that would be with the front end of a bulldozer.'*⁴⁰³

The dismissive attitude to youth detention and the policy imperative of the government was reflected in Minister Elferink's direction for Commissioner Middlebrook to *'forget'* any new funding for youth detention infrastructure. It was also reflected in the direction from the Chief Minister for Commissioner Middlebrook to cut the cost of Corrections by 20%, and the Cabinet's ultimate decision to reallocate less than the bare minimum of funds sought. Commissioner Middlebrook described it accurately to Ms Cohen when she raised concerns about the likely loss of funds sought during the Cabinet deliberation process in March. He said:

...the message that is given is loud and clear there is very little support for custodial reform. I know that this is very short sighted and again the very nature of the term boot camp indicates the punitive thinking that is within Government...the government have a very hard resolve to tough law and order policy and they see all the alternatives

*as soft options... This is going to be a tough call, but we will have to as a department concentrate on our core business responsibilities to meet the Government efficiency.*⁴⁰⁴

From October 2013, when Minister Elferink gave Commissioner Middlebrook a reality check as to what his Cabinet colleagues would support, and when he submitted the significantly watered down funding request notwithstanding criticisms from key departments, he should have been aware of the seriousness of the risks posed to detainees and staff.⁴⁰⁵

The confidentiality of Cabinet deliberations prevents the Commission from inquiring into the quality of Minister Elferink's advocacy with the Chief Minister and his colleagues for the funding for the construction of new youth justice facilities which his Commissioner and the Department so desperately needed. However, the drastic reduction in the funding sought once the submission went to Cabinet and was re-drawn as a memorandum on the advice of Treasury - presumably at the direction of Cabinet - was a direct result of Cabinet's decision not to invest as the department had recommended.

The Holtze Youth Detention Centre

On 19 August 2014, days before the tear-gassing incident, Minister Elferink signed off on an urgent request to use a portion of the Complex Behavioural Unit at the new Darwin Correctional Centre as a youth detention centre. This reassignment in line with provisions of the *Youth Justice Act* would be carried out on the basis that *'the current physical infrastructure at DD is outdated and has limited capacity to protect public safety by providing secure detention to a growing number of violent and disruptive young people.'*⁴⁰⁶ This was an emergency interim measure while the old Darwin Correctional Centre at Berrimah was redeveloped as a youth detention centre. The interim facility was to be called the Holtze Youth Detention Centre. The facility was not appropriate for youth detention.

Commissioner Middlebrook said that before the escapes and the tear-gassing incident in August 2014, the Complex Behavioural Unit at Holtze had been suggested as a youth justice facility. He explained that at that time he did not agree that it would make a good youth detention facility. However, when the detainees escaped in August and then started to return to custody. The Complex Behavioural Unit was considered as a short term option.⁴⁰⁷ This was confirmed by Mr Elferink, who told the Commission that *'having weighed up the options we felt we had to give it a go.'*⁴⁰⁸

The pressure to find a solution was evident as, despite warnings that the Holtze facility was inadequate, the move went ahead. A Programs Officer who viewed the site prior to the move raised concerns about its inappropriateness.⁴⁰⁹

The Holtze facility was new, open and lighter than the former Don Dale Youth Detention Centre⁴¹⁰ but as predicted, it was unfinished and not fit for purpose. *'A considerable number of issues with the building site that restricted the Department's ability to take over the site'* became apparent after the move.⁴¹¹ They included the existence of hanging points, telecommunications problems, automatic doors that did not close securely, and unfinished rooms.⁴¹² Further, because the centre had not been

designed as a youth detention centre, it presented a high risk of injury due to porcelain and glass surfaces and exposed electrical components.⁴¹³

An audit by the PSU from September 2014 emphasised that *'failures in the physical security'* contributed to the incidents at the Holtze facility. The audit noted that *'the doors in the HYDC were keyed into the unlocked position, which means that instead of being only able to be opened by swipe cards they could be pushed/slid open'*. It stated that the incidents at the Holtze facility were the result of detainees reacting to poor treatment and a lack of recreational activities. *'There was nothing for them to do and they were not given exercise, this made them angry and frustrated.'*⁴¹⁴

Rather than resolving the problems caused by poor infrastructure, the decision to move to the Holtze facility only resulted in instability and serious incidents, including breaches of security.⁴¹⁵ Ms Cohen, told the Commission that the move to the Holtze facility was a decision that the department *'regretted.'*⁴¹⁶

After the tear-gassing incident and incidents at the Holtze facility publicly exposed serious problems in youth detention, Minister Elferink chose not to acknowledge the government's failings but responded by scapegoating the children and young people involved, calling them *'the worst of the worst'* and *'villains.'*⁴¹⁷ This was a gross abdication of responsibility by Minister Elferink. He misled the public with his comments given he knew of the appalling conditions endured by children and young people in detention, living in aged, inadequate and decrepit facilities, under the control of unqualified and untrained staff and with little to do each day and no genuine support for rehabilitation.⁴¹⁸

The move to the Berrimah site

On 22 December 2014, the Commissioner approved the relocation of all staff members and detainees from the Holtze facility to the former Darwin Correctional Centre at Berrimah.⁴¹⁹ Commissioner Middlebrook explained that it had been the Department's intention not to move to the Berrimah site until all works had been completed. However, the damage to the Holtze facility, as well as information that detainees might be planning a disturbance during the Christmas/New Year period, prompted the move earlier than intended.⁴²⁰ This was another premature move which did not improve the conditions in which children and young people were held.

Mr Caldwell, who was Director of Youth Justice at the time, said that when the detainees were moved to Berrimah, they were living in *'a live construction zone.'*⁴²¹ Commissioner Middlebrook explained that the rushed decision to move to Berrimah was another response to the infrastructure failings. He said:

*'the whole reason why we pushed the move to Berrimah was there was no way we could get a new institution in five minutes, space and money set aside for amenities was being spent.... My biggest problem was that I was trying to catch up repairing damages, that I was spending money that I had earmarked to provide amenities and everything else...it was like a crisis situation which occurred everyday that we couldn't seem to get in front of.'*⁴²²

Commissioner Middlebrook acknowledged that the early move to the Berrimah site was problematic.

He said, 'If everything had gone to plan and that institution had been handed over on 1 July, as was intended, then I think the scenario for 2014 and 2015 may have been different.'⁴²³ After the move to the current Don Dale Youth Detention Centre, Minister Elferink and his department continued to receive complaints about the standard of the facilities. In January 2015, Amnesty International wrote to Minister Elferink raising concerns about the conditions in which children and young people were held at the Berrimah site.⁴²⁴ The letter states:

*the detention of juveniles in a non-purpose built facility, such as the Don Dale Berrimah site, is damaging to their wellbeing and rehabilitation prospects... while operating as an adult prison the conditions at Berrimah have been described as 'appalling' and not complying with international human rights obligations with respect to the treatment of prisoners.*⁴²⁵

In May 2015, the inadequacy of the facility was raised again. After a review, the Deputy Superintendent informed Commissioner Middlebrook that fences were missing locks; there was a large amount of construction rubbish around the site, such as chairs, old rolls of carpet, trollies and pallets; and the cells used for at-risk detainees were also damaged.⁴²⁶

After the tear-gassing incident, the Northern Territory Government did commit to some reform. The Vita Report was delivered in January 2015, noting that 'red flags and similarities to the Banksia Hill experience' were not recognised, necessary changes were not made⁴²⁷ and the facilities at the former Don Dale Youth Detention Centre, the Alice Springs Detention Centre and the Holtze facility were inadequate.⁴²⁸ While the Vita Report supported the refurbishment of the Berrimah site, it stated that it was imperative that 'the funding earmarked to renovate the Berrimah YDC is made available and that the renovations earmarked for that centre are completed before the juveniles enter the facility.'⁴²⁹ This recommendation became otiose as the premature move to the Berrimah site occurred in December 2014. This was acknowledged in the Vita Report:

*[w]hen finalising the report the review was made aware that the detainee population was transferred to the Berrimah facility on 23 December, as a result of a number of ongoing critical incidents. As a result, some of the contents in this report may no longer be relevant.*⁴³⁰

The Vita Report commissioned by Minister Elferink was expected to persuade the government to provide critical funding for youth justice facilities.⁴³¹ However, the financial commitment following the Vita review still fell short of what was required to deliver baseline adequate infrastructure and services to detainees and staff members.

In April 2015, improvements to the Alice Springs Youth Detention Centre were revisited for the first time since it was removed from the draft Cabinet submission of early 2014. At this time, the Minister's Office requested that the Executive Director, the Commissioner, the Children's Commissioner and the Deputy Manager of the detention centre visit the Alice Springs Secure Care Health Facility, also known as Kwyiyernpe House, to assess its suitability as a youth detention centre.⁴³² Following the visit, the Deputy Manager reviewed the floor plan to align it with a youth detention layout, and a report was prepared identifying necessary upgrades to convert the facility into a youth detention centre.⁴³³ In June 2015, the option of developing part of the Alice Springs Correctional Centre was also considered. The Deputy Manager said that this would be a 'cheap fix' compared to the redevelopment of the Alice Springs Secure Care Health Facility.⁴³⁴ Neither of these options were pursued. Ms Cohen said she could not recall the reason why the redevelopment of the Alice Springs health facility did not go ahead.⁴³⁵ A review of the documents discussing the redevelopment indicate

that cost may have been an issue.⁴³⁶

In 2016, the issue of the inadequacy of the current Don Dale Youth Detention Centre was drawn to the attention of the government after a review of the Northern Territory Department of Correctional Services by Keith Hamburger. The review report – *A Safer Northern Territory through Correctional Interventions* (the Hamburger Report) - stated that members of the review team who visited the current Don Dale Youth Detention Centre were ‘*dismayed by the conditions in which staff were working and youth were living.*’ The report acknowledged the money spent on refurbishing the centre and the indoor recreation area. However, it found that the centre was ‘*totally unacceptable*’ accommodation for children and young people in detention, and stated that ‘*accommodating youth offenders in a facility that was condemned when it housed adult prisoners is unacceptable, and nothing will make the old Darwin Correctional Centre suitable for youth offenders.*’⁴³⁷ Further, the Hamburger report pointed to the existence of numerous hanging points at the centre; old, welded prison beds, unacceptable shower facilities; lack of outdoor exercise areas; and ‘*the overwhelming impression of disrepair and despair*’ at the centre.⁴³⁸

Attempts to improve the facilities for female children and young people

The former Don Dale Youth Detention Centre was originally built in 1991 to accommodate 25 male children and young people. The detention centre was not designed to accommodate female detainees separately. Early in the relevant period, this problem was more confined as only one or two female detainees were held there.⁴³⁹ However, the increase in male and female detainees from 2009 resulted in greater opportunities for male and female detainees to mix and for inappropriate conduct to occur.⁴⁴⁰

During the relevant period, governments were informed that the youth detention centres in Darwin and Alice Springs were unsuitable to accommodate increasing numbers of female detainees. While governments considered plans to establish a separate facility for female detainees, this never came to fruition.

From March 2009, Minister McCarthy was advised of the inadequacy of the existing infrastructure at the former Don Dale Youth Detention Centre to:

- physically separate female from male detainees
- ensure that female detainees were not harassed, assaulted by, or engaged in inappropriate or risky behaviour with, male detainees, consistent with the government’s duty of care, and
- effectively meet the special and rehabilitation needs of female detainees in a manner equal to male detainees, as recognised by the *Standard Minimum Rules for the Administration of Juvenile Justice*.⁴⁴¹

Based on that information, Minister McCarthy took a submission to Cabinet seeking a stand-alone female facility at the Don Dale Youth Detention Centre for up to 10 detainees. The cost of the proposed facility was estimated to be approximately \$2.17 million over two years.⁴⁴² Despite warning of the infrastructure failings and corresponding risks, Cabinet rejected the submission.⁴⁴³

In April 2009, the Department advised Minister McCarthy that managing male and female detainees together at the Don Dale Youth Detention Centre had become ‘*increasingly difficult and risky.*’ At that time, the medium-security section of the centre was used to hold female children and young people. However, this decision significantly impacted the effectiveness of both the

classification and education systems, and access to programs and activities for both male and female detainees.⁴⁴⁴

In 2011, housing females at the Don Dale Youth Detention Centre was again identified as problematic, and the Department recommended revisiting the previous Cabinet submission for a separate 10-bed female facility at the Darwin detention centre as a priority.⁴⁴⁵ A briefing from the Chief Executive Officer to the Minister noted that *'the issue of female juvenile detainees must be addressed as a matter of urgency'*⁴⁴⁶ and stated that female detainees were held in a nine bed wing in the centre. In 2011, a draft Cabinet submission was prepared, which resembled the rejected Cabinet submission from 2009.⁴⁴⁷ However, it appears this draft was not then progressed. In 2011 to 2012, two demountable buildings were acquired for educational and case worker purposes at the former Don Dale Youth Detention Centre. This enabled some of the existing infrastructure to be re-converted to detainee accommodation. However, this did not fully address the need for female accommodation.⁴⁴⁸

In March 2013, the 2011 draft submission for a separate facility for female children and young people at the Don Dale Youth Detention Centre was again revisited. The then Assistant General Manager, Mr Yaxley, told Executive Director that if the proposal were approved it would alleviate the inability to accommodate female detainees appropriately and the difficulty of accommodating newly admitted detainees at the centre. In an e-mail dated 15 March 2013 to the Executive Director, Mr Yaxley said,

*[v]oila! Band aid applied and the bleeding can stop, the pressure is relieved, staff can manage the detainees in a more structured manner, without any negative influence from High classified detainees.*⁴⁴⁹

In October to November 2013, the Department explored alternative facilities to accommodate female detainees. Yirra House in Darwin, which at the time was a residential care facility, was considered as an option. However, due to security concerns and the costs associated with necessary refurbishment, Yirra House was subsequently considered unsuitable.⁴⁵⁰ Despite the repeated warnings from 2009 to 2013 that youth detention facilities were ill-equipped to accommodate female detainees, none of the plans ever progressed. As a result, facilities remain inadequate for female detainees. The Hamburger Report stated that the shower facilities for girls and young women at the Don Dale Youth Detention Centre were 'unacceptable' as the shower room was accessible by an open quadrangle with only a plastic shower curtain for privacy.⁴⁵¹ The report also emphasised that girls and young women suffered isolation at the centre.⁴⁵²

Ultimately, during the relevant period, management, the department and successive governments failed to act in response to numerous warnings about the harsh, unsafe and inappropriate facilities in which detainees were held. Ad hoc attempts to resolve the failings of the infrastructure did not improve the experiences of detainees, and in fact contributed to the continued deterioration of conditions and treatment in youth detention.

The current government, elected in August 2016, accepts that the facilities remain unsuitable.⁴⁵³ In December 2016, the Northern Territory Government announced that it had allocated \$22 million for new youth justice facilities to be built in Darwin and Alice Springs - \$15 million for the Darwin facility and \$7 million for the Alice Springs facility.⁴⁵⁴

Findings

During the relevant period, both Minister McCarthy and Minister Elferink and the governments of which they were members were continually briefed about the impact of the poor state of the youth detention facilities and on the nature, quality and effectiveness of youth detention, and, by implication, their capacity to help deliver the objects of the *Youth Justice Act (NT)*.

Both governments failed to address these concerns and failed to invest adequately in replacing those facilities, which significantly contributed to:

- the harsh conditions that children and young people experienced in all youth detention centres but particularly in Alice Springs
- the unjustified isolation and segregation of female detainees
- the lack of recreational activities available to detainees, and
- the decline in the health, safety and wellbeing of detainees.

To a large extent, the shortcomings identified in the management and operation of youth detention services were sourced in the attitude of the ministers and governments from time to time who:

- were responsible for the allocation of funds to the youth detention system, and
- set the tone for the attitude and approach towards those detained by those who worked with detainees.

ENDNOTES

- ¹ Exh.311.074A, NT Department of Chief Minister: Cabinet Handbook February 2015, 1 January 2015, tendered 27 April 2017, Appendix A. The current version is available at <https://dcm.nt.gov.au/__data/assets/pdf_file/0018/252216/cabinet_handbook_august_2017.pdf>
- ² *Public Sector Employment and Management Act* (NT), s 5A(2).
- ³ *Public Sector Employment and Management Act* (NT), s 22.
- ⁴ *Public Sector Employment and Management Act* (NT), s 5B(c).
- ⁵ *Public Sector Employment and Management Act* (NT), s 5B(d)(ii)
- ⁶ *Public Sector Employment and Management Act* (NT), s 5B(e)(i).
- ⁷ *Public Sector Employment and Management Act* (NT), s 5B(e)(ii).
- ⁸ *Youth Justice Act* (NT), s 4.
- ⁹ Youth Justice Regulations (NT) reg 72; Exh.741.002, Annexure MP-2 to the Statement of Mark Payne, 23 February 2009, tendered 25 July 2017, p. 4
- ¹⁰ Exh.741.002, Annexure MP-2 to the Statement of Mark Payne, 23 February 2009, tendered 25 July 2017. p. 13; *Youth Justice Act* (NT) s 158A.
- ¹¹ Youth Justice Regulations (NT) reg 42.
- ¹² During the relevant period incident reports were required to be recorded under the Incident Reporting and Recording Directive: Exh.064.058, Incident reporting and recording, 7 Oct 2011, tendered 31 March 2017.
- ¹³ Youth Justice Regulations (NT) reg 74.
- ¹⁴ Youth Justice Regulations (NT) reg 67.
- ¹⁵ Transcript, David Ferguson, 24 March 2017, p. 1831: lines 27-29.
- ¹⁶ Exh.124.001, Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, para 37; Exh.741.162, Annexure MP-162 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, p.2.
- ¹⁷ Exh.064.126, Audit 26.07.2012, 29 November 2012, tendered 15 March 2017 and Exh.064.127, Alice Springs report 27/11/2012, 29 November 2012, tendered 29 March 2017: while this audit was conducted by Barrie Clee, senior management were aware of the operational issues in Alice Springs in 2012. Mr Middlebrook urged Mr Caldwell and Mr Yaxley to speak to staff: see Exh.064.117, Fwd: Urgent Operational Issues Alice Springs Youth Detention, 13 November 2012, tendered 29 March 2017, p. 1; Exh.064.165, Deferred – Detainee Complaints Register DDYDC, 28 March 2014, tendered 31 March 2017; Exh.064.166, Response – Use of force register, 2 April 2014, tendered 29 March 2017; Exh.236.001, Response – BMU Register, 2 April 2014, tendered 30 March 2017; Exh.283.196, Signed Memo – ASYDC Audits Nov 2014, 8 December 2014, tendered 31 March 2017; Exh.064.223, Signed – Post Incident Cell Placement – C block Review Jan 2015, 8 January 2015, tendered 29 March 2015; Exh.064.264, Further PSU audit, 25 May 2015, tendered 31 March 2017; Exh.774.001, Signed Memorandum: At risk (self harm) Don Dale Youth Detention Centre, 14 July 2015, tendered 22 August 2017; Exh 842.001, Audit – B & C Blocks: De-escalation Rooms Don Dale Youth Detention Centre, 29 September 2015, tendered 24 October 2017, p. 1163; Exh.124.007, Annexure DF-6 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017; Exh.124.005, Annexure DF-4 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017; Exh.124.009, Annexure DF-8 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017; Exh.124.008, Annexure DF-7, 17 February 2017, tendered 23 March 2017.
- ¹⁸ Exh.064.165, Deferred – Detainee Complaints Register DDYDC, 28 March 2014, tendered 31 March 2017; Exh.064.166, Response – Use of force register, 2 April 2014, tendered 29 March 2017; Exh.236.001, Response – BMU Register, 2 April 2014, tendered 30 March 2017; Exh.283.196, Signed Memo – ASYDC Audits Nov 2014, 8 December 2014, tendered 31 March 2017; Exh.064.264, Further PSU audit, 25 May 2015, tendered 31 March 2017; Exh.774.001, Signed Memorandum: At risk (self harm) Don Dale Youth Detention Centre, 14 July 2015, tendered 22 August 2017; Exh 842.001, Audit – B & C Blocks: De-escalation Rooms Don Dale Youth Detention Centre, 29 September 2015, tendered 24 October 2017, p. 1163.
- ¹⁹ Exh.064.223, Signed – Post Incident Cell Placement – C block Review Jan 2015, 8 January 2015, tendered 29 March 2015; Exh.124.005, Annexure DF-4 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017; Exh.124.009, Annexure DF-8 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017; Exh.124.008, Annexure DF-7 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017.
- ²⁰ Exh.064.126, Audit 26.07.2012, 29 November 2012, tendered 15 March 2017: while this audit was conducted by Barrie Clee, senior management including Mr Middlebrook and Ms Cohen were aware of the operational issues in Alice Springs in 2012.
- ²¹ Transcript, Ken Middlebrook, 26 April 2017, p. 3000: lines 37-39, p. 3001, lines 1-2.
- ²² Transcript, Ken Middlebrook, 26 April 2017, p. 3000: lines 40-47.
- ²³ Transcript, Salli Cohen, 24 April 2017, p. 2839: lines 12-16.
- ²⁴ Transcript, Ken Middlebrook, 26 April 2017, p. 3001: lines 5-6, 11-12, 15-23
- ²⁵ Transcript, Ken Middlebrook, 26 April 2017, p. 3001: lines 15-18.
- ²⁶ Transcript, Ken Middlebrook, 26 April 2017, p. 3001: lines 28-32.
- ²⁷ Exh.823.001, Letter to Mr Middlebrook attaching Final Investigation Report re complaints relating to services provided by Northern Territory Department of Correctional Services, 22 April 2014, tendered 24 October 2017 p. 1.
- ²⁸ Exh.053.028, Children’s Commissioner Own Initiative Investigation Report: Services provided by the Department of Correctional Services at the Don Dale Youth Detention Centre, 20 August 2015, tendered 14 December 2016, p. 36: the report states ‘it is difficult to determine the total amount of time the young persons were permitted to be out of his cell each day because there were no records kept for the entire time the young persons were held in the BMU cells. Inspection of observation cells showed that they were incomplete.’

- ²⁹ Exh.053.029, Children’s Commissioner Own Initiative Investigation Report: Services provided by the Department of Correctional Services at the Don Dale Youth Detention Centre, Alice Springs Youth Detention Centre, 15 August 2016, tendered 14 December 2016, p. 34: the report states that there were deficiencies of recording the decisions to transfer young person’s temporarily to adult facilities.
- ³⁰ Exh.053.027, Children’s Commissioner Confidential Report relating to youth detention practices, 12 February 2015, tendered 14 December 2016, pp. 18-19.
- ³¹ Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, p 1.
- ³² Transcript, Salli Cohen, 30 March 2017, p. 2328: lines 30-40.
- ³³ Exh.211.011, Annexure SC-10 to the statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p. 7
- ³⁴ Transcript, Johan Elferink, 27 April 2017, p. 3105: lines 30-35.
- ³⁵ Transcript, Salli Cohen, 30 March 2017, p. 2321: lines 30-37.
- ³⁶ Exh.211.011, Annexure SC-10 to the statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p. 19.
- ³⁷ Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, p. 47.
- ³⁸ Exh.746.000, Statement of Jenni Gannon, 5 May 2017, tendered 25 July 2017, para. 21.
- ³⁹ Exh.746.000, Statement of Jenni Gannon, 5 May 2017, tendered 25 July 2017, para. 23.
- ⁴⁰ Submission, Northern Territory Government response to Notice of Adverse Material 42, 11 October 2017, para. 19 citing Exh.746.000, Statement of Jenni Gannon, 5 May 2017, tendered 25 July 2017, paras 12-16; Ms Gannon estimated that by May 2017, 95% of existing staff would have completed the training.
- ⁴¹ Exh.124.007, Annexure DF-6 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, p. 2.
- ⁴² Exh.124.005, Annexure DF-4 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017 p. 4.
- ⁴³ Exh.124.009, Annexure DF-8 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, p. 4.
- ⁴⁴ Exh.124.008, Annexure DF-7 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, p. 3.
- ⁴⁵ Exh.746.000, Statement of Jenni Gannon, 5 May 2017, tendered 25 July 2017, para. 30.
- ⁴⁶ Exh.738.000, Statement of Jeanette Kerr, 21 February 2017, tendered 25 July 2017, para. 24.
- ⁴⁷ Exh.738.000, Statement of Jeanette Kerr, 21 February 2017, tendered 25 July 2017, para. 25; Exh.738.008, Annexure JK-8 to Statement of Jeanette Kerr, 21 February 2017, tendered 25 July 2017, p. 9.
- ⁴⁸ Exh.064.166, Response – Use of force register, 2 April 2014, tendered 29 March 2017, p. 2; Exh.236.001, Response – BMU Register, 2 April 2014, tendered 30 March 2017, p. 2; Exh.124.009, Annexure DF-8 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017, p. 5; Exh.124.010, Annexure DF-9 to Statement of David Ferguson, 17 February 2017, tendered 23 March 2017.
- ⁴⁹ Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 11.
- ⁵⁰ Transcript, Salli Cohen, 30 March 2017, p. 2362: lines 8-14.
- ⁵¹ Transcript, Salli Cohen, 30 March 2017, p. 2310: line 41; p. 2362: lines 8-14.
- ⁵² Exh.444.000, Statement of Peter Rainbird, 3 May 2017, tendered 12 May 2017, para. 10.
- ⁵³ Exh.064.142, Temporary Secondment of Michael Yaxley, 28 May 2013, tendered 31 March 2017, p. 1.
- ⁵⁴ Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 11.
- ⁵⁵ Transcript, Russell Caldwell, 29 March 2017, p. 2106: lines 44-46.
- ⁵⁶ Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, paras 24-26.
- ⁵⁷ Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 76.
- ⁵⁸ Transcript, Russell Caldwell, 29 March 2017, p. 2106: lines 40-42.
- ⁵⁹ Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 5.
- ⁶⁰ Exh.172.001, Statement of James Sizeland, 17 February 2017, tendered 27 March 2017, paras 7, 9.
- ⁶¹ Exh.172.001, Statement of James Sizeland, 17 February 2017, tendered 27 March 2017, paras 7, 9.
- ⁶² Transcript, James Sizeland, 27 March 2017, p. 1866: lines 35-38.
- ⁶³ Exh.075.001, Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017, para. 13.
- ⁶⁴ Transcript, Derek Tasker, 15 March 2017, p. 1050: lines 28-30.
- ⁶⁵ Transcript, Derek Tasker, 15 March 2017, p. 1106: lines 39-43.
- ⁶⁶ Exh.064.120, FW: Derek Taskers Contracts, 20 November 2012, tendered 29 March 2017, p. 2; Exh.064.131, Tasker please explain letter, 3 December 2012, tendered 29 March 2017.
- ⁶⁷ Transcript, Michael Yaxley, 29 March 2017, p. 2239: lines 40-41; p. 2240: lines 5-15; Exh.064.131, Tasker please explain letter, 3 December 2012, tendered 29 March 2017, p.2
- ⁶⁸ Exh.075.001, Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017, para. 13.
- ⁶⁹ Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, paras 5.3, 5.5.
- ⁷⁰ Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para. 13-15.
- ⁷¹ Exh.035.001, Statement of Mark Payne, 4 December 2016, tendered 6 December 2016, paras 18(d)(i); Exh.258.001, Statement of Victor Williams, 3 February 2017, tendered 31 March 2017, para 6; Transcript, James Sizeland, 28 March 2017 p.1997: lines 40-44.
- ⁷² Exh.035.001, Statement of Mark Payne, 4 December 2016, tendered 6 December 2016, paras 21-22.
- ⁷³ Exh.035.001, Statement of Mark Payne, 4 December 2016, tendered 6 December 2016, paras 27, 45.
- ⁷⁴ Exh.204.001, Northern Territory Correctional Services Directive, 31 August 2011, tendered 29 March 2017.
- ⁷⁵ Transcript, Ken Middlebrook, 26 April 2017, p. 2988: lines 24-27, 31-40.
- ⁷⁶ Exh.211.020, Annexure SC-19 to Statement of Salli Cohen, 24 January 2015, tendered 31 March 2017, p 6.

- 77 Exh.211.020, Annexure SC-19 to Statement of Salli Cohen, 24 January 2015, tendered 31 March 2017, p 6.
- 78 Transcript, Salli Cohen, 30 March 2017, p. 2350: lines 13-39.
- 79 Exh.283.104, RE: 29 April 2015, tendered 31 March 2017, p 1; Exh.741.037, Annexure MP-037 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017.
- 80 Transcript, Megan Mitchell, 11 October 2016, p. 30: lines 21-23, 36-47.
- 81 Exh.031.002, "A Safer Northern Territory Through Correctional Interventions", 31 July 2016, tendered 5 December 2016, pp. 144-145. It is noted that at p.143 the report also found as follows: 'However, we acknowledge this arrangement to be preferable to operating the centre critically short staffed, or with an even higher proportion of inexperienced officers than it already has.'
- 82 Exh.006.001, Rules for the Protection of Juveniles Deprived of their Liberty ('JDL Rules' or 'Havana Rules'), 14 December 1990, tendered 11 October 2016, Rule 82.
- 83 Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, Rule 22.2.
- 84 Principal Advocate for Children and Youth, 2013, "It depends who's working" The Youth Reality at Roy McMurtry Youth Centre, Provincial Advocate for Children and Youth, Toronto, p.20.
- 85 Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 15 September 2013, tendered 31 March 2017, p. 6; Transcript, Megan Mitchell, 11 October 2016, p. 30: lines 14-30; Transcript, Kelly Dedel, 29 June 2017, p. 5290: line 45-p.5291: line 16.
- 86 Exh.283.111, Fwd: 12HR Shifts, 4 May 2015, tendered 31 March 2017 p. 1; Transcript, Ken Middlebrook, 26 April 2017, p. 3023 lines: 26-27.
- 87 Exh.265.001, Statement of Dr Gary Manison, 14 February 2017, tendered 31 March 2017, paras 21-24; Exh.435.000, Statement of Phillip Brown, 2 May 2017, tendered 12 May 2017, para 47; Exh.219.001, Annexure SC-5 to Statement of Salli Cohen, 19 December 2013, tendered 30 March 2017, p. 40; Exh.157.001, Statement of Jamie Clee, 16 March 2017, tendered 24 March 2017, para. 6.
- 88 Exh.212.001, Statement of Salli Cohen, 8 March 2017, tendered 30 March 2017, paras 35-36.
- 89 Exh.153.001, Statement of Louise Inglis, 15 February 2017, tendered 24 March 2017, para 30; Transcript, Leonard de Souza, 22 March 2017, p. 1651: lines 4-6.
- 90 Exh.777.001, Review of Human Resources NT Juvenile Detention, undated, tendered 22 August 2017, pp. 6-7.
- 91 Exh.777.001, Review of Human Resources NT Juvenile Detention, undated, tendered 22 August 2017, p. 4.
- 92 Exh.283.061, Report of Review of NTCS staff training and development arrangements, 18 May 2009, tendered 31 March 2017, p. 10; Exh.265.001, Statement of Dr Gary Manison, 14 February 2017, tendered 31 March 2017, paras 35-36.
- 93 Exh.064.006, Memo to ED re JD HR review progress 21.05.09, 26 May 2009, tendered 31 March 2017, p. 5.
- 94 Exh.265.001, Statement of Dr Gary Manison, 14 February 2017, tendered 31 March 2017, para 23.
- 95 Exh.265.001, Statement of Dr Gary Manison, 14 February 2017, tendered 31 March 2017, para 22.
- 96 Submission, Northern Territory Government response to Notice of Adverse Material 42, 11 October 2017, citing Exh.172.001, Statement of James Sizeland, 17 February 2017, tendered 27 March 2017 para 30; Transcript, Michael Yaxley, 28 March 2017, p. 2092: line 27.
- 97 Exh.283.061, Report of Review of NTCS staff training and development arrangements, 18 May 2009, tendered 31 March 2017, p. 10.
- 98 Transcript, Michael Yaxley, 28 March 2017, p. 2092: lines 14-35; Exh.172.001, Statement of James Sizeland, 17 February 2017, tendered 27 March 2017, para 30.
- 99 Transcript, Gerald McCarthy, 17 March 2017, p. 1372: lines 5- 10.
- 100 Exh.095.001, Statement of Gerald McCarthy dated 14 March 2017, tendered 17 March 2017, para 34.
- 101 Transcript, Michael Yaxley, 28 March 2010, p. 2075: line 29 – p. 2076 line 6.
- 102 Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, paras 7, 58.
- 103 Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para. 60.
- 104 Exh.435.000, Statement of Phillip Brown, 2 May 2017, tendered 12 May 2017, paras 44, 47, 54; Exh.435.002, Annexure 2 to Statement of Phillip Brown, 22 May 2012, tendered 12 May 2017, pp. 2-3.
- 105 Exh 435.002, Annexure 2 to Statement of Phillip Brown, 22 May 2012, tendered 12 May 2017, p. 3.
- 106 Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, dated 21 February 2017, tendered 31 March 2017, p. 5.
- 107 Transcript, Michael Yaxley, 28 March 2017, p. 2077: lines 12-14.
- 108 When Michael Yaxley was Deputy Superintendent and Superintendent at the former Don Dale Youth Detention Centre: Transcript, Michael Yaxley, 28 March 2017, p. 2074: lines 43-47; p. 2075: lines 11-16.
- 109 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 52.
- 110 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 48.
- 111 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, paras 49-50.
- 112 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 50.
- 113 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, paras 51 and 60.
- 114 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 49, 50 and 60.
- 115 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 51; Exh.190.007, Annexure MY-6 to Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, p. 2; Exh.190.008, Annexure MY-8 to Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017.
- 116 Exh.435.000, Statement of Phillip Brown, 2 May 2017, tendered 12 May 2017, paras 7, 54.
- 117 Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017.
- 118 Transcript, Michael Yaxley, 29 March 2017, p. 2239 lines 28-41; Exh.064.131, Tasker please explain letter, 3 December 2012, tendered 29 March 2017.
- 119 Exh.095.005, Annexure GM-4 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017; Exh.095.006,

Annexure GM-5 to Statement of Gerald McCarthy 14 March 2017, tendered 17 March 2017; Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 13 October 2016, paras 239-241; Exh.064.163, Police v Derek Tasker, 5 February 2014, tendered 31 March 2017, para 9; Exh.064.023, Morgan Preliminary Investigation, 11 May 2010, tendered 29 March 2017, p.2.

120 Exh.211.020, Annexure SC-19 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p 6.

121 Transcript, Ken Middlebrook, 26 April 2017, p. 2967: lines 39-40.

122 Exh.444.000, Statement of Peter Rainbird, 3 May 2017, tendered 12 May 2017, para. 14.5; Exh.444.001, Annexure PR-1 to Statement of Peter Rainbird, 3 May 2017, tendered 12 May 2017.

123 Exh.444.000, Statement of Peter Rainbird, 3 May 2017, tendered 12 May 2017, para. 14.5.

124 Exh.444.000, Statement of Peter Rainbird, 3 May 2017, tendered 12 May 2017, para. 15.

125 Exh.444.002, Annexure PR-2 to the Statement of Peter Rainbird, 3 May 2017, tendered 12 May 2017.

126 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 39.

127 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 41.

128 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 40.

129 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 53.

130 Exh.211.012, Annexure SC-11 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p. 9.

131 Exh.228.001, Youth Detention Infrastructure Cab Sub, 8 October 2013, tendered 30 March 2017.

132 Exh.211.020, Annexure SC-19 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, pp. 6-7.

133 Exh.211.020, Annexure SC-19 to the Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p. 6.

134 Transcript, Ken Middlebrook, 26 April 2017, p. 2967: lines 39-40.

135 Transcript, Ken Middlebrook, 26 April 2017, p. 2969: lines 32-38.

136 Transcript, Ken Middlebrook, 26 April 2017, p. 2968: lines 24-34.

137 Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 144.3.

138 Exh 125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017.

139 Exh.212.001, Statement of Salli Cohen, 8 March 2017, tendered 30 March 2017, para. 36.

140 Exh.318.021, Appendix 18 to the Statement of Ken Middlebrook, 3 March 2017, p. 5.

141 Exh.283.118, Operational overview week 1 - (in confidence), 10 May 2015, tendered 31 March 2017.

142 Exh.072.001, Statement of John Fattore, 23 February 2017, 14 March 2017, paras 29-30.

143 Exh.072.001, Statement of John Fattore, 23 February 2017, 14 March 2017, paras 31-34.

144 Exh.072.001, Statement of John Fattore, 23 February 2017, 14 March 2017, para. 35.

145 Exh.072.001, Statement of John Fattore, 23 February 2017, 14 March 2017, para. 36; Exh.072.011, Annexure JF-10 to the Statement of John Fattore, 23 February 2017, 14 March 2017.

146 Transcript, John Fattore, 14 March 2017, p. 1025: lines 3-10.

147 Exh.072.001, Statement of John Fattore, 23 February 2017, 14 March 2017, para. 36.

148 Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para. 49; Transcript, Barrie Clee, 15 March 2017, p. 1124: lines 11-13.

149 Transcript, Barrie Clee, 15 March 2017, p. 1123: line 41 - p.1124: line 4.

150 Transcript, Barrie Clee, 15 March 2017, p. 1124: lines 15-21.

151 Transcript, Barrie Clee, 15 March 2017, p. 1124: lines 27-41; Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para 50; Transcript, Barrie Clee, 15 March 2017, p. 1125: lines 25-26.

152 Transcript, Barrie Clee, 15 March 2017, p. 1124: line 45 – p. 1125: line 2.

153 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 51; Exh.190.007, Annexure MY-6 to the Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017.

154 Exh.095.020, Annexure GM-18 to Statement of the Gerald McCarthy, 14 March 2017, tendered 17 March 2017; Exh.095.019, Annexure GM-19 to Statement of the Gerald McCarthy, 14 March 2017, tendered 17 March 2017.

155 Exh.095.012, Annexure GM-11 to statement of Gerald McCarthy, undated, tendered 14 March 2017, at p. 0053 flash brief dated 30 April 2012 and p. 0054 Flash brief dated 21 May 2012.

156 Exh.096.020, letter from the Youth Justice Advisory Committee to Minister McCarthy dated 11 July 2012, at pp. 0403-0405.

157 Exh.319.001, Statement of Ken Middlebrook, 6 March 2017, tendered 26 April 2017, paras 58-60.

158 Exh.079.003, Annexure BC-2 to the Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, p. 6.

159 Exh.079.001, Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, para. 56.

160 Exh.079.003, Annexure BC-2 to the Statement of Barrie Clee, 16 February 2017, tendered 15 March 2017, p. 6.

161 Exh.166.001, Alice Springs Juvenile Detention CONFIDENTIAL, 29 October 2015, tendered 24 March 2017, p. 1.

162 Exh.777.001, Review of Human Resources NT Juvenile Detention 2004, 2004, tendered 22 August 2017, p 27.

163 Exh.283.061, Report of Review of NTCS staff training and development arrangements, 18 May 2009, tendered 31 March 2017, pp.10-11.

164 Exh.265.001, Statement of Dr Gary Manison, 14 February 2017, tendered 31 March 2017, paras 26, 37; Exh.283.061, Report of Review of NTCS staff training and development arrangements, 18 May 2009, tendered 31 March 2017, pp.10-11.

165 Exh.283.061, Report of Review of NTCS staff training and development arrangements, 18 May 2009, tendered 31 March 2017, pp. 6-7, 10-11.

166 Exh.211.011, Annexure SC-10 to statement of Salli Cohen, 21 February 2017, p.1.

167 Transcript, Salli Cohen, 30 March 2017, p. 2328: lines 30-40.

168 Exhibit 211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, pp. 6-7; Transcript, Salli Cohen, 30 March 2017, p. 2329: lines 16-20.

169 Exhibit 211.011 , Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, pp 21-22, 25-26

- 170 Transcript, Johan Elferink, 27 April 2017, p. 3114: lines 40- 44, p. 3119: lines 37-44.
- 171 Transcript, Johan Elferink, 27 April 2017, p. 3120: lines 40-41.
- 172 Transcript, Johan Elferink, 27 April 2017, p. 3115: lines 5-7.
- 173 Transcript, Johan Elferink, 27 April 2017, p. 3110: lines 43-46, p. 3111: lines 35-37, p. 3112.
- 174 Transcript, Johan Elferink, 27 April 2017, p. 3115: lines 35-40.
- 175 Exh.1104.001, Confidential Report under s 43(2) and (5) of the *Children's Commission Act 2013* relating to Youth Detention Practices, 24 October 2014, tendered 31 October 2017; Exh.1103.001, Letter to Howard Bath, 24 October 2014, tendered 31 October 2017; Exh.321.025, Annexure 24 to Statement of Johan Elferink, 30 March 2017, tendered 27 April 2017.
- 176 Transcript, Johan Elferink, 27 April 2017, p. 3110: lines 8-11, pp. 3110; lines 8-10; 3120: lines 25-30.
- 177 Exh.324.001, Re: Start up ideas for crime response, 21 March 2016, tendered 27 April 2017, p. 1.
- 178 Transcript, Johan Elferink, 27 April 2017, p. 3190: line 14. Minister Elferink was cross-examined about this document at p. 3146: line 43 – p. 3149: line 13.
- 179 Transcript, Johan Elferink, 27 April 2017, p.3145: lines 10-18, p.3146: lines 35-41.
- 180 Transcript, Ken Middlebrook, 26 April 2017, p. 2925 lines 11-15; Transcript, Ken Middlebrook, 26 April 2017, p. 2926, lines 23-28.
- 181 Ex 095.001, Statement of Gerald McCarthy, 14 March 2017, para 58; Exh.535.000, Statement of Robyn Lambley, 6 June 2017, paras 19, 29-39, 46-54.
- 182 Exh.073.001, Statement of John Fattore, 9 March 2017, tendered 14 March 2017, para 11; Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para 40; Transcript, Michael Yaxley, 28 March 2017, p. 2085: lines 25-35.
- 183 Exh.073.001, Statement of John Fattore, 9 March 2017, tendered 14 March 2017, para. 12.
- 184 Exh 116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 44.
- 185 Exh.064.080, Response to Children's Commissioner request for information on training including PART for juvenile detention staff, 2 May 2012, tendered 22 March 2017, p. 4.
- 186 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 58.
- 187 Exh 116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, para. 45.
- 188 Exh.073.001, Statement of John Fattore, 9 March 2017, tendered 14 March 2017, para. 12.
- 189 See further Chapter 11 (Detention centre operations).
- 190 Exh.095.001, Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, para. 33.
- 191 Exh.095.001, Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, para. 34.
- 192 Such as Michael Yaxley, John Fattore, Peter Rainbird and Barrie Clee (between 2011 to 2013) and James Sizeland (from 2014 onwards); see Exh 116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, paras 76-84, 89, 91-93.
- 193 Such as Phil Brown (Deputy Director of Operations in 2012), Margaret Anderson (Executive Director of Youth Justice in 2012-13) and Salli Cohen (Executive Director, Youth Justice in 2013 –15); see Exh.116.001, Statement of Leonard de Souza, 21 February 2017, tendered 22 March 2017, paras 77, 83, 89, 94.
- 194 Exh.444.000, Statement of Peter Rainbird, 3 May 2017, tendered 12 May 2017, paras 13-14.
- 195 Exh.749.001, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, paras 30-35.
- 196 Exh.444.002, Annexure PR-2 to Statement of Peter Rainbird, 3 May 2017, tendered 12 May 2017, p. 2.
- 197 Exh.746.000, Statement of Jenni Gannon, 5 April 2017, tendered 25 July 2017, para. 12.
- 198 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 39.
- 199 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 41.
- 200 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 40.
- 201 Transcript, Ken Middlebrook, 26 April 2017, p.2967: lines 36-40; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 40.
- 202 Exh.330.013, Observations about Corrections Management, 25 May 2016, tendered 28 April 2017, p. 1.
- 203 Transcript, John Elferink, 27 April 2017, p. 3110: lines 43-46.
- 204 Transcript, Russell Caldwell, 29 March 2017, p. 2128: line 42 – p. 2129: line 2.
- 205 Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017, p. 6.
- 206 Exh.1104.001, Confidential Report under s 43(2) and (5) of the *Children's Commission Act 2013* relating to Youth Detention Practices, 24 October 2014, tendered 31 October 2017; Exh.1103.001, Letter to Howard Bath, 24 October 2014, tendered 31 October 2017.
- 207 Exh.321.025, Annexure 24 to Statement of Johan Elferink, 30 March 2017, tendered 27 April 2017.
- 208 Exh.318.015, Annexure 11 to the Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017.
- 209 Exh.194.016, Annexure RSC-17 to the Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, p. 2.
- 210 Standard Operating Procedures from 2011 indicate that staff should endeavour to provide a minimum of one hour out of the cell on each shift: Exh.741.032, Annexure MP-32 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, p. 9.
- 211 Submission, Northern Territory Government response to Notice of Adverse Material 42, 11 October 2017, para 54(b).
- 212 Exh.053.028, Annexure 18 to the Statement of Dylan Voller, 25 November 2016, tendered 13 December 2016, p. 28.
- 213 Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, p. 26.
- 214 Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017, pp. 1,2, 6, 7.
- 215 Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, p. 12, 26.
- 216 Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, p. 26.
- 217 Exh.606.000, Precis of Statement of Mike McFarlane, 16 June 2017, tendered 21 June 2017, para 26(e)
- 218 Transcript, Johan Elferink, 27 April 2017, p. 3107: lines 5-7.
- 219 Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p. 5.

- ²²⁰ Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p. 24.
- ²²¹ See Chapter 11 (Detention centre operations).
- ²²² See Chapter 11 (Detention centre operations).
- ²²³ See Chapter 15 (Health, mental health and children at-risk).
- ²²⁴ Michael Vita noted in his 2015 review of Northern Territory Youth Detention Centres that implementing up-to-date standard operating procedures should be a priority for youth detention because *'it is always difficult to discipline staff or hold them accountable for any breaches of duty of care requirements when the procedures that should dictate what they do are not updated or they are not aware of them'*: Exh.437.002, Annexure 2 to Statement of Michael Vita, 11 January 2017, tendered 12 May 2017, pp. 21-22.
- ²²⁵ See further Chapter 11 (Detention Centre operations); Keith Hamburger noted in his 2016 review of the Northern Territory Department of Correctional Services that *'a lack of leadership and supervision of staff'* contributed to incidents at the former Don Dale Youth Detention Centre: Exh.031.002, Annexure 1 – Report, "A Safer Northern Territory Through Correctional Interventions" [REDACTED], 31 July 2016 tendered 5 December 2016, p. 144;
- ²²⁶ See further Chapter 12 (Abuse and humiliation); see further Chapter 13 (Use of force); see further Chapter 20 (Detention centre staff); Transcript, James Sizeland, 27 March 2017, p. 1884: lines 9-18.
- ²²⁷ Exh.311.042D, Ken Middlebrook, 28 August 2014, tendered 27 April 2017; Transcript, Johan Elferink, 27 April 2017, p. 3094: lines 32-37.
- ²²⁸ Transcript, Salli Cohen, 24 April 2017, p. 2788: lines 15-19.
- ²²⁹ Exh.311.047, Elferink interview with ABC Darwin, 16 September 2014, tendered 28 April 2017.
- ²³⁰ Exh.311.11A, Radio interview transcript, 16 October 2015, tendered 28 April 2017, pp 8-9.
- ²³¹ Exh.822.001, Re: HOPE Program, tendered 24 October 2017.
- ²³² See further Chapter 11 (Detention centre operations).
- ²³³ Exh.437.002, Annexure 2 to the Statement of Michael Vita, 11 January 2017, tendered 12 May 2017, pp. 21-22.
- ²³⁴ Exh.214.001, Statement of Salli Cohen, 23 March 2017, tendered 30 March 2017, para 33.
- ²³⁵ Louise Inglis said: *'...if us four had been on shift for four days, same shift, with each other, knowing – and same seniors, whatever, four days on, calm, everybody's happy, there's no complaints, there's no big – no big arguments or big fights, and you go home thinking, "I think I've achieved something this week," and so you go and have your three days off thinking, stupidly, that you've achieved something that week, and then you get back and, as we said, all the people are in the cells and half of them are in the red T-shirts and you think, "What the hell happened in the three days we weren't here?':* Transcript, Louise Inglis, 24 March 2017, p. 1787: lines 31-19.
- Mr Harmer said: *"You'd it go in to do one shift one afternoon, bring the boys out. Okay, the senior would say to you, "Yeah, give them cup of tea, three in the kitchen at the time, if they want to have a piece of bread, jam on it, yeah, go for it." And then, "Shoes on, they can go and play on the field, blah blah blah." You'd do that one afternoon and then you'd have a different senior on and then you'd start repeating that procedure again, "No, what the hell are you doing? What do you think you're doing?" "We did this yesterday." "Well, you're not doing it today. No cups of tea, no bloody bread for them, they can wait until mealtime." "Okay, okay."':* Transcript, Greg Harmer, 24 March 2017, p. 1786; lines 36-44; p. 1787: lines 1-18.
- Ben Kelleher said that inconsistencies included: *"taking kids' mattresses out of the cells for not a very good reason, giving them a longer period in the BMU for behaviour that I don't believe warranted that. Not allowing them to go out on the basketball court for a long time just because it didn't suit the shift supervisor at the time. Things like that made subsequent shifts, and the rest of the day very hard...":* Transcript, Ben Kelleher, 21 March 2017, p. 1543, lines 20-31.
- Eliza Tobin said: *"So there was no real long-term consistency for staff or detainees about management styles. That kept changing, as well as the day-to-day management styles within the office and the senior youth workers. So, from that point of view, it was very unsettled, unpredictable, which isn't good for anybody in a workplace, I don't think."':* Transcript, Eliza Tobin, 24 March 2017, p. 1785, lines 40-47; p. 1786: lines 1-2.
- ²³⁶ Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017, pp. 2-3.
- ²³⁷ Exh.437.002, Annexure 2 to Statement of Michael Vita, 11 January 2017, tendered 12 May 2017, pp. 21-22; Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, pp. 45; Exh.214.001, Statement of Salli Cohen, 23 March 2017, tendered 30 March 2017, para 34; see Chapter 11 (Detention centre operations).
- ²³⁸ Transcript, Leonard de Souza, 22 March 2017, p. 1617: lines 18-19.
- ²³⁹ Exh.073.001, Statement of John Fattore, 9 March 2017, tendered 14 March 2017, para.13.
- ²⁴⁰ Exh.096.016, Ministerial regarding CAALAS letter to Minister dated 15 August 2011, 15 August 2011, tendered 17 March 2017, p. 2
- ²⁴¹ Exh.211.011, Annexure SC-10 to the statement of Salli Cohen, dated 21 February 2017, tendered 31 March 2017, p. 92.
- ²⁴² Transcript, Leonard de Souza, 22 March 2017, p. 1632: lines 27-30.
- ²⁴³ Transcript, Louise Inglis, 24 March 2017, p. 1788: lines 34-35; Exh.147.001, Statement of Jon Walton, 21 February 2017, tendered 24 March 2017, para 18; Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p. 45, Exh.194.016, Annexure RSC-17 to Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, p. 2.
- ²⁴⁴ Exh.264.001, Statement of Kyla Raby, 16 February 2017, tendered 31 March 2017, para. 39. Ms Cohen said that Ms Raby received guidance on the development of the new manual and standard operating procedures from Mr Sizeland and herself and in her opinion, Ms Raby understood what was required. However, Ms Cohen acknowledged that Ms Raby was new to public service, came into a unit three-quarters of the way through a project and in matters in which she had some involvement, was not necessarily involved in or aware of all the other relevant activities being undertaken: Exh.214.001, Statement of Salli Cohen, 23 March 2017, tendered 30 March 2017, paras 7, 32.
- ²⁴⁵ Transcript, Salli Cohen, 30 March 2017, p. 2382: lines 14-45, p. 2383: lines 1-25.
- ²⁴⁶ Exh.741.001, Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, para. 62.
- ²⁴⁷ Exh.125.001, YJ Detention Review Sept 2014, 19 September 2014, tendered 23 March 2017, pp. 2-3.

248 Exh.283.118, Operational overview week 1 (in confidence), 10 May 2015, tendered 31 March 2017, pp. 1-2.
249 Exh.095.012, Annexure GM-11 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017.
250 Exh.095.005, Annexure GM-4 to Statement of Gerald McCarthy dated 14 March 2017, tendered 17 March 2017.
251 Exh.095.006, Annexure GM-5 to the Statement of Gerald McCarthy dated 14 March 2017, tendered 17 March 2017.
252 Transcript, Gerald McCarthy, 17 March 2017, p. 1374: line 43 – p. 1375: line 5; p. 1384: lines 6-14, 30-33.
253 Exh.334.001, Statement of Howard Bath, 24 March 2017, tendered 28 April 2017, paras 8-9.
254 Exh.011.001, Statement of Howard Bath, 5 October 2016, tendered 12 October 2016, paras 78-80.
255 Exh.011.001, Statement of Howard Bath, 5 October 2016, tendered 12 October 2016, paras 78-80.
256 Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para. 224.
257 Transcript, Gerald McCarthy, 17 March 2017, p. 1385: line 45 – p. 1386: line 4, p. 1386 lines 6-8.
258 Transcript, John Elferink, 27 April 2017, p. 3136: lines 23-30.
259 Transcript, John Elferink, 27 April 2017, p. 3136: lines 35-37.
260 Transcript, John Elferink, 27 April 2017, p. 3136: lines 44-47.
261 Transcript, Adam Giles, 28 April 2017, p. 3249: lines 35-45, p. 3250: lines 1-45.
262 Transcript, Adam Giles, 28 April 2017, p. 3281: lines 12-35.
263 Exh.309.004, Letter from the Department of Justice to the Children's Commissioner, 1 September 2011, tendered 21 April 2017, p.1.
264 Exh.095.015, CAALAS letter, 15 August 2011, tendered 17 March 2017, pp. 1-2.
265 Exh.204.001, Northern Territory Correctional Services Directive, 31 August 2011, tendered 29 March 2017.
266 Exh.204.001, Northern Territory Correctional Services Directive, 31 August 2011, tendered 29 March 2017.
267 Transcript, Ken Middlebrook, 26 April 2017, p. 2988: lines 24-27, 31-36.
268 Transcript, Ken Middlebrook, 26 April 2017, p. 2989: lines 29-36; p. 2990: lines 8-10.
269 Transcript, Michael Yaxley, 29 March 2017, p. 2205: lines 34-40, p. 2206: lines 27-33.
270 Transcript, Michael Yaxley, 29 March 2017, p. 2204: lines 39-44; p. 2205: lines 5-6.
271 Transcript, Michael Yaxley, 29 March 2017, p. 2205: lines 1-11.
272 Exh.311.008, Document written by Barrie Clee, 24 August 2012, tendered 26 April 2017, p. 1.
273 Transcript, Ken Middlebrook, 26 April 2017, p. 2990 lines 29-34.
274 Exh.383.001, Annexure ANC-1 to the Statement of Amanda Nobbs-Carcuro, 11 May 2017, tendered 12 May 2017, p. 5.
275 Exh.313.001, SFNT Advice, 18 March 2014, tendered 24 April 2017, pp. 2-3.
276 Transcript, Salli Cohen, 24 April 2017, pp. 2833-2834.
277 Exh.312.001, Re: Incident reports for [REDACTED], 13 April 2014, tendered 24 April 2017; Exh.283.235, Re: [REDACTED], 9 April 2014, tendered 31 March 2017; Transcript, Ken Middlebrook, 26 April 2017, p. 2997: lines 9-15.
278 Submissions, Northern Territory Government, 23 May 2017, para 93.
279 Transcript, Ken Middlebrook, 26 April 2017, p. 2992: lines 13-15.
280 Transcript, Ken Middlebrook, 26 April 2017, p. 2989: lines 16-19.
281 Transcript, Ken Middlebrook, 26 April 2017, p. 2987: line 45 – p. 2988: line 2.
282 Exh.741.037, Annexure MP-37 to Statement of Mark Payne, 23 February 2017, tendered 25 July 2017.
283 Exh.741.000, Statement of Mark Payne, 23 February 2017, tendered 25 July 2017, para 43.
284 Exh.051.001, Statement of Dylan Voller, 25 November 2016, tendered 12 December 2016, para 129; Exh.053.029, Annexure 19 to the Statement of Dylan Voller, 25 November 2016, tendered 12 December 2016, pp. 48-49 (Attachment D).
285 Exh.283.095, Re [REDACTED], 8 April 2015, tendered 31 March 2015, pp. 1-2
286 Exh.212.001, Statement of Salli Cohen, 8 March 2017, tendered 20 March 2017, para 7.
287 Transcript, Salli Cohen, 24 April 2017, p. 2788: lines 13-14.
288 Transcript, Salli Cohen, 24 April 2017, p. 2788: lines 14-15, 18-19.
289 Exh.283.104, RE:, 29 April 2015, tendered 31 March 2017, p. 1.
290 Exh.311.084, Re: Use of Restraints – Youth Detainees, 29 April 2015, tendered 24 April 2017, p. 1.
291 Transcript, Ken Middlebrook, 26 April 2017, p. 3029 line 8.
292 Transcript, Ken Middlebrook, 26 April 2017, p. 3028 lines 32-33.
293 Transcript, Ken Middlebrook, 26 April 2017, p. 3028: line 15, p.3030: lines 14-15
294 Transcript, Ken Middlebrook, 26 April 2017, p. 3030 lines 22-29.
295 Transcript, Ken Middlebrook, 26 April 2017, p. 3027 lines 14-15.
296 Transcript, Salli Cohen, 24 April 2017, p. 2787 lines 1-5.
297 Exh.283.129, Re: Discussions with the Minister, 20 June 2015, tendered 31 March 2017, p. 1.
298 Transcript, Ken Middlebrook, 26 April 2016, p. 3024 line 3.
299 Exh.212.011, Annexure SC-10 to Statement of Salli Cohen, 8 March 2017, tendered 31 March 2017, p. 3.
300 Transcript, Johan Elferink, 27 April 2017, p. 3197: lines 40-45.
301 Transcript, Johan Elferink, 27 April 2017, p. 3198: line 2.
302 Transcript, Johan Elferink, 27 April 2017, p. 3198: lines 2-3.
303 Transcript, Ken Middlebrook, 26 April 2017, p. 3028: lines 36-39.
304 Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 234.
305 Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras 234-235.
306 Exh.283.151, File Notes - 2014-0428, 2 November 2016, tendered 31 March 2017, p 2.
307 Exh.283.204, RE: [REDACTED], 22 June 2015, tendered on 31 March 2017.
308 Transcript, Mr Ken Middlebrook, 26 April 2017, p.3060: line 40 –p.3061 line 7.
309 Exh.011.001, Statement of Howard Bath, 5 October 2016, tendered 12 October 2016, para 99(b).

310 Transcript, Ken Middlebrook, 26 April 2017, p. 3054: lines 30-36, see also Detention Submissions, Ken Middlebrook, p. 5.
311 Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para 148.
312 Transcript, Ken Middlebrook, 26 April 2017, p. 2982: lines 9-47.
313 Submission, Northern Territory Government, 11 October 2017, para 85(e).
314 See Chapter 10 (Detention facilities).
315 Mr Caldwell stated *'there was a lack of suitable physical facilities for detainees at Don Dale, Alice Springs, Holtze CBU and the old Berrimah prison site'*; Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 211; Mr Yaxley stated *'significant investment should be put into building two new purpose-designed youth detention centres in Alice Springs and Darwin. Neither premises is fit for purpose. Neither premises was designed having regard to contemporary classification systems and the associated benefits in helping to encourage detainees to change their behaviour and thinking patterns.'*; Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 108; Salli Cohen said that *'the most pressing issue was the unsuitability of the facilities'*: Exh.212.001, Statement of Salli Cohen, 8 March 2017, tendered 30 March 2017, para. 18; Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, paras 118-120. Mr Middlebrook acknowledged that from 2009, the Don Dale Youth Detention Centre and Aranda house were at capacity: Exh.318.0001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras 29-30, 33, 39-40, 56, 57 124(e)-(f).
316 Exh.095.001, Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, para. 42.
317 Transcript, Gerald McCarthy, 17 March 2017, p. 1345 lines 15-16.
318 Exh 321.001, Statement of Johan Elferink, 30 March 2017, tendered 27 April 2017, para. 45.
319 Transcript, Johan Elferink, 27 April 2017, p. 3214 lines 42-43.
320 Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 75.
321 Exh.095.001, Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, para. 42.
322 Transcript, Jeanette Kerr, 8 December 2016, p. 525 lines 12-13.
323 Exh.095.001, Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, para. 42.
324 Transcript, Gerald McCarthy, 17 March 2017, p. 1329 lines 21-28.
325 Transcript, Gerald McCarthy, 17 March 2017, p. 1340 lines 24-46.
326 Transcript, Gerald McCarthy, 17 March 2017, p. 1340 lines 31-33.
327 Exh.318.009, Appendix 5 to Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, pp. 6-8.
328 Exh.096.003, Official visitor report, 2 July 2009, tendered 17 March 2017; Exh.096.005, Ministerial brief in relation to Official Visitor report, 23 December 2009, tendered 17 March 2017.
329 Exh.841.001, Official Visitor Report of Keith Williams, 21 December 2010, tendered 24 October 2017. The Commission notes that this a draft version of the report.
330 The new prison project involved the plan to replace the Darwin Correctional Centre.
331 Exh.095.014, Annexure GM-13 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, p. 7.
332 Exh.095.014, Annexure GM-13 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, p. 5.
333 Exh.095.014, Annexure GM-13 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, p. 4.
334 Transcript, Gerald McCarthy, 17 March 2017, p. 1333: line 26.
335 Exh.095.015, Annexure GM-14 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, p. 5.
336 Transcript, Gerald McCarthy, 17 March 2017, p. 1334: line 8.
337 Exh.096.006, Northern Territory Prison Project Review, 1 February 2010, tendered 17 March 2017, pp. 39-40.
338 Exh.096.006, Northern Territory Prison Project Review, 1 February 2010, tendered 17 March 2017, p 29.
339 Exh.096.017, Carney Review of the Northern Territory Justice System, 30 September 2011, tendered 17 March 2017, p. 206.
340 Transcript, Gerald McCarthy, 17 March 2017, p. 1339 lines 4-5.
341 Transcript, Gerald McCarthy, 17 March 2017, p. 1338 lines 34-35.
342 Transcript, Gerald McCarthy, 17 March 2017, p. 1340 lines 16-24.
343 Exh.211.005, Annexure SC-4 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p. 29.
344 Exh.095.012, Annexure GM-11 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, p 3.
345 Exh.072.001, Statement of John Fattore, 23 February 2017, tendered 14 March 2017, para. 14.
346 Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para. 30.
347 Exh.095.017, Annexure GM-16 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017 p.1.
348 Exh.072.006, Annexure JF-5 to Statement of John Fattore, 23 February 2017, tendered 14 March 2017, pp. 8-9.
349 Exh.072.006, Annexure JF-5 to Statement of John Fattore, 23 February 2017, tendered 14 March 2017, p. 4.
350 Exh.095.012, Annexure GM-11 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, p. 4.
351 Exh.072.006, Annexure JF-5 to Statement of John Fattore, 23 February 2017, tendered 14 March 2017, pp. 4-5.
352 Transcript, Gerald McCarthy, 17 March 2017, p. 1370 lines 8-10.
353 Exh.072.001, Statement of John Fattore, 23 February 2017, tendered 14 March 2017, para. 17.
354 Exh.072.012, Annexure JF-11 to Statement of John Fattore, 23 February 2017, tendered 14 March 2017, p. 1.
355 Exh.095.012, Annexure GM-11 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, p. 3.
356 Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para. 33.
357 Exh.095.017, Annexure GM - 16 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017.
358 Exh.072.001, Statement of John Fattore, 23 February 2017, tendered 14 March 2017, para. 27.
359 Exh.096.015, CAALAS letter, 15 August 2011, tendered 17 March 2011, p. 5.
360 Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, paras 124(e), (g).
361 Exh 095.012, Annexure GM-11 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, p. 16; Exh.096.020, brief to Minister from Acting CEO regarding letter from Chair of YJAC, regarding ASJDC, 3 August 2012, tendered 17 March 2017 pp. 15-16.

362 Transcript, Gerald McCarthy, 17 March 2017, p. 1370 lines 9-10.

363 Exh.318.001 Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, para. 33.

364 A flash brief from May 2012 indicates that Aranda House continued to be in operation in 2012: Exh.095.020, Annexure GM-19 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017; Derek Tasker, gave evidence that in 2012 staff members were stretched across the Alice Springs Youth Detention Centre and 'a re-opened Aranda House': Exh 075.001, Statement of Derek Tasker, 16 February 2017, tendered 14 March 2017, para. 33.

365 See Chapter 10 (Detention facilities).

366 Exh.095.001, Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, paras 68.1, 68.3. See Chapter 10 (Detention Facilities)

367 Exh.095.001, Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, para. 69; Exh.080.001, Statement of Antoinette Carroll, 1 December 2016, tendered 15 March 2017, para. 8.

368 Exh.096.017, Carney Review of the Northern Territory Justice System, 30 September 2011, tendered 17 March 2017, p.viii-ix.

369 Exh.337.100, Budget Cabinet Decisions with Submissions – BC12-12, 31 March 2012, tendered 12 May 2017, p. 30.

370 Transcript Gerald McCarthy, 17 March 2017, p. 1339: lines 16-18.

371 Exh.190.012, Annexure MY-11 to Statement of Michael Yaxley, tendered 20 February 2017, tendered 28 March 2017, p. 1.

372 Exh.190.012, Annexure MY-11 to Statement of Michael Yaxley, tendered 20 February 2017, tendered 28 March 2017, p. 1.

373 Transcript, Ken Middlebrook, 26 April 2017, p. 2955 lines 36-38.

374 Exh.748.027, Annexure MA-27 to Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, pp. 4-5.

375 Exh.748.027, Annexure MA-27 to Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, p. 5.

376 Exh.748.000, Statement of Margaret Anderson, 22 May 2017, tendered 25 July 2017, para. 140.

377 Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, p. 1.

378 Transcript, Salli Cohen, 30 March 2017, p. 2328 lines 30-40.

379 Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, p. 6.

380 Exh.211.011, Annexure SC-10 to the Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, p. 6.

381 Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, p. 7.

382 Exh.211.020, Annexure SC-19 to Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, pp. 6-7.

383 Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, p. 11.

384 Exh.211.011, Annexure SC-10 to Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, p. 20.

385 Transcript, Johan Elferink, 27 April 2017, p. 3114, lines 40-45, p. 3119, lines 38-40.

386 Transcript, Johan Elferink, 27 April 2017, p. 3120 line 40; p. 3115 line 5, , p. 3112 line 30.

387 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 42.

388 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 58.

389 Exh.211.012, Annexure SC-11 to Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, p. 9.

390 Exh.211.012, Annexure SC-11 to Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, p. 15.

391 Exh.211.012, Annexure SC-11 to Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, p. 16.

392 Exh.311.018, Chief Minister's Letter of Charter, 18 October 2013, tendered 24 April 2017 ; Exh.311.019, CORRECTIONAL SERVICES – Key Agency Outcomes, 18 October 2013, tendered 24 April 2017, p. 1.

393 Exh.211.006, Annexure SC-5 to Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, pp. 18-19.

394 Transcript, Ken Middlebrook, 26 April 2017, p. 2969, line 34.

395 Exh.311.051, MINC140062 - Signed Budget Cab Sub Youth Justice Framework Phase 1.pdf, 20 October 2014, tendered 28 April 2017, p. 22.

396 Exh.283.307, AGD Blue Comment, 3 February 2014, tendered 31 March 2017, p. 1.

397 Exh.231.001, FW: Cabinet-in-Confidence - AGD comment on Draft Cabinet Submission: Youth Justice Framework - Phase 1: Detention Centre Infrastructure and Operating Model - Comment ready for collection, 4 February 2014, tendered 30 March 2017, p. 1.

398 Exh.283.307, AGD Blue Comment, 3 February 2014, tendered 31 March 2017, p. 1.

399 Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 49.

400 Exh.232.001, MINC140117 – Memoranda to Cabinet Colleagues DCP and YJ, 18 March 2014, tendered 30 March 2017, p. 10

401 Transcript, Gerald McCarthy, 17 March 2017, p. 1340 lines 28-29.

402 Transcript, Ken Middlebrook, 28 April 2017, p. 3314, lines 17-20.

403 Transcript, Ken Middlebrook, 28 April 2017, p. 3314, lines 20-30.

404 Exh.234.001, Re: Saving measure, 13 March 2014, tendered 30 March 2017, p. 1.

405 While Mr Middlebrook denied that he had knowledge of the Banksia Hill memo and the Dolphin Report he accepted however that he would have expected Mr Middlebrook to raise the issues in the reports with him, that Mr Middlebrook expressed to him concerns about Don Dale Youth Detention Centre on a number of occasions, and that he had his own concerns about the lack of recreational activities, and lack of rehabilitation services: Transcript, Johan Elferink, 27 April 2017, p. 3120 line 40; p. 3115 line 5, p. 3112 line 30.

406 Exh.321.019, Annexure JE-18 to Statement of Johan Elferink, 28 March 2017, tendered 27 April 2017, p. 1.

407 Transcript, Ken Middlebrook, 26 April 2017, p. 2965 lines 2-25.

408 Exh.321.001, Statement of Johan Elferink, 31 March 2017, tendered 27 April 2017, para. 51.

409 Exh.264.001, Statement of Kyla Raby, 16 February 2017, tendered 31 March 2017, paras 30-31.

410 Exh.172.001, Statement of James Sizeland, 17 February 2017, tendered 27 March 2017, para. 139.

411 Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 199.

412 Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 200.

413 Exh,172.001, Statement of James Sizeland, 17 February 2017, tendered 27 March 2017, para. 139.

414 Exh 283.217, Review of Issues in Youth Detention, 19 September 2014, tendered 31 March 2017, p. 3.

- 415 Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, p. 21.
- 416 Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para 199.
- 417 Exh.283.294, Juveniles highlight major flaws after damaging screen at Darwin's Holtze maximum security unit, prison officers union says, 27 October 2014, tendered 31 March 2017.
- 418 Hope, Z, 'Minister defends choice of tear gas in teen riot' [website], 24 August 2014, Territory Stories, <<http://www.territorystories.nt.gov.au/bitstream/10070/252831/9/NTN24AUG14PG009-MAI-COLOUR-PRIMARY.PDF>>, accessed 20 October 2017.
- 419 Exh.211.018, Annexure SC-17 to Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017
- 420 Exh.318.001, Statement of Ken Middlebrook, 3 March 2017, 26 April 2017, para. 57.
- 421 Exh.194.001, Statement of Russell Caldwell, 13 March 2017, tendered 29 March 2017, para. 169.
- 422 Transcript, Ken Middlebrook, 26 April 2017, p. 2959 lines 10-12, 14-17.
- 423 Transcript, Ken Middlebrook, 26 April 2017, p. 3039 lines 2-5.
- 424 Exh.321.031, Annexure 30 to Statement of Johan Elferink, 30 March 2017, tendered 27 April 2017.
- 425 Exh.311.072, Letter from Director Amnesty International to Ministers re Conditions at Don Dale Juvenile Detention Centre, Berrimah, 8 January 2017, tendered 28 April 2017, p. 1.
- 426 Exh.283.118, Operational overview – week 1 (in confidence), 10 May 2015, tendered 21 March 2017, p. 2.
- 427 Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, p. 11.
- 428 Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, pp.11, 47, 65.
- 429 Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, p. 48.
- 430 Exh.024.024, Review of the Northern Territory Youth Detention System Report, January 2015, tendered 13 October 2016, p. 7.
- 431 Transcript, Salli Cohen, 24 April 2017, p. 2901 lines 11-20; Transcript, Ken Middlebrook, 26 April 2017, p. 3015 line 40 – p. 3016: line 4.
- 432 Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, p. 63.
- 433 Exh.211.008, Annexure SC-7 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p.p. 40-45.
- 434 Exh.211.008, Annexure SC-7 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p. 39.
- 435 Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, p. 67.
- 436 Exh.211.008, Annexure SC-7 to Statement of Salli Cohen, 21 February 2017, tendered 31 March 2017, p. 39.
- 437 Exh.031.002, Annexure 1 "A Safer Northern Territory Through Correctional Interventions", 31 July 2016, tendered 5 December 2016, p. 142.
- 438 Exh.031.002, Annexure 1 "A Safer Northern Territory Through Correctional Interventions", 31 July 2016, tendered 5 December 2016, p. 142.
- 439 Exh.318.009, Appendix 5 to Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, Attachment A 'Female Juvenile Detainee Numbers'.
- 440 This situation gave rise to an alleged sex romp after security doors were left unlocked: Exh.318.009, Appendix 5 to Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, p. 15.
- 441 Exh.318.009, Appendix 5 to Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, pp. 6-8.
- 442 Exh.318.009, Appendix 5 to Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, p. 6.
- 443 Exh.318.009, Appendix 5 to Statement of Ken Middlebrook, 3 March 2017, tendered 26 April 2017, p. 2.
- 444 Exh.095.012, Annexure GM-11 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, pp. 18-19.
- 445 Exh.095.012, Annexure GM-11 to Statement of Gerald McCarthy, 14 March 2017, tendered 17 March 2017, pp. 1-2.
- 446 Exh.072.005, Annexure JF-4 to Statement of John Fattore, 23 February 2017, tendered 14 March 2017, p. 3.
- 447 Exh.206.001, Draft Cab Sub New Female section at the Don Dale centre 2011, 15 March 2012, tendered 29 March 2017.
- 448 Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para, 76.
- 449 Exh.064.139, Draft Cab Sub Proposed New Female Section at DDC, 15 March 2013, tendered 29 March 2017, p. 1.
- 450 Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, paras 55-60.
- 451 Exh.031.002, Annexure 1 "A Safer Northern Territory Through Correctional Interventions", 31 July 2016, tendered 5 December 2016, p. 142.
- 452 Exh.031.002, Annexure 1 "A Safer Northern Territory Through Correctional Interventions", 31 July 2016, tendered 5 December 2016, p. 142.
- 453 Transcript, Jeanette Kerr, 8 December 2016, p. 525 lines 12-13.
- 454 Exh.033.001, Statement of Jeanette Kerr, 2 December 2016, tendered 6 December 2016 para. 43; Exh 034.002, Schedule A to Statement of Jeanette Kerr, 2 December 2016, tendered 6 December 2016 p. 3 Transcript Jeanette Kerr, 8 December 2016, p 498 line 21-p. 499 line 11.

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LEAVING DETENTION AND
THROUGH CARE

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LEAVING DETENTION AND THROUGH CARE

Children and young people are vulnerable upon release from detention, as they are commonly re-exposed to the environments, people, places and other influences that led them into detention. Recidivism risks associated with release from detention can be offset by helping children and young people to strengthen existing positive connections or build new connections outside detention prior to release.¹

A well-planned and supported transition from detention can be the circuit-breaker in a cycle of reoffending. Without adequate planning for release, the system is '*absolutely setting up a young person to fail*'.² Without post-release support, the likelihood of failure inevitably increases.

Chapter 19 (Case management and exit planning) sets out the legislative and international human rights framework for making rehabilitation an objective of actions taken by governments in response to criminal offending, including the detention of children and young people.

This framework makes clear that rehabilitation must be the subject of planning both while a child or young person is in detention and when they are released and returned to the community. Even if a period of detention is perfectly managed, it will count for little if care is not taken with the processes of release and reintegration.

As noted by the Central Australian Aboriginal Congress (Congress) in its submission to the Commission, the whole detention experience should prepare a child or young person for reintegration.³ Release and reintegration should be factored into rehabilitation goals and case management planning from the outset of a period of detention.

The importance of these concepts appears to be recognised by the Northern Territory Government in its handling of adult prisoners. Adult prisoners have a much higher level of support during

imprisonment with a particular view to their release than that provided to children and young people.

For example, the Batchelor Institute of Indigenous Tertiary Education provides vocational education training to adult prisoners in the Northern Territory to ‘provide an underlying foundation that may lead to meaningful employment opportunities’.⁴ The Sentenced to a Job program provides work and training opportunities to adult prisoners through exchanges with external employers and organisations.⁵ The Pre and Post Release Supported Accommodation program helps adults exiting correctional facilities to find and maintain employment, obtain vocational skills and understand tenancy requirements.⁶ Comparable programs for children and young people in detention in the Northern Territory do not yet exist in any meaningful way.

Chapter 19 (Case management and exit planning) discusses some positive steps that have been taken by the Northern Territory Government to recognise the indivisibility of release planning and case management for children and young people in detention. As recommended in that chapter, the Northern Territory Government should ensure adequate resources are provided for rehabilitation assessment and the delivery of pre- and post-release programs and services. It should also direct its youth offenders rehabilitation framework towards meeting fundamental needs for each child and young person who is involved with the criminal justice system.

HOW TO ACHIEVE AN EFFECTIVE CONTINUUM OF REHABILITATION

The primary deficiencies in the current model of rehabilitation services for children and young people in detention appear to be:

- duplication of case management assessment and planning services by Territory Families Case Management and Throughcare Unit inside youth detention facilities:
 - by the Department of Correctional Services (Community Corrections) in providing supervision in the community
 - by Territory Families in carrying out child protection orders in the community, and by community organisations that assist children and young people
- non-provision of case management services to children and young people, and
- inadequate communication with and inclusion in pre-release planning of individuals and services outside detention that are involved or should be involved with children or young people in the community.

See Chapter 19 (Case management and exit planning) for more on this topic.

Similar problems have been identified in other jurisdictions and have been the subject of targeted positive improvements.

In the Australian Capital Territory, a case manager provides a consistent contact for a child or young person throughout their involvement in the youth justice system, and a single case plan ensures continuity of planning, coordination and support.⁷ An integrated child protection and

youth justice system allows children and young people to benefit from a continuum of care and a consistent case management system, whether they are on child protection orders or under youth justice supervision.⁸ There are aspects to this model that could be applied to the Northern Territory, where the Commission has heard evidence about the crossover between children and young people in the youth justice and care and protection systems (see Chapter 35 (The crossover of care and detention)). In these circumstances, there should be seamless coordination between those responsible for children and young people in detention and those responsible for them on release.

In New South Wales, the Waratah Pre-Release Unit has been established as an annex to the Reiby Juvenile Justice Centre. The children and young people in detention are supported through intensive case management. An allocated key worker liaises with community case workers, the child or young person and Waratah Unit staff.⁹ Aboriginal mentors are involved in the process.¹⁰

Ms Katrina Wong, a solicitor from the New South Wales Legal Aid Commission, told the Commission of the benefits of a wraparound approach to services planning her organisation offers vulnerable children and young people with complex needs. The Chair of the Youth Justice Board for England and Wales spoke of the value of the cross-disciplinary Youth Offending Teams in the United Kingdom.¹¹

The Commission's inquiry into throughcare and rehabilitation practice in the Northern Territory and other jurisdictions has shown what features a successful model of rehabilitation should possess:

- In the process of assessing the criminogenic risks and rehabilitation needs of a child or young person to formulate an individually tailored case management plan, information should be sought from the stakeholders and services engaged with this person. This process should identify all government, community and family stakeholders and services relevant to rehabilitating the person while they are in detention and after release; and seek the person's participation in case planning and service delivery processes.
- From the outset, case management of a child or young person in youth detention should focus on services addressing offending-related needs and providing support for reintegration into the community on release.
- The case planning process should incorporate all needs of the child or young person during a period of detention and post-release. In accordance with these needs, multidisciplinary actions should be clearly outlined and delegated before the case plan is implemented.
- A case plan should be reviewed by all stakeholders involved in creating it.
- The case planning process should include memoranda of understanding between Territory Families and other relevant departments. This will facilitate cross-agency meetings and coordinated service delivery and ensure the involvement of government service stakeholders such as those related to housing, education and health.
- The child or young person should not be required to seek assistance from, or initiate the need for services outside of the case management planning and review process.

-
- The lead responsibility for case management planning, review and service coordination should be by a single, qualified youth justice caseworker who remains responsible for the child or young person's plan while they are in detention and upon exit, if they remain subject to a supervision order. To facilitate this, case management services for all children and young people in contact with the criminal justice system, whether in detention or not, should be provided from a single youth justice case management service.
 - There should be no or minimal interruption to the case management process, including assessment of needs, upon the discharge of a child or young person from detention, provided they remain the subject of some form of supervision order.

The Commission recognises and supports the continuation and expansion of existing throughcare programs within organisations such as the North Australian Aboriginal Justice Agency. The Commission acknowledges that the overwhelming majority of detainees are Aboriginal persons. Eligible detainees should be case managed by a comprehensive throughcare program run by a community organisation, and duplication of government case management services should be avoided.

The Commission nonetheless considers it is the responsibility of the Northern Territory Government to provide a comprehensive throughcare case management service to every child and young person in youth detention or otherwise involved in the youth justice system in the Northern Territory. In particular this includes children and young people in Central Australia, where the Commission has heard about '*the absolute lack*' of post-release and throughcare services.¹²

The current model operating in the Northern Territory requires change to achieve the continuity and coordination of planning and services that will best support detainees exiting detention.

To best implement the features discussed above, the Northern Territory Government should consult with all organisations that are practically involved with children and young people who have experienced detention. This includes Official Visitors, North Australian Aboriginal Justice Agency Throughcare and organisations that provide post-release services, such as the Central Australian Aboriginal Legal Aid Service, Congress and Danila Dilba Health Service.

Aboriginal children and young people, who form the majority of the youth detention population in the Northern Territory, should be provided with culturally appropriate and locally available pre- and post-release programs and support.¹³ This necessarily requires the Northern Territory Government to consult with the communities of those children.

It is essential that case management and throughcare policies for dealing with children and young people reflect a trauma-informed approach. The Northern Territory Government has told the Commission it accepts the prevalence of childhood trauma backgrounds and is committed to implementing a trauma-informed approach in policies and practices regarding children and young people in detention.¹⁴

FUNDAMENTAL ASPECTS OF POST-RELEASE PLANNING

Accommodation, education, employment and health care must form part of case management planning for every child and young person exiting detention.

As the North Australian Aboriginal Justice Agency submitted:

Studies in the United States have consistently shown that:

... ex-prisoners and detainees returning to their socially disadvantaged communities are even more disadvantaged than when they went into detention unless significant social and programmatic reports such as employment training, mental health support, housing support and so on are available.¹⁵

On this basis, it was submitted that it is vital to provide additional support within the communities for returning detainees, for example by way of housing, education and employment services, and physical and mental health care.¹⁶

Accommodation

Suitable housing enhances the ability of a young person to engage in post-release education or rehabilitation programs.¹⁷ The Commission has heard of the difficulties faced by children and young people transitioning into the community and engaging with available post-release services without stable accommodation.¹⁸ There are many self-evident risks associated with homelessness. If children and young people leaving detention are placed in out of home care, that placement must be adequately equipped to manage their reintegration.

In the Australian Capital Territory, community-based supported accommodation is provided at Narrabundah House Indigenous Supported Residential Facility for five Aboriginal and Torres Strait Islander young men aged 15 to 18, who are subject to community-based justice orders.¹⁹ Residents are offered support to access employment, education or training, with the aim of developing independent living skills, connections to culture, and engagement with services.²⁰

The Australian Capital Territory Community Services Directorate offers the Housing for Young People Program, open to young people aged 16 to 25 who need accommodation while transitioning from youth justice, care and protection, or homelessness services.²¹ A single contact person assists each participant in all dealings with Housing ACT.²²

The Australian Capital Territory initiatives are instructive models in addressing post-release accommodation and reflect the Queensland Housing First proposal:

'Let's get someone into stable accommodation, and let's address the other issues which may relate to alcohol and other drug use, or it may relate to mental health. Let's work on those once the person has housing.'²³

Education and employment

Once accommodated, a child or young person will require employment, or further education and training that makes employment possible. Ideally, education and vocational programs will commence in detention and continue in the community.²⁴ Reengagement with education has been shown to minimise antisocial behaviours and provide a buffer for children and young people against risk factors.²⁵ Education should be a key factor in post-release programs.

The program facilitated by the Waratah Pre-Release Unit in New South Wales offers detainees practical vocational training within the community. Children and young people may leave the detention centre during the day to attend work experience or courses.²⁶ Continued work experience, study and job offers can result from these interactions.²⁷ Detainees can also access programs to develop skills for community life, such as preparing meals and using public transport.²⁸

Health care

Access to health care, including treatment for substance abuse, is a critical component of post-release programs; poor pre-release planning for healthcare can significantly impact a child or young person's ability to access services.²⁹

The Royal Australasian College of Physicians has suggested that there is a '*window of opportunity*' for appropriately assessing the health care needs of detainees, many of whom suffer from a range of physical and mental health issues.³⁰ Treatment plans can be developed and include ongoing treatment for chronic conditions after release.³¹

Success of such an approach was evident in a pilot voluntary extended throughcare program that commenced in 2013, available to adult prisoners returning to the community in the Australian Capital Territory.³² It provided participants with mental health counselling; physical health treatment including drug and alcohol rehabilitation; or general assistance with wellbeing. Most participants reported positive outcomes and expressed appreciation for support they had not previously received.³³

EVALUATION OF REHABILITATION SERVICES AND PROGRAMS

An effective throughcare model will only be achieved if adequate data is collected to regularly evaluate the effectiveness of the needs assessment and planning processes, and the correlating programs and activities.

The "*A Safer Northern Territory through Correctional Interventions*" – Report of the Review of the Northern Territory Department of Correctional Services (Hamburger report) recommended developing a 12-month plan for the delivery of rehabilitation programs at both youth detention centres in the Northern Territory, to address the deficiencies it identified in the youth detention case management system.³⁴ The Hamburger report also recommended detainee commencements and completions be monitored to ensure rehabilitation programs are a '*central plank*' in delivering of services to young people in detention.³⁵

The Deputy Chief Executive Officer of Territory Families told the Commission in December 2016 she agreed that a review of case management programs was called for.

*'I think the entire range of programs needs to be reviewed ... I don't know if there is an evidence base for them or how effective they are ... I think that we need to do a lot of work in that area and make sure that the programs are tailored to the needs of the young people.'*³⁶

However, during the course of the Commission's inquiries in the many months following Territory Families giving evidence and more than 12 months following the Hamburger report, the Northern Territory Government did not provide or identify any formal review of post-detention or transition services.³⁷ Without evaluating the effectiveness of programs and their suitability for the assessed needs of individual detainees, any expectation of effectively rehabilitating those participating in those programs has no proper foundation. As at July 2017, such a review had not been completed, though the Commission was told procurement to undertake an evaluation of all programs run in youth detention centres was underway.³⁸

In its submissions to the Commission in September 2017, the Northern Territory Government did not refer to the progress of the evaluation and suggested the ongoing activities of the Commission 'placed a limit on some of the reform design that we may have otherwise already delivered' in relation to the Hamburger report recommendations concerning rehabilitation programs.³⁹ The submissions also referred to the impact of the time taken since December 2016 to establish a sound organisational structure within Territory Families and recruit appropriate persons to implement its reform agenda, which are 'ongoing processes'.⁴⁰

In addition to an absence of meaningful program review or evaluation, the Northern Territory Government does not produce its own statistics in relation to the rates of recidivism of children and young people released from detention.⁴¹ It reported that it does not produce this information because historically there has been no reporting of recidivism statistics by any other jurisdiction in Australia and the necessary data compilation and analysis 'is a particularly time-consuming and resource-intensive undertaking'.⁴²

While other jurisdictions in Australia may not produce recidivism statistics themselves, the data they do produce is at least capable of being interpreted by statisticians such as the Australian Institute of Health and Welfare in order to produce recidivism information.⁴³ The deficiencies in the data produced by the Northern Territory Government about children and young people involved in the youth justice system is discussed in further detail in Chapter 41 (Data and information sharing).

The Commission considers it essential that the Northern Territory Government upgrade its data-collection systems to enable analysis of recidivism rates for children and young people. Current data does not allow for any analysis on the comparative effectiveness of program participation on reoffending. Such information could be used in future program planning and design to enable evidence-based decision-making.

Reports on the delivery of rehabilitation and throughcare programs should be prepared and released publicly each year. These reports would assist in identifying any issues with programs and encourage a process of continuous improvement.

An independent review and evaluation of new exit planning and post-release programs should be undertaken five years after these programs are introduced. This review should include complete data for the period on the number of children and young people accessing these services, outcomes and recidivism rates.

The outcomes of the independent review should be provided to the Children's Commissioner (or proposed Commission for Children and Young People) and released as a public report.

Recommendation 24.1

An integrated, evidence-based throughcare service be established for children and young people in detention to deliver:

- **adequate planning for release including, as appropriate, safe and stable accommodation, access to physical and mental health support, access to substance abuse programs, assistance with education and/or employment**
- **improved exit planning and post-release services to be made available to all children and young people detained more than once or for longer than one week**
- **a comprehensive wraparound approach facilitated by cross-agency involvement, and**
- **planning for detainees to exit from detention as soon as they enter detention.**

Recommendation 24.2

The throughcare service be independently evaluated at the end of five years, with a report to the Commission for Children and Young People, including outcomes and rates of reoffending.

ENDNOTES

- ¹ For example, the Waratah Pre-release Unit in NSW goes to great lengths to involve the community and engage children and young people in community activities to strengthen these connections and provide a support network on release (see for example Transcript, Leilani Tonumaiepa, 12 May 2017, p. 3874: lines 19–44).
- ² Transcript, Antoinette Carroll, 13 December 2016, p. 740: lines 20–24.
- ³ Submission, Central Australian Aboriginal Congress, 1 November 2016, p. 22.
- ⁴ Exh.318.004, *Northern Territory Department of Correctional Services Annual Report 2014–15*, 2015, tendered 26 April 2017, p. 82.
- ⁵ Exh.047.002, *Northern Territory Department of Correctional Services Annual Report 2015–16*, 2016, tendered 9 December 2016, p. 91.
- ⁶ Exh.047.002, *Northern Territory Department of Correctional Services Annual Report 2015–16*, 2016, tendered 9 December 2016, p. 80.
- ⁷ Site visit, Bimberi Youth Justice Centre, 16 February 2017.
- ⁸ Site visit, Bimberi Youth Justice Centre, 16 February 2017.
- ⁹ Exh.377.000, Statement of Leilani Tonumaiepa, 9 May 2017, tendered 12 May 2017, para. 40.
- ¹⁰ Transcript, Leilani Tonumaiepa, 12 May 2017, p. 3875: lines 6–17.
- ¹¹ Ms Katrina Wong, a solicitor for the New South Wales Legal Aid Commission, described the benefits of the New South Wales Legal Aid Children’s Civil Law Service, which provides a wrap-around service that addresses the civil and criminal law needs of children and young people and the systemic issues that have contributed to a child or young person coming before the criminal justice system (see Exh.490.000, Statement of Katrina Wong, 13 April 2017, tendered 2 June 2017, paras 18–19). Mr Charlie Taylor, the Chair of the Youth Justice Board for England and Wales, told the Commission about the benefits of the Youth Offending Teams operating in the United Kingdom. These teams involve members from the police, social services, probation, health and education bringing together ‘cross-disciplinary expertise from a range of facets of a child’s life’. The Youth Offending Teams are local, government-based units that try to approach a child or young person’s offending holistically, ‘recognising that youth offending is often a manifestation of a number of things that are going wrong in these young people’s lives’ (see Exh.643.000, Precise of Charlie Taylor, 27 June 2017, tendered 29 June 2017, paras 22–24).
- ¹² Submission, Central Australian Aboriginal Legal Aid Service, July 2017, p. 20.
- ¹³ Moore, T, Saunders, V, & Mc Arthur, M, 2008, *Lost in transition: young people’s transitions from custody to the community*, Institute of Child Protection Studies, Canberra; Transcript, Marius Puruntatameri, 31 March, p. 2404: lines 8–44. Currently, Elders do visit children and young people post-release, but this is on an entirely voluntary basis.
- ¹⁴ Exh.738.000, Statement of Jeanette Kerr, 21 February 2017, tendered 25 July 2017, paras 10–11.
- ¹⁵ Exh.338.000, Statement of Eileen Baldry, 3 May 2017, tendered 8 May 2017, para. 26, as cited in Submission, North Australian Aboriginal Justice Agency, August 2017, p. 129.
- ¹⁶ Submission, North Australian Aboriginal Justice Agency, August 2017, p. 129.
- ¹⁷ Exh.338.000, Statement of Eileen Baldry, 3 May 2017, tendered 8 May 2017, para. 53.
- ¹⁸ Exh.338.000, Statement of Eileen Baldry, 3 May 2017, tendered 8 May 2017, para. 53; Site visit, Supervised Community Accommodation, Townsville, 4 May 2017. Staff and participants in the Supervised Community Accommodation program described these difficulties.
- ¹⁹ ACT Government, ‘Bimberi Youth Justice and Residential Services’, *Community Services Directorate* [website], 1 August 2017, <<http://www.communityservices.act.gov.au/ocyfs/bimberi>>, accessed 15 September 2017.
- ²⁰ ACT Government, ‘Bimberi Youth Justice and Residential Services’, *Community Services Directorate* [website], 1 August 2017, <<http://www.communityservices.act.gov.au/ocyfs/bimberi>>, accessed 15 September 2017.
- ²¹ ACT Government, ‘Housing For Young People Program’, *Community Services Directorate* [website], 13 September 2017, <http://www.communityservices.act.gov.au/hcs/services/youth_housing> accessed 15 September 2017.
- ²² ACT Government, ‘Housing For Young People Program’, *Community Services Directorate* [website], 13 September 2017, <http://www.communityservices.act.gov.au/hcs/services/youth_housing> accessed 15 September 2017.
- ²³ Transcript, Darren Young, 12 May 2017, p. 3909: lines 12–15, as cited in Submission, North Australian Aboriginal Justice Agency, August 2017, p. 130.
- ²⁴ Exh.338.000, Statement of Eileen Baldry, 3 May 2017, tendered 8 May 2017, paras 64, 66; (see the Waratah Pre-release Unit for example; Exh.377.000, Statement of Leilani Tonumaiepa, 9 May 2017, tendered 12 May 2017, paras 34–35, 42).
- ²⁵ Moore, T, McArthur, M & Saunders, V, 2008, *Lost in transition: young people’s transitions from custody to the community*, Institute of Child Protection Studies, Canberra, p. 108.
- ²⁶ Exh.377.000, Statement of Leilani Tonumaiepa, 9 May 2017, tendered 12 May 2017, paras 25, 33.
- ²⁷ Exh.377.000, Statement of Leilani Tonumaiepa, 9 May 2017, tendered 12 May 2017, para. 35; Transcript, Leilani Tonumaiepa, 12 May 2017, p. 3878: lines 3–7.
- ²⁸ Exh.377.000, Statement of Leilani Tonumaiepa, 9 May 2017, tendered 12 May 2017, para. 34.
- ²⁹ Exh.338.000, Statement of Eileen Baldry, 3 May 2017, tendered 8 May 2017, para. 63.
- ³⁰ Submission, Royal Australasian College of Physicians, December 2016, p. 6.
- ³¹ Submission, Royal Australasian College of Physicians, December 2016, pp. 6, 8.
- ³² Exh.338.015, Annexure EB-15 to the Statement of Eileen Baldry; Griffiths et al., 2017, *Evaluation of ACT Extended Throughcare Pilot Program: Final Report*, University of New South Wales, Sydney, tendered 8 May 2017, p. 1.
- ³³ Exh.338.015, Annexure EB-15 to the Statement of Eileen Baldry; Griffiths et al., 2017, *Evaluation of ACT Extended Throughcare Pilot Program: Final Report*, University of New South Wales, Sydney, tendered 8 May 2017, pp. 53–54.

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- ³⁴ Exh.031.002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions* [REDACTED], 31 July 2016, tendered 5 December 2016, p. 160: recommendation 163.
- ³⁵ Exh.031.002, Annexure 1 to Statement of Keith Hamburger, *A Safer Northern Territory through Correctional Interventions* [REDACTED], 31 July 2016, tendered 5 December 2016, p. 160: recommendation 163.
- ³⁶ Transcript, Jeanette Kerr, 8 December 2016, p. 523: lines 35–43.
- ³⁷ Exh.374.000, Statement of Amanda Nobbs-Carcuro, 24 March 2017, tendered 11 May 2017, para. 144.
- ³⁸ Exh.792.001, 27 July 2017, tendered 24 October 2017, para. 5.
- ³⁹ Submission, Northern Territory Government, Response to Notice of Adverse Material 23, 12 September 2017, para. 21.
- ⁴⁰ Submission, Northern Territory Government, Response to Notice of Adverse Material 23, 12 September 2017, para. 21.
- ⁴¹ Exh.388.000, Statement of Carolyn Whyte, 21 March 2017, tendered 12 May 2017, para. 8; Exh.374.000, Statement of Amanda Nobbs-Carcuro, 24 March 2017, tendered 11 May 2017, para. 159.
- ⁴² Exh.388.000, Statement of Carolyn Whyte, 21 March 2017, tendered 12 May 2017, para. 8.
- ⁴³ Australian Institute of Health and Welfare, 2017, *Young people returning to sentenced youth justice supervision 2015-16*, Juvenile Justice Series No. 21, p. 24.

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THE PATH INTO DETENTION

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THE PATH INTO DETENTION

INTRODUCTION

We know many of our kids have problems and we've been asking government for many years to support us to work with those kids so they can be strong, happy and law-abiding. Sending them to Don Dale or taking them from their family only makes things worse – for that child, for the family and for the whole community. For all our people, young or old, jail harms them and our whole community. They lose their culture, their identity and their respect for themselves and others.¹

Submission, Lajamanu Kurdiji people

Detention should only be used as a last resort for children and young people. It is a measure that should only be taken for the most violent and persistent of young offenders.² The principle that children and young people should be held in custody for an offence as a last resort and for the shortest appropriate time is at the heart of modern-day youth justice policies. It is enshrined in human rights principles and is a feature of the Northern Territory *Youth Justice Act* (NT). It was a theme that was voiced by many of the witnesses who gave evidence to the Commission.

It is widely accepted that incarceration in youth detention is not beneficial to children and young people and does little to improve community safety through reducing recidivism.³ As Judge Peter Johnstone, the President of the Children's Court of NSW, stated:

Recidivism studies in the United States show consistently that 50 to 70% of youths released from juvenile correctional facilities are re-arrested within two to three years. Further, children who have been incarcerated achieve less educationally, work less and for lower wages, fail more frequently to form enduring families, and experience

*more chronic health problems (including addiction), than those who have not been confined.*⁴

In some instances of offending, detention will be a necessary response to ensure community safety, but in most cases more appropriate and effective responses should be investigated.⁵

Understanding how to reduce the numbers of children and young people entering youth detention requires the examination of how they came to be in detention. For that reason, the Commission examined aspects of the criminal justice pathway that ends with a child or young person entering detention. This included contact with police, arrest, charge and interview, the consideration of bail and diversion, and the role of the courts.

Children and young people also come into contact with the criminal justice system due to offending committed as a result of *'lack of maturity, the propensity to take risks and a susceptibility to peer influence, combined often with intellectual disability, mental illness and victimisation'*.⁶ It is not unusual for children and young people to commit minor criminal offences, and most grow out of offending behaviour.⁷

*'Minor offending by youth, especially boys, is actually quite normal behaviour. Most kids do it. But it tends to be only those from minority backgrounds and disadvantage who are punished for it through the juvenile/criminal justice system.'*⁸

Vincent Schiraldi, Senior Research Fellow, Program in Criminal Justice Policy and Management, Harvard Kennedy School

However, contact with the formal criminal justice system increases the likelihood that children and young people may reoffend in the future.⁹ Once a child or young person enters the criminal justice system, they may be labelled as an offender or criminal, which can affect their future behaviour. Punishment through detention may contribute to further engagement in criminal behaviour due to influence from 'deviant' peers, and they gain a criminal record which can limit their future prospects.¹⁰ There is also evidence that incarceration in a youth detention facility can *'interrupt and delay the normal pattern of "aging out" of criminal behaviour.'*¹¹

A youth justice system that prioritises deterrence, supervision and punishment does not reduce reoffending.¹² In fact, research suggests that children and young people who think they will be severely punished actually commit more crime.¹³ Given these factors, limiting the involvement of children and young people in the criminal justice system, particularly being held in detention, should be a fundamental objective at all stages of the criminal process. Research also suggests that children and young people have a greater potential to be rehabilitated than adult offenders provided they do not become too enmeshed in the system, are made accountable for their crimes and are given support.¹⁴

Each stage of the criminal process should involve mechanisms to divert children and young people from progressing further down the path to detention. These mechanisms should address the

underlying drivers of criminogenic behaviour and hold young offenders appropriately accountable for their actions, giving full consideration to protecting the public and community safety.

TYPES OF OFFENCES

During the relevant period, property crimes were the most common types of offences committed by children and young people.¹⁵ Table 25.1 shows the number of children and young people charged between 2006–07 and 2015–16, and the offence with which they were charged.¹⁶ The nature of offences committed by children and young people in the Northern Territory is similar to other jurisdictions, with more offences against property than against the person.¹⁷

Table 25.1: Offences committed by children and young people in the Northern Territory by gender, 2006–07 to 2015–16

Offence category	Female	Male	Total
1. Homicide and related offences	0	0	0
2. Acts intended to cause injury	70	256	326
3. Sexual assault and related offences	0	30	30
4. Dangerous or negligent acts endangering persons	18	124	142
5. Abduction and related offences	3	22	25
6. Robbery, extortion and related offences	22	29	51
7. Unlawful entry with intent/burglary, break and enter	83	1000	1083
8. Theft and related offences	332	1973	2305
9. Deception and related offences	2	44	46
10. Illicit drug offences	9	19	28
11. Weapons and explosives	28	97	125
12. Property damage and environmental pollutionm	101	1516	1617
13. Public order offences	98	930	1028
14. Road traffic and motor vehicle regulatory offences	70	246	316
15. Offences against justice procedures, government security and operations	224	677	901
16. Miscellaneous offences	1	1	2
99. Other	70	138	208

Source: Exh.696.001, Statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, para. 29.

POLICE

Police are integral to a well-functioning, effective youth justice system. They are the first point of contact a child or young person has with the youth justice system. It is at this point that the system is most flexible and there are multiple avenues available to divert a child from the path to detention. The deeper a child or young person is drawn into the youth justice system, the narrower those options can become. The decisions police make at that first point of contact can determine whether a young person is offered a rehabilitative-focused response to their offending behaviour or one directed towards punishment.

The nature of the interactions police have with children and young people can play a pivotal role in determining their future attitudes towards the police and the law.¹⁸ Through positive interactions with children, young people and communities police can build trusting relationships and provide pro-social modelling. In contrast, negative interactions with police can *'further alienate young people at risk of offending'*.¹⁹ The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs noted in 2011 that:

*[T]here are many stories of inspirational police officers working with Indigenous communities and Elders to develop positive relationships between communities and the police force. However, when this is not the case, the outcomes for Indigenous youth can be extremely serious, and can lead to negative consequences for whole communities.*²⁰

Negative interactions can, however, be improved benefiting the police, the young person and the community as a whole. For example, the Commission heard *'the story of Redfern and how police absolutely turned around the relationship with the community and the young people by engaging directly with Elders and senior people in the community'*.²¹ The Commission visited the Clean Slate Without Prejudice program in Redfern and saw firsthand the benefits of collaboration between the police and the community.

Clean Slate Without Prejudice program

The Clean Slate Without Prejudice program is a *'grass roots community, holistic exercise, assistance and referral program designed to help Aboriginal and Torres Strait Islander youth'* run by a partnership between the Tribal Warrior Aboriginal Corporation and Redfern Police.²²

Established in 2009 through a collaboration of local Elders, the Babana men's group chairman and a Commander from the New South Wales Police,²³ the program involves young people coming to the National Centre of Indigenous Excellence to participate in boxing training three mornings each week with Aboriginal mentors and local police.²⁴ The mentors also help participants to find accommodation, employment and education or training.²⁵ The young people who participate are at risk of offending.²⁶ Children and young people are also referred by the Court to attend the program as part of their bail conditions. The program is thought to have a number of positive aspects:²⁷

- participants attend morning sessions, and are then ready to go to work or study early
- they are less likely to be out on the street late at night
- the breakfast following training is an opportunity for participants to discuss issues affecting them, and
- the adults who attend can provide support, advice and mentoring.

The program takes a strengths-based approach, not a deficits-based approach. The Chief Executive Officer of the Tribal Warrior Aboriginal Corporation described the impact the program has had:

*'Clean Slates has changed the way we interact with each other, the way policing happens, the way that police deal with Indigenous young offenders here, and with community-based policing. The idea is that they just do exercises in the morning at the 6.00am program. Everyone drops their guard, and at the end of the session, everyone's equal, and they learn about each other. After that, the kids go on to school or work, the police go to work, and when they see each other in the street, there's something simple that they do together, and they become friends. So it helps in the way the youth form, and if you're in a police car and you see one of the young guys who may in the past have had some difficulty with you, or vice versa, and you say, 'How y'a going?' And they may be able to influence the other people that are with them. It sounds really simple, but it's huge. It's the human level of life.'*²⁸

The Clean Slate Without Prejudice program has been formally recognised for its success, receiving a gold award in the police-led category of the 2016 Australian Crime and Violence Prevention Awards.²⁹ These awards recognise good practice in the prevention or reduction of violence and other types of crime.³⁰

A Commander from the Redfern Local Area Command told the Commission of the impact the program has had:

'I got with my community, we knew the problems, we knew robberies, we knew drugs, but we didn't know really what to do about it.

Yeah, we can lock them up, but that just wasn't doing anything for the problem. So I got with Babana Men's Group, Shane Phillips, Mick Mundine, Milly Ingram and we discussed what do we do. Let's have a routine program, let's do boxing in the morning, Monday, Wednesday, Friday 6.00 am. Routine discipline. We had 15 kids who were out of control, instead of police picking them and taking them on programs, the Aboriginal community picked 10 of the worst kids, but 10 who were influential, that if they changed their ways, other kids would change their ways.

That was in June 2009, in June 2010, not one of those kids committed an offence and our youth robberies went down by 80%. The program continues, it's been going for eight years. We probably had about four Aboriginal kids arrested for

robbery in Redfern each year. It's just astounding and amazing what you can do as a community if you let your community speak to you, and you're not too arrogant, not to accept it. As a police officer we are taught a lot of things, we do our job pretty well, but we don't know the community, especially Aboriginal communities, like the community of Redfern have been generous enough to assist me.

Our common goal – keep kids out of criminal justice system and keep them safe. If you can convince your community that that's all you want to do, and you take positive steps in doing it, your community will help you every time.³¹

POLICING FAMILIES AND COMMUNITIES

From 2007, the Northern Territory Emergency Response increased the police presence in Northern Territory communities. Eighteen new police stations were established and over 50 additional police were stationed in remote communities.³² The increased policing in these communities led to a significant increase in youth traffic and vehicle prosecutions in remote communities.³³

Remote communities

The North Australian Aboriginal Justice Agency (NAAJA) has observed two types of policing in remote Aboriginal communities: *'either adopting a "fortress mentality" of separation from the community or becoming an active part of the community through interaction with Elders, sport and community activities with young people.'*³⁴

Despite these challenges, in some remote communities such as Yuendumu, police have developed good relationships by engaging with Aboriginal Elders. A Chairperson on the board of the Warlpiri Youth Development Aboriginal Corporation told the Commission that the local police were willing to work with the Elders: *'With the problem with the children, we ask if the police can come and listen to our meeting and they turned up, and they were there helping us ... we work together very well.'*³⁵

The Commission also heard that some police officers working in remote communities have recognised the value in community-led solutions with an awareness that *'communities often feel that a program is being imposed on them.'*³⁶ In a statement to the Commission, a Senior Program and Policy Officer Youth Services from the Northern Territory Police told the Commission *'there is a huge body of research supporting the significance of strong Indigenous community connection and participation in the development and delivery of programs.'*³⁷ The Northern Territory Police have collaborated with some remote communities to establish effective community-based remote youth programs.³⁸ The Tiwi Islands Youth Development and Diversion Unit is one such example. This program is discussed further in this chapter under 'Diversion'. The Commission heard through meetings with police in Alice Springs that *'more power needs to be put onto Aboriginal communities – an outsider deciding punishment for these kids does not work.'*³⁹

Role of other agencies and services in the communities

Police officers have observed that in some communities the absence or failure of other agencies and services to engage with children and young people can lead to a reliance on police to manage children and young people.⁴⁰ Where another agency or service threatens to call the police as a response to challenging behaviours, this has a tendency to undermine positive work by police to build relationships with those children and young people.⁴¹ Children and young people in care are often dealt with by police in circumstances where they would benefit from a collaborative approach with Territory Families.⁴²

The Commission heard from criminologist Dr Eileen Baldry that this phenomenon is not uncommon. When there are no supports or services for children and young people with complex support needs who are perceived to be too difficult to manage by schools, communities and even their families, they are left to the police to manage, with the police becoming 'care managers'.⁴³

The Commission was told in meetings with police in Alice Springs that police are often the only 'after hours service' available in a community.⁴⁴ Similarly, the Commission was advised that in Maningrida, a remote Aboriginal community in Arnhem Land, there was not much for young people to do as youth services had restricted hours. Crime was perceived to be a problem due to a lack of discipline imposed on young people, overcrowding within homes and boredom.⁴⁵ Police have suggested that if more services and activities were available to occupy children and young people, this may reduce the offending driven by boredom. The Commission was also told at these meetings that police felt that non-government organisations (NGOs) were given a lot of funding but did not provide any after-hours services when children and young people were most in need.⁴⁶

POLICE IN THE NORTHERN TERRITORY

The Northern Territory Police Force is established under the *Police Administration Act* (NT).⁴⁷ The Commissioner is responsible for 'general control and management' of the police force and may issue General Orders and instructions as necessary to 'secure the good government and efficient working' of the police force.⁴⁸

The Act sets out the core functions of the Northern Territory Police, which include:

- upholding the law and maintaining social order
- protecting life and property, and
- preventing, detecting, investigating and prosecuting offences.⁴⁹

The Commission was told in meetings with police in Alice Springs that these core functions encompass active engagement with children, young people and communities to uphold the law, prevent offences and promote safety.⁵⁰ The Commission accepts NAAJA's submission that:

[i]here needs to be greater recognition that the core police function of preventing offences can occur through policies and policing that focus on early intervention, crime prevention and working in a youth-oriented way and with the community.⁵¹

The Northern Territory Police General Order – Youth provides police with direction on how to appropriately deal with young people, according to their obligations, under the *Youth Justice Act*.⁵²

Youth Engagement Police Officers

Youth Engagement Police Officers were in existence in the Northern Territory until 2017 and serviced in excess of 140 primary and secondary schools in urban, regional and remote communities across the Territory. Youth Engagement Officers were funded internally through the Northern Territory Police and formed part of their standing workforce.⁵³

The remit of the Youth Engagement Officers was to establish positive relationships with students, parents and teaching staff to promote a supportive learning environment and safer school communities.⁵⁴ Offending in schools was, in the first instance, investigated by Youth Engagement Officers.⁵⁵

As fully sworn, front-line, police officers, they also performed operational duties associated with their positions, including regular patrols of residential areas, shopping complexes and bus interchanges, both proactively and in response to reports of antisocial or criminal behaviour involving students.⁵⁶ Youth Engagement Officers were involved in identifying youth at risk within the school system and working with the Department of Education to ensure that appropriate programs were in place to assist these students.⁵⁷ The role of Youth Engagement Officers was incorporated into a new Community and Youth Engagement Officer's role.⁵⁸

Community and Youth Engagement Officers

Community and Youth Engagement Officers were introduced in 2017 with a view to placing more emphasis on prevention, engagement and awareness within the broader community, rather than directing police resources to schools.⁵⁹

Officers carry out all functions formerly undertaken by Youth Engagement Police Officers, including continuing to focus on youth engagement, but they spend less time based in schools.⁶⁰ Officers continue to provide important presentations to young people on issues such as bullying, personal safety, cyber safety, sexting, social media and law. The Community and Youth Education Officers within schools, however, do not hold responsibility for offences or incidents occurring in schools requiring police attendance.⁶¹

Officers are focused on understanding and developing relationships with all aspects of the community, including children and adults, men and women, and minority groups such as Aboriginal people, immigrants, refugees and vulnerable people.⁶²

Of the 18 new police officer positions announced on 31 January 2017,⁶³ seven will become Community and Youth Engagement Officers, bringing the total to 24.⁶⁴

Community Engagement Police Officers

Community Engagement Police Officers are uniformed, fully sworn officers based in regional and remote areas of the Northern Territory.⁶⁵ The Community Engagement Police Officer program was introduced in 2011 as a joint initiative of the Northern Territory Government and the Commonwealth Government, aiming to support crime prevention, help out in the community and build trusting relationships with the police.⁶⁶ Officers have specific responsibilities directed at ensuring community safety in a culturally appropriate way.⁶⁷

The Community Engagement Police Officer program objectives are:

- to assist and support the community in increasing school attendance and youth participation in recreational and educational activities
- to work in collaboration with service providers and community members to support local community-based activities and programs
- to provide positive role modelling and mentoring to community members, especially youth
- to assist in promoting awareness of social issues around alcohol and substance abuse
- support the remote and regional police station Officer In Charge and police officers posted to the remote and regional police station to:
 - engage effectively in a culturally sensitive manner with their local community members and Service Aboriginal Liaison Officers
 - support Community Safety Committees and Community Safety Action Plans, and
 - maintain effective stakeholder engagement with Community Night Patrols and Community Northern Territory Emergency Services Volunteer Units.⁶⁸

Nine full-time Community Engagement Police Officers are responsible for an area covering 'more than 1.3 million square kilometres' and a population of over 51,000.⁶⁹ They provide a service to 51 remote and very remote communities across the Northern Territory.⁷⁰ Within this area there are 87 schools, 63 night patrols and 28 Fire and Emergency Services groups.⁷¹ The duties of Community Engagement Police Officers support about 203 front-line (general duties) police officers.

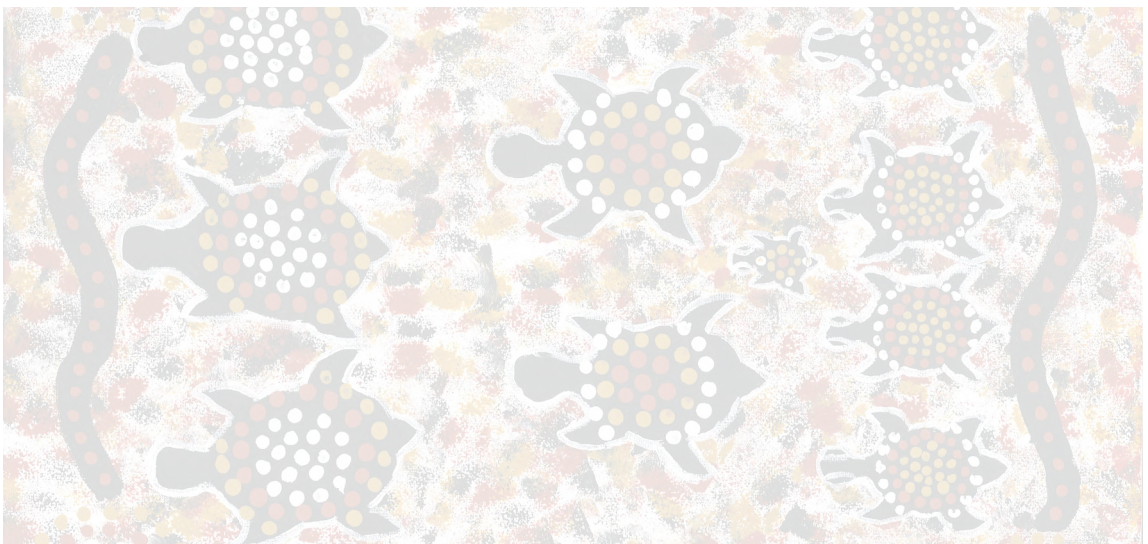
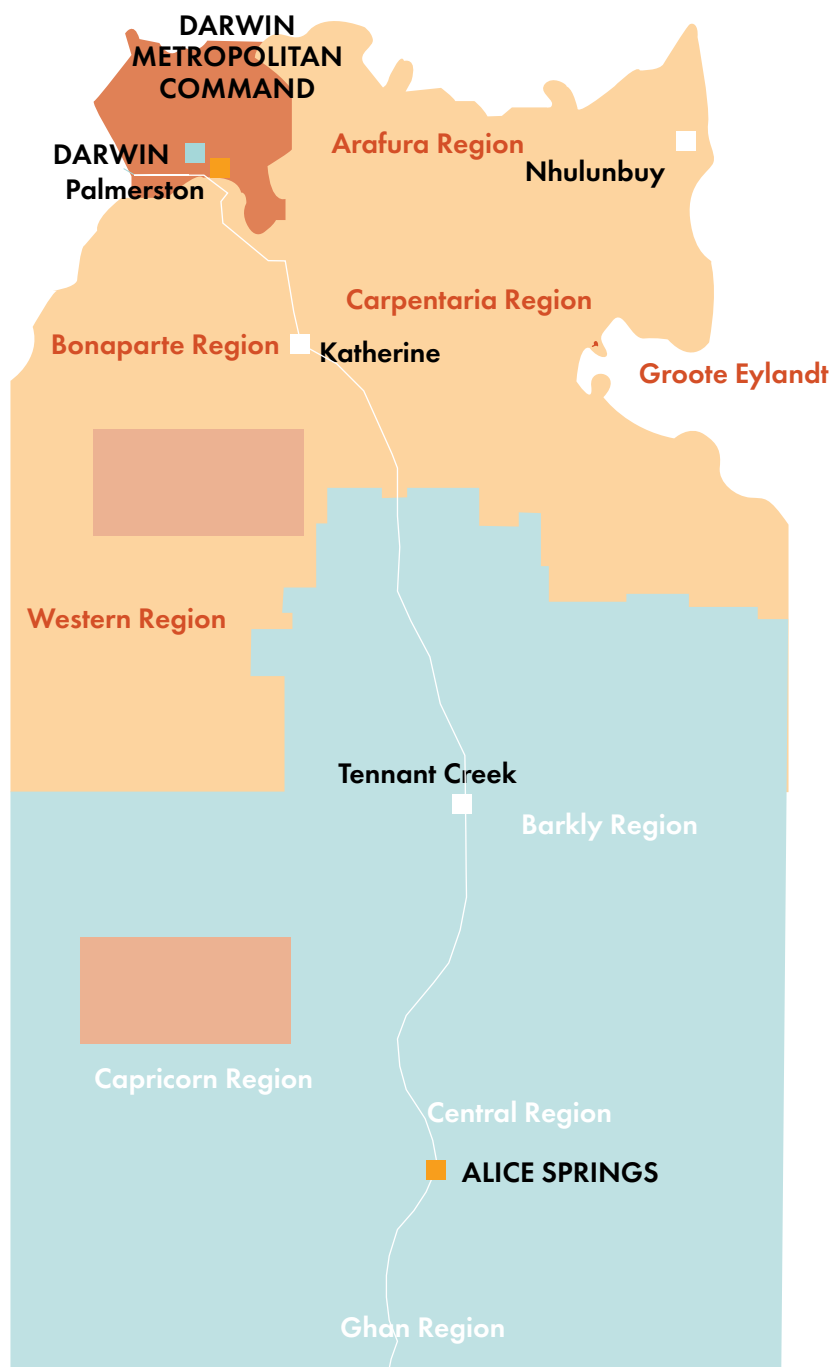


Figure 25.1: Geographic regions policed by Community Engagement Police Officers



Source: Exh.359.000, Annexure IL-02 to Statement of Ian Lea, 5 May 2017, tendered 10 May 2017, para. 6 and p. 7, Annex A.

The geographical regions in which the Community Engagement Police Officers are located are shown in Figure 25.1 and are known as Arafura, Bonaparte, Carpentaria, Western, Groote Eylandt, Barkly, Capricorn, Central and Ghan. This map illustrates the extremely large geographical area these nine Community Engagement Police Officers cover.⁷²

A 2013 evaluation found that Community Engagement Police Officers were perceived by communities to be most successful at making it easier for the community to get on with police, helping services work better together with police, improving safe behaviour and making the community feel safer.⁷³ They were seen as least effective at reducing community members' contact with the criminal justice system.⁷⁴

Youth Diversion Unit

The Youth Diversion Unit is a dedicated unit of the Northern Territory Police established to coordinate the diversion of children and young people from the formal justice system. Its role also includes training general police officers in their obligations to divert children and young people under the *Youth Justice Act*.⁷⁵

The composition of the Unit and its role is further discussed in this chapter under 'Diversion'.

Aboriginal Community Police Officers

The *Police Administration Act* provides for the appointment of Aboriginal Community Police Officers (ACPOs) with the same powers and duties as other officers.⁷⁶ ACPOs must be of Aboriginal descent and of good character.⁷⁷ ACPOs are uniformed sworn police officers who provide communication and liaison with local Aboriginal communities.⁷⁸ ACPOs play a significant role in remote communities given their cultural connections, experience and skills.⁷⁹ In 2015–16, there were 60.5 full-time equivalent ACPO positions.⁸⁰

ACPO recruits undertake 22 weeks of training, which includes training in units including persons in care or custody, policing between cultures, and youth justice.⁸¹ ACPO recruits also attend a local community to meet with local residents and discuss cultural concerns from a public safety perspective.⁸² At remote police stations there are usually two to three police officers and where possible an ACPO.⁸³

In their submission to the Commission, Danila Dilba Health Service recommended that the role of the ACPO be expanded to be part of, or work with, the Youth Diversion Unit especially in remote communities.⁸⁴ The Commission accepts the appropriateness of that submission.

POLICE TRAINING IN YOUTH JUSTICE

Australia's obligations under the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) include obligations regarding training of police.⁸⁵

*In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.*⁸⁶

Beijing Rules, Article 12(1)

Police training in practice

Police constables complete a 30-week training program.⁸⁷ The program includes specific modules on youth justice and *'policing between cultures'*.⁸⁸ Groups of new Recruit Constables travel to remote police districts *'for extended camps'* to gain an understanding of life in community.⁸⁹ The ACPOs 22-week training program also includes a specific module on youth justice.⁹⁰

The Commission has heard from police on the ground that training in youth issues is insufficient or lacking.⁹¹ Often police interacting with children and young people are general duties officers,⁹² and the knowledge of the *Youth Justice Act* *'might not be as thorough'* among front-line police as in the Youth Diversion Unit.⁹³ Similarly, the Northern Territory Police acknowledge that the training provided to Youth Engagement Police Officers *'has been limited'*.⁹⁴ The Commission heard that there should be training for police in a trauma-informed therapeutic approach encouraging the use of diversion.⁹⁵ One of the roles of the Youth Diversion Unit is to provide ongoing training for general duties officers and Youth Engagement Officers about dealing with children and young people under the *Youth Justice Act*.⁹⁶ A Senior Constable in the Youth Diversion Unit explained to the Commission that he also finds *"on the job" training* *'useful in encouraging officers who do not work in the Youth Diversion Unit to take a "stop and think" step'* which is helpful in ensuring that *'diversion candidates did not end up being automatically processed into the court system'*.⁹⁷

Officers commencing in the Youth Diversion Unit do not receive any formal induction or specific training on youth diversion.⁹⁸ In 2015 and 2016, members of the Youth Diversion Unit received training in trauma-informed practice and restorative justice principles, but until 2015 formal training and development for staff was *'minimal'*.⁹⁹ The limited training in restorative justice may have contributed to what some services providing diversion programs perceive to be a punitive and *'compliance-focused'* culture within the Youth Diversion Unit.¹⁰⁰ The Commission was told that the Northern Territory Police have recently worked with Territory Families to develop training for officers commencing in the Youth Diversion Unit in youth engagement, restorative justice conferencing and trauma-informed practice.¹⁰¹

A Senior Constable in the Youth Diversion Unit noted the lack of training and ongoing professional development in youth justice and recommended that youth diversion officers receive specialist training, and ideally obtain a Diploma in Youth Justice.¹⁰² The Commission was told that more specialised training would assist officers to deal *'with the issues that we're addressing on a day-to-day basis'*.¹⁰³ Trauma-informed training would give youth diversion officers the skills to engage effectively with children and young people who have experienced early childhood trauma, Fetal Alcohol Spectrum Disorder (FASD) and other cognitive disabilities and behavioural issues such as Attention Deficit Hyperactivity Disorder (ADHD).¹⁰⁴ Police working with children and young people

should also receive training to ensure they are able to recognise a range of disabilities a child or young person may have which could impact their interaction with the youth justice system, as the Commission was also told that hearing loss and auditory processing problems can adversely affect a child or young person's communication with police. For example, police may perceive a young person with hearing loss as non-compliant.¹⁰⁵

*'In order to maintain best practice in youth diversion, I believe it is imperative for youth diversion officers to maintain their skills in the youth justice and restorative practice fields through ongoing training and further research on youth justice and diversion practices in other jurisdictions.'*¹⁰⁶

Senior Constable, Alice Springs Police Youth Diversion Unit

The Commission recognises that there are many police working in the Northern Territory who are aware of the special needs of children and young people. A lawyer who gave evidence to the Commission stated these officers *'are very careful when they are dealing with young people and are very much aware of their obligations under the Youth Justice Act and Regulations and Police General Orders'*.¹⁰⁷

However, there was also evidence before the Commission about inconsistent police practices in relation to diversion, such as inappropriate referral practices and narrow interpretation of eligibility criteria under the *Youth Justice Act*; the use of arrest; the approach to charging and interviewing young people; the treatment of young people in police custody; and the approach to bail, which demonstrates that comprehensive training in youth justice and ongoing professional development is required for all police dealing with children and young people. These issues are discussed in detail later in this chapter.

Aboriginal youth-oriented training and cultural competence

At the earliest stage of the justice system, police consider whether to proceed with formal charges or put the young offender on a diversionary program.¹⁰⁸ Australia-wide, police proceed with formal charges against Aboriginal children and young people at a rate of five to 10 times more often than they do against non-Aboriginal offenders aged 10–14, and three to five times more often against Aboriginal offenders aged 15–17.¹⁰⁹ The Commission heard from a Superintendent of the Northern Territory Police that each of the major centres has what is called *'command training'* where constables receive refresher training at the Police College on topics of concern at the time.¹¹⁰ Given the high number of Aboriginal children and young people coming into contact with the criminal justice system, police officers should be provided with ongoing refresher training oriented towards both children and young people as well as training that takes cultural issues into consideration. A Tiwi Elder told the Commission about the need for community-specific cultural awareness training, highlighting that *'one-off'* cultural awareness training for police is not sufficient:¹¹¹

'I don't believe that officers that are coming to the Tiwi Islands are being trained in Tiwi cultural awareness programs. So they have to do that ... if you can't relate and communicate with the people and you don't have the people skills then you have

*got a big problem in trying to communicate with people in the – in the communities, Aboriginal communities. I have seen it happen.*¹¹²

The suggestion was made to the Commission that local cultural advisors should be engaged to provide police with ongoing community-specific cultural advice and cross-cultural training.¹¹³ An ongoing focus on Aboriginal youth-oriented training should also continue throughout the careers of police officers coming into contact with children and young people.¹¹⁴

Police culture

It is not sufficient to provide police with mandatory training in the areas discussed above. This will be ineffective unless these approaches are embedded into police culture. In relation to the training provided regarding the circumstances in which it is appropriate to arrest children and young people, a Northern Territory Police Superintendent told the Commission: *'I think that training has been given; whether people have taken it on board would be another issue'*¹¹⁵, and that a *'tough on crime'* approach to children and young people leads to *'a creation of community expectations'* that *'can affect the thinking of some of our people'*.¹¹⁶ To counter this pressure, it is important that police training and leadership consistently reinforce key principles such as arrest being an option of last resort.¹¹⁷ The Commission agrees with NAAJA's submission that training *'needs to be valued by the organisation as supporting its core functions and incorporated into the culture of the police service'*.¹¹⁸

One Police Superintendent told the Commission *'we have got to be aware as police officers that the decisions we make are fair and just and not just in line with those who are the loudest'*.¹¹⁹

THE NEED FOR A SPECIALISED POLICE DIVISION

The critical biological, psychological and social differences between children and young people and adults have been discussed in earlier sections of this report. In the Commission's view, the different needs of children and young people, the benefit of deflecting them from patterns of criminal behaviour early, and the importance of police in that task, warrants the creation of a specialised, highly trained police division in the Northern Territory to work with children and young people.

New Zealand model – Police Youth Aid

The Commission considers that there is value in the Northern Territory Government examining the specialised youth police services which exist in other jurisdictions, particularly in New Zealand.¹²⁰ The adoption of a model along these lines was advocated in a number of submissions to the Commission.¹²¹

The New Zealand Police Youth Aid Division oversees the completion of *'alternative action'* under the *Oranga Tamariki Act 1989 (NZ)*.¹²² Alternative action is action taken by the police that responds to offending but keeps the child or young person out of the formal youth justice system.¹²³ Youth Aid officers create an Alternative Action Plan with the offender, and if the agreed-upon alternative action is successfully completed, the police will not lay charges.¹²⁴

Youth Aid officers are considered to be more senior within the New Zealand Police organisational structure and are on an elevated pay scale.¹²⁵ They undertake a two- to three-year course, after which they achieve a Diploma in Youth Services. The Commission was told that the training has a significant focus on cognitive and intellectual disability and trauma.

The Commission received evidence that trained specialists working with children and young people is one of the characteristics of a 'good' youth justice system.¹²⁶

*'Without a small amount of knowledge about the characteristics of young people, and of youth offenders in particular, it is all too easy to treat young people simply as "junior adults". First, this can result in responses which may not be fair: as brain science indicates, young people are often not as responsible for their actions as an adult might be. Second, if professionals have some knowledge of young people and how to work with them, they are able to make the process more accessible to young people. It is impossible for young people to engage with the criminal justice system, and make it a meaningful process, if they do not understand it.'*¹²⁷

Recommendation 25.1

- 1. The position of Aboriginal Community Police Officers be expanded and include the position of Youth Diversion Officers.**
- 2. Establish a specialist, highly trained Youth Division similar to New Zealand Police Youth Aid.**
- 3. 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.**
- 4. Northern Territory Police organisation and remuneration structures appropriately recognise officers with specialist skills in youth justice.**
- 5. 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.**

ARREST

*'I was 13 when I was first arrested. I cannot remember where I was, but I remember I was arrested for stealing. I was placed in the back of a paddy wagon. I was taken to the Darwin Watch House. I felt like a criminal.'*¹²⁸

Vulnerable witness AQ

When a child or young person is arrested in the Northern Territory, they are taken into police custody. If charged, they remain in the custody of police until they are granted bail or brought before the Court.

In the Northern Territory, youth arrests have increased significantly over the past decade. They have increased 15 times for Aboriginal females and tripled for Aboriginal males.¹²⁹ By comparison, over the same period, youth arrests more than tripled for non-Aboriginal females and increased by almost a quarter for non-Aboriginal males.¹³⁰ In contrast, from the period 2006–16, the population of the Northern Territory increased by 17%.¹³¹ Table 25.2 below illustrates the number of arrests from 2006–07 to 2015–16 by gender and Aboriginal status.¹³²

Table 25.2: Arrests of children and young people in the Northern Territory by gender and Aboriginal status, 2006–07 to 2015–16

	Female		Female Total	Male		Male Total	Grand Total	Percent Female	Percent Indigenous
	Indigenous	Non-Indigenous		Indigenous	Non-Indigenous				
2006/2007	17	8	25	327	71	398	423	6%	81%
2007/2008	45	7	52	325	51	376	428	12%	86%
2008/2009	68	12	80	392	57	449	529	15%	87%
2009/2010	48	12	60	455	80	535	595	10%	85%
2010/2011	53	5	58	391	62	453	511	11%	87%
2011/2012	139	14	153	671	128	799	952	16%	85%
2012/2013	118	19	137	862	131	993	1130	12%	87%
2013/2014	155	25	180	899	113	1012	1192	15%	88%
2014/2015	192	26	218	932	108	1040	1258	17%	89%
2015/2016	284	25	309	1060	88	1148	1457	21%	92%
Grand Total	1119	153	1272	6314	889	7203	8475	15%	88%
% change	1571%	213%	1136%	224%	24%	188%	244%		

Source: Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, p. 31, Table 1.

Over the relevant period, the number of arrests of all children and young people more than tripled. The most dramatic rise involved the youngest children, aged 10–14 – with an eightfold increase.¹³³



Table 25.3: Arrests of children and young people in the Northern Territory by age, 2006–07 to 2015–16

	Age at apprehension						Grand Total
	10 - 14	15 - 16	17	18 - 19	20 - 24	Older adult	
2006/2007	77	183	146	13	3	1	423
2007/2008	77	183	153	13	2		428
2008/2009	156	211	138	19	5		529
2009/2010	147	265	176	4	1	2	595
2010/2011	149	185	158	15	3	1	511
2011/2012	281	405	239	25	2		952
2012/2013	365	459	276	27	2	1	1130
2013/2014	416	464	278	33	1		1192
2014/2015	509	456	265	26	1	1	1258
2015/2016	652	539	239	22	3	2	1457
Grand Total	2829	3350	2068	197	23	8	8475
% change	747%	195%	64%	69%	0%	100%	244%

Source: Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, p. 31, Table 2.

Figures 25.2 and 25.3 show rates of apprehension and rates of arrest over the relevant period. Apprehension rates include both arrests and summonses. When analysing the data of male arrests and apprehensions over the period it can be seen that there is a dramatic increase in the use of arrest as opposed to the use of summonses. For example, from the period 2006 - 07 until 2011 - 12 boys were roughly equally likely to be dealt with by arrest or summonses. Following this period, boys were more likely to be dealt with by way of arrest with 799 boys arrested in 2011 - 12 and 467 boys receiving a summons, and in 2015 - 16 1148 boys were arrested, with only 389 being dealt with by way of summonses.¹³⁴

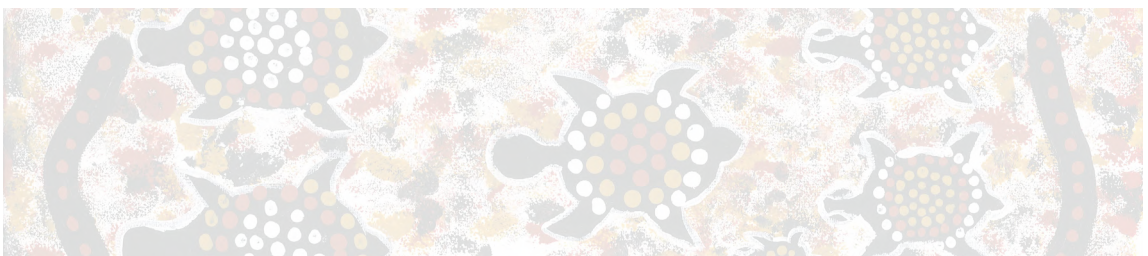
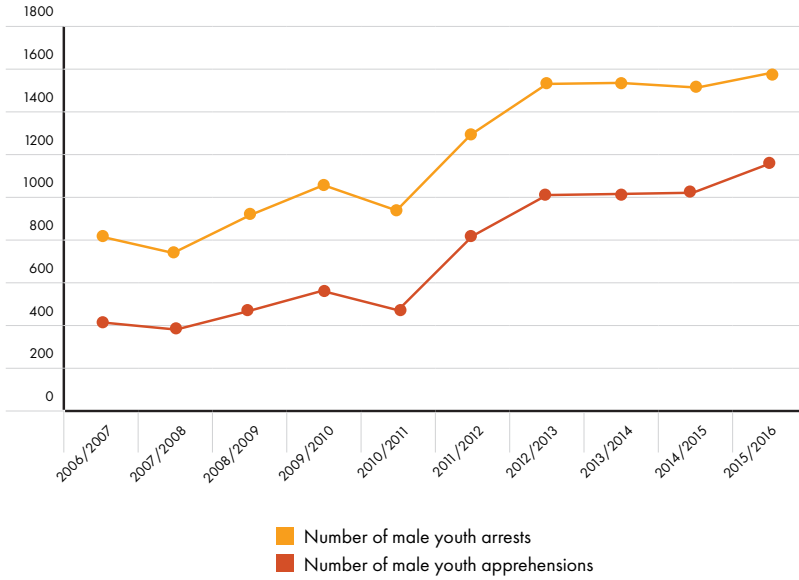


Figure 25.2: Male youth arrests and apprehensions, 2006–16

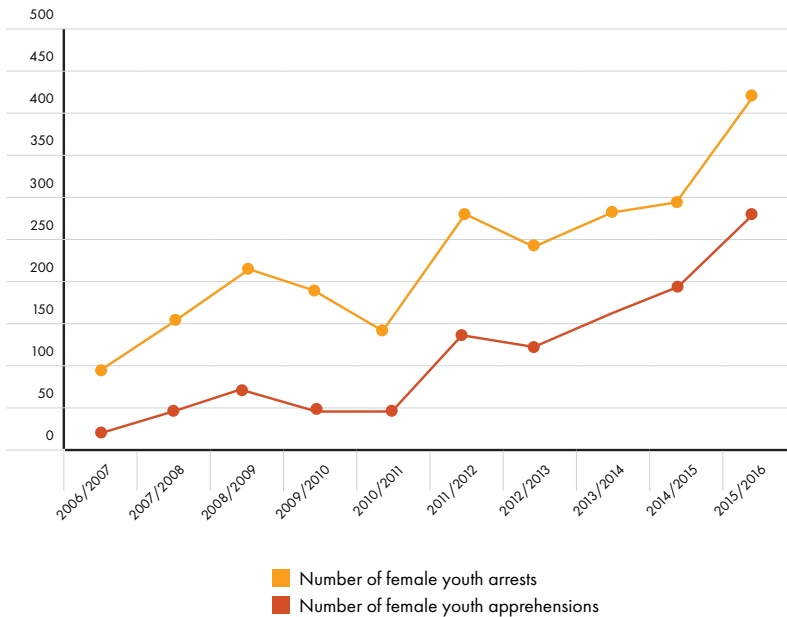
Male youth arrests and apprehensions 2006 - 16



Source: Adapted from Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, pp. 5, 30.

Figure 25.3: Female youth arrests and apprehensions, 2006–16

Female youth arrests and apprehensions 2006 - 16



Source: Adapted from Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, pp. 5, 30.

During the relevant period, the number of apprehensions per distinct youth also increased as shown in Table 25.4. In 2006–07, of those children and young people who were apprehended, the average number of times they were apprehended was 1.6 times over the year. By 2015–16 that rate had increased to an average 2.65 times over the year. The Commission also notes that there was a spike in arrest rates from 2011, when breach of bail became an offence.

Table 25.4: Number of youth apprehensions per distinct youth apprehended, by sex and Aboriginal status

	Female		Female Total	Male			Male Total	Grand Total
	Indigenous	Non-Indigenous		Indigenous	Non-Indigenous	Unknown		
2006/2007	1.31	1.14	1.25	1.65	1.70		1.56	1.60
2007/2008	1.36	1.53	1.35	1.67	1.41		1.61	1.55
2008/2009	1.54	1.54	1.54	1.67	1.38	1.00	1.60	1.58
2009/2010	1.48	1.35	1.42	1.71	1.54		1.67	1.62
2010/2011	1.38	1.29	1.36	1.85	1.31		1.71	1.65
2011/2012	1.79	1.53	1.72	2.17	1.99		2.13	2.04
2012/2013	1.70	1.74	1.71	2.40	2.35		2.39	2.25
2013/2014	1.86	2.10	1.89	2.36	2.13		2.18	2.24
2014/2015	2.09	2.10	2.09	2.54	2.77		2.56	2.46
2015/2016	2.60	2.82	2.62	2.67	2.64		2.66	2.65
Grand Total	1.78	1.61	1.75	2.12	1.81	1.00	2.06	1.99

Source: Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, p. 6.

Power and discretion to arrest

Article 37(b) of the *United Nations Convention on the Rights of the Child* (CRC), ratified by Australia in 1990, provides that State parties ‘shall ensure’ that the arrest and detention of a child is used only as a measure of last resort and for the shortest appropriate period of time.¹³⁵ The Beijing Rules, adopted by the Committee on the Rights of the Child, provide guidance on the implementation of the CRC. The Beijing Rules recognise the need for discretion at all stages of youth justice administration

and proceedings and the need for accountability in the exercise of any such discretion.¹³⁶

Both the power of police in the Northern Territory to arrest children and young people and the discretion whether or not to arrest are found in section 123 of the *Police Administration Act*, which provides that:

'A member of the Police Force may, without warrant, arrest and take into custody any person where he believes on reasonable grounds that the person has committed, is committing or is about to commit an offence.'

In the exercise of their discretion to arrest a person under the age of 18, police in the Northern Territory must also comply with the *Youth Justice Act*, which guides and restricts the exercise of the discretion to arrest children and young people in a number of ways.

The *Youth Justice Act* requires police to divert a person under 18 from the criminal justice system instead of arresting them and charging them with an offence, except in circumstances where diversion is excluded under the legislation.¹³⁷ The Act also stipulates that if a child or young person is charged, police are required to proceed by way of summons against a person who is under 18 rather than by arrest unless the officer believes, on reasonable grounds, that:

- the child or young person will not appear in court to answer a summons in relation to the offence, or
- releasing the child or young person from custody will be accompanied by a substantial risk of:
 - a continuation or repetition of the offence or another offence by the child or young person,
 - the loss or destruction of evidence relating to the offence, or
 - harm to the child or young person.¹³⁸

A summons is a notice to appear in court. Compared with arrest, it is a less confronting and punitive way of bringing a child or young person on charges before the Court as it does not involve being arrested and detained.¹³⁹

In administering the *Youth Justice Act*, police must take into account the principles in the Act which include that a person aged under 18 should only be kept in custody for an offence, whether on arrest, in remand or under sentence, as a last resort and for the shortest appropriate period of time.¹⁴⁰

Additional guidance for police on the exercise of their discretion to arrest a child or young person is found in the Police General Orders.¹⁴¹ The Northern Territory Police General Order – Arrest states that arrests are an *'action of last resort'* and police should only arrest a person:

- to prevent the continuation or repetition of an offence
- to prevent the risk of further offences which may cause a danger to the public
- if it is unlikely a summons or notice to appear will ensure the offender's appearance in court
- if the charge is of a serious nature, or
- if the person is intoxicated to the extent that they would not understand the consequences of their actions or the summons or notice to appear process.¹⁴²

Failure to comply with the Orders does not, of itself, make an arrest unlawful.

The law in the Northern Territory provides for some oversight of the exercise of police discretion to arrest children and young people. Under section 17 of the *Youth Justice Act*, if a police officer who is not an 'authorised officer' under the Act arrests a child or young person, they must notify an 'authorised officer' as soon as practicable. An 'authorised officer' is the Commissioner of Police, a Deputy Commissioner of Police, Assistant Commissioner of Police or those delegated to act as an 'authorised officer' for Part Two of the *Youth Justice Act* which include all officers of the rank Commander, Superintendent, Senior Sergeant and all officers in charge of a police station.¹⁴³

The Court may be invited to review the legality of an arrest by a defendant and to exclude any evidence obtained as a consequence of failing to comply with the *Youth Justice Act*, but there is no apparent systematic review of the exercise of the discretion to arrest.

Use of arrest

In the 2015–16 financial year, police made 1,457 arrests of children and young people in the Northern Territory.¹⁴⁴

The legislative framework and Police General Orders governing the exercise of the discretion to arrest children and young people in the Northern Territory detail the principle that arrest should only be used as a last resort.

The Commission's ability to examine the appropriateness of the exercise of the discretion to arrest was hampered by a lack of data on the use of summons as against arrest and on the reasons for arrest. The lack of reporting on the exercise of the police discretion to arrest makes it difficult to measure police performance as to their exercise of this discretion as required by the Beijing Rules. The common view of lawyers who gave evidence on the Commission's Legal Processes Panel was that arrest is not used by some police in the Northern Territory as a last resort. A former NAAJA children's lawyer, who appeared on the panel, said in her statement:

*'In my experience, there appeared to be a preference to arrest rather than utilise less intrusive means of dealing with children suspected of offending or having involvement in alleged offending. What I mean by that is there have been quite a few instances where police have chosen to arrest a child rather than contact the parent/guardian and request they come in for either a formal interview or discussion at the station, especially where police are merely following up on enquiries and there is no suggestion that the child is committing further offences.'*¹⁴⁵

A lawyer with the Northern Territory Legal Aid Commission (NTLAC) agreed, telling the Commission:

*'The police are supposed to commence matters against young people by way of summons rather than arrest. Unfortunately, in my experience this does not usually occur. Arrest seems to be the default position and that is even in circumstances where there is no imminent threat to the public, and when the police know the current residential address of the young person and their responsible adult.'*¹⁴⁶

A Supervising Summary Prosecutor with the Northern Territory Director of Public Prosecutions (DPP) office also told the Commission that police in the Northern Territory do not always use arrest as a last resort:

*'The majority of files received by the DPP for a single charge of breach of bail are by way of arrest (as opposed to by way of a summons). There is much merit in many cases for the latter course.'*¹⁴⁷

The Commission heard that a preference for arrest rather than summons was more likely when a group of offenders was involved to enable further investigation.¹⁴⁸ A Superintendent from the Northern Territory Police also accepted that this occurred regardless of whether a child or young person in the group was a first-time offender.¹⁴⁹ When questioned about the Legal Panel evidence that arrest was not used as a last resort by police, a Northern Territory Police Superintendent said he was *'satisfied with the quality of our training at the recruit level'*, but acknowledged that *'we do struggle sometimes ... maintaining some of the cultural issues within the organisation'*.¹⁵⁰

Mode of arrest

The Commission heard evidence that there have been a few instances where police arrest children and young people at school. Vulnerable witness AS said:

*'I was arrested at school by the police and taken to the Watch House. I didn't like being arrested at my school, this happened once before as well, because I felt a lot of shame with the police coming there. They could have picked me up from [my] house'*¹⁵¹

In addition to the evidence of AS, a former lawyer from NAAJA gave evidence of two further instances where police had arrested young people at school, handcuffing them in front of staff and other pupils.¹⁵² At the time of arrest, there was no immediate threat of continuing offending as they were lawfully at school and engaged in class.¹⁵³ The young people's parents had not been contacted to arrange a voluntary meeting outside school hours.¹⁵⁴

A Superintendent of the Northern Territory Police told the Commission that the arrest of children and young people at school should be avoided and should be an action of last resort if they are not offending at the time.¹⁵⁵ He also agreed that it can be humiliating, degrading and embarrassing for a child or young person to be handcuffed and taken out of school in front of their peers.¹⁵⁶

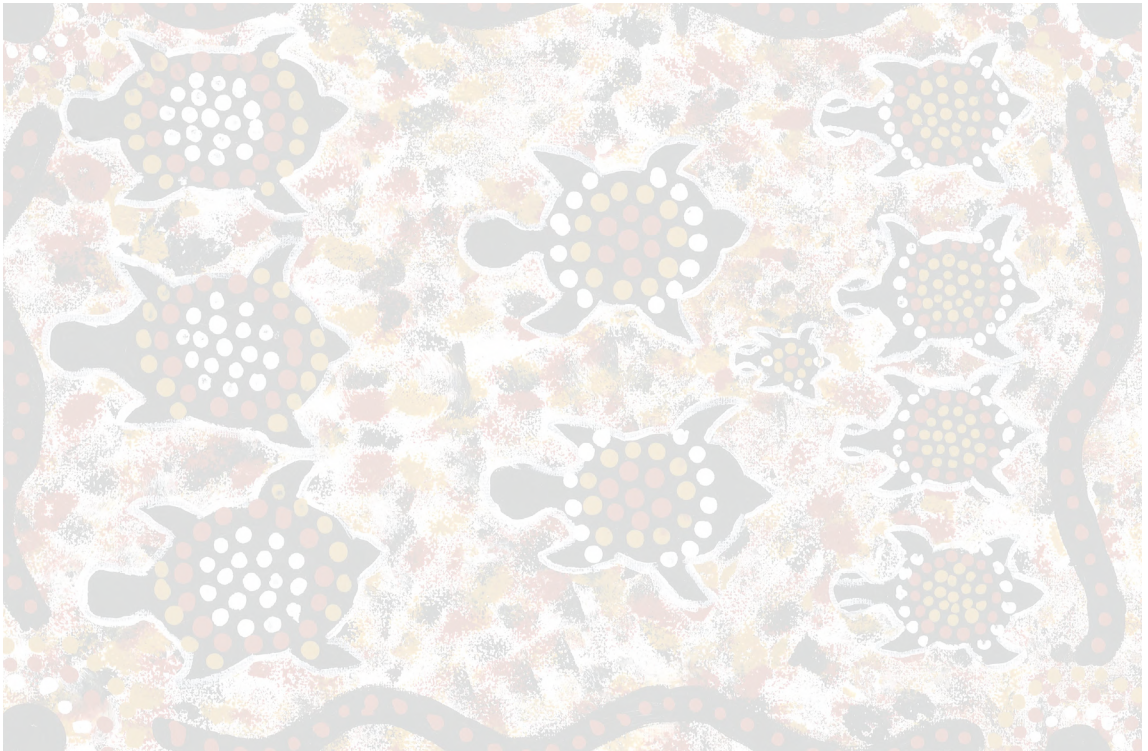
Findings

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.

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.

Recommendation 25.2

1. Northern Territory Police undergo training every two years to reinforce their obligations under the *Police Administration Act (NT)*, *Youth Justice Act (NT)* and *Police General Order – Arrest* in relation to the exercise of their discretion to arrest children and young people.
2. Northern Territory Police collect data on the incidence of arrest of children and young people, the reasons for the use of arrest, rather than summons, the outcome of the charges laid against children and young people who were arrested, and prepare a report to be published annually.
3. The Northern Territory Commissioner of Police amend the *Police General Order – Arrest* to provide that children and young people must not be arrested at school unless there is a substantial risk the child or young person will abscond or reoffend if not arrested at school.
4. The Northern Territory Commissioner of Police review *Police General Orders* and police training to ensure police understand the basis on which charges may be laid against a child or young person.
5. Undertake a review of charging practices over the last three years with respect to children and young people.



In the Watch House

'When I got back to Darwin, detectives came to my house and took me to the Darwin Watch House. We were kept in the Darwin Watch House for about two days. We didn't get a shower the entire time we were in there. We got food every day but the food was pretty shit. For example, the rice was stale and I didn't even know what the food was – it was just brown. The cells in the Darwin Watch House had a bubbler tap for water and a toilet and were about as clean as the cells in detention – they had spit on the walls and that.'

Vulnerable witness AB¹⁵⁷

The first place of detention for most children and young people in the Northern Territory is in cells attached to a police station, known as a 'watch house'. Children and young people who are arrested in the Northern Territory are held in a watch house until they are released on bail by police, transferred to a detention centre or brought before the Court.¹⁵⁸

Length of time children and young people were held in the Watch House

'Over the years I have had a number of experiences with the police. When I first started getting picked up by the Police, they would try to force me into doing interviews. They would say things to scare me, like 'You're going to get locked up' and 'If you talk to us, you'll get bail'.

A number of times when I got picked up by the police and charged with an offence, I would be kept in the Watch House for a number of hours. The police would often not question me about the matter several hours after I had been charged. I would have to

wait until the police spoke to me to apply for bail ...

... I was held in custody for a period of about 14 hours without being charged. There were other times where I was held really long times in the Watch House.'

Vulnerable witness AM¹⁵⁹

The Commission is concerned about the length of time that children and young people are being held in watch houses prior to being charged. The Commission analysed records from the Alice Springs Watch House for a month in 2017 as shown in Table 25.5. In that single month three young people aged 12, 13 and 14 were held for over 30 hours.¹⁶⁰ All three were subsequently released on bail. Another child aged 11 was held in the watch house for 17 hours before being released on bail.

Table 25.5: Alice Springs Watch House records for one month in 2017

	Age	Period in Police Custody	Total Time in Custody	Bail	Charge
Child 1	13	Apprehended: 24/MM - 12:45 Detained at Police Station: 24/MM/2017 - 13:44 Released: 25/MM/2017 - 21:05	31 hours and 21 minutes	Police Bail - 27/MM/2017	Unlawful use of Motor Vehicle
Child 2	17	Apprehended: 24/MM - 11:35 Detained at Police Station: 24/MM - 11:44 Released: 25/MM - 16:53	5 hours and 6 minutes	Released into custody of responsible adult - 27/MM/2017	Unlawful Entry with Intent; Unlawful use of Motor Vehicle
Child 3	15	Apprehended: 24/MM - 12:37 Detained at Police Station: 24/MM - 12:45 Released: 25/MM - 22:19	9 hours and 34 minutes	No Bail - conveyed to Youth detention	Sex Int Child 16 year, Agg Assault, Breach DVO, Breach Bail
Child 4	12	Apprehended: 24/MM - 21:20 Detained at Police Station: 24/MM - 21:51 Released: 25/MM - 09:16	11 hours and 6 minutes	Released into custody of Court Guards for appearance at Local Court	Breach of Bail
Child 5	13	Apprehended: 24/MM - 21:20 Detained at Police Station: 24/MM - 21:51 Released: 25/MM - 09:17	11 hours and 26 minutes	Released into custody of Court Guards for appearance at Local Court	Breach of Bail
Child 6	12	Apprehended: 24/MM - 12:45 Detained at Police Station: 24/MM - 14:22 Released: 25/MM - 22:47	32 hours and 25 minutes	Released on bail until 27/MM	Unlawful entry; Damage to Property; Stealing; Unlawfully use a motor vehicle
Child 7	14	Apprehended: 24/MM - 12:45 Detained at Police Station: 24/MM - 14:19 Released: 25/MM - 21:32	32 hours and 25 minutes	Released on until 27/MM	2 counts of Attempt Unlawful entry - Dwelling 14 Counts of Damage to Property; 14 counts of stealing; 1 counts of trespass on premises; 7 counts of unlawful entry - Dwelling; 4 counts of unlawfully use of a motor vehicle; 1 count of unlawful use MV valued over \$20000
Child 8	11	Apprehended: 24/MM - 02:31 Detained at Police Station: 24/MM - 02:54 Released: 25/MM - 20:32	17 hours 38 minutes	Released on bail until 27/MM	Unlawful entry x 3

Source: Exh.395.004, Table of Alice Springs Watch House records, [Redacted] 2017, tendered 12 May 2017.

Section 4(c) of the Youth Justice Act provides that 'a youth should only be kept in custody for an offence, whether on arrest, in remand or under sentence, as a last resort and for the shortest

appropriate period of time.¹⁶¹ The *Police Administration Act* provides that the police may hold a young person in custody for the purposes of investigation for a *'reasonable period'*.¹⁶² Section 138 provides a list of considerations to determine what a reasonable period is, but these are broad and allow for police discretion.¹⁶³ This may lead to a situation where children or young people are held in custody for a considerable period for the purposes of an investigation, even though police may not be confident that they have offended.¹⁶⁴

A lawyer from the Central Australian Aboriginal Legal Aid Service (CAALAS) told the Commission that she was aware of instances where young people had been held in watch houses for over 24 hours without charge while investigations took place.¹⁶⁵ A Superintendent of the Northern Territory Police agreed that for a young person to find themselves in custody for up to 30 hours, especially in a situation where they have potentially not committed any offences, was *'way too long for the purposes of investigation'*.¹⁶⁶

Evidence provided by a Superintendent of the Northern Territory Police of the length of time children spent in the watch house for the relevant period in Table 5.6 demonstrates that children and young people being held for up to 30 hours was not the norm, but did occur. The data demonstrates that across the Territory, children and young people were held in custody for more than two days on a number of occasions from 2006 until March 2017.¹⁶⁷

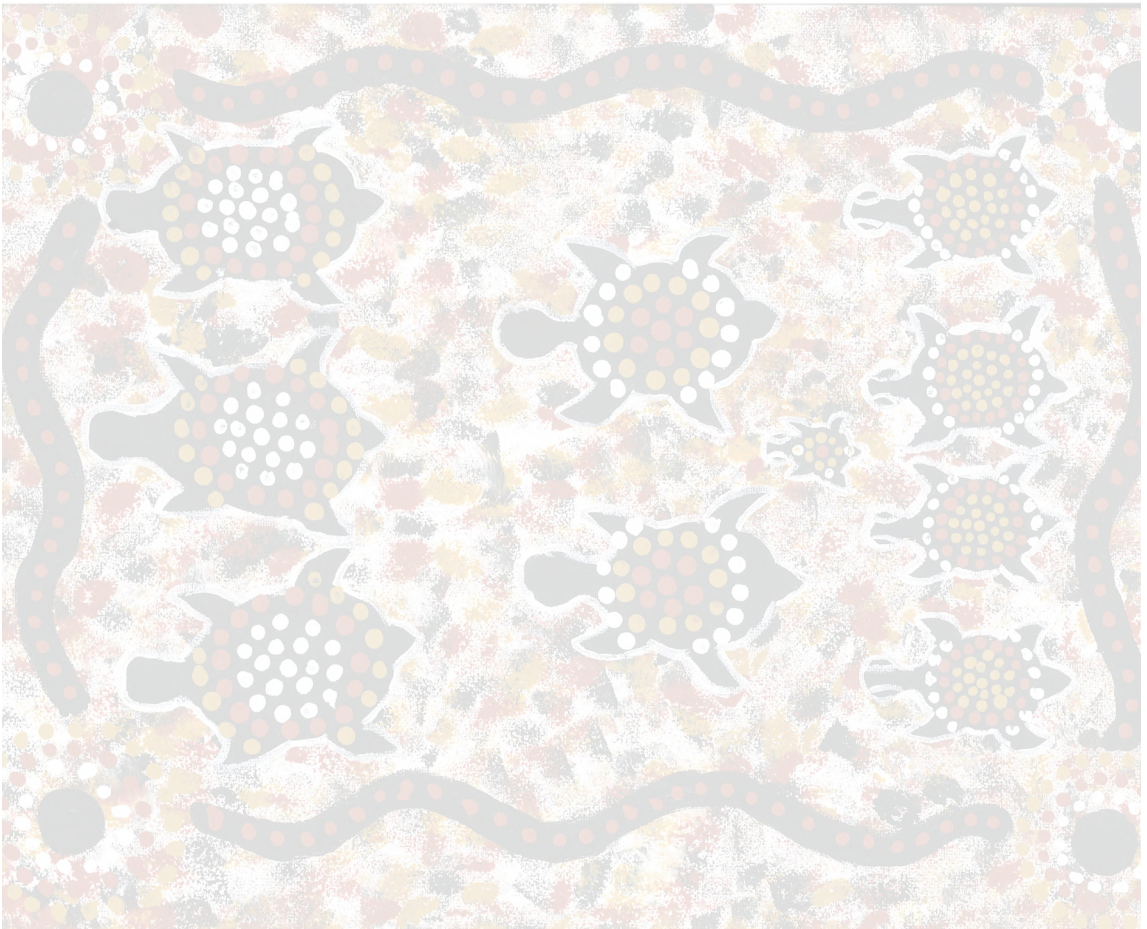


Table 25.6: Total number of watch house custody episodes and duration of episodes for children and young people in the Northern Territory, 2006–17

Year	Length of Episode					Total Number of Episodes over relevant period
	Less than One day	One Day or More but Less than Two Days	Two Days or More but Less than Three Days	Three Days or More but Less than Seven Days	Seven Days or More	
1 August to 31 December 2006	731	13	10	0*	3*	757
1 January to 31 December 2007	1621	32	8	9*	3*	1673
1 January to 31 December 2008	1721	26	14	2*	4*	1767
1 January to 31 December 2009	2069	47	16	7*	8*	2147
1 January to 31 December 2010	2186	59	11	13*	7*	2276
1 January to 31 December 2011	1821	53	9	8*	3*	1894
1 January to 31 December 2012	2111	101	29	13*	2*	2611
1 January to 31 December 2013	2502	80	16	10*	3*	2611
1 January to 31 December 2014	2418	80	14	14*	9*	2581
1 January to 31 December 2015	2445	91	20	19*	6*	2581
1 January to 31 December 2016	1822	96	19	12*	8*	1957
1 January to 31 December 2017	477	20	12	6*	1*	516
Total Number of Episodes Over Relevant Period	21924	698	178	113*	57*	22970

Source: Exh.695.001, Annexure IL-1 to Statement of Ian Lea, 9 June 2017, tendered 10 July 2017, Table 1.

The Commission was told that episodes longer than three days were most likely the result of a failure to finalise records, but it was not possible for the Northern Territory Police to review each record individually to confirm that was the case for every episode.¹⁶⁸

To compensate for this potential recording error, the Northern Territory Police provided the Commission with data indicating the median length of time children and young people were held in custody shown in Table 7. This data demonstrates that children are generally being held longer in police custody in 2016 and 2017 than they were in 2006.¹⁶⁹

Table 25.7: Median holding length of police custody episodes for children and young people by month, 2006–17

Month	Year											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
January	n/a	05:58	05:24	06:19	06:01	05:49	06:21	06:06	06:18	06:17	07:34	06:57
February	n/a	06:06	04:51	04:46	06:12	06:41	06:37	06:08	07:45	05:57	07:46	08:00
March	n/a	05:58	04:45	05:43	05:34	06:37	06:54	06:34	06:41	06:54	06:26	08:16
April	n/a	05:27	04:34	05:54	05:14	05:43	06:32	06:40	05:45	07:22	06:18	n/a
May	n/a	06:20	05:16	06:30	05:36	04:30	07:50	06:09	07:09	08:24	05:50	n/a
June	n/a	05:06	06:18	05:07	05:27	05:47	05:36	05:39	07:09	06:40	06:44	n/a
July	n/a	06:16	05:25	06:01	05:34	07:06	06:20	07:56	07:17	06:58	07:38	n/a
August	05:13	05:01	03:57	06:04	05:25	06:53	05:12	06:08	07:22	07:44	07:25	n/a
September	05:33	04:16	05:17	05:10	06:59	06:08	06:52	06:20	06:43	07:24	06:31	n/a
October	06:10	04:03	05:33	05:20	06:00	06:34	05:46	06:31	06:47	07:42	06:59	n/a
November	05:23	05:10	04:52	04:51	05:34	06:39	05:48	06:28	06:54	06:35	06:37	n/a
December	05:00	05:47	06:26	05:08	06:21	06:14	06:07	06:12	07:43	07:19	06:52	n/a

Source: Exh.695.001, Annexure IL-1 to Statement of Ian Lea, 9 June 2017, tendered 10 July 2017, Table 2.

The Northern Territory legislation does not stipulate a maximum time that children and young people can be held in custody so that police can undertake investigations in relation to the offence. In other jurisdictions, legislation dictates how long any person can be held in police custody without charge. In New South Wales, police can only hold a person, child or adult, for a maximum of six hours without charge beginning from the time of arrest which can be extended once by an authorised officer.¹⁷⁰ In South Australia, both adults and children can be held for up to four hours unless police get an extension of up to eight hours from a magistrate or judge.¹⁷¹ In Queensland, a police officer can detain children and adults for a reasonable time, taking into account factors such as age and mental capacity, for investigation or questioning not exceeding eight hours. A judge or magistrate can grant an extension of the custody period for a reasonable time of no more than eight hours.¹⁷² For a Commonwealth offence other than terrorism, a person who is Aboriginal or appears to be under 18 cannot be held for longer than two hours.¹⁷³

The Commission concludes that the Northern Territory should introduce time limits on the length of time a child or young person may be held in police custody for investigation.

Finding

Children and young people were held in police custody in the Watch House for unreasonably long periods of time.

Recommendation 25.3

1. The Northern Territory Government ensure all police cells are made suitable for detaining children.
2. Provision be made in either the *Police Administration Act (NT)* or the *Youth Justice Act (NT)* that children and young people may be held in custody without charge for no longer than four hours. Any extension up to a further four hours may only be granted by a Judge.

Holding of children and young people in police custody with adults

Article 37(c) of the CRC applies to children and young people held in police custody. State parties are to ensure that:

'Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.'

There is no legislative requirement in the Northern Territory that children and young people in police custody must be kept separately from adults. The *Youth Justice Act* requires separation of children from adults 'as far as practicable' when they are being transported to and from court.¹⁷⁴ Children and young people remanded into the custody of the Commissioner of Correctional Services must also be kept separate from adult prisoners.¹⁷⁵ However, there is no legislative protection for children and young people in police custody other than when they are being transported to and from court. According to the Police General Order in relation to custody, children and young people should be separated from adults, except in the case of an Aboriginal child or young person who should be located within close proximity of other Aboriginal people.¹⁷⁶ However, the General Order stipulates that where it is necessary for adults and youths to be in the same cell, female youths are to be with female adults and male youths are to be with male adults, and extra observation should be made to ensure the safety of children and young people.¹⁷⁷

The Commission heard concerns about children being held in close and visible proximity to adults in Darwin and Alice Springs watch houses, particularly in Alice Springs, but received no reports of children and young people being held in the same cell as adults in those watch houses. The Commission was told by a Superintendent of the Northern Territory Police that at the Darwin Watch House, children and young people are always kept separate from adults and males and females are also kept separated.¹⁷⁸

He told the Commission that there is capacity to separate children and young people from adults, and by gender, where there are four or more cells attached to a police station.¹⁷⁹ Of the 59 police stations in the Northern Territory, 11 have four or more cells.¹⁸⁰ The Commission was told that in remote communities, while the capacity to separate children and young people from adults and different genders is limited, it is rare to have more than a few people in custody at any given time.¹⁸¹ In its submission to the Commission, the Aboriginal Peak Organisations Northern Territory (APO NT) stated it had been informed of some instances where children and young people had been held with adults in cells in police stations in remote areas,¹⁸² although the Commission was not told of any specific examples and has not been able to investigate this claim further.

Children and young people in police custody in remote and regional police stations are released or transferred as soon as possible to a detention centre in an urban centre by air or road.¹⁸³ APO NT submitted to the Commission that when children and young people are transferred, they are frequently transported with adult prisoners and with prisoners of the opposite gender.¹⁸⁴

NAAJA and APO NT both raised concerns about the removal of children and young people from their families and communities when they are transferred. The automatic transfer of children and young people in custody in remote areas to an urban centre would appear to be in breach of the principle in section 4(i) of the *Youth Justice Act* that children and young people should not be withdrawn unnecessarily from their family and environment. Whether the transfer was necessary will depend upon many factors. The Commission was unable in the time to investigate a sufficient number of transfers from remote communities to ascertain if there were adequate reasons for doing so and whether and how frequently children were transferred in the company of adult offenders.

Conditions in police custody

Concerns were raised with the Commission by lawyers about the conditions children and young people face in custody. A Local and Youth Court Practice Manager at CAALAS stated:

*'It is well-known in the criminal practice that our clients, particularly children, struggle with the conditions at the Watch House. It is brightly lit and extremely noisy due to the amount of intoxicated people in custody. Sleeping can be difficult. In Alice Springs, young people are placed in a cell close to the main entrance so they can be monitored easily, but this affords them little privacy and expose them to a constant stream of adult offenders who are being processed.'*¹⁸⁵

NAAJA submitted to the Commission:

*In the 20 police stations in the remote circuit that NAAJA attends, there are no cells purpose-built for the accommodation of youth prisoners. Cells in remote police stations resemble the conditions of the Don Dale Behavioural Management Unit. NAAJA has observed that the concrete cells have no air conditioning, are filthy and unhygienic, have unclean mattresses, are open to mosquitoes and midges, and are without privacy. In many remote police stations, young Aboriginal persons who are in custody are often placed in cells with adult prisoners.'*¹⁸⁶

In contrast, a Superintendent from the Northern Territory Police told the Commission that in remote and regional stations, the cells are basic but clean and well maintained.¹⁸⁷ He said the focus in those areas is that the cells are safe, with no hanging points.¹⁸⁸ The Commission was also told that

in the last 18 months, the Darwin Watch House has undergone renovations and it is clean and well maintained.¹⁸⁹ The Commission toured both the Darwin and Alice Springs watch houses and found them to be clean and in good condition.

Finding

There is no legislative provision to prevent children and young people in the Northern Territory being held in custody with adults in contravention of Article 37(c) of the CRC.

POLICE INTERVIEWS

It is during apprehension, interrogation and questioning that most violations of young people's rights occur. This is the most hidden aspect of the child's contact with the criminal justice system and the stage at which the child is most vulnerable.¹⁹⁰

Professor Ian O'Connor

There is a significant power imbalance when children and young people are interviewed by police. Police have a 'systemic advantage over young people due to their status as agents of the state and their greater knowledge and familiarity of law and its processes.'¹⁹¹

In recognition of this imbalance, international human rights instruments prescribe safeguards for children and young people in their interactions with police, including with respect to police interviews. The Northern Territory Police also have their own policies that should be adhered to.

In the Northern Territory, the Police General Order – Questioning People who have Difficulties with the English Language – the 'Anunga' Guidelines provide police with guidance on questioning people who may not speak English as a first language which, when complied with, provide safeguards for Aboriginal children and young people.



Anunga Guidelines

Northern Territory Police policies in relation to interviewing Aboriginal children and young people are informed by the Anunga Guidelines. The Anunga Guidelines were introduced in 1976 by the Northern Territory Supreme Court.¹⁹² These guidelines apply to:

*Any person being questioned as a suspect, if that person is not as fluent in English as the average white person of English descent.*¹⁹³

The guidelines are not in legislation,¹⁹⁴ however, they have been taken into consideration in the formulation of Northern Territory Police policies, such as the General Order Questioning and Investigations and the General Order Questioning People who have Difficulties with the English Language –The ‘Anunga’ Guidelines.¹⁹⁵ Key aspects of the Anunga Guidelines include, but are not limited to:¹⁹⁶

- An interpreter should be present even if the person to be interrogated speaks some English.
- Where practicable a ‘prisoner’s friend’ should be present. The friend should be someone in whom the person has confidence, and by whom they will feel supported.
- Great care should be taken in administering the caution when the stage has been reached that it is appropriate to do so. The person should be asked to explain what is meant by the caution, phrase by phrase. Questioning should not proceed until it is apparent that the individual understands the right to silence.
- If the individual seeks legal assistance, reasonable steps should be taken to arrange it. As a general rule, if a suspect states that he or she does not wish to answer any, or any further questions, the interrogation should not continue past that point.
- The guidelines are to be interpreted broadly, and to be applied at every stage of the investigation.

The Commission was told of some of the concerns witnesses had in relation to the way police conduct interviews with children and young people.

Access to legal advice

The CRC states that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance.¹⁹⁷ The Beijing Rules provide:

*Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian ... shall be guaranteed at all stages of proceedings.*¹⁹⁸

Children and young people require legal advice before an interview with police so they can make an informed decision whether or not to participate. Without the capacity to make an informed decision, the right to silence is meaningless.

Under the *Youth Justice Act*, police in the Northern Territory must notify children and young people prior to a search or interview of their ‘ability to access’ legal advice and representation ‘unless impracticable’.¹⁹⁹ Children and young people must not be interviewed without a support person who may be, but does not have to be, their lawyer.²⁰⁰ There is no legal requirement in the Northern Territory that a child or young person receive legal advice prior to interview or that a lawyer be present during any interview.

Police are not required by law to notify a lawyer that a child or young person has been brought into custody. The Police General Order – Custody, which provides guidance to police in the execution of their duties, states that police should notify an Aboriginal legal service when an Aboriginal child is brought into custody.²⁰¹ The Commission has heard evidence from a former senior lawyer from NAAJA that police did not invariably do so, and children and young people were regularly interviewed without having had access to legal advice.²⁰² The Commission accepts that this has occurred but is in no position to determine if it is widespread.

Custody notification scheme

The Northern Territory currently has no Territory-wide custody notification scheme. In 1991, the Royal Commission into Aboriginal Deaths in Custody (RCIDIC) recommended that when an Aboriginal person is taken to a police station for interrogation or following an arrest, police should advise the relevant Aboriginal Legal Service.²⁰³ This recommendation is reflected in the Police General Order – Custody, which states that police must make reasonable efforts to establish protocols to notify an Aboriginal legal service when an Aboriginal person is arrested or detained.²⁰⁴

In Central Australia, CAALAS has an informal agreement with police, so that police will generally notify CAALAS when an Aboriginal child or young person is taken into custody.²⁰⁵ CAALAS provides an after-hours, on-call service to provide advice to Aboriginal children and young people prior to the interview.²⁰⁶

NAAJA told the Commission in its submissions that it has been waiting for a response from police for a similar arrangement in Katherine since November 2015.²⁰⁷ The Commission heard evidence that police do not always inform NAAJA or NTLAC when a child or young person is brought into custody.²⁰⁸ A former senior lawyer for NAAJA observed it was ‘very rare’ to get phone calls from police to say there is a child in custody despite NAAJA having a custody telephone line.²⁰⁹

The Commission notes that under section 135(2) of the *Police Administration Act*, a disclosure that a person is being held in custody can only be made with the consent of that individual and that alcohol or drug impairment may preclude that consent.²¹⁰

Notifying a lawyer that a child or young person is in custody can reduce the time they are detained. The lawyer can advocate with police to grant bail and if bail is refused, the lawyer has more time to contact the family and make arrangements to support a bail application when the young person is brought before the Court.

New South Wales is the only jurisdiction in Australia where the law requires an Aboriginal Legal Service to be notified when an Aboriginal or Torres Strait Islander person is detained.²¹¹ The

Aboriginal Legal Service (NSW/ACT) Limited (ALS NSW/ACT) conducts a Custody Notification Service which is a 24-hour telephone legal advice service and welfare check for Aboriginal people taken into police custody.²¹² Lawyers at ALS NSW/ACT are notified when that occurs. A lawyer provides advice to the person in custody prior to the interview and checks on the person's physical and psychological state.

The Principal Solicitor responsible for criminal practice at ALS NSW/ACT told the Commission that clients may not be as willing to discuss medical and welfare issues, including suicidal ideation, with the police, but may do so with a culturally appropriate solicitor who is a *'partisan agent on the side of the person detained'*.²¹³ The Custody Notification Service is a valuable service for vulnerable people in custody in New South Wales, significantly improving the welfare of Aboriginal people in police custody,²¹⁴ including mitigating the risks of death in custody. After the introduction of the Custody Notification Service in 2000, no deaths in custody occurred in New South Wales until December 2015.²¹⁵ More recently, three Aboriginal people have died in custody in New South Wales and one has died in the Australian Capital Territory.²¹⁶

ALS NSW/ACT solicitors take more than 300 calls per week from Aboriginal people in police custody.²¹⁷ The Custody Notification Service costs \$526,000 per year, including the phone line, a rotating roster of seven lawyers and one administration officer.²¹⁸ The total cost per phone call is less than \$39.²¹⁹

In October 2016, the Federal Minister for Indigenous Affairs, Senator the Hon. Nigel Scullion, announced that the Commonwealth Government had written to all State and Territory governments offering to fund a national roll-out of custody notification schemes similar to that in New South Wales, contingent on each jurisdiction mandating its use and agreeing to fund it after a three-year introductory period.²²⁰

In submissions to the Commission, NAAJA stated that both they and CAALAS are currently in discussions with the Commonwealth and Northern Territory Governments for a custody notification service which will provide after-hours legal representation to Aboriginal people in police custody.²²¹ Northern Territory Police, in evidence before the Commission, supported the establishment of a coordinated custody notification protocol.²²²

The Commission strongly supports the introduction of a notification scheme in the Northern Territory, particularly with the significant overrepresentation in custody of Aboriginal people.²²³ The Commission further supports an equivalent scheme for non-Aboriginal children, involving other legal services such as NTLAC.

The Commission also notes that the RCIDIC recommended that *'Coroner's Offices in all States and Territories establish and maintain a database to record all details of Aboriginal and non-Aboriginal deaths in custody and liaise with the Australian Institute of Criminology ... to compile and maintain record of Aboriginal deaths in custody in Australia'*,²²⁴ and that *'statistics and other information on Aboriginal and non-Aboriginal deaths in prison, police custody and juvenile detention centres, and related matters be monitored nationally on an ongoing basis'*.²²⁵

These recommendations were implemented through the establishment of the National Deaths in Custody Program at the Australian Institute of Criminology.²²⁶ However, they have not produced a

report since 2015 and the data in that report was for the years 2011–12 and 2012–13.²²⁷ The timing of the report is affected by the collection of data from all jurisdictions, the time it takes to validate and cross-check data with coronial records and population data that is not available for months after the end of the financial year.²²⁸ The National Deaths in Custody Program has noted the delay of up to two years to produce a report on deaths in custody and agreed to move to financial year reporting, but that has not occurred.²²⁹

Recommendation 25.4

1. A custody notification scheme be introduced requiring police to notify a lawyer from an appropriate legal service as soon as a child or young person is brought into custody.
2. The Northern Territory Government commit to resource the custody notification scheme following the initial three-year funding from the Commonwealth Government, including funding the legal services to provide the custody notification scheme.

Recommendation 25.5

1. The Northern Territory collect and report data on Aboriginal deaths in custody to the Australian Institute of Criminology.
2. The Australian Institute of Criminology to publish all data made available on Aboriginal deaths in custody on an annual basis.

Pressure from police

'I was asked to be interviewed by the police and was told that if I did not do the interview I would be charged with everything. I said that I would not do the interview. The police then charged me with [numerous] offences and I was refused bail. I have seen documents that were given to my criminal lawyer and it says that there was DNA evidence and CCTV footage of me. As far as I know this evidence was never given to my lawyer or to the Court. All but two of those charges were withdrawn.'

Vulnerable witness AS²³⁰

'While I was under 18 years old, the police would sometimes try and get me to do an interview by telling me that if I did the interview they would drop some of the charges or give me bail. They also would sometimes try and get me to do an interview while I was under the influence of drugs. They would also sometimes attempt to ask me questions outside an electronically recorded interview.'

Vulnerable witness AG²³¹

'[T]he police asked me to do an interview with them at the Darwin Watch House. I spoke to a NAAJA criminal lawyer on the phone before this happened and I asked the lawyer to ask the police not to do an interview. I was told by the police that I still had to do an interview. I thought that I did not have a choice so I did an interview ...

When I got into the interview they told me that I could ask to stop the interview and that I didn't have to answer their questions. I didn't like the questions they were asking and I felt more and more uncomfortable as the interview went on so I asked to stop the video.

I know the police officer was saying it was my choice but when he said that it was my last chance to talk to them and that they would charge me with all the charges, I felt like I didn't have a choice and that I had to keep on going with the interview.'

Vulnerable witness CE²³²

'Police say you don't have to speak to them or do an interview, they say 'we can't force you', but really I think they do. They just keep asking question and say 'it's just going to be quick'. The police have said this to me before.'

Vulnerable witness BW²³³

The Commission was told that on occasions some police tell children and young people they will be given additional charges, will not be granted bail,²³⁴ or that they will not be diverted unless they agree to an interview and make *'full and frank admissions'*.²³⁵ NAAJA submitted that in its experience, there has been an increasing use of pressure to extract confessions from young people.²³⁶ A former children's lawyer for NAAJA said in her statement to the Commission:

*'There are a couple of issues wound up in this, the first being that police arrest a number of youth and state that each will be charged with 'everything' or certain serious offences unless they tell police what happened and participate in an interview. I am aware of circumstances where those youth who declined to speak were then charged with a significant number of offences for which there was no evidence in support at the time of charging, during the court proceedings and right up to the hearing date, when either all or a substantial number of charges were withdrawn. I have seen numerous examples of this practice occurring.'*²³⁷

The degree and frequency of these contentions have not been examined with police but the Commission considers that the recommendations made above that children and young people have a right to legal advice prior to the interview and that a lawyer is notified when a child or young person comes into custody should ensure that children and young people are fully informed about their rights in police interviews.

Support person

'I did have a support person with me when I was interviewed but she did not say anything during the interview. She did speak to me beforehand and said I could say no comment or tell them to stop. I told her that was what I wanted to do, stop any interview, and she said to say it on tape. I did, but when the police kept going anyway, she didn't stop them. I think she should have.'

Vulnerable witness CE²³⁸

An important safeguard to protect the interests of young people in custody being questioned by police is the presence of a support person. Section 18(2) of the *Youth Justice Act* provides that an officer must not interview a person under 18 unless a support person is present. A support person may be:

- a person exercising parental responsibility for the child or young person
- a person nominated by the child or young person
- a lawyer for the child or young person; or
- if none of the above are available within two hours, a person from the register of support persons established maintained by the Youth Justice Advisory Committee.

Police General Orders are silent on the role of support people in interviews.

A spokesperson from CAALAS told the Commission that in Alice Springs the support person is almost always a family member.²³⁹ However, NAAJA submitted that in the Top End, police do not make reasonable attempts to find a lawyer, a person with parental responsibility or a person nominated by the child or young person.²⁴⁰ The Commission heard:

'I am concerned that the Red Cross volunteer support persons are called in without reasonable attempts being made to contact the parent or guardian of the young person. This is especially the case if the child is in the Department's care. The frequency of this occurrence makes me very concerned whether this is a practice to enable progression of an interview as quickly as possible.'

*This is undesirable because the preferred order/structure of persons that can be present as support persons is about trying to ensure the person present has an existing direct relationship, hopefully one they trust, with that young person. In all cases, it should be someone the child can rely on to provide objective independent advice to them and ensure the interview is conducted fairly. Engaging a volunteer who doesn't know the child and does not have a direct relationship or interest in their wellbeing should be the last resort.'*²⁴¹

A former NAAJA lawyer noted that sometimes police will have a departmental worker attend an interview who has no prior relationship with a young person, 'at a time when that young person

needs a support person who they trust and who knows their background and issues'.²⁴² NAAJA further stated:

'During the relevant period of examination of the Commission, we have never been contacted by police to act as a support person despite our legal relationship, support and cultural knowledge of the child in custody ...

*Though the various non-government agencies on the register do have commendable intentions to support an Aboriginal child during police questioning, they may not be able to act in the best interests of the child where they are not adequately trained in identifying language barriers, cultural differences and in ensuring that a child has access to legal advice and representation.*²⁴³

However, a Superintendent of the Northern Territory Police told the Commission:

*'A key priority for youth in custody is to process them quickly. One of the biggest issues in doing this is the availability of a responsible adult. We do not conduct investigations such as interviews or forensic procedures in relation to youth without having a responsible adult present, however sometimes it is very difficult to arrange for someone fitting that description to come in. Sometimes the youths are unable to provide contact details or the person we contact does not answer or does not wish to attend the station. We sometimes have to rely on the Register of Appropriate Support Persons to provide an impartial, external support person.*²⁴⁴

Lawyers for children and young people who gave evidence to the Commission raised concerns that police do not make sufficient efforts to locate a child or young person's parent or guardian, or a support person with a relationship to the child or young person, prior to going to the register.²⁴⁵ During its tour of the Darwin Watch House, the Commission was told of the frustration police experience in trying to locate family or a suitable person known to the child and that they would welcome a list of senior Aboriginal persons willing to be contacted and lend support to the child.

NAAJA submitted to the Commission that Aboriginal Law and Justice Groups are best placed to identify Aboriginal persons who 'by reason of kinship or customary law' should be on the register of support persons under the Act.²⁴⁶

Concerns were also raised by lawyers for children and young people that support people do not understand their role in police interviews or that police do not provide clear instructions about a support person's role.²⁴⁷ A representative from CAALAS told the Commission that this was often the case for family members acting as support people, who are often told by police, erroneously, that they are not allowed to intervene in the police interview.²⁴⁸

Lawyers from CAALAS, NAAJA and NTLAC told the Commission that police should explain to a support person what their role entails prior to the interview. Support people should be given a document explaining their role, and be advised of the child's right to silence, that the child can speak with a lawyer and other ways a support person can assist the child or young person to exercise their rights in custody.²⁴⁹ In addition to the document, the role should be explained to the support person.

Findings

The Northern Territory Police in the Top End of the Northern Territory do not always make a reasonable effort to find a support person who is in a parental role, nominated by the child or young person, or a lawyer who has a relationship with the child or young person in custody as a support person in a police interview.

People providing support in accordance with section 18(2) of the *Youth Justice Act* (NT) do not receive adequate information and training to enable them to fulfil their role in police interviews.

Recommendation 25.6

1. The *Youth Justice Act* (NT) be amended to provide that a child or young person must not be interviewed by police:

- until they have sought and obtained legal advice and assistance, or
- after exercising their right to silence.

2. The Northern Territory Government take immediate steps:

- to ensure the register of support persons established under section 14 of the *Youth Justice Act* (NT) includes people from Aboriginal Law and Justice Groups and/or other Aboriginal community bodies for each area of the Northern Territory
- to amend section 14 of the *Youth Justice Act* (NT) to require that a person may only be on the register of support persons if they have undertaken training by an approved provider on their role as a support person
- to ensure police provide support people who are not lawyers with information in an easily understood form, including orally, with the use of an interpreter if necessary, or by providing a document or showing a video explaining the support role and outlining what the support person can or cannot do to assist the child during the interview, and
- to ensure all decisions by police to use a support person from the register of support people are reviewed by a senior officer, including the steps taken to locate a member of the young person's family or an alternative support person.

Overcharging

Lawyers who gave evidence to the Commission highlighted that there are concerns that police sometimes charge children and young people with offences that are not supported by the evidence, which are later withdrawn, a practice known as 'overcharging'.²⁵⁰ A Supervising Summary Prosecutor from the DPP told the Commission of one example where a young person was charged with 169 offences arising out of one incident. The prosecution later proceeded on only 27 charges to which the young person pleaded guilty.²⁵¹ The Commission was also told in the Judges' Roundtable

that a child or young person may initially face, for example, in excess of 70 charges, later reduced to fewer than five.²⁵²

A children's lawyer from CAALAS stated:

*'A related issue is that of police overcharging young people. This seems to occur regularly in circumstances where there are a number of co-offenders in an alleged spree of offending. Police tend to charge all involved with the same offences, irrespective of whether they were involved at certain periods of time and have made admissions to that effect. Often this overcharging leads to young people remaining in custody longer than the offending warrants or the accumulation of many bail breaches. In my experience, police prosecution sometimes do not appropriately consider representations in accordance with the admissible evidence on file, and matters only resolve when a contested hearing prosecutor has a look at the file once they are assigned it after the matter being listed for hearing (which all takes time).'*²⁵³

The Commission was told that overcharging can lead to a court determining that a child or young person is not eligible for bail, resulting in them being remanded in detention.²⁵⁴ Lawyers from NTLAC and NAAJA told the Commission that police would regularly advise the Court during a bail application for a young person that evidence on certain charges would be forthcoming.²⁵⁵ When the anticipated evidence was not provided and the unsubstantiated charges were later withdrawn, with the child or young person having 'spent time on remand which ultimately served to be "dead time"'.²⁵⁶ It was noted at the Judges' Roundtable that children and young people may remain in detention for an extended period while the charges that should not have been laid are considered by the prosecution and withdrawn.²⁵⁷

The Office of DPP told the Commission that in the last six months, overcharging had become less of an issue, following weekly meetings between their office and police to better inform police practice in relation to charging children and young people.²⁵⁸

The Commission was told that there are practices in place to review charges laid against children and young people. Under section 21 of the *Youth Justice Act*, a person under 18 must not be charged with an offence without the consent of an 'authorised officer'.²⁵⁹ A Superintendent of the Northern Territory Police also pointed to police policy and training as protections against overcharging.²⁶⁰ Police internal policy provides officers with guidance on when the available evidence warrants the laying of charges. The policy includes information about assessing the adequacy of the evidence needed to meet a reasonable prospect of conviction test, not only a *prima facie* case test, as well as considerations such as the availability, competence and credibility of potential prosecution witnesses.²⁶¹ Internal police policies also require that charges against a child or young person are reviewed by two police officers senior to the officer in charge of the investigation.²⁶²

The Commission did not have data on the rate at which charges were withdrawn or the reasons for withdrawal. Given the weight of evidence before the Commission from judges, prosecutors and children's lawyers, the Commission accepts that there is a perception that despite police safeguards, children and young people in the Northern Territory are regularly overcharged, and recommends that there should be an independent review of the issue undertaken, and that statistics should be

published as to the number of charges laid and withdrawn, in relation to children and young people.

Findings

**Northern Territory Police overcharge children and young people with offences.
The extent to which this occurs could not be determined.**

DIVERSION

Diversion programs attempt to re-direct children and young people who have come into contact with the police away from the youth justice system. The police and the courts can refer young offenders to diversion; the hope is that the more nuanced intervention that diversion programs can offer will lead the young person to understand the effect and impact of their crime, and change their behaviour.

Offering diversion for young offenders recognises that not all young offenders are or will ever become dangerous criminals, and that for some young people an early intervention at the right time can change patterns of behaviour. Diversion gives children and young people an opportunity to learn from their mistakes and correct their behaviours without resorting to the formal justice system.²⁶³ The objective of diversion is to encourage young offenders to take responsibility for their actions and minimise their interactions with the youth justice system.²⁶⁴

'Youth diversion enables offenders to take responsibility for their actions, make reparations for the harm they have caused and build their own capacity to make better decisions in the future.'

Senior Constable, Youth Diversion Unit²⁶⁵

The Northern Territory youth justice system places considerable emphasis on diversion for young people. The basis for diversion is set out in the legislation. The police have an established youth diversion unit and there is a network of diversion program providers. However, the Commission was told about restrictions that limit the potential value of diversion, and how well and how effectively the diversion process is working in the Northern Territory. The Deputy Chief Executive Officer of Territory Families expressed the view that diversion in the Northern Territory *'hasn't been delivered well ... for a number of years'*.²⁶⁶

Diversion obligations

The terms *'diversion'* and *'alternative action'* capture a range of measures including verbal or written warnings, formal cautions, referrals to youth justice conferences and community-based programs. Consistent with the *'last resort'* principle for detention, opportunities for diversion should be strongly pursued.

This view is consistent with Australia's international obligations in relation to youth justice. The preference for diversion as an alternative to formal judicial proceedings is to be found in the CRC. Article 40.3(b) mandates:

States Parties shall seek to promote the establishment of laws, procedures, authorities

*and institutions specifically applicable to children alleged, as, accused of, or recognized as having infringed the penal law, and, in particular whenever appropriate and desirable, measures for dealing with children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.*²⁶⁷

The Beijing Rules provide:

Rule 11(1): Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority...

Rule 11(2): The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

Rule 11(3): Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

*Rule 11(4): In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.*²⁶⁸

In addition, the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules) mandate that juvenile justice systems should 'uphold the rights and safety and promote the physical and mental well-being of juveniles.'²⁶⁹

Successful diversion programs

Diversion programs, in accordance with the principles of the *Youth Justice Act*, must be culturally appropriate, promote health and self-respect, foster a sense of responsibility and encourage attitudes and the development of skills that will help young people develop their potential as productive members of society.²⁷⁰ The Commission considers that successful diversion programs, as a fundamental aspect of a good youth justice system, will include a number of identifiable features:²⁷¹

- **Timely referral, assessment and participation:** To be most effective, particularly given a child's sense of time, any diversion and responsive action should closely follow apprehension by police.²⁷² Delay will diminish any positive impact.²⁷³
- **Availability without admission of guilt:** To require an admission of the offence before allowing the young person into diversion; may discourage some young offenders from participating.
- **Availability for repeated referrals:** Some children and young people may re-offend after diversion, and placing automatic restrictions on their capacity to re-engage in further diversion programs would limit the value of the program.

- **Inclusion of a conference with the victim or family:** Conferences can encourage young people to take responsibility and be held accountable for their actions. Participation of the victim in a youth justice conference is important for the child or young person to be able to understand the effect of their offending.²⁷⁴
- **A diversion plan and a specialist case manager:** An effective diversion system will include individual plans, tailored for the person, and a case manager who will work with the young person to complete the plan.
- **'Wraparound' services for the young person:** This would assist the young person to comply with the plan, and address their health, housing and education needs.
- **Engagement with the young person's family:** Having the family of the young person involved in developing the diversion plan connects the process to the young person's home and community and gives them support to achieve the plan.²⁷⁵
- **Built-in education, rehabilitative programs, cultural activities, employment pathways, mentoring and community service:** Diversion programs should incorporate multiple components, address multiple needs and strengths, and work in multiple environments, such as family, peer group and education.²⁷⁶ Services such as mental health services and substance abuse services should also be available through the diversion program.
- **Culturally appropriate plans and programs:** A good diversion process must be culturally appropriate, working towards a stronger connection to and understanding of culture and cultural values.
- **Community input and control of diversion programs:** The Commission received numerous submissions from a range of organisations and individuals emphasising the need for diversion programs for children and young people to be designed and implemented by the communities in which they operate.²⁷⁷
- **Measureable and evaluated outcomes:** Diversion programs should be evaluated against established criteria to determine whether the programs are leading to positive change. Measures might include engagement with education, training or employment; reconnecting with family; maintaining or securing stable accommodation; and the rates and/or types of re-offending participants compared with non-participants.

Youth Diversion Unit

The Youth Diversion Unit has a presence in Darwin, Alice Springs, Katherine and Tennant Creek.²⁷⁸ A Senior Constable of the Alice Springs Youth Diversion Unit explained that its role involves arranging *'non-government case management, restorative justice conferencing and diversion programs for young people on diversion.'*²⁷⁹

The Youth Diversion Unit was established in 2000 with 11 police officers and six civilian staff members located in Darwin and Alice Springs.²⁸⁰ Since then, staffing numbers and locations have been influenced by funding levels.²⁸¹

The unit received Commonwealth funding until 2006–07, and Northern Territory Government funding following the 2011 *Review of the Northern Territory Youth Justice System* – conducted by Jodeen Carney on behalf of the Northern Territory Government to identify emerging issues and trends in youth justice and youth offending.²⁸² This enabled the establishment of Youth Diversion Units in Katherine and Tennant Creek from mid-2012, with one police officer in each location.²⁸³ The Northern Territory Government funding covered the cost of salaries but not operational costs.²⁸⁴

For most of the relevant period, staffing levels have been considered insufficient for the workload of the Youth Diversion Unit, which is responsible for implementing the youth diversion provisions in Part 3 of the Youth Justice Act.²⁸⁵ In evidence presented to the Commission, the Northern Territory Government accepted that inadequate staffing levels limited the effectiveness of the Youth Diversion Unit and meant it was not able to undertake community outreach functions.²⁸⁶ The Northern Territory Government announced additional funding and staff for the Youth Diversion Unit in early 2017.

Table 25.8: Staffing levels of the Northern Territory Youth Diversion Unit, 2000–17

PROGRAM	Juvenile Diversion Unit - Initial Commonwealth Funding	Youth Diversion Unit - NTG Police Funding	Youth Diversion Unit NTG Police Funding	Anticipated future staffing - NTG Police Funding
DATE	2000	2011	2017	2017 April onwards
Darwin	7 police positions, 4 civilian positions, based in Darwin	4 police positions, 2 civilian positions, based in Palmerston	4 police positions, 2 civilian positions, based in Darwin	8 police positions, 2 civilians positions, based in Darwin
Alice Springs	4 police positions, 2 civilian positions,	5 police positions, 1 civilian positions	3 police positions, .5 civilian positions,	4 police positions, .5 civilian positions,
Katherine	-	#	1 police position	1 police position
Tennant Creek	-	#	1 police position	1 police position
TOTAL	17 positions	12 positions	11.5 positions	16.5 positions

Katherine and Tennant Creek Youth Diversion Unit officers commenced in mid 2012 - 2013

Source: Exh.363.000, Statement of Jennie Renfree, 1 May 2017, tendered 10 May 2017, para. 15.

One of the services providing diversion programs also expressed the view that the Youth Diversion Unit has been ‘*drastically underfunded*’, with ‘*implications for the effective implementation of restorative justice services, both for young people and for victims*’.²⁸⁷

Alice Springs

The Alice Springs Youth Diversion Unit has limited staffing and resources. Staffing levels have fluctuated between three and five police officers, and in 2017 it only had funding for only three police officer positions.²⁸⁸ The Unit does not have conferencing facilities or regular access to a car,²⁸⁹ which creates difficulties for arranging and attending restorative justice conferences, as staff need to

source facilities for each conference.²⁹⁰ The three staff members are also required to assist with court processes to ‘fill a resourcing gap’ in the police prosecutions team.²⁹¹

The Commission was told that in Alice Springs and Central Australia, aside from diversion resourcing issues, there are also inadequate services and activities in the community for children and young people at risk of coming into contact with police.²⁹²

Darwin

The Darwin Youth Diversion Unit serves both Darwin and the surrounding region, which encompasses a number of remote communities in the Top End. There are only four staff members in the Unit and they manage high caseloads.²⁹³ When the Commission met with Northern Territory Police in Darwin, it was informed that the four staff members were dealing with 214 open files.²⁹⁴ Officers have to travel frequently covering large distances, and their travel and caseload requirements made it difficult to work effectively with victims who take part in youth justice conferences.²⁹⁵

REFERRAL FOR DIVERSION

The Northern Territory Police has had policies in place since 2000, through the Pre-Court Youth Diversion Scheme, to divert children and young people from the courts.²⁹⁶ The Diversion Scheme is based on the principles of restorative justice, ‘that emphasise reparation of harm caused by crime and conflict’.²⁹⁷

The *Youth Justice Act* provides opportunities for diversion at several points between first contact with the police and conviction in a court, including the police providing referral to diversion, and the court providing referral prior to a finding of guilt or prior to sentencing.²⁹⁸

The first opportunity for diversion arises before charging. Under section 39, a police officer must consider alternative action before charging any child or young person. Alternative action includes:

- administering a verbal warning
- administering a written warning
- requiring the child or young person to attend a youth justice conference, and
- referring the child or young person to a diversion program.²⁹⁹

When a police officer believes a child or young person has committed an offence they first assess whether it is a type of offence where alternative action can be taken.³⁰⁰ If the answer is yes, the police may issue a verbal or written warning, or refer the child or young person to the Youth Diversion Unit to assess their eligibility for a diversion assessment.³⁰¹ A superintendent of the Northern Territory Police described the benefit of giving a child a verbal warning:

‘In my experience, verbal warnings are effective when dealing with young offenders at the first sign of offending, essentially when they first begin to come to the attention of police. An honest conversation with the young person and their [Responsible Adult] can often be enough of an intervention to shift them back onto the right track and reduce or prevent further offending. Early intervention is key to dealing with young persons who are potentially heading down the wrong path. Verbal warnings that involve Responsible Adults can also give police an insight into the young person’s home

*environment which can alert police officers to other risk factors that could contribute to the young person potentially re-offending. At this early stage, police can look to involve Community and Youth Engagement police officers and other support agencies to support and work with the youth and their family to mitigate these risk factors.*³⁰²

Verbal warnings can only be given for minor offences, such as disorderly behaviour or stealing property less than \$100 in value.³⁰³ They can be given with or without the consent of a responsible adult and are accompanied by an explanation of the offending and potential consequences.³⁰⁴ The warning is recorded in PROMIS and the Officer In Charge of the Youth Diversion Unit is advised.³⁰⁵ In practice, verbal warnings are not always recorded.³⁰⁶

Written warnings are similar in substance but more formally delivered, and are issued to the child or young person in front of a responsible adult.³⁰⁷ The Northern Territory Police General Order Youth Pre-Court Diversion imposes a ceiling of two such warnings, except in exceptional circumstances.³⁰⁸ Again, there is evidence from police favouring removal of this limitation on written warnings.³⁰⁹

If the case is referred to the Youth Diversion Unit and the Unit decides the child or young person is eligible for assessment, the case will be referred to a contracted NGO service provider funded under the Territory Families Youth Diversion Grants Program.³¹⁰ NGOs receive referrals for youth diversion from the police under section 39 and section 64 of the *Youth Justice Act* from the courts.³¹¹

The assessment criteria, set out in the General Order Youth Pre-Court Diversion, include:

- whether the child or young person is already involved in any diversion program
- any prior criminal convictions
- the seriousness of the offence
- any past involvement in a diversion program, and successful completion
- the alleged circumstances of offending, as set out in the statement of facts
- whether the child or young person and their responsible adult consent to diversion
- the effect diversion or court proceedings may have on the community in which the child or young person resides
- the existence of family support, and
- whether the child or young person is the subject of any existing orders or restrictions, such as good behaviour orders or bonds, 'no further trouble' orders, bail conditions and any other court-related matters.³¹²

The Guidelines of the Director of Public Prosecutions also state that when making the decision to prosecute, the availability and efficacy of any alternatives to prosecution must be taken into consideration.³¹³

COURT-ORDERED DIVERSION

Under section 64 of the *Youth Justice Act* if a child or young person is not diverted before charge and the case progresses to court, the court can, with the consent of the prosecution and the child or young person involved, order a diversion assessment and then refer the case for inclusion in a diversion program or a youth justice conference.³¹⁴ A diversion referral directs the case to the police for diversion assessment.³¹⁵

The police are not required to make a new assessment if one has previously been made.³¹⁶

The Commission has no basis on which to think that prosecutors do not consent to proposed diversion referrals. Generally speaking, the prosecutor represents the community's interests in seeing criminal conduct dealt with and will, in most cases, receive victim impact statements. They may be aware of other factors relevant to the issue – such as other pending charges, or previous unsatisfactory diversions. It is highly unlikely that any prosecutor in a youth court would argue against an order for diversion if the court was included in that direction. There is no identified reason for recommending that this requirement be removed from section 64.

THE DIVERSION PROCESS

If a child or young person is found suitable for diversion they are allocated a police case officer from the Youth Diversion Unit to oversee the diversion from a police perspective, and a case manager from the NGO diversion service provider.³¹⁷ There are different diversion service providers in different parts of the Northern Territory.

The child or young person and his or her responsible adult sign a diversion agreement,³¹⁸ which includes a plan tailored by the service provider.³¹⁹ These plans have no prescribed form, and are developed collaboratively by the child or young person, their responsible adult, the case management service provider, other service providers working with the child or young person, victims, community Elders (if appropriate) and the Youth Diversion Unit.³²⁰

The activities, programs and work that can be included in the plan 'are really only limited by the imagination of the people involved in its design, and the resources available in the local area'.³²¹ Plans average three months, varying with the particular circumstances of the child or young person.³²²

'The main consideration in choosing or designing parts of plans is that they should help to build a young person's understanding of how their behaviour has impacted their community, or help them deal with their personal problems. I don't like just sending young people off to do 'busy work'...

*[A] program in Alice Springs was suggested by the victim of the offence, who ran a local store. The young person had broken into the victim's store. The young person did volunteer work at the business as part of the diversion program. The idea behind the work was to help the young person understand the importance of the store to the local community and to develop social skills by meeting and interacting with customers. It cannot have been easy for the victim to offer this option or for the young person to agree to it but I think the young person really developed as a result.'*³²³

Senior Constable, Northern Territory Police

The Youth Diversion Unit is responsible for monitoring the child or young person's progress and providing support as required, usually on a weekly basis.³²⁴

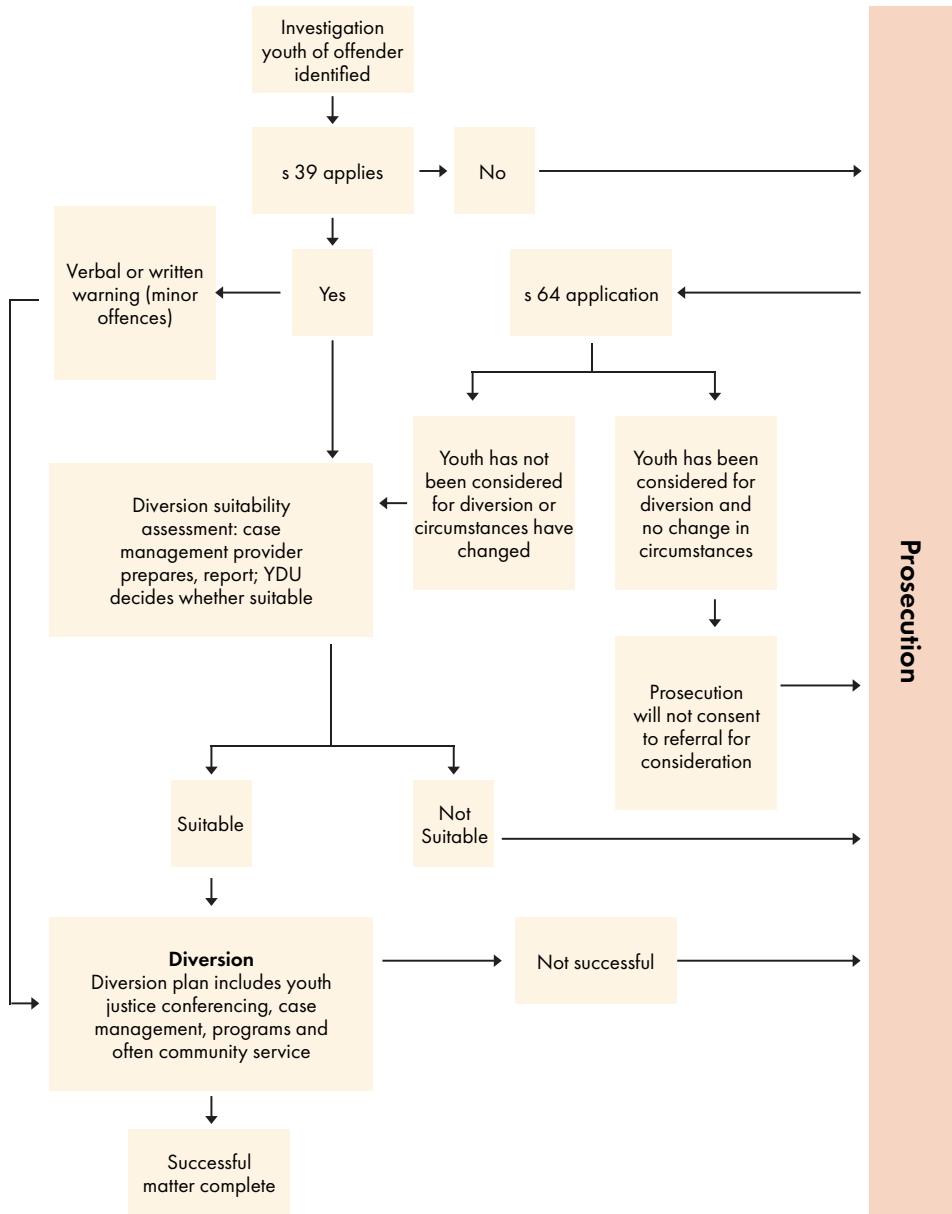
If a charge has been laid, the prosecution file is placed on hold pending the outcome of diversion.³²⁵ If the child or young person completes the diversion plan successfully, a criminal investigation or criminal legal proceeding cannot be continued or commenced against the young person in relation to that offence.³²⁶ Their offence is considered dealt with, and the charges must be withdrawn.³²⁷ A Senior Constable told the Commission that diversion should not be seen as a 'soft option' or a 'let off'.³²⁸ Participating in diversion requires significant effort and requires the child or young person to assume responsibility for their actions.

'I first got into trouble with Police in [REDACTED] when I was 14 years old. I did some diversion for that trouble. I don't remember much about diversion but I do remember having to apologise to people. That was a hard thing to do but I think it was good.'

Vulnerable Witness BW³²⁹



Figure 25.4: Flowchart of the current assessment process for youth diversion in the Northern Territory, 2017³³⁰



Source: Exh.363.000, Statement of Jennie Renfree, 1 May 2017, tendered 10 May 2017, para. 43.

Delivery of diversion in remote areas

Diversion is difficult to deliver in very remote areas. If there is no diversion service provider in the area, it may be possible to find a suitable ad hoc service provider by, for example, approaching the local health clinic, school, art centre, or sport and recreation centre.³³¹ As a last resort, police at a local station may assume the role,³³² although as one Senior Constable noted, this can compromise the important quality of independence. It can also burden local police, who are not trained to conduct youth case management and/or conferencing.³³³ A Northern Territory Judge told the Commission:

*'Notwithstanding the mandatory requirement for diversion, in many remote communities diversion appears to exist in name only with very little being offered to assist young offenders to take responsibility for their conduct and be re-directed to pro social activities. Problems lie in finding local service providers with many communities being serviced by a provider who travels periodically to the community and the lack of available programs within the community. It is difficult to see how diversion can operate effectively without a constant diversion presence in a community to monitor the young person's conduct.'*³³⁴

In some remote communities where service providers provide diversion services, there are no permanent Youth Diversion Unit staff members. The Manager of Youth Services for the Malabam Health Board Aboriginal Corporation at Maningrida noted there is no dedicated Youth Diversion Officer in the community.³³⁵ The Manager believed that a dedicated Youth Diversion Officer would be beneficial to the community, as having an officer attend compliance meetings is 'a helpful reminder to the young person about what would happen if they didn't continue with the program.'³³⁶

SAFEGUARDS TO ENSURE DIVERSION IS CONSIDERED

The Commission heard evidence of a number of safeguards built into the charging process to ensure that Northern Territory Police consider diversion for child or youth offenders. The Youth Diversion Unit conducts a daily review of all diversion determinations made in respect of children and young persons charged, and liaises with the Director of Public Prosecutions at least weekly to review ongoing prosecutions and consider whether cases should have been diverted.³³⁷ Recently changes were implemented to require further review of decisions not to divert children under the age of 14.³³⁸ These decisions are now reviewed by the Superintendent, Custody and Judicial Services Division.³³⁹

Where a case that could have been diverted is identified, the prosecution is informed and should agree to a referral for diversion under section 64.³⁴⁰

These oversight processes are important, but tend to occur later in the charging process. General police training and better resourcing of the Youth Diversion Unit would likely capture more young people earlier in the process so that early diversion could be offered under section 39.

THE USE OF DIVERSION

In 2015–16 there were 2,082 children and young people apprehended by police, and 729 individual youth diversions.³⁴¹ These included youth justice conferences, verbal and written warnings,

and other diversions including referrals to drug treatment programs, such as those run by the Council for Aboriginal Alcohol Program Services (CAAPS), the CatholicCare NT Drug and Alcohol Intensive Support Program for Youth (DAISY) and BushMob.³⁴²

These figures show that only 35% of the young people apprehended during this period were diverted.³⁴³ This is despite the fact that diversion has proved to be very successful; Northern Territory Police data for 2015–16 indicated that 85% of children and young people who participated in a diversion program did not reoffend.³⁴⁴

Research suggests that nation-wide, Aboriginal children and young people are less likely to be diverted than non-Aboriginal children and young people.³⁴⁵ This is also the case in the Northern Territory specifically, where in 2015 32.6% of Aboriginal children and young people accused of offences were diverted, compared with 47.9% of non-Aboriginal children and young people.³⁴⁶

In the same year, 62.2% of Aboriginal children and young people were denied diversion because of the seriousness of the offence or because they had re-offended, compared with 46.1% of non-Aboriginal children and young people.³⁴⁷ Table 25.9 illustrates that Aboriginal children and young people were consistently less likely to be granted diversion than their non-Aboriginal peers.³⁴⁸ Diversion of Aboriginal children and young people has generally been found to be effective in reducing recidivism among those who complete the program.³⁴⁹

Table 25.10 shows the number of children and young people diverted in the period relevant to this Commission of Inquiry, 2006 to 2016, and the regions that they come from.³⁵⁰

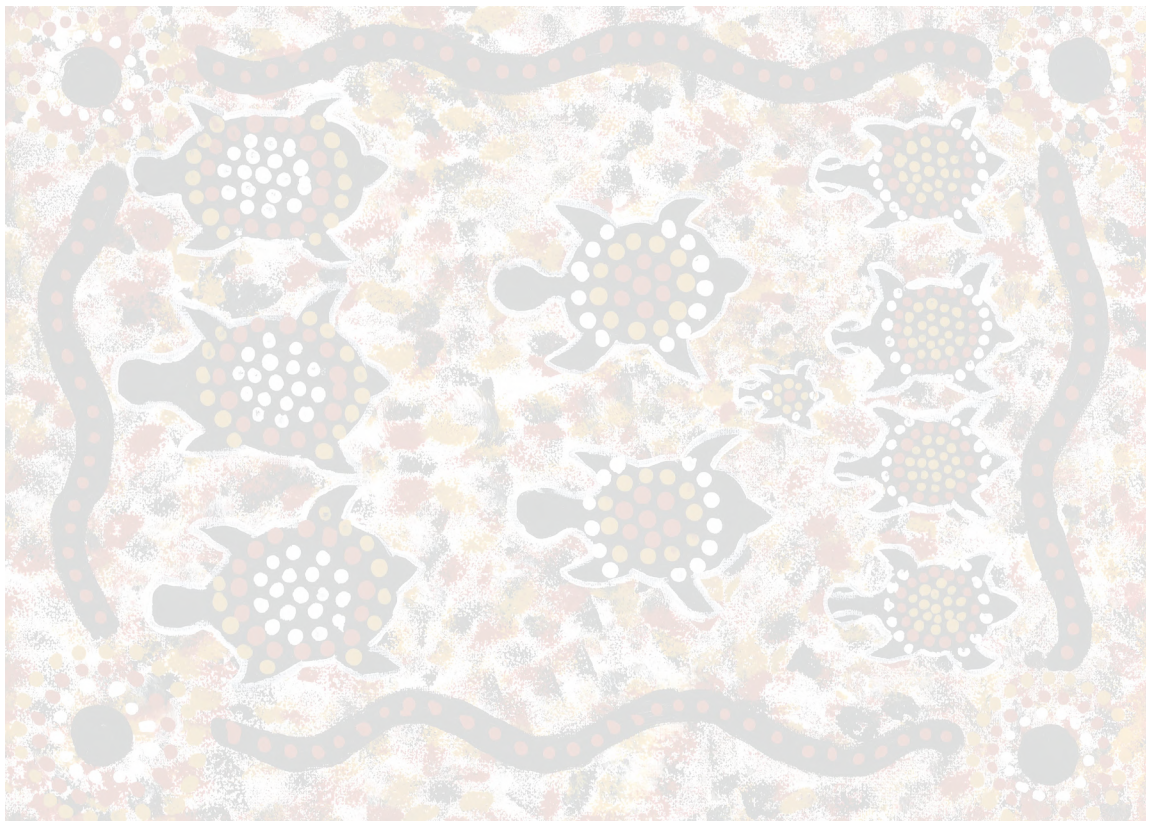


Table 25.9: Diversion of children and young people aged 10 to 17 in the Northern Territory, from 2007 to 2015, by Aboriginal status

	Proportion diverted (%)		Juvenile apprehensions (no.)	
	Aboriginal & Torres Strait Islander	Non - Indigenous	Aboriginal & Torres Strait Islander	Non - Indigenous
2015				
Males	32.0	45.8	1407	249
Females	35.1	54.1	359	85
Totals	32.6	47.9	1766	334
2014				
Males	27.9	41.4	1233	239
Females	44.6	50.0	294	50
Totals	31.1	42.9	1527	289
2013				
Males	26.4	36.2	769	232
Females	35.0	56.7	217	60
Totals	28.3	40.4	986	292
2012				
Males	22.1	42.7	737	211
Females	37.5	58.6	160	58
Totals	24.9	46.1	897	269
2011				
Males	36.3	62.2	546	222
Females	61.5	83.6	156	55
Totals	41.9	66.4	702	277
2010				
Males	34.7	52.5	861	255
Females	51.8	74.4	166	86
Totals	37.5	58.1	1027	341
2009				
Males	34.9	62.6	919	254
Females	46.6	67.4	238	89
Totals	37.3	63.8	1157	343
2008				
Males	39.9	46.2	791	236
Females	47.1	69.5	240	82
Totals	41.6	52.2	1031	318
2007				
Males	32.3	35.0	781	286
Females	43.4	51.5	136	66
Totals	33.9	38.1	917	352

Source: Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, p. 1 of Table 11A.3.43.

Table 25.10: Children and young people referred to youth diversion in the Northern Territory from 2006 to 2017, by region

	2006/ 2007	2007/ 2008	2008/ 2009	2009/ 2010	2010/ 2011	2011/ 2012	2012/ 2013	2013/ 2014	2014/ 2015	2015/ 2016	2016/ 2017	Total
Adelaide River		2			1						3	6
Alice Springs	72	75	108	90	55	57	65	77	53	53	52	757
Ali Curung	5	5	10	2	9	2	3	5	11	26	5	83
Alyangula	13	5	7	6	14	8	8	44	43	48	4	201
Avon Downs	2			2	1		9	4			3	21
Batchelor	5	2		7	8	7	2	12	13	13		59
Borrolooia	27	21	14	2	1	3	5	5	8	7	2	95
Casuarina	96	144	156	129	124	74	69	115	61	99	35	1103
Daily River	15	16	4	5		1	2		8	21	4	76
Darwin (City)	32	30	29	33	54	23	10	27	51	41	20	350
Elliott				6	3		1	16	5	1		32
Gunbaianya	2	19	5	7	3	6	23	22	29	12	1	129
Harts Rango		4		8	1	2		1	7	2	2	27
Humpty Duo	9	12	19	14	5	17	4	9	14	29	19	151
Jabiru	14	1	22	10	10	7	1	3	3	3		74
Kalkaringi	1		3	5		5	1	1	1	13	2	32
Katherine	19	15	41	44	32	28	31	45	48	49	29	381
Kintore		1		2			1		5	6	8	23
Kulgera	5	1		3	1	1			7			18
Lajamanu	1	1							5	3	4	14
Maningrida		13	1	6	14	5	4	26	31	24	19	143
Maranboy	14	5	2	12	7	4	2	3	17	1	1	68
Mataranka		2	1	3							2	8
Ngukurr	8	7	2	16	29	2		22	23	12	4	125
Nhulunbuy	7	4	15	30	8	16	11	27	24	21	39	202
Ntaria	4	4	2	3	3	5			1	1		23
Palmerston	61	52	73	68	85	73	31	35	65	63	24	630
Papuriya	3	1		2		8		14	5	15		48
Pine Creek	1				5	4		1		1		12
Piriangimpi		3		9	4		2	5	17	7		47
Tennant Creek	41	26	17	40	15	22	25	27	18	46	17	294
Timber Creek	1	20	4	4	8	1	2	20	8	2	7	77
Ti Tree	1	2	6	5	1	3	1	2		5	2	28
Wadeye	1	6	5	17	4	10	10	9	9	14	4	91
Wurruyiyanga	23	22	7	16	2	16	2	7	2	18	5	120
Yuendumu		12	21	6	23	14	9	11	5	10	10	121
Yulara				3	1	1		3	1	3	1	13
		7	2	4	3	8						24
Total:	483	544	576	619	534	433	334	598	598	659	328	5716

Source: Exh.363.000, Statement of Jennie Renfree, 1 May 2017, tendered 10 May 2017, para. 109.

Youth Justice Conference

'In 2013, while working in Tennant Creek as the Youth Diversion officer, I conducted a restorative justice conference in Ali Curung with a group of young people aged between 14 and 17 years, who had been involved in breaking into the community store. The conference was held at the store.

I expected up to 14 people to attend, being the four young people, a responsible adult for each, myself as a facilitator, two people from the store and some youth service providers. However, more than 40 people turned up to the conference, including three Elders of the community.

During the conference, the young people spoke about what they had done, the Elders spoke about how it had affected the community and everyone present had an opportunity to speak about the issue.

At the conclusion of the conference, everyone agreed on a course of action to address what had occurred, and that became the diversion plan. The diversion plan included that the young people would volunteer their time to work at the store and around the community.

Everyone who participated in the conference expressed their happiness with the process, particularly with how it enabled the young people to hear the concerns of the community and how their actions had affected others. It also allowed the young people to take responsibility for their actions and make reparations to the community as a whole.³⁵¹

Senior Constable, Alice Springs Police Youth Diversion Unit

One of the most effective components of diversion is the youth justice conference. Section 39 and section 64 of the *Youth Justice Act* refer to a youth justice conference that takes the form of either a victim-offender conference or a family conference.³⁵² These conferences are regarded as an integral part of diversion for every child and young person referred for diversion under section 39 and section 64.³⁵³ Under section 84, another type of youth justice conference can also be convened which is a 'pre-sentence conference' with victims, community representatives, family members or other appropriate persons.³⁵⁴ Pre-sentencing conferences are discussed further in the 'Courts' section.

A victim-offender conference might include – in addition to the victim and the offender – a support person for the victim, and one or two of the offender's family members.³⁵⁵ A family conference could be larger, involving the offender and family members, as well as community Elders or a case manager from any service provider the child or young person is involved with, including Territory Families.³⁵⁶ Both conferences are facilitated by a conference convener, generally a police officer from the Youth Diversion Unit.³⁵⁷

While a youth justice conference is voluntary for everyone involved, if a child or young person does not participate, they must go back to court.³⁵⁸

*'Another example of the value of youth diversion was when a [youth justice conference] was held for a young person who had been in a car that was stolen from the principal of the local school and damaged in a crash. The young person's Nannas were both in the conference and the victim was present too. The young person had broken his arm in the car crash. One of the Nannas was wailing because the young person could have been killed. Many of the people present at the conference started crying. It was a very powerful experience for all present but especially for the young person who had to deal with the consequences of his actions including the harm done to his family as well as the victim.'*³⁵⁹

Manager of Youth Services, Malabam Health Board Aboriginal Corporation

A Senior Constable from the Alice Springs Youth Diversion Unit who undertakes youth justice conferencing told the Commission that preparing for each conference is very time-consuming, as the process must be discussed with all the participants so they know what to expect.³⁶⁰ He described to the Commission what occurs in a youth justice conference:

'In a victim/offender conference, first, the young person will tell their story of how they came to commit the offence. Then, the young person's parents will talk about how the offending has affected them. Next, victims will have an opportunity to talk about how the offending has affected them. The young person then has a chance to respond to the victim's comments. The victim will then be able to ask specific questions of the young person. The focus of the conference is to explore the harm that has been caused by the offending. Often, the sharing of different perspectives which occurs at these conferences goes a long way towards helping people move on from that harm.'

*Family conferences...are usually more focused on how the young person can make up for the trouble that has happened. The young person will be invited to speak about the offending, and the members of the family will talk about how it has affected them. I will also talk briefly about how the offending has impacted the victim, based on my discussions with the victim or on a victim impact statement.'*³⁶¹

At the end of a youth justice conference the child or young person and their responsible adult must sign an agreement.³⁶² The diversion plan that was designed for them may be altered at the conference, and is signed by everyone who attends the conference.³⁶³ The conditions imposed on each child or young person are tailored to the individual, but the outcomes might include having to perform community service, provide an apology, or engage in further case management or counselling.³⁶⁴

Youth justice conferences are demonstrated to be effective at reducing offending. Northern Territory Police data for 2015-16 found that *'after participating in youth justice conferencing only 15% of children and young people reoffended and only 6.6% offended more than twice.'*³⁶⁵

Youth justice conferences are not only beneficial to young offenders. Research suggests that there are also benefits for victims who participate in youth justice conferences, including greater satisfaction about how their case is handled, and reduced symptoms of post-traumatic stress disorder.³⁶⁶

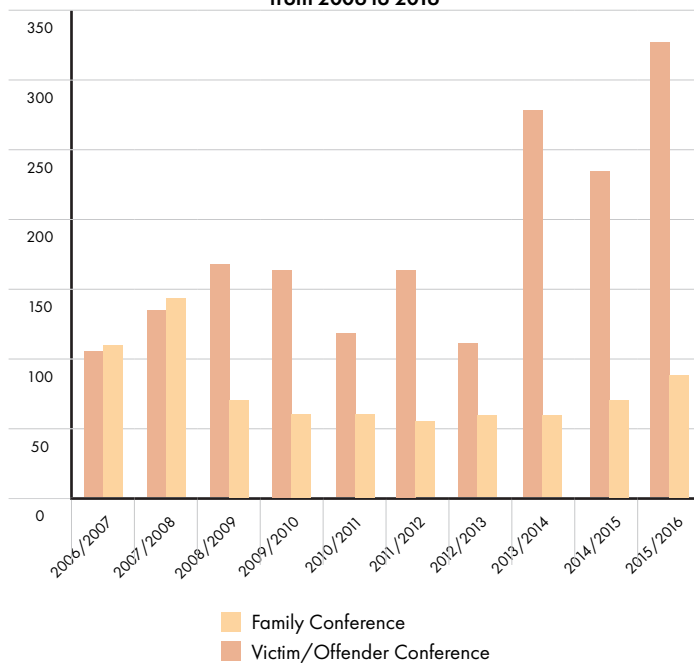
Table 25.11 shows the number and type of youth justice conferences conducted across the Northern Territory for the relevant period.³⁶⁷ Table 25.11 shows that for most of the period family conferences were held more often than victim-offender conferences across the Northern Territory.³⁶⁸

A representative of Relationships Australia told the Commission that in his experience:

*'There has...been a large drop over the last three years in the number of youth justice conferences where the victim attends. Unfortunately it is now the case in my experience that the attendance of the victim is rare. I think this is largely due to the limited support and assistance they are given by the Youth Diversion Unit.'*³⁶⁹

Relationships Australia felt that underfunding of the Youth Diversion Unit had impacted its capacity to support victims.³⁷⁰ However, a Superintendent from the Youth Diversion Unit in Alice Springs told the Commission that in his experience both type of conference are held with equal frequency.³⁷¹

Table 25.11: Type and number of youth justice conferences conducted in the Northern Territory, from 2006 to 2016



Source: Adapted from Exh.363.000, Statement of Jennie Renfree, 1 May 2017, tendered 10 May 2017, para. 97.

UNDERUTILISATION OF SECTION 39 DIVERSION

The Commission heard that police referral policies and practices lead to underutilisation of diversion under section 39 of the *Youth Justice Act*, causing children and young people to be excluded for technical reasons. Although there are various reasons for this underutilisation, the Commission notes the evidence from Northern Territory Police, that pressures to meet community expectations about

being 'tough on crime' have sometimes affected how police apply diversion principles.³⁷²

'When I was first getting in trouble with the Police, there was a two day diversion program that I was booked into. The problem was that I did not know where I was supposed to go on the day and because my mum did not have a car, I did not have a way to go see Corrections to find out or to go where I was supposed to be. Because of that, I missed the diversion and was not given a second chance.

*I know a couple of people who were in trouble with the Police and were able to go to diversion. Those people went to diversion programs and were able to stay out of trouble after that, so it looks like it really worked for them.'*³⁷³

Vulnerable Witness AX

Current and former staff members at the DPP, NTLAC, NAAJA and CAALAS described many children and young people coming before the courts without diversion having been properly considered as required by the Act.³⁷⁴ A Senior Policy Advocate at NAAJA told the Commission:

*'[T]here has been an inconsistent approach to youth diversion across the Northern Territory in terms of Police consideration of a youth and/or facilitating youth diversion. There was also inconsistency in terms of whether diversion would even be offered or applied. In my view whether diversion was applied would come down to the discretion of the individual police officer. In the major centres like Darwin, Palmerston and Katherine the considerations around criteria to be met and the process involved in diversion appear to be better understood, as I believe the Youth Diversion Unit had greater oversight.'*³⁷⁵

A DPP prosecutor described incidents in the Youth Justice Court where 'the matter would be first mentioned and, through discussion with diversion, prosecution will find out that this young person actually hadn't been considered for diversion previously'.³⁷⁶ Any failure to consider a child or young person for diversion before they are charged and appear before the court would be in contravention of section 39 of the Youth Justice Act unless it fell within one of the exclusions in section 39(3).³⁷⁷ This not only has potential negative implications for the children and young people who have to come before the court unnecessarily, it also results in a 'waste of court time and resources on matters that could have been better diverted at the first instance'.³⁷⁸

'Sadly, diversion wasn't really made available to him and it should have been given the low level of his offending. It would be to other young people, but again because Dylan presented in a different way to some other clients in the court in Alice Springs it just became very evident from the go-get there would be a punitive approach taken to Dylan as he travelled through the system. He was never afforded, as I say, a diversion or other mechanisms that would really ... address his causal effects of offending, especially around – through therapeutic needs.'

Dylan Voller's caseworker³⁷⁹

The Chief Executive Officer of the Warlpiri Development Aboriginal Corporation raised referral issues of a different kind. This organisation provides diversion programs for the Warlpiri communities of Yuendumu, Willowra, Lajamanu and Nyirripi, and the Chief Executive Officer stated:

‘Our experience is that police refer young people to diversion appropriately and often. In fact, if anything they over refer as they refer young people who don’t have the requisite Warlpiri connection. It is difficult to get the same results and successes with young people who aren’t Warlpiri as the program isn’t as culturally appropriate for other Indigenous peoples. In addition we do not have enough funding to meet the demand beyond the Warlpiri community.’³⁸⁰

Limits on diversion

The obligation to divert a child or young person under section 39 rather than charge does not apply in certain circumstances, namely if:

- the youth has left the Northern Territory or their whereabouts are unknown
- the alleged offence is a ‘serious offence’ – numerous offences come within the definition in section 3 of the Youth Justice Regulations but are generally serious crimes of violence, sexual offences and serious drug offences
- the youth has on two previous occasions been dealt with by a youth justice conference or diversion program, and
- the youth has some other history that makes diversion unsuitable including previous diversions or convictions.³⁸¹

However, section 39(4) empowers the Commissioner of Police, or the Commissioner’s delegate, to authorise or require a police officer to divert a child or young person notwithstanding section 39(3).

The exemption from the obligation to divert under section 39(3) does not apply to verbal or written warnings. Nonetheless the Northern Territory Police General Order – Youth Pre-Court Diversion imposes a limit of two written warnings, save in exceptional circumstances.³⁸² In addition, the Commission was told that under the current system it is the practice that children and young people can only be given one verbal warning prior to more serious intervention.³⁸³ A superintendent of the Northern Territory Police told the Commission that he supported the use of warnings on a case by case basis rather than the imposition of policy and practice limits on the number that can be issued.³⁸⁴

In addition, the Commission heard evidence that the discretionary authorisation or direction as to further diversions under section 39(4) is not commonly exercised.³⁸⁵ However, the Commission notes that the oversight provided by the Northern Territory Police Youth Diversion Unit provides a mechanism where operational decisions by police officers can be reviewed, and that discretion can be exercised with respect to the issue of a third written warning.³⁸⁶

In the Commission’s view, the fact that a child or young person has previously participated in two or more diversion programs or youth justice conferences is a relevant factor in assessing their suitability to participate in future programs or conferences, but should not be a bar, or even create a presumption against, future participation. The Commission was told that it can take ‘several diversion opportunities before a young person will be able to change their behaviour.’³⁸⁷ The nature and

circumstances of some youth offending can also differ significantly.

On 3 February 2017, the Northern Territory Government approved funding for a suite of youth diversion programs and initiatives.³⁸⁸ Territory Families is currently implementing, or planning the implementation of, these measures, including legislative reform to support the implementation of diversion programs.³⁸⁹

These reforms will: remove the limit on the number of times a child or person can be considered for diversion; review the offences for which a young person may not be considered for diversion; ensure that the courts are able to issue cautions and warnings; and refer young people to diversionary programs as part of their sentencing powers; and ensure courts have appropriate alternatives to detention available.³⁹⁰ The Commission supports these proposed reforms.

Admission of guilt

The Police General Order – Youth Pre-Court Diversion stipulates that when an officer apprehends a child or young person for an offence, one of the factors that must be considered when deciding if diversion is appropriate is that *‘the youth must admit his/her responsibility in the commission of the offence/s’*.³⁹¹ There is no legislative requirement to do so. Legislation requires the child or young person to consent to the diversion but not to admit responsibility for the offence.³⁹²

Section 41(2) provides that any admission made, or information given by, a child or young person during the course of diversion is not admissible in any subsequent criminal proceedings in respect of the offence.³⁹³

Despite the absence of support in the legislation, the Commission heard evidence that the police have on occasion required, or attempted to require, a child or young person to admit guilt before diversion options can be considered.³⁹⁴ A NTLAC lawyer told the Commission:

*‘The understanding ... of police seems to be that a child has to admit guilt ... of all the elements and all the offences before they can be diverted. I have been on the receiving end of custody calls from the watch-house where I’ve had a police officer say to me, ‘We want the young person to do a record of interview, they need to admit the offending before we will divert them’.*³⁹⁵

In view of the potential for misunderstanding, the requirements of acceptance of responsibility before diversion ought be clarified. In New Zealand, the young person is required to *‘not deny’* the offence to have access to a family group conference.³⁹⁶ In New Zealand, *‘not denied’* may indicate that the child or young person accepts that they are guilty of some conduct, but not necessarily the charge as laid by the police.³⁹⁷

‘Serious offence’ and history of previous convictions

Children and young people are also precluded from diversion if the alleged offence is a *‘serious offence’* as defined in the Youth Justice Regulations.³⁹⁸ Serious offences include terrorism, murder and manslaughter, arson, home invasion, unlawful entry of a building with intent to commit offence when armed, and assault with intent to steal.³⁹⁹

Police officers are also not obligated to divert children where they consider the child or young person 'has some other history that makes diversion an unsuitable option'.⁴⁰⁰

The Commission heard evidence from one lawyer who said that in her experience, police exercise their discretion to exclude quite broadly, even where the offence does not fall within the statutory meaning of 'serious offence'.⁴⁰¹ She stated:

*'Well, legislatively the serious offences should be the ones that are set out in the regulations. However, it would seem that police will consider a particularly violent assault, or a string of unlawful entries, even if it is for a first time offender, as not suitable for diversion, because it is too serious and it should come to court, and there is no reason for that, legislatively, why that should be occurring.'*⁴⁰²

Exclusion of traffic offences

Under the *Youth Justice Act*, if a young person is alleged to have offended against Part V or Part VI of the *Traffic Act* (NT),⁴⁰³ they cannot be considered for diversion.⁴⁰⁴ Part V concerns drink driving and Part VI covers a number of offences including dangerous driving or riding, driving while disqualified or not licensed, and driving an unregistered or uninsured vehicle.⁴⁰⁵

As with the other areas of exclusion stipulated in section 39(3) of the *Youth Justice Act*, the Commissioner's delegate may nonetheless authorise or require the police officer to deal with the youth by way of a youth justice conference or diversion program.

The Carney report recommended the extension of eligibility for diversion in 2011,⁴⁰⁶ but the recommendations were not implemented. The report noted that some of the offences that can exclude children and young people from diversion were traffic and motor vehicle offences commonly committed by young offenders, including drink and drug driving offences, dangerous driving, driving while disqualified, driving unregistered and driving unlicensed.⁴⁰⁷ Prior to the introduction of the *Youth Justice Act*, Northern Territory Police were able to divert children and young people for the offence of driving unlicensed, to participate in a driver training and licensing program.⁴⁰⁸ The Carney report considered that allowing young people who committed traffic and motor vehicle offences to take driving programs as part of diversion would educate them and reduce future offending.⁴⁰⁹

*'Traffic offences are also outside the regime and this can potentially complicate the way in which matters that would otherwise go to diversion can proceed. For example, a youth may have committed offences of unlawful use of a motor vehicle but being the driver of the vehicle faces a charge of driving unlicensed. Whilst the more serious offending can be dealt with by a diversion, the unlicensed driving charge cannot.'*⁴¹⁰

Managing Judge of the Youth Justice Court

This area of exclusion, the Commission was told by one practitioner, catches too many young offenders, including minor, non-habitual offenders.⁴¹¹ The Northern Territory Police and Territory Families both told the Commission they supported an amendment to the *Youth Justice Act* to remove the exclusion of some traffic offences from diversion.⁴¹²

The Commission notes that Territory Families is proposing to review the offences for which a young person may be considered for diversion,⁴¹³ and supports that review.

The Commission heard that from time to time when a child or young person has been charged with offences that could be diverted as well as excluded traffic offences, police prosecutors used their discretion to divert eligible offences, and set or stand aside the traffic matters so the child or young person is eligible for diversion.⁴¹⁴ The charges could be re-agitated if the child or young person failed diversion and was brought before the court.⁴¹⁵ This is a practical solution to what would otherwise be a legislative barrier to diversion, without needing to undertake the additional administrative burden of seeking the authorisation of the Commissioner's delegate.

DELAY ISSUES

One of the principles of the *Youth Justice Act* notes the value of decisions being timely – consistent with a young person's sense of time.⁴¹⁶ Delays have an impact on the effectiveness of diversion given a child or young person's developmental capabilities regarding time, and proximity to the offending behaviour.⁴¹⁷ As a youth worker with NAAJA told the Commission:

*'The delay is the biggest issue in my mind because young people – the trail goes cold very fast with young people and if they have – they have to go to diversion because of something they had done a month ago or even longer ago, you make an appointment, if they maybe don't keep the first appointment, then you go back a week later, it means so little to them. It's the immediacy, and being able to get them on board as soon as you possibly can is a crucial element of diversion working well.'*⁴¹⁸

Lawyers, police and diversion service providers told the Commission of significant delays in the process from charge to completion of diversion. They identified that these delays were caused by understaffing and a lack of resources for the Youth Diversion Unit and the NGOs that deliver the services and program.⁴¹⁹

'Many young people were on waiting lists pending assessment in excess of months due to the backlog. I understood the reason for this was due to the number of youth being referred, lack of appropriate funding, staff and resources by both the YDU and the contracted service providers. It is crucial to being effective that youth are engaged immediately after offending to ensure they appreciate there are consequences, are held accountable and the risk factors addressed.'

Former NAAJA lawyer⁴²⁰

Once the police refer a child or young person to an NGO service provider for assessment for suitability for diversion, four weeks is allowed to complete assessments for referrals under section 39 and two weeks for court-referred diversion under section 64.⁴²¹ A period of two weeks is given for the completion of assessments under section 64 because the onus is on the child or young person and their responsible adult to make the first contact with the organisation conducting the assessment.⁴²² The Commission was told that this assessment may not occur due to cultural or language barriers, with children and young people not understanding what is required of them.⁴²³

It might assist in alleviating delays for court referrals under section 64 if a case management officer were in court to make contact with the young person as soon as the order is made.⁴²⁴

A service provider based in Darwin told the Commission that while they aim to keep to these timelines, delays can occur between referral and assessment as a result of a high number of referrals, contact difficulties or failures to attend assessments.⁴²⁵ Delays can also occur prior to police referral to a service provider as a result of the time taken to investigate the offending; due to administrative delays in referral from the police to the service provider; or due to the time taken to obtain information from other organisations, including Territory Families.⁴²⁶

These issues are exacerbated in remote areas. The Darwin Youth Diversion Unit identified some key limitations on the use of diversion in the remote communities they serve, including a lack of service providers, a lack of programs addressing causes of offending behaviour, and a lack of supervision and accountability for existing diversion programs.⁴²⁷ It was considered that some remote communities needed a dedicated Youth Diversion Officer, or at least an officer who could regularly attend compliance meetings with young people undertaking diversion.⁴²⁸

A service provider based in Maningrida told the Commission that while they aim to complete diversion from referral to completion within 12 weeks, this can be difficult when Ceremony is taking place.⁴²⁹

Other problems also contribute to delay. For instance, children and young people may have to wait for a case manager to become available.⁴³⁰ It can be difficult for case managers to access some remote areas that become cut off in the rainy season.⁴³¹ It can also be difficult to predict demand as multiple young people offending together in a small community can make it difficult for a caseworker to manage the number of diversion programs effectively.⁴³² Enabling remote communities to deliver community-led diversion in partnership with local police would make diversion more accessible to children and young people in remote communities and likely more satisfactory to the communities themselves.

Police indicated to the Commission that the delivery of diversion case management, conferencing and program services would be best delivered by Aboriginal people in Aboriginal communities,⁴³³ and that this is already occurring in some places:

*'I get phone calls from the officers in these remote communities saying this is – something has happened, this is how the community has brought it to our attention and seek to address it, and is that in line with the Youth Justice Act and youth diversion? And invariably, yes, it is, because that's exactly what we want to see in youth diversion.'*⁴³⁴

Access to completion reports

The Commission was told by a lawyer from NTLAC:

'The court and the young person's legal representatives were given very little information about the diversion program and what exactly a young person had to achieve or complete. I am aware that the prosecutors receive some form of report as to completion or failure but it was never tendered in court nor provided to the young person's legal representatives ... It should be legislated that the reports back about assessment and the

*final report about diversion should be tendered to the court and made available to the young person's lawyer.*⁴³⁵

A report may contain information about why a child disengaged from the diversion program, or describe the efforts that the child or young person made prior to disengaging. This may assist in determining the terms of any sentencing order.

ADEQUACY OF PROGRAMS AND COMMUNITY ENGAGEMENT

Other potential impediments to effective youth diversion are the need for sufficient appropriately funded diversion programs, and the need for the engagement of communities. One service provider told the Commission:

*'Historically there have been significant issues with the diversion providers in assisting and supporting youth offenders due to the lack of programs available for them to be referred to. It was this gap in services that YWCA Darwin recognised and with additional funding from [Territory Families] has been able to address some gaps with the provision of suitable programs. Difficulties remain in finding appropriate community service work for young people to do, especially for those under 15 years old, due to supervision and insurance requirements.'*⁴³⁶

The Central Australian Aboriginal Congress (CAAC) submitted that well-resourced diversionary options for Aboriginal children and young people should be offered at both the first point of contact with police and at sentencing.⁴³⁷ CAAC also submitted that Aboriginal Elders and mentors be made an integral part of the diversionary process.⁴³⁸

Anyinginyi Health Aboriginal Corporation submitted:⁴³⁹

'Our Aboriginal staff have canvassed a wide range of Aboriginal views and opinions from our people of the Barkly region over the last few weeks. There have been two consistent views emerge:

- *That diversion of offenders should occur on to traditional country where there is proximity for visitation by Elders and kin and where 'two way learning' can occur, i.e. teaching them in both Aboriginal and mainstream education;*
- *That there is an urgent need in our Barkly communities for an adequate range of after-school and weekend activities for children and youths, with pathways for older youths into employment prospects and self-development interest.'*

Senior Northern Territory Government bureaucrats agreed that future programs should be community led,⁴⁴⁰ and that Aboriginal communities should be supported to design appropriate diversion programs.⁴⁴¹

The Commission understands that historically there have been significant issues with the provision of sufficient diversion services in the Northern Territory, particularly a lack of diversion programs being available for referrals⁴⁴² and that this continues to be an issue in some regions of the Northern Territory.⁴⁴³

The Commission also heard concerns about the funding available for diversion programs across the Northern Territory.⁴⁴⁴ The demand for diversionary and other services typically outweighs the funding available to provide these services, both from the Northern Territory and the Commonwealth Governments.⁴⁴⁵ Programs are generally reliant on external funding for their existence, and sometimes only receive short-term funding, which means they cease to be available when the program runs out.⁴⁴⁶ As a result of short-term funding cycles the knowledge and efficiencies that have built up over the course of a program will be lost and need to be developed again when a new program is established in an area.⁴⁴⁷

DIVERSION PROGRAMS IN THE NORTHERN TERRITORY

A range of organisations currently deliver youth diversion programs in the Northern Territory, including the Young Women’s Christian Association (YWCA) of Darwin, Relationships Australia Northern Territory, the Warlpiri Youth Development Aboriginal Corporation (WYDAC), the Tiwi Islands Council and the Malabam Health Board Aboriginal Corporation.

YWCA Darwin has been delivering youth diversion services, based on the principles of restorative justice, since 2002.⁴⁴⁸ Prior to a one-off funding package given by Territory Families in September 2016, the YWCA was unable to deliver diversion programs as its focus was on the case management of children and young people on diversion.⁴⁴⁹ Territory Families gave this additional funding to YWCA Darwin as it recognised there was a lack of programs available for youth.⁴⁵⁰ Children and young people aged 10–18 can only be referred to the program by the police or the Youth Court.⁴⁵¹ The child or young person may participate in programs targeting self-esteem, cyber safety, legal rights, organisational abilities, anger management, communication, understanding the ‘fight or flight’ response, getting job ready, healthy relationships, alcohol and other drug use, or resilience as part of their diversion program.⁴⁵² The YWCA case worker may also work with other service providers to ensure effective support is given to the young person and their family.⁴⁵³

Similarly, the Relationships Australia Northern Territory Youth Diversion Program accepts children and young people aged 10–18.⁴⁵⁴ Relationships Australia Northern Territory provides case management services to children and young people on diversion, including arranging and attending the youth justice conference.⁴⁵⁵ Case management also includes arranging a tailored program that may involve community service, counselling programs, and other programs and activities.⁴⁵⁶ The programs offered by Relationships Australia Northern Territory also include the Respectful Relationships Program, which is an individualised program to address behaviours relating to respecting others, and the Drum Zone program which addresses the dangers of rock throwing.⁴⁵⁷

WYDAC, formerly known as the Mt Theo Program, operates youth diversion programs across Yuendumu, Willowra, Lajamanu and Nyirripi.⁴⁵⁸ During the course of the Commission the Commissioners visited WYDAC at Yuendumu and saw firsthand how the community initiated program operates. WYDAC receives referrals from the police, the courts, Territory Families, schools and the community, with 50% of its referrals coming from the police and the courts under the *Youth Justice Act*.⁴⁵⁹ In addition to youth justice conferencing,⁴⁶⁰ the programs seek to engage young people in ‘positive, healthy, safe and interesting activities’ including sports, arts and craft, music and specialised activities like dance workshops.⁴⁶¹ One of the cultural elements of the program includes weekly bush trips, where Elders and young people travel ‘out bush’ and engage in activities that promote positive relationships and cultural teaching.⁴⁶² A 2015 independent evaluation of WYDAC’s youth diversion programs found that it was likely that the delivery of these programs lowered levels

of youth crime in communities.⁴⁶³ Encouragingly 91.7% of program graduates in the evaluation cohort were employed.⁴⁶⁴ Despite this evaluation, the Commission has heard that one of the main problems WYDAC faces is a lack of funding.⁴⁶⁵

The Tiwi Islands Youth Diversion and Development Unit provides culturally appropriate formal and informal diversionary programs for Tiwi youth, focusing on developing participants' attachment to family, community and school.⁴⁶⁶ The Tiwi Islands Youth Diversion case management team work with at-risk youth in a traditional manner through Tiwi Skin groups.⁴⁶⁷ The program is supported by the Northern Territory Police.⁴⁶⁸ It has been operating for over 10 years.⁴⁶⁹ Participants are usually first-time offenders who are given the opportunity to participate in a youth justice conference and supported by a range of cultural interventions to address risk factors for offending.⁴⁷⁰ The program has resulted in low rates of recidivism.⁴⁷¹ NTLAC referred to the program as a 'best practice example' of youth diversion.⁴⁷² A 2014 evaluation of the Tiwi Islands Youth Diversion and Development Unit by the Australian Institute of Criminology found that *'the program was useful in reconnecting young people to cultural norms and ... directly addressed the factors that contribute to offending behaviour'*.⁴⁷³ A Tiwi Elder told the Commission: *'It now has a full-time young Tiwi person running it after being mentored ... it's a wonderful thing to see our young Tiwi people taking over these roles and responsibilities'*.⁴⁷⁴

In Maningrida, Malabam Health Board Aboriginal Corporation operate the 'Greats' Youth Services, which provide a range of programs and services for children and young people aged 10–20 years.⁴⁷⁵ One of the programs delivered is the Youth Diversion Program 'On Track' operated in partnership with the Northern Territory Government.⁴⁷⁶ It receives referrals from the police and the court under section 39 and section 64 respectively.⁴⁷⁷ Most of the young people referred by the police are over the age of 14 and are referred by the police for offences such as, break and enter, property damage and stealing cars.⁴⁷⁸ Children who are referred may attend programs addressing sexual health, alcohol and other drugs, anger management, community wellness, back to country cultural engagement and community service.⁴⁷⁹

Service providers in the various locations may also organise for a child or young person to attend programs operating in their area. For example, CAAC in Alice Springs operate a violence intervention program,⁴⁸⁰ Wongabilla Equestrian Centre Youth Diversion Program in Darwin offer a horse husbandry and basic riding skills program for children and young people to determine if they are suited to a career in the livestock industry,⁴⁸¹ and the Australian Red Cross operate the Personal Helpers and Mentors program in Katherine where they assist children to achieve self-identified goals around self-esteem, responsibility, education and improved community engagement.⁴⁸²

Other service providers have also developed informal programs for children and young people on diversion. The Manager of Youth Services for Malabam told the Commission that one young person resided on his grandfather's outstation as part of the diversionary process, assisting with the upkeep of land, fishing and hunting.⁴⁸³ This informal arrangement required approval from the Northern Territory Police Youth Diversion Unit, and Malabam are now hopeful of using the outstation as a diversionary option for others.⁴⁸⁴ This would provide both community service and program elements of diversion, as young people could participate in overnight camps, help maintain the outstation, undertake cultural learning and hunt for food.⁴⁸⁵

There appears to be a need for diversion programs suitable for children in the 10–14 year age range. In the Commission's view, specific programs should be developed to cater for these young

people. An example is the Barreng Moorop program in Victoria, run in partnership by Victorian Aboriginal Legal Services, the Victorian Aboriginal Child Care Agency, and Jesuit Social Services.⁴⁸⁶ The program is a trauma-informed and culturally responsive diversionary program designed to work with Aboriginal children who have had contact with police.⁴⁸⁷ The program targets children aged 10–14, ensuring intervention at the ‘earliest’ stage of interaction with the youth justice system.⁴⁸⁸ The program provides ‘a wrap-around case-work based response, including an understanding of the composition of Aboriginal families, in which the extended family plays an active role’.⁴⁸⁹

Deadly Treadlies

Deadly Treadlies was a diversion and early intervention program operating in Central Australia between 2003 and 2009⁴⁹⁰ at the Alice Springs Youth Accommodation and Support Service (ASYASS) and through outreach workshops delivered to Alice Springs Town Camps, remote communities and schools.⁴⁹¹ The program was accessed by more than 1,000 children and young people every year.⁴⁹² The majority of those who accessed the program were Aboriginal; however, non-Aboriginal children and young people also attended the program based at the Alice Springs Youth Accommodation and Support Service.⁴⁹³

The Deadly Treadlies program involved collaboration between children and young people, their families and teachers, and police.⁴⁹⁴ Deadly Treadlies workers would help to facilitate the referral of children and young people and their families to case management, education and support services.⁴⁹⁵

Deadly Treadlies received formal recognition for its success as a diversion and early intervention program, including a Certificate of Merit (2005) at the Australian Crime and Violence Prevention Awards and a Ministerial Community Safety Award (March 2005) from the Northern Territory Government.⁴⁹⁶

Referral to alcohol and drug and mental health programs

Diversionary programs that focus on the delivery of mental health, and drug and alcohol services are often necessary to address the underlying causes of a child or young person’s offending behaviour. The Commission has been told there are a lack of referral options for young people requiring mental health assistance, particularly in Central Australia.⁴⁹⁷ One consequence is that police and courts do not have a wide range of options for diverting children and young people for mental health treatment. The Commission was told that in some instances this may lead to children and young people being detained where alternative options should be available.⁴⁹⁸

It has been said in submissions that the number of drug and alcohol counselling and rehabilitation programs for young people in the Northern Territory is insufficient and that there is a lack of culturally appropriate programs in particular.⁴⁹⁹ There are several highly regarded services operating in the Northern Territory but demand significantly exceeds the available beds.⁵⁰⁰

*'If I was a person in authority and able to change the way I experienced criminal justice in the NT ... I would have provided more courses in Don Dale and in the community to give young children an insight into drugs and alcohol and how to make better choices. I would have liked more support in the community to do courses without the threat of going back to jail if I stuffed up.'*⁵⁰¹

Vulnerable witness AQ

Specialist intervention may be required for children and young people suffering from neurological conditions that may lead to offending behaviours, such as fetal alcohol spectrum disorder (FASD) or acquired brain injury. They also need to be referred to programs that have been designed specifically for their condition.⁵⁰² Treatment services need to aim to reduce their likelihood of further offending. Ideally, services should have the capacity to treat young people with multiple conditions.

DIVERSION REFORMS AND ADDITIONAL FUNDING

During the course of the Commission, the Northern Territory Government announced an \$18.2 million package for youth diversion programs and initiatives annually, including \$10 million in new funding.⁵⁰³ The announcement included a commitment to fund 52 new youth diversion workers and the provision of additional funding to NGOs to run youth diversion programs.⁵⁰⁴

On 21 April 2017, it was announced that an additional \$1.75 million would be invested in after-hours youth services in Alice Springs and Tennant Creek. These would provide services for at-risk children and young people, as well as universal late-night activities for all children and young people.⁵⁰⁵

The Deputy Chief Executive Officer of Territory Families described the program and diversion options that have been designed to complement and support the effective implementation of alternatives to youth detention, including:

- road safety programs for children and young people involved in traffic offences and alcohol and other drug diversion programs
- the establishment of a dedicated youth diversion workforce, known as Youth Outreach and Re-engagement Teams, to work together with children and young people, the Department of Education, the Northern Territory Police and non-government service providers
- a risk assessment 'tool' for case managers to assess a child or young person's risk of contact with the youth justice system
- increased management and focus on the implementation of restorative justice victim/offender conferencing programs,
- the development of a Youth Justice Agreement for children and young people involved in diversionary activities to sign, to reinforce the seriousness of the diversion activities and reinforce their commitment to the activity, and

- the engagement of the Operation Flinders Foundation to deliver ‘early intervention wilderness camps for at-risk youth’.⁵⁰⁶

Youth Outreach Engagement Officers began their youth support roles after completing their training in May 2017,⁵⁰⁷ with staff to be posted in Darwin/Palmerston, Katherine and Alice Springs.⁵⁰⁸ The workforce was designed to provide a range of primary, secondary and tertiary interventions, including identifying and assessing at-risk children and young people, diverting them from youth detention and coordinating service delivery.⁵⁰⁹

The Commission welcomes these announcements and would welcome further steps in accordance with the recommendations in this chapter to strengthen the focus on diversion, which provides an integral and effective opportunity to intervene early with young offenders to divert them from further offending.

Recommendation 25.7

The Northern Territory Commissioner of Police refresh and reissue Police General Order – Youth promulgated 22 February 2007.

Recommendation 25.8

The Northern Territory Police Youth Diversion Unit be resourced to provide a comprehensive diversion service with adequate specialist staff members and facilities, to give effect to the principles of the *Youth Justice Act* (NT).

Recommendation 25.9

The definition of the ‘serious offences’ that exclude a young person from eligibility for diversion be reviewed, with a view to removing preclusion from diversion for less serious offending.

Recommendation 25.10

The *Youth Justice Act* (NT) be amended to remove the restriction on police consideration of diversion in section 39(3)(c).

Recommendation 25.11

The references to offences against Part V and Part VI of the *Traffic Act* (NT) be reviewed with a view to enabling children and young people charged with offences under these provisions to be eligible for diversion under section 39 of the *Youth Justice Act* (NT).

Recommendation 25.12

The Northern Territory Commissioner of Police amend Police General Order – Youth Pre-Court Diversion to remove the requirement that a child or young person must admit to committing an offence when an officer is considering them for diversion and require instead that the child or young person ‘does not deny’ the offence.

Recommendation 25.13

The *Youth Justice Act* (NT) be amended to require reports about a child or young person’s participation in a diversion program be tendered in court and made available to the child or young person’s legal representative.

Recommendation 25.14

Youth diversion programs in remote communities be developed and operated in partnership with, or by, Aboriginal communities and/or Aboriginal controlled organisations.

BAIL

Most children and young people held in detention in the Northern Territory are not there because they have been sentenced to detention, but because they have been remanded in custody awaiting a hearing or outcome in their case. The evidence before the Commission suggests that the high number of children and young people held on remand is a consequence of the following: the introduction of the offence of breach of bail,⁵¹⁰ the imposition of bail conditions unlikely to be adhered to,⁵¹¹ the lack of programs to support children and young people on bail, and the lack of suitable bail accommodation.⁵¹²

It is in this context that the Commission has considered evidence about how the bail process applies to children and young people in the Northern Territory. The Commission has examined whether changes should be made to the bail system to make it a more effective tool to reduce the high numbers of young people in detention on remand.

On an average day in 2015–16, 71% of young people in detention in the Northern Territory were on remand, significantly more than the national average of 57%.⁵¹³

Figure 25.5 shows the number per 10,000 of young people aged 10–17 in detention on an average night, by state and territory, June quarter 2012 to June quarter 2016. It shows that the youth detention rate in the Northern Territory is significantly higher than in any other Australian jurisdiction.

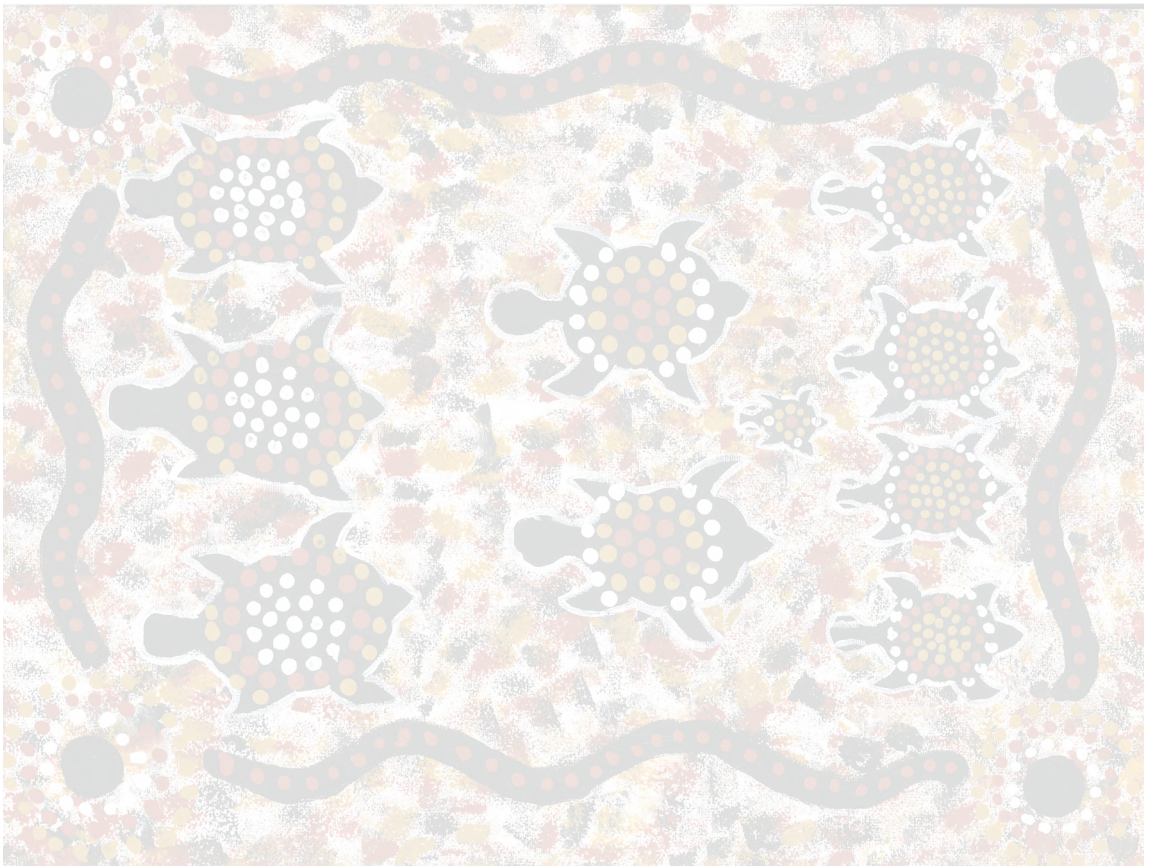
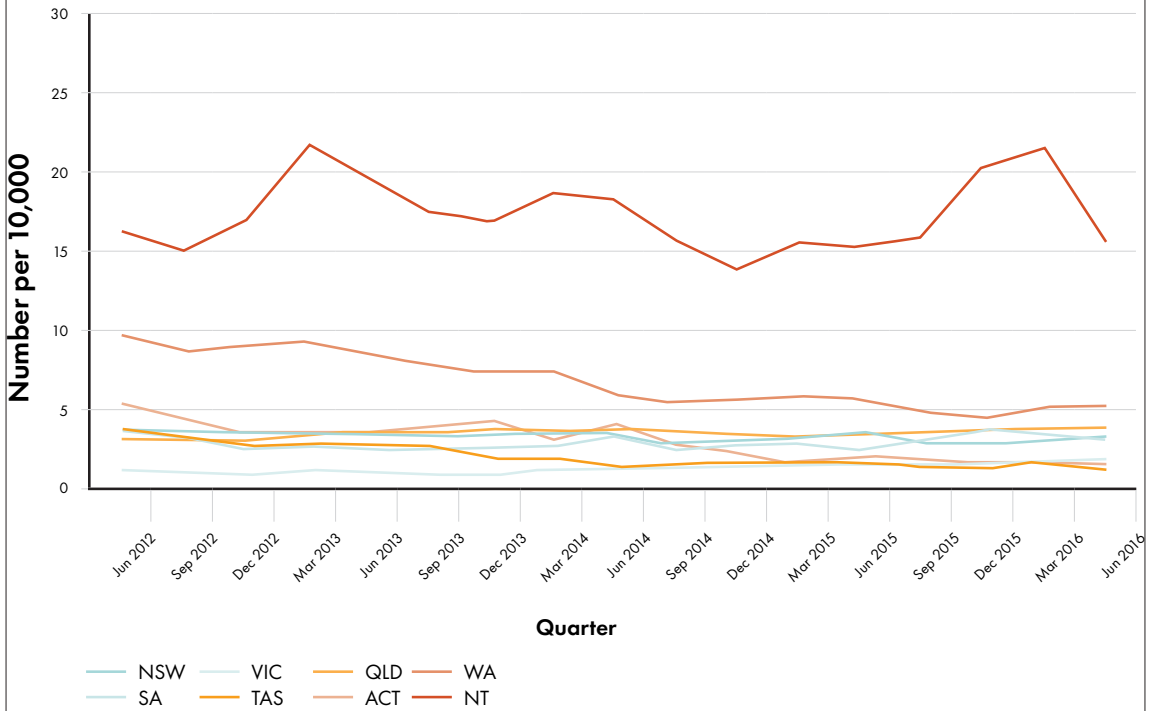


Figure 25.5: Young people aged 10–17 in detention on an average night, by state and territory, June quarter 2012 to June quarter 2016 (Rate)



Notes: Trends among small populations should be interpreted with caution. Numbers tend to fluctuate from quarter due to random variation, and this might affect the appearance and interpretation of trends.

Source: AIHW, Bulletin 138, Youth detention population in Australia 2016, Figure 5.2

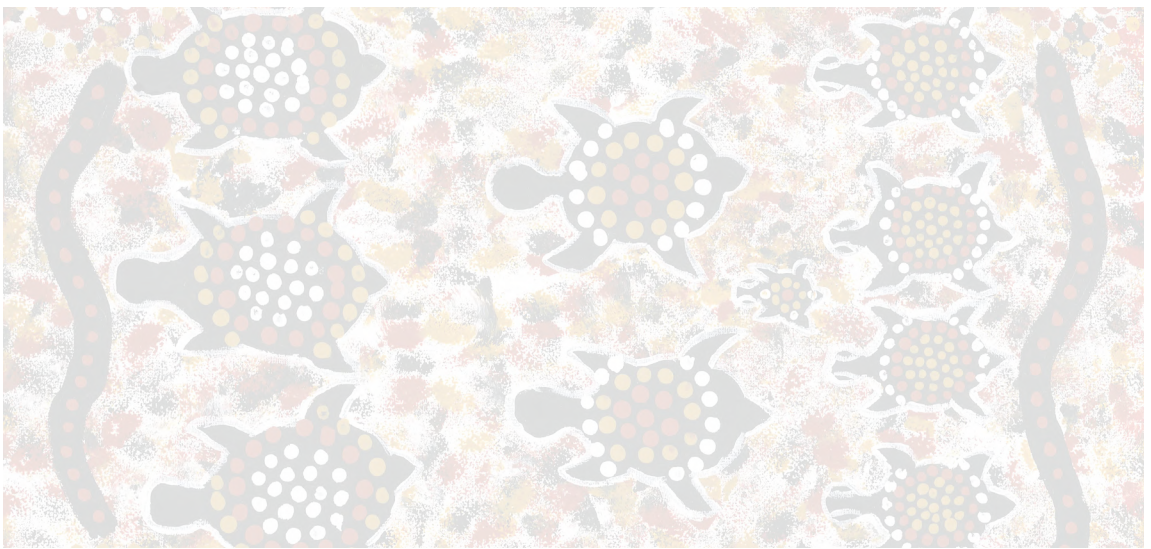


Figure 25.6 shows the rates of young people aged 10–17 in both un-sentenced and sentenced detention on an average day in 2015–16 across Australia.⁵¹⁴

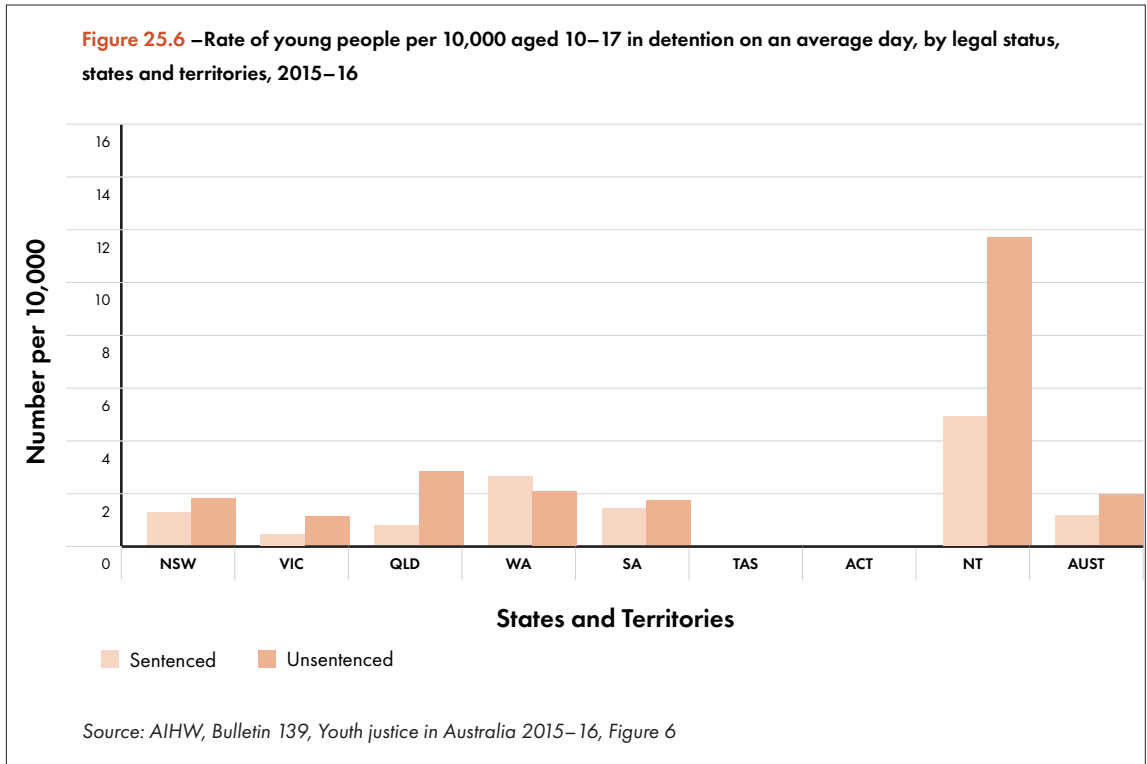


Figure 25.7 shows the average daily percentage of children and young people in each of the youth detention centres in the Northern Territory over the relevant period who were there on remand.⁵¹⁵

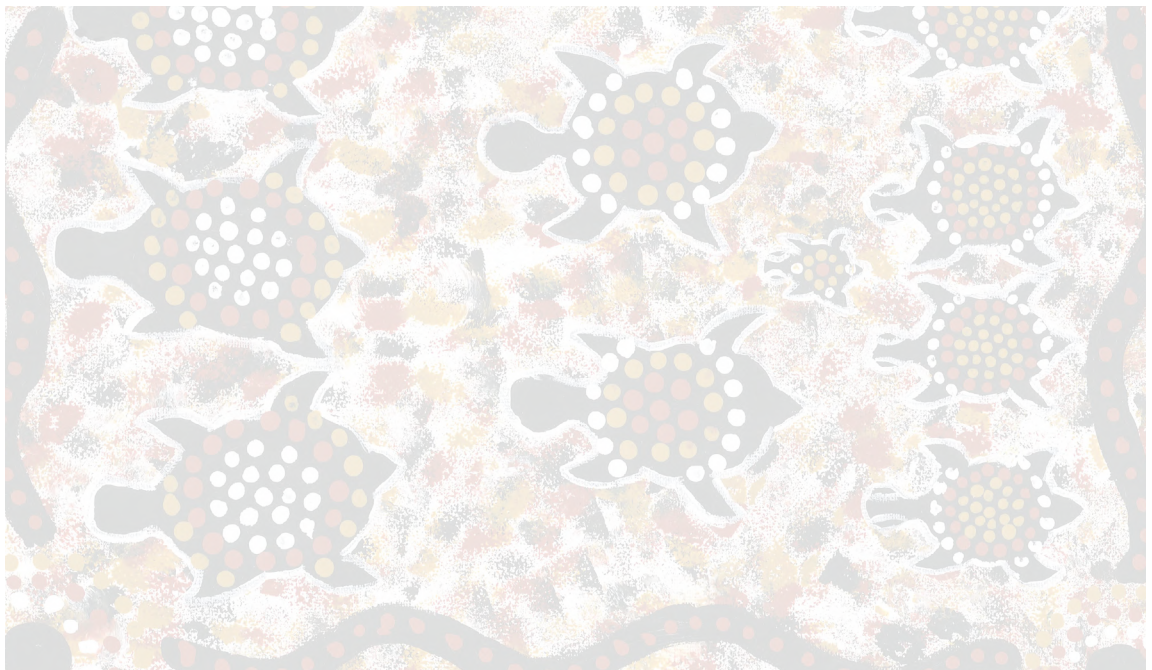
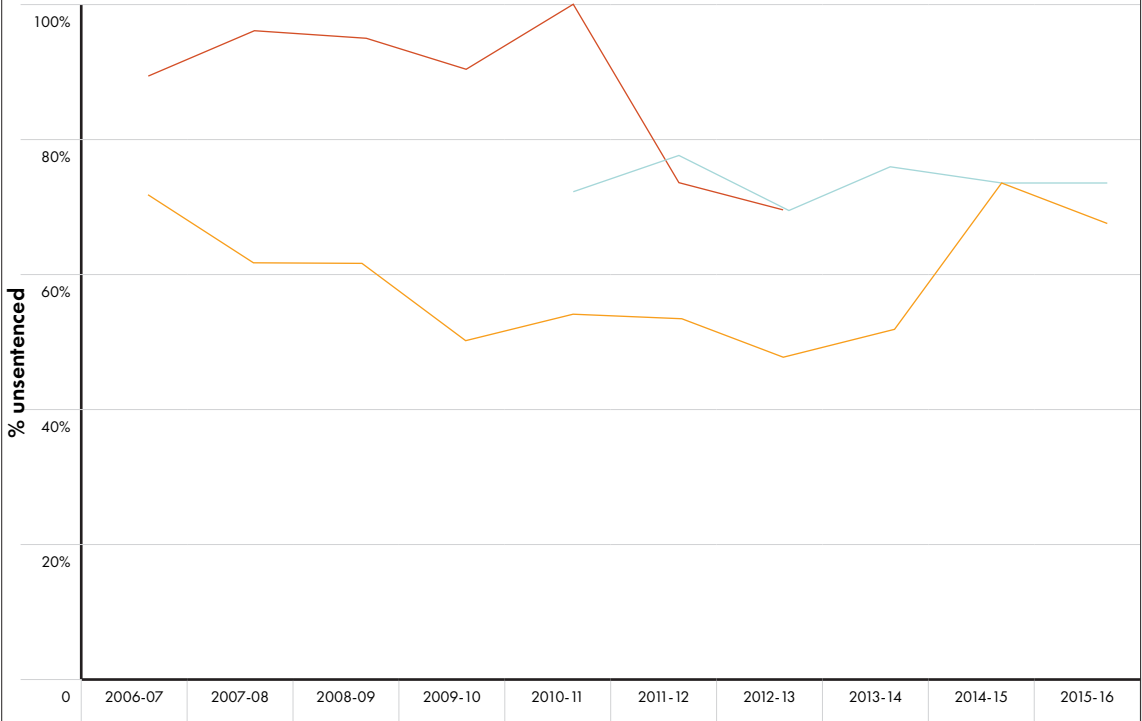


Figure 25.7: Proportion of unsentenced children and young people in Northern Territory Youth Detention Centres, 2006–07 to 2015–16

Yearly daily average percentage of youth detainees who are unsentenced, by detention centre 2006-07 to 2015-16



	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
% Unsented AH	89%	97%	96%	91%	100%	74%	70%			
% Unsented ASDC					72%	77%	71%	76%	74%	74%
% Unsented DOOC	72%	62%	62%	51%	55%	54%	48%	52%	73%	68%

Source: Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, p. 49

A former lawyer from the North Australian Aboriginal Justice Agency (NAAJA) recalled to the Commission an incident where the only time a young person spent in custody following an apprehension was on remand.⁵¹⁶ A lawyer from the Northern Territory Legal Aid Commission (NTLAC) recounted another incident where a young person spent longer in detention than the sentence they received on conviction.⁵¹⁷

*'I have been incarcerated four times ... Each time I was there I was on remand.'*⁵¹⁸

Vulnerable witness AF

*'Often when I would get arrested for breach of bail I would lose my placement. I remember heaps of times being in court and the Magistrate/Judge would ask the DCF [Department of Children and Families] worker if there was a placement available and they would say no. That meant I wouldn't even get a chance at bail. I'd just get remanded to Don Dale for days or weeks sometimes. I'd been told that DCF were supposed to be my parents, but it often felt to me that DCF were just saying they had no placements to punish me and that they could have easily found me placements if they really wanted to.'*⁵¹⁹

Vulnerable witness DB

The Deputy Chief Executive of Territory Families identified a number of drivers that contribute to children and young people being held on custodial remand. These include:

- a lack of suitable accommodation for bail
- a lack of support to police and young people when determining bail conditions
- the increasingly complex needs of young offenders
- a lack of access to effective legal representation
- young people not applying for bail
- judicial attitudes
- punitive community attitudes
- court delays
- difficulties locating 'responsible adults' to support bail applications
- inappropriate and/or arbitrary use of bail conditions
- criminalisation of bail breaches
- policing practices, and
- a lack of access to services and programs.⁵²⁰

It has been suggested to the Commission that breach of bail becoming an offence has contributed to the number of children and young people on remand.⁵²¹ The Commission heard evidence that the high number of children and young people held in remand would be reduced by making appropriate changes to bail conditions⁵²² and the provision of accommodation and programs to support young people on bail.⁵²³

THE BAIL ACT

The *Bail Act* (NT) governs the circumstances in which bail is granted in the Northern Territory for children and young people as well as adults.⁵²⁴ Section 8 of the *Bail Act* creates a presumption in favour of bail being granted,⁵²⁵ other than for certain serious offences.⁵²⁶ Serious offences include murder, terrorism and arson.⁵²⁷

Section 24 of the *Bail Act* specifies the considerations for deciding whether a person should be granted bail.⁵²⁸ They are detailed and include:

- the probability of whether or not the person will appear in court in respect of the offence, having regard only to certain criteria, such as ties to a community, employment, previous criminal history, previous failure to appear and the seriousness of the offence and likely penalty
- the needs of the person to be free to pursue lawful purposes
- any cognitive or mental impairment of the person, and
- any risk the person might pose to another person, including whether they would commit any further offence.⁵²⁹

In most respects, the *Bail Act* operates in the same way for children and adults. Only limited allowance is made for the different needs of children and young people compared to adults. There is a statutory requirement for the court or the authorised member (police) to take into consideration that an applicant is a 'youth' within the meaning of the *Youth Justice Act* (NT).⁵³⁰ However, the *Bail Act* contains no explanation of what this requires and the *Youth Justice Act* does not contain any provisions specifically relating to the different, or additional, considerations that might apply when assessing and granting bail for children and young people.

When considering whether to grant bail, police are also required to comply with the Northern Territory Police General Order for Bail (Bail General Order).⁵³¹ The Bail General Order requires police follow the provisions of the *Bail Act* when deciding whether to grant bail,⁵³² what considerations may be taken into account in deciding whether to oppose bail,⁵³³ the conditions that may be imposed,⁵³⁴ and the procedures for a review of a refusal to grant bail.⁵³⁵

If bail is granted it may be conditional or unconditional. If unconditional, the only obligation on the child or young person is to appear at their next court hearing. Conditional bail attaches additional obligations. In the Northern Territory, a breach of any of the conditions on which bail was granted has been a criminal offence since 2011.⁵³⁶ A young person not complying with a bail condition – for example, not living at a stipulated address or associating with certain other young people – may be charged with the additional offence of breach of bail. In Queensland, the offence of breach of bail does not apply to children.⁵³⁷

REMAND AND SUBSEQUENT CUSTODY

At community meetings and in written submissions the concern was expressed that remand in custody is overused for young people, and that the principle of custody as an option of last resort is not being met for young people detained on remand.⁵³⁸

A 2013 Australian Institute of Criminology study, *Bail and Remand for Young People in Australia*,⁵³⁹

found that custodial remand adversely impacted children and young people by:

- separating them from their usual support structures of family and friends, increasing the risk that they suffer physical and psychological harm
- disrupting their education and employment, which weakens their connection to these institutions which normally protect against further offending
- increasing the likelihood that they offend in the future, through exposing them to sentenced young offenders, and
- statistically increasing the likelihood that they would be incarcerated in the future, irrespective of their offending.

'[O]nce a young person, particularly the younger they are, goes into remand, they are then introduced to the world of criminal justice and corrections and being managed ... [T]hat process then becomes something which continues because of a number of things: (1) the young person begins to think, 'This is where I belong', (2) they are known to the police and the police keep an eye out for them. And they are arrested more often. (3) They are often given – if they're given bail or they're on parole or they're on an order, they're often given an order, a range of requirements that they can't meet. And, therefore, they are breached and go back in. And this begins this cycle... And it introduces the young person to the normalised life of being managed by the criminal justice system'.⁵⁴⁰

Professor Eileen Baldry, Professor of Criminology, University of NSW

The link between detention at an early age and subsequent periods of detention was noted by witnesses both within and outside Australia. Vincent Schiraldi, a Senior Research Fellow at Harvard University who oversaw significant reforms to youth justice as the Director of Juvenile Corrections in Washington DC, told the Commission that children and young people who are held in detention on remand are much more likely to end up back in detention at a later date.⁵⁴¹

The Queensland Manager of Youth Justice Practice expressed similar views:

'Any time that a young person spends on remand can have significantly negative impacts. We have significant data that shows that even if a young person is in remand for only a short period of time overnight, they are a significantly higher risk of being remanded again in the future. And the second remand period will be a much longer period. Once they are in detention, whether it is for a short period of time or not, they're connected with peers who may have pro-criminal attitudes, which increases their likelihood of reoffending. They can get disconnected from education, so even though that remand period might not show up on formal records, the fact that they may get enrolled into an education facility in a detention centre can show up in the education enrolment records later on, which can lead to exclusions. There's disconnection from family and community. So there's quite a long list of reasons why we think that remand, unless it's absolutely essential, is quite detrimental to a young person'.⁵⁴²

The Commission heard the stories of children and young people who first entered detention on a

period of remand and have continued to cycle through the system ever since. Vulnerable witness BR told the Commission:

'I first started being held at the old Don Dale on remand when I was about 11 or 12. I was in and out of there over the next few years, spending more and more time there the older I got. I was held on remand and served sentences at Don Dale. I was at the old Don Dale pretty much every year from when I was 12 to 16/17. Then I started being held in the adult prison'.⁵⁴³

The Commission accepts the view that detaining children and young people on remand is likely to have significant negative impacts, and is likely to increase rather than decrease the risk that they will further offend, and be further detained. Accordingly, steps should be taken to reduce the number of young people on remand.

Girls on remand in Alice Springs

A particular issue for girls and young women on remand in Alice Springs is that there is no appropriate facility in which to hold them. Alice Springs Youth Detention Centre is not able to hold male and females separately.⁵⁴⁴ As a result, girls and young women are generally only held in the centre on remand for short periods of time.⁵⁴⁵ If they are to be held for longer periods they are transferred to Darwin, as discussed in Chapter 17 (Girls in detention).

The Commission was also told by a CAALAS lawyer that because of the limited capacity at the Alice Springs Youth Detention Centre, she was aware of one instance where a girl was held in the police watch house on remand:⁵⁴⁶

'Even periods after they're brought before a court and if they are once again remanded by ... the Youth Court, they will return to the watch-house and have to wait for the next court date in custody in the Alice Springs watch-house. That's particularly difficult for females. They're held in a cell at the front of the watch-house. We have had one young lady recently... she had to put the mattress up to block the glass to use the toilet, things like that, because her cell was visible to everybody'.⁵⁴⁷

Police watch houses are designed for the temporary holding of offenders. While the Commission is unable to determine on the material before it the prevalence of this practice, the Commission's view is that it is not appropriate to hold children or young people on remand in the police watch house. During a visit to the Darwin Watch House the Commission was told that police would prefer children be taken elsewhere after first coming into police custody. In Adelaide young people arrested by police are taken immediately to the youth training centre at Cavan which is equipped to receive them 24 hours a day.

Proposed amendments to the bail legislation and the provision of supported bail accommodation in Alice Springs may partly alleviate this problem. Proper facilities need to be provided in Alice Springs for holding females on remand.

Recommendation 25.15

Ensure that appropriate facilities are available in Alice Springs for girls or young women who need to be held on remand.

POLICE AND COURT HANDLING OF BAIL REQUESTS

Evidence provided to the Commission in Table 25.12 demonstrated that over the relevant period, if a child or young person was refused bail at the watch house by either a police officer or an on-call judge, bail was granted by the court in only 15% of cases following the first appearance of the child or young person.⁵⁴⁸

Table 25.12: Outcome of bail requests for children and young people in the Northern Territory, 2006–16

Outcome	Presumption for Bail*		Presumption Against Bail*	Grand Total
	Not on Bail	On Bail Already		
Bail granted in watch house	3,776	1,717	730	6,223
Bail refused to watch house	1,537	2,211	1,227	4,975
Judge remands youth**	983	1,230	823	3,036
Remand order 1st app	662	796	623	2,081
No remand order 1st app	321	434	200	955
Court bail granted 1st app	240	361	152	753
No bail record 1st app**	81	73	48	202
Judge does not remand youth	554	981	404	1,939
Remand order 1st app	311	336	260	907
No remand order 1st app	243	645	144	1,032
Court bail granted 1st app	63	578	102	743
No bail record 1st app***	180	67	42	289
Grand Total	5,313	3,928	1,957	11,198
Percentage of situations in which bail was refused at the watch house and the first decision of the court was to grant bail	4%	26%	8%	15%

Source: Exh.696.001, Annexure CW-4 to Statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, p. 3

After-hours bail

In the Northern Territory, a bail application can be considered by an on-call judge by telephone up to 10pm.⁵⁴⁹ This system means that children and young people may spend unnecessary time in custody. If a child or young person is taken into custody late at night or is not processed before 10pm they have to wait until 7am (at the earliest) before their bail application is considered by a judge.⁵⁵⁰

BAIL CONDITIONS

The *Bail Act* requires conditions to be imposed if they appear necessary for the police officer or court to minimise risks to the safety or welfare of others, or to the proper administration of justice, that may result from releasing the accused person on bail.⁵⁵¹ The conditions imposed must be proportionate to those risks.⁵⁵²

Youth-specific bail considerations

The Commission has been told that the approach to bail for children and young people in the Northern Territory inadequately recognises their needs and capacity.⁵⁵³ Legislative reform that recognises the particular needs of young people and providing a clear culturally appropriate framework is needed. As mentioned, the *Bail Act* merely requires whether or not the person is a youth within the meaning of the *Youth Justice Act* to be taken into account.⁵⁵⁴

The Commission is not aware of any jurisdiction in Australia where the bail provisions applicable to young people have been entirely removed from the bail law applying to adults. However, in several jurisdictions the legislation includes specific additional requirements in relation to youth, including: considering all other options before remanding a child or young person in custody; taking into account the desirability of allowing the living arrangements; that the education, training or employment of the child or young person is to continue without interruption or disturbance; and the desirability of minimising the stigma to the child or young person from being remanded in custody. In the Australian Capital Territory when making a decision about granting bail to a child, the decision maker must consider the principles of the *Children and Young People Act 2008 (ACT)*.⁵⁵⁵ In Western Australia, when granting bail to a child, the authorised officer must consider whether it is desirable to impose a condition as to the attendance by the child at school or other educational institution.⁵⁵⁶ The *Bail Act 1977 (Vic)* prescribes certain factors which must be taken into account in determinations concerning all children and young people,⁵⁵⁷ including the importance of stability in the lives of children and young people, the desirability of granting bail where possible,⁵⁵⁸ and specific factors that must be taken into consideration in determinations concerning all Aboriginal people.⁵⁵⁹

Separate legislative provisions for children and young people can guide bail decision-makers by highlighting the different considerations that might apply to them in any bail decision.⁵⁶⁰ This can be especially valuable where a decision-maker is not a specialist familiar with bail decisions for children and young people.⁵⁶¹

The Commission proposes that the *Bail Act* should be amended to require principles set out in section 4 of the *Youth Justice Act* to be considered in any decision about bail for a child or young person.

The Commission further considers that denying bail to a child or a young person should only occur in the most serious of cases. Where there are limited other options, and in keeping with the principle that detention of children and young people should only be used as a last resort, the Commission recommends a provision limiting the power of police and courts to deny bail to children and young people, except in the most grievous cases where a genuine, serious risk to community safety is established.

Making bail conditions appropriate

The Commission heard evidence that some of the bail conditions commonly imposed on children and young people were impractical given their circumstances, and, realistically, were likely to be breached.⁵⁶² These included:

- night-time curfews requiring a young person to be in a particular house during specific hours, where the young person has a dysfunctional home life or the designated location was not safe or

appropriate.⁵⁶³ An alternative condition of similar effect would be a condition requiring the young person to stay away from public places at certain times rather than being in a particular house

- curfews requiring a young person to remain in a house where there is no adult who will actively supervise them,⁵⁶⁴ limiting their contact with positive and supportive role models⁵⁶⁵
- non-association orders that prevent a young person from associating with other named young people, which may remove the young person from valuable support groups such as sporting activities, or in some cases school,⁵⁶⁶ and
- prohibitions on the young person consuming drugs or alcohol where the young person has a substance abuse problem with no effective supports to change their behaviour.⁵⁶⁷

The necessity for such conditions to meet the objective of having the young person appear in court when called upon, to prevent further offending or to protect witnesses, may not be apparent in every case.

The Commission heard from witnesses who described situations where children and young people breached their bail because of their living situation, or other matters largely beyond their own control as children. The Commission was told by one lawyer:

*'It's not uncommon for a child who comes from a town camp to be bailed to live on the town camp in the care of a specified adult family member, but with various associated conditions such [as] a curfew, and not every town camp is like this, but many town camps in Alice Springs are extremely chaotic places. A lot of uncontrolled drinking, all of which is illegal, a lot of violence. For example, it's often the case that a child will be exposed to violence amongst adults and leave the camp to get away from the violence. Not necessarily that they are being personally threatened with violence, but not to be around it. It's a perfectly rational response, but if their bail condition is not [to] leave the camp after dark, then they are going to be in breach of bail.'*⁵⁶⁸

A similar view was expressed by another lawyer:

*'[O]ne thing concerned me in the past you may get a first offender youth who commits an unlawful entry in company with other people. They are then placed on a raft of conditions straight up, just almost as a matter of course, because they're a youth. ... [I]f they have dysfunctional family at home, or there's problems with staying at home, they then breach their curfew and obviously they get a charge of breach of bail. It's another criminal charge, end up in custody again. I do think that for recidivist offenders who are constantly – I think my learned friend colleague referred to it as a – the "frequent flyers", yes, there probably is need for conditions. But I do have reservations as to whether much thought is given, in imposing conditions, in taking into account the history of the youth, their family circumstances; that sort of thing.'*⁵⁶⁹

Children and young people also breach bail conditions because of a lack of mature impulse control. As one witness explained, they *'are not capable of consequential thinking and do not understand the impacts of their impulsive actions.'*⁵⁷⁰ The inability to consider the consequences of actions is further magnified with children and young people who suffer from cognitive impairments, drug and alcohol

addiction or mental health issues.⁵⁷¹ The Commission heard of one lawyer's client who suffered from alcohol addiction:

*'One young man suffered from presumed fetal alcohol syndrome disorder which meant he had a real problem with alcohol himself. The requirement that he not consume any alcohol or sniff any volatile substances saw him before the court on at least four occasions for breaching his bail before the depth of his problem was realised and the condition was removed.'*⁵⁷²

Many of the statements made by vulnerable witnesses illustrate the inability of children and young people to maturely consider the consequences of their actions. Vulnerable Witness CJ told the Commission:

*'[I] would try to stick to my curfew, but eventually I would just come home at the wrong time. Even if I was just five minutes late I'd just end up thinking 'I'll get locked up again anyway. I might as well make it worth it', so I would hang out with my crew and go stealing.'*⁵⁷³

Vulnerable Witness AS gave evidence about complying with his bail conditions:

*'[F]or most of the time I was on remand I had a curfew, which meant that I could not be out of my house from 7pm to 7am ... For a long time after I got the curfew, I couldn't tell the time on my watch so I didn't really know what time it was and when I had to go back home. Someone had tried to teach me how to tell the time before that, but I just didn't understand. I remember I got picked up once by the Police at the Red Rooster car park at about 7.55 pm. Most of the time I missed the curfew I would get arrested by the Police and taken to the watch house. Sometimes if I got picked up during the day, I would get taken to the Supreme Court. By the end of the Griffith remand, the sentencing remarks show that I was held in detention for about 56 days in that year I was on the Griffith Remand. Some of it was for breach of bail when I did other offending, but a lot of it was because of a breach of bail because I was in breach of curfew without any other offending.'*⁵⁷⁴

Vulnerable witness AG told the Commission:

'When I would get bail, a lot of the time they would put a curfew as a condition of bail. I would always say that they shouldn't do that because it is just setting me up to fail. There were a couple of times that I breached bail for this reason.

*Home detention was something that worked better for me, as this was something I could keep to. Once, in 2015, I stayed in home detention for about 2 months. It wasn't easy but I could do it.'*⁵⁷⁵

The Commission also heard from another vulnerable witness who breached his bail because he was attending a cultural ceremony:

'I got in trouble for missing Court at [REDACTED] I think I broke my bail. I tried to tell

*them that I was at a men's ceremony that day but they didn't listen to me. So they sent me to Don Dale, which was far away from my family.*⁵⁷⁶

These issues could be addressed through a more tailored design of bail conditions in light of the circumstances of the child or young person.

As examples, the Commission was told that residential conditions imposed by the NSW Children's Court often specify that certain departures from conditions will not necessarily constitute a breach, such as spending a night at other relatives' homes, or leaving a home during curfew time when there is good reason.⁵⁷⁷ In Victoria, the *Bail Act 1977* (Vic) requires courts to impose conditions that 'are no more onerous than necessary and do not constitute the unfair management of the child.'⁵⁷⁸

The Commission considers that additional protections should be included in the legislation in the Northern Territory.

Findings

In some cases bail conditions are imposed on children and young people that are not appropriately tailored to address the individual circumstance of the young person.

Decision makers on occasion impose conditions that are not necessary to secure the objectives of ensuring the young person appears at court to answer the charges, and of preventing further offending behavior

Communicating the bail conditions

The former Chief Magistrate of the Northern Territory, Justice Hilary Hannam, told the Commission:

*'I think there's a huge misunderstanding in the community, generally, about bail and the purpose of bail is to secure a person's attendance in court. Then, when it comes to young people generally, just this expression, 'Can I get bail?', that just meant, 'Can I get out of custody?'; but the actual obligation to appear in court is, I think, very poorly understood. I was staggered at the amount of non-attendance at court in the Northern Territory, generally, and the practice of issuing of warrants for people who didn't turn up. And, really, regularly wondered whether people actually understood what it meant to get bail. Now, when you put additional layers upon that of language difficulties, additional layers of youthfulness and then the issue, as you say, of hearing impairment, it makes it – it was very troubling to me.'*⁵⁷⁹

Bail conditions can be complex and it is vital that young people have their conditions explained to them in a way they can understand. This is especially so for children who may be cognitively impaired, disabled, or have limited literacy or understanding of English.

Bail conditions should also be explained to the parent or responsible adult who is with the young person, in language they understand. Children and young people may be reliant on adults, particularly family, to ensure they comply with their bail conditions, or to assist them in getting to court.⁵⁸⁰ Children and young people in care may be particularly vulnerable if they do not have an attentive caseworker.⁵⁸¹

The Managing Judge of the Youth Justice Court told the Commission about the approach judges can take to ensure that proceedings are conducted in a way that is appropriate for the young person's age, maturity and cultural background:

*'Speaking directly to the youth and responsible adult rather than directing communication through counsel ... build some rapport with the youth (and responsible adult) and provide explanations to them as to the reasons for the orders being made and to assess their understanding of those orders (bail and sentences). Using a form of language and concepts that are understood by the young person and getting the young person to respond and talk to the Court.'*⁵⁸²

Since a young person will be very keen to leave police custody, there is a real risk that they will readily agree with the conditions without much, or any, reflection about the obligations of their bail. A short, age-appropriate video in the main language groups might convey the purpose of bail and the importance of adhering to the conditions imposed.

If a decision maker is unsure if a young person has understood the conditions of bail, steps should be taken to communicate it.⁵⁸³ An interpreter might be required, or advice may need to be taken to ensure that the conditions are formulated in a developmentally appropriate way. During a site visit to New Zealand, the Commission observed a practice of the court requiring a young person to repeat to the judge each of his bail conditions in a conversational dialogue.

Giving a young person the bail papers will not remedy this problem as they may not read such a complex document, or if read, understand it. More likely they will be lost. During a Commission roundtable meeting it was suggested that alerts about court appearances could be sent by SMS or via an app since some children and young people, particularly in the urban Darwin area, tend to have mobile phones. During a visit to the NSW Children's Court in Parramatta the Commission was told that a court is considering the use of technology to assist children and young people to remember their bail conditions, such as the use of text message reminders about curfew times.⁵⁸⁴ The cost of these initiatives, it might be thought, would readily be offset against savings in police time and court adjournments. These initiatives require further discussion between stakeholders such as police, the court and legal aid bodies.

Finding

In some cases decision makers granting bail do not ensure sufficiently that:

- **young people understand the conditions of their bail and what is required of them, and**
- **the parent or responsible adult with the child understands the bail conditions and what is required of the young person.**

Recommendation 25.16

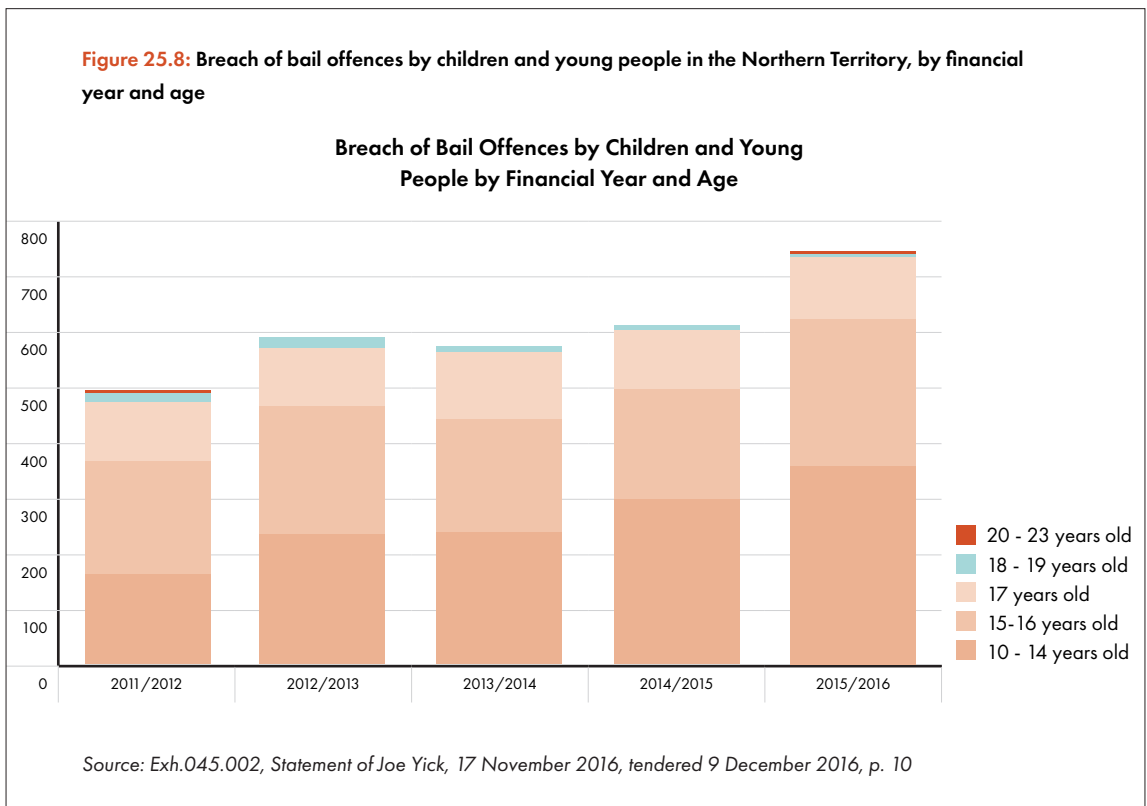
Territory Families investigate the development of electronic means of explaining bail and reminding young people of their bail obligations.

Enforcement of bail conditions

Criminalising breach of bail

Following an amendment to the *Bail Act* in 2011, it is an offence punishable by up to two years imprisonment for a person to breach bail.⁵⁸⁵ Prior to the amendment, breach of bail was not a separate offence.⁵⁸⁶

Figure 25.8 illustrates the number of breach of bail offences by young people up to the age of 24 since the 2011 amendment introducing the breach of bail offence.⁵⁸⁷ It shows that the younger a person is, the more likely they are to breach their conditions.



In the first year following the introduction of the offence of breach of bail, 20 young people received an order of detention for breach of bail.⁵⁸⁸ This figure has steadily risen, and in 2015–16, 94 young people received an order of detention for breach of bail.⁵⁸⁹

Of the children and young people charged with breach of bail since 2011, 91% have been Aboriginal.⁵⁹⁰ Table 25.13 shows that over the period 2011 to 2016, breach of bail offences have been increasing for Aboriginal children and young people but declining for their non-Aboriginal counterparts.⁵⁹¹

Table 25.13: Breach of bail offences for children and young people in the Northern Territory, by Aboriginal status, 2010–11 to 2015–16

	Female		Female Total	Male		Male Total	Grand Total	Percent Female	Percent Indigenous
	Indigenous	Non-Indigenous		Indigenous	Non-Indigenous				
2010/2011	1	2	3	28	3	31	34	9%	85%
2011/2012	78	4	82	349	61	410	492	17%	87%
2012/2013	61	9	70	452	68	520	590	12%	87%
2013/2014	83	6	89	434	51	485	574	16%	90%
2014/2015	115	8	123	450	37	487	610	20%	93%
2015/2016	185	11	196	519	26	545	741	26%	95%
Grand Total	523	40	563	2232	246	2478	3041	19%	91%
% change	137%	175%	139%	49%	-57%	33%	51%		

* Note that Breach of bail was not an offence until 16 May 2011. At one breach of bail event on a single day may be recorded against multiple matters for which the defendant has bail. Breach of bail is counted once per individual per day, no matter how many breach of bail records exist for that day.

² Financial year of the offence

³ Measured as the change from 2011/12 (the first full financial year) to 2015/16.

Source: Exh.045.002, Statement of Joe Yick, 17 November 2016, tendered 9 December 2016, Corrected information Table b

The consequences criminalising all breach of bail can be counterproductive.⁵⁹² It criminalises conduct that is not, of itself, criminal, such as not residing at a prescribed address. It can also lead to the entrenchment of children and young people in the youth justice and detention systems if they are detained as a result.⁵⁹³ A child may be detained for breach of bail, and subsequently found not guilty of the original charge. The Commission understands that there is no evidence that making breach of bail a crime deters young people from offending. The Northern Territory Police has noted that it has not reduced offending.⁵⁹⁴

Importantly, the criminalisation of breach of bail can lead to the detention of children and young people who would otherwise not be detained. The Commission heard from a CAALAS lawyer that it is not unusual for a child or young person with no criminal history and one incident of substantive offending to start spending significant periods of time in custody and detention as a result of breaching bail conditions.⁵⁹⁵ The young person also ends up with more criminal charges and a large amount of victim's levies that they may not be able to pay.⁵⁹⁶ Under the *Victims of Crimes Assistance Act* (NT) a levy of \$50 is imposed on a child who is found guilty of an offence but not imprisoned for that offence.⁵⁹⁷

Evidence was provided to the Commission from the Criminal Justice Research and Statistics Unit of the Northern Territory Department of the Attorney-General and Justice that 54% of youth apprehensions between 2011 and 2016 where breach of bail was the only offence resulted in police bail being refused.⁵⁹⁸ This means that children and young people were being refused bail as a result of breaching conditions such as curfew, rather than reoffending.

DB, who was in the care of the Department of Children and Families, started getting into trouble with police around the age of 12. Many of DB's placements were in residential homes. DB set out a number of times she was arrested for breach of bail while in residential care. On some occasions, she was also charged with assault after the carers called the police. DB recalled she was 'in and out of Don Dale all the time'.⁵⁹⁹

- '... when I was 12 I was breached because I didn't stay with the carer while I was at the shops. The Police arrested me and brought me to court in custody.
- In [REDACTED] I was breached because I couldn't find the carer for a lift home from the shops and they said I ran away. The Police arrested me and brought me to court in custody.
- In [REDACTED] I was breached because I wouldn't go to school and for running away. I did run away but it was because the carer called police about some other incident at placement and I didn't want to be arrested. The Police arrested me and brought me to court in custody.
- In [REDACTED] I was breached because I stayed out later than my curfew. My curfew was at 7.30pm and I went out at 8.50pm and came back at 10.30pm. The Police came to my placement at 1.30am and arrested me and brought me to court in custody.
- In [REDACTED] I was breached because I was away from placement and was breaking curfew. The Police came at 5.25am the next day and arrested me.
- In [redacted] I was breached for breaking curfew. Police came at around 11.15pm the next day and arrested me.'

The Commission received submissions from experienced legal practitioners that the offence of breach of bail should not apply to children and young people in the Northern Territory.⁶⁰⁰ The Deputy Chief Executive Officer of Territory Families told the Commission that she would support the decriminalisation of breach of bail as it is a key driver of remand for children and young people in the Northern Territory.⁶⁰¹

A range of different approaches have been considered or taken within Australia as detailed below.

- In its 2013 report *Bail and Remand for Young People in Australia*, the Australian Institute of Criminology recommended that bail legislation distinguish between 'technical' breaches of bail and 'criminal' breaches of bail, and that only criminal breaches of bail should be an offence under bail legislation. On this approach, technical breaches of bail are acts that breach bail conditions, but would not otherwise constitute a criminal offence. Criminal breaches of bail are acts that would be criminal irrespective of whether the person committing them is on bail.⁶⁰²
- In Queensland, which has no offence for breach of bail for children or young people, the first breach is dealt with by informal warning and engagement with the family. A further breach causes a formal written warning, and contact with the family or the carer concerning the breach. If this is unsuccessful the young person is brought before the court for evaluation of the reason for the breach.⁶⁰³

- In NSW, breach of bail is an administrative provision. An alleged breach allows the child or young person to be brought before a court to determine whether a breach has occurred and if so, the consequence of that breach. Revocation of existing bail is an option, but a further charge only occurs if the young person fails to appear.⁶⁰⁴

In all jurisdictions in Australia, including jurisdictions where breach of bail is not a criminal offence, it is lawful for police to arrest a child or young person who is believed to be in breach of their bail conditions to go back before the court for their bail to be revoked.⁶⁰⁵ Police are able to monitor or intervene where there has been a lack of compliance with a bail condition notwithstanding, the absence of legislation making breach of bail a criminal offence.⁶⁰⁶ In jurisdictions where breach of bail is not an offence, it means that children cannot be charged with additional offences if they have only breached the conditions of their bail.

If the Northern Territory were to decriminalise breach of bail, there are still consequences for children and young people breaching bail without adding to their criminal history. As in other states, children and young people could be given a warning, be arrested or receive a court summons where they can have their bail revoked without accruing further criminal charges.

Police monitoring and enforcement

*'I remember once when I was 14 being on bail and was at the show, the police seen me and the paddy wagon followed me all the way to Palmerston. I got off the bus, looked at the bus timetable and the police officer said: [AQ] you got five minutes to get home. I ran all the way home. I saw the police drive past. I got home. I was puffing. They drove up to my place. I was in the driveway, they pulled into my yard and said 'thank you'. I remember this incident because I felt like I was always being looked at by police even if I was not doing anything wrong, I felt like I had police attention all the time.'*⁶⁰⁷

Vulnerable witness AQ

Judge Oliver noted that frequent checks throughout the night by police to check if the young person is observing a curfew can alienate the child or young person and their family, disrupt sleep and school attendance and cause trouble for them at home.⁶⁰⁸

The Commission was told that some families experienced multiple police checks throughout the night, disrupting the family and leaving them feeling 'harassed'.⁶⁰⁹ NTLAC, in its submission, reported that its staff in Tennant Creek were aware of children and young people regularly being woken up at 2am or 3am, impacting on school attendance and concentration.⁶¹⁰ It noted that disruptive curfew checks, which are typically one of the few interactions a child or young person has with police, can affect relationships between children and young people and police and authority figures more generally.⁶¹¹

'The ... police would come to my house and check my curfew, a lot of the times it was either really late at night or really early in the morning, which would mean that me and my dad would get woken up by this.'

Vulnerable witness AS⁶¹²

A senior legal practitioner told the Commission one male youth was subject to multiple curfew checks throughout the night from the police despite the fact he was wearing an electronic monitoring device.⁶¹³

The Commission recognises the police and community interest in ensuring that bail conditions are complied with, and further understands that curfew conditions may be relevant to the management of youth activity at night by the police. Nevertheless, unless there is a demonstrated need for frequent checks for particular young people, attending family homes very late at night should be avoided. The President of the NSW Children's Court told the Commission of the practices followed in NSW in relation to the use of curfews:

*'[O]ne of the things in the last five years that's happened is that we are imposing less curfews or less onerous curfews, we are putting conditions on those curfew requirements that prevent the police from knocking on the door five times a night or at 3 o'clock in the morning. So we are limiting the number of times they can visit those premises with a view to seeing whether the child is complying with their curfew provisions, because historically the police used to go around two or three times a night seven nights a week, which is not only annoying the parents but annoying the neighbours. So we put a stop to that sort of behaviour and, to their credit, the police are actually being much more sophisticated in the way they enforce these curfew provisions, for example, and that's resulted in a reduction in our remand population.'*⁶¹⁴

Electronic monitoring

One potential condition of bail is requiring a child or young person to wear an electronic monitoring device, which allows police to monitor the person's location to ensure that they are complying with the conditions of their bail. The *Bail Act* was amended in March 2017 to expand of the use of electronic monitoring as a bail condition.⁶¹⁵

The Commission can see advantages and disadvantages in using such devices. They may reduce the prospect of a child or young person being remanded in custody, and limit over-frequent or intrusive night time checks by police. Steps could also be taken to monitor or limit their use by the court.

On the other hand, these devices are potentially stigmatising for the child or young person, and as a result may affect their rehabilitation.⁶¹⁶ Vulnerable witness CE said:

*'I was given an electronic monitoring device a couple of times but I took it off. I felt a bit shamed by wearing the device. People noticed it. But I could probably deal with it better now.'*⁶¹⁷

On balance the Commission considers that the use of electronic monitoring devices on children and young people should only be considered as an option of last resort, where the only alternative measure is to detain the young person.

Recommendation 25.17

Electronic monitoring conditions should only be considered when there is no other alternative to remanding the child or young person in detention.

Arrest for breach of bail

In at least some instances, police appear to have used arrest powers for breach of bail where a summons could have been used.⁶¹⁸ The Office of the Northern Territory Director of Public Prosecutions (DPP) described an instance in which a young person breached a residential condition for a few days, then returned home and became compliant again, after which the police arrested the young person and took him into custody to appear in court for breach of bail.⁶¹⁹

The Commission was also told that police have sometimes arrested young people for breach of bail in error, for example, where the young person is no longer on bail, or where a condition no longer applies. The DPP in May 2017 noted that such cases occurred weekly over February to April 2017. The DPP has responded by introducing a system to provide police with a record of all court-ordered changes to bail for young people. This appears to have led to improvement.⁶²⁰

Arrest powers should only be used for breaches of bail in situations where the breach involves another instance of offending, or where the breaching conduct clearly indicates a materially increased risk of non-attendance at court or further offending.

Findings

Police have on occasions arrested children and young people for breaches of bail when a summons could have been issued.

Police have on occasions arrested young people for breach of bail when they were no longer on bail or where their conditions had been varied.

Recommendation 25.18

A formal administrative arrangement between the Office of the Director of Public Prosecutions and Police be developed to update bail and bail condition information to avoid erroneous arrest.

Recommendation 25.19

The *Bail Act* (NT) be amended:

1. to provide that a youth should not be denied bail unless:
 - a. charged with a serious offence and a sentence of detention is probable if convicted
 - b. they present a serious risk to public safety
 - c. there is a serious risk of the youth committing a serious offence while on bail, or
 - d. they have previously failed to appear without a reasonable excuse
2. to require that when imposing bail conditions the police and courts take into consideration:
 - a. the age, maturity and circumstances of the young person, including their home environment, and
 - b. the capacity of the young person to comply with the conditions
3. to require that at the time bail is granted to a young person, each bail condition and the consequences of breach of that condition be explained to the young person, taking steps to ensure their understanding, using interpreters or modified means of communication if necessary
4. to exclude children and young people from the operation of section 37B (offence to breach bail), and
5. to give police the power to:
 - a. issue an informal or formal written warning to a young person believed to have breached any bail condition, or
 - b. where a breach has occurred more than once, issue a summons to a young person who has breached bail requiring them to come before the court to determine the consequences of any breach.

Recommendation 25.20

The Commissioner of Police issue a Directive setting out:

- guidelines for the police in relation to curfew checks, including the circumstances in which they should be used or avoided, and their frequency, and
- that police only arrest a child or young person for breach of bail where the breach occurs as a result of or in connection with further offending and after police have considered and rejected as inappropriate issuing a summons, or where the breaching conduct clearly indicates a materially increased risk of non-attendance at court or further offending.

BAIL SUPPORT PROGRAMS AND BAIL ACCOMMODATION

Bail for a child or young person works best when they have the support of an adult who can help them comply with any bail conditions, and keep out of trouble. Many children and young people do not have such a person to help them and bail support programs are designed to provide some of that support. The immature reasoning of a young person whose sense of the unfairness of not having bail can be seen in vulnerable witness BF's comment:

'I ended up in custody because sometimes there was no one to bail me out. When I was at Don Dale, I would see mates coming in for doing things that were way more serious, and they would get out before me. I started thinking that if I was going to be locked up, it might as well be for something that was worth getting locked up for.'

The nature of the assistance provided in a bail support program will depend on the needs of the child or young person. For some it might involve meeting with a bail support caseworker every few days, for others it might involve staying at bail support accommodation.

Bail support programs, particularly accommodation programs, are an expense to the government, but are usually less so than holding a young person in secure detention.

As at March 2017, almost every other jurisdiction in Australia has some form of a bail support program, with the exception of South Australia and the Northern Territory.⁶²¹ This has been described as a 'huge gap in the system'.⁶²² The Deputy Chief Executive Officer of Territory Families told the Commission that 'the provision of support in completing bail orders can play an important role in reducing rates of custodial remand.'⁶²³

'A recent national study of bail support programs identified a number of key 'drivers' of remand for young people. A number of these are particularly relevant to the Northern Territory and include ... a lack of suitable accommodation for bail purposes ...'

Deputy Chief Executive Officer of Territory Families⁶²⁴

There are currently no supported bail accommodation services for children and young people in Darwin, apart from a homeless youth refuge which has limited capacity, only accepts young people aged 15 years or over, and will not accept anyone with onerous bail conditions.⁶²⁵

'The reality of bail options are that there are none in Darwin. This is acutely problematic for young people who are arrested in remote communities, remanded in custody and flown to Darwin.'

Lawyer, Northern Territory Legal Aid Commission⁶²⁶

The Alice Springs Youth Accommodation and Support Services (ASYASS) is funded by the Northern Territory Department of Health through funding for the homeless and operates a crisis refuge service for youth aged between 14 and 17.⁶²⁷

ASYASS provides early intervention, intensive case management and life skills development for those who reside at their homes.⁶²⁸ Children and young people are assisted with education and employment, parenting skills, life skills and can be linked with outreach services as required.⁶²⁹ The service cannot always meet demand.⁶³⁰

The Northern Territory Government has recognised for some years that a bail support program would be beneficial, but such a program has not proceeded due to a lack of funds. The Commission was told that the funds that might have been used for that purpose were instead used to offset an overspend in the detention centre budget.⁶³¹

During the course of this Commission the Northern Territory Government committed to introducing bail support including accommodation facilities. The Commission understands that an interim Youth Bail Support Accommodation service is now being delivered through ASYASS.⁶³²

The Commission was told that Territory Families are in the process of implementing or planning the implementation of a number of measures designed to provide alternatives to youth detention, including establishing a Bail Support Advisory Service, Bail Supervision and Supported Bail Accommodation.⁶³³ This is expected to include developing bail accommodation facilities at Yirra House in Darwin and at The Gap in Alice Springs, the scoping of existing facilities at Nhulunbuy and Tennant Creek, securing a facility in Katherine and facilities for girls in Darwin and Alice Springs.⁶³⁴ The Commission was told that it is the aim of the Northern Territory Government to transition to an arrangement in which these facilities will be operated by Aboriginal controlled organisations.⁶³⁵ An effective bail support program, including bail accommodation, should:⁶³⁶

- be available to support young people from the moment they are granted bail
- operate as a 24-hour service
- be available to young people irrespective of whether they have entered a plea of guilty and are awaiting sentence or not
- have the capacity to deal with young people who may have complex needs
- be designed to include wrap around services, such as education, housing, employment and health
- operate with clear and effective lines of communication to the courts, police, families and other interested parties
- operate in a culturally competent manner
- collect high-quality data about its operations and make that data available for formal evaluation of its effectiveness
- have a specialist youth worker who works with the young people and their families, among other things, to support them in arranging services and provide practical life skills support such as attendance at Centrelink, obtaining a driver's licence and purchasing clothing, and
- develop bail support plans for the young people, through a specialist youth worker engaging with the young person and their family.

In their submissions to the Commission, CAALAS and NAAJA both advocate for models of bail support programs which include 'wrap-around' services such as those provided by the Conditional Bail Program in Queensland and ASYASS in Central Australia.⁶³⁷

The Commission was told, and accepts, that bail accommodation should strive to approximate a home environment. The Chief Executive Officer of ASYASS recommended bail homes being located in ordinary houses rather than at an identifiable facility.⁶³⁸ ASYASS's current facilities are houses located across Alice Springs.⁶³⁹ They are designed to be normal and non-stigmatising home environments, with bedrooms, lounge rooms, kitchens and gardens.⁶⁴⁰ The Chief Executive Officer of ASYASS recommended that each house should have approximately four beds, and if the numbers of young people needing accommodation increase then more small facilities should be opened rather than increasing their capacity. In her view the bail accommodation design proposed by Territory Families for a large facility with secure windows, unbreakable beds and a concrete fit-out would resemble a detention facility.⁶⁴¹

The Commission holds some reservations with respect to facilities the Northern Territory Government may be proposing to use – that is, Yirra House in Darwin and the facility at The Gap in Alice Springs. Neither could be described as homelike. There may be a risk that these will be set up and operate as institutional facilities, even as de facto low security detention facilities. This would be a highly undesirable outcome.

Finding

The Northern Territory has inadequate bail support services, including bail accommodation services, for children and young people.

Recommendation 25.21

Bail support services for children and young people be provided in Darwin, Alice Springs, Tennant Creek, Katherine and Nhulunbuy, together with other such locations as are appropriate, which include the following features:

- 1. accommodation services in small homelike residences**
- 2. bail support plans developed with a specialist youth worker, covering education, employment, recreation and sporting goals**
- 3. the engagement of the young person and their family, where possible, in the development of the plan, and**
- 4. the availability of, and referral to, services and practical life skills support to assist the young person.**

Recommendation 25.22

The Northern Territory Government, in the establishment and delivery of bail support services, give priority to working with Aboriginal community controlled organisations.

COURT ISSUES AND THE WAY FORWARD

The final stage of the criminal justice process leading to detention occurs in the courts, where the charge is determined and a sentence imposed. In Australia, this is the case for children and young people just as it is for adults. However, recognising that children are not the same as adults as, at the very least, they are developmentally and emotionally immature and more apt for rehabilitation, courts dedicated to children have been created in most jurisdictions in Australia.

The courts also adjudicate on children in a different way to adults. Courts will decide if a child needs care and protection if the natural carer – the family – is unable to do so. This may, and often does, lead to an order for the removal of a child from his or her home. This jurisdiction is exercised elsewhere in Australia by the same court that deals with young offenders. In the Northern Territory, this is the Family Matters Division of the Local Court.⁶⁴² Since a high percentage⁶⁴³ of young offenders in the Northern Territory are, or have been, subject to some form of child protection order, the Commission recommends that care and protection matters be heard in the same court which hears criminal proceedings against children and young people. See Chapter 35 (The crossover of care and detention).

While the Northern Territory Youth Justice Court has some elements of a separate court, it is not operationally separate from the Local Court.⁶⁴⁴ It has no chief judge or president and all Local Court judges are judges of the Youth Justice Court.⁶⁴⁵ Although it has a managing judge in Darwin, the court sits in its own premises, but elsewhere it is housed within the Local Court. The *Youth Justice Act*, which came into force on 1 August 2006, continued the Juvenile Court as the Youth Justice Court, which had been established in 1984 as the Northern Territory's first court for children.⁶⁴⁶

A specialist children's court has many benefits. It allows judges dedicated to proceedings involving children and young people to build greater expertise and experience. It ensures a clear separation between cases involving children and adults. It allows the court to develop procedures and services to meet the different objects and principles of youth justice. It allows for consistency in approach by experts in this area of law. Importantly, as many young offenders are under child protection orders, a specialist court can allow a more comprehensive understanding of a child's circumstances, and, if managed early enough and with appropriate supports, may deflect the child from offending or further offending.

The Commission had the benefit of discussions with Northern Territory Supreme and Local Court judges at a roundtable facilitated by the Chief Justice and the Chief Judge of the Local Court. Many practical difficulties in the application of the *Youth Justice Act* and the *Care and Protection of Children Act* (NT) were ventilated in the discussions and the Commission is very grateful to everyone who participated. The Commission in its public hearings heard from the Presidents of specialist children's courts in New South Wales, Queensland and Western Australia.⁶⁴⁷ Judge Becroft, now New Zealand's Children's Commissioner but formerly Principal Youth Court Judge of New Zealand also gave evidence before the Commission. The Commissioners visited the Youth Court in South Australia and spoke with the Judge of the Youth Court.⁶⁴⁸ The Commissioners also visited the Children's Court in Melbourne and Parramatta in New South Wales and learnt how the specialist Children's Koori Court operated.⁶⁴⁹ All judges were unanimous in advocating for a specialist children's court separate from courts which also heard adult matters and for a head of jurisdiction responsible for the administration and direction of the court. The Commission wishes publicly to acknowledge their willingness to participate in this enquiry.

The smaller jurisdictions of Tasmania and the Australian Capital Territory, like the Northern Territory, do not have distinctly separate children's courts. They operate within the wider ambit of the Magistrates Court with their own legislative provisions. Even where a state has a separate children's court, because of the relatively small populations across large distances, all judicial officers are members of the children's court and sit in that jurisdiction when outside the capital cities.

This chapter discusses some of the shortcomings in the application of the *Youth Justice Act* as they relate to criminal proceedings against children and young people and recommends some changes.

The human rights framework

The principles and procedural safeguards set out in the international instruments, to which Australia is a party, that are identified as necessary for the operation of a court administering youth justice are summarised below.

1. Youth justice laws, procedures, authorities and institutions are to be specifically developed for, and be applicable to, children.⁶⁵⁰
2. Any decisions concerning a child or young person are to be made in the best interests of that child or young person, with youth justice processes to be aimed at rehabilitation and wellbeing.⁶⁵¹
3. All children and young people appearing in court have the right to an independent and fair trial, including the right to be heard.⁶⁵²
4. Youth justice matters are to be finalised quickly, with children and young persons prioritised for release on remand.⁶⁵³
5. Youth justice proceedings are to be held in closed courts.⁶⁵⁴
6. The court is to have due regard to the child or young person's background and circumstances.⁶⁵⁵
7. Children and young people are to be protected and facilities where necessary (particularly in the case of children or young persons with disabilities) are to be made available.⁶⁵⁶
8. There is to be an emphasis on diversion from the youth justice system through all stages of the charging and court process.⁶⁵⁷
9. Detention of children and young people should occur only as a last resort, with a focus on maintaining the family unit.⁶⁵⁸

The *Youth Justice Act* in its statement of principles and specific provisions is compatible with most aspects of this human rights framework.

The *Youth Justice Act* is underpinned by principles that specify children and young people should be dealt with in a way that acknowledges their particular needs and is consistent with their age and maturity.⁶⁵⁹ Children must be held accountable for their actions and encouraged to accept responsibility.⁶⁶⁰ The *Youth Justice Act* enshrines that the punishment of a young person must be designed to afford them an opportunity to develop a sense of social responsibility and allow them to be reintegrated into the community.⁶⁶¹ The principle of detention as a last resort, for the shortest appropriate period, is also highlighted in the *Youth Justice Act*.⁶⁶²

However, there are some serious departures from international standards and from those applied in other Australian jurisdictions in the *Youth Justice Act*. Those are the standards which require criminal proceedings to be in closed court and a prohibition on the publication of material identifying young offenders. Under the *Youth Justice Act*, the court decides if closing proceedings is in the young person's best interests.⁶⁶³ The court may order that proceedings in the Youth Court not be published.⁶⁶⁴ On the other hand, proceedings in the Family Matters Division of the Local Court concerning the wellbeing of children in care and protection proceedings are held in closed court and the publication of any material relating to them is prohibited.⁶⁶⁵ These issues are discussed further below.

Although, with the above exceptions, the principles and the more detailed provisions enunciated in the *Youth Justice Act* are generally sound and could accommodate most, if not all, therapeutic approaches to youth justice, their practical application has been hampered in many cases by a failure to engage with some of its provisions. This is due to unrealised implementation, inadequate funding and, in some instances over the relevant period, the want of a cohort of judges, prosecutors and defence lawyers trained and interested in the wider issues surrounding youth justice. There have been, and are, notable magistrates, judges and legal practitioners dedicated to achieving optimum outcomes for children who are the subject of criminal proceedings but who have been hampered in doing so largely by the want of suitable programs for the rehabilitation of young offenders and resourcing of pre-sentence conferences.

Some of these areas of weakness are being addressed by the Northern Territory Government but more can be done.

Separate court facilities

Since February 2016, both the Youth Justice Court and the Family Matters Division of the Local Court sit in a purpose-built facility in Darwin separate from the adult court. The courtroom is set up in a round table style. This is a more inclusive and less overwhelming space for children, young people and their families and carers than a traditional courtroom with its elevated positioning of the judge, with a dock and the separation of advocates from others involved in the proceedings.

Before this, proceedings for children and young people were dealt with in a courtroom at the main Darwin Local Court. While court Practice Directions existed to prevent youth offenders from mixing with adult offenders,⁶⁶⁶ the Commission understands there were no separate entrances for children and young people, and those in custody were in holding cells that could be seen and heard by adult offenders.

One vulnerable witness told the Commission about being kept in holding cells adjacent to adult cells prior to a court appearance:

*'It was loud, like, rough. We was getting sworn at. They [adult prisoners] threatened us. They talked – like talked back to us, and that made us feel scared sort of. Some of the officers would say they will put us in with them and that if we get smart back, because we would get cheeky, because they were swearing at us ... It was a little bit intimidating. It was, like, scary and that. Didn't really – you know, didn't make us feel too good.'*⁶⁶⁷

The new premises in Darwin allow children and young people to be kept in holding cells apart from adult offenders.

The Commission received submissions that the lack of youth-specific court facilities in Alice Springs is of particular concern.⁶⁶⁸ In Alice Springs, the Youth Justice Court generally sits in designated court rooms in the main Local Court building, which is also used for adult offender matters.⁶⁶⁹ Children and young people are held in cells near adult prisoners.

Both Territory Families and CAALAS expressed support for a separate Youth Justice Court facility in Alice Springs.⁶⁷⁰ CAALAS suggested that the lack of a specialist youth court has contributed to a punitive approach to youth justice in Alice Springs.⁶⁷¹ The Northern Territory Government told the Commission that in 2015–2016 the Youth Court recorded 2,300 lodgements. While 1,200 were in the Darwin region, 833 were in the Alice Springs region. During 2015–16, the Youth Court recorded 15,704 listings of which 6,895 were in the Darwin Region and 4,244 were in the Alice Springs region. This suggests that Alice Springs could support a separate Youth Court facility.

The *Youth Justice Act* imposes responsibility on the Minister to direct the Youth Justice Court to sit in particular locations and in any approved building. The Minister is to ensure that the facilities are adequate and appropriate and *'as far as practicable are separate from the places in which proceedings'* for adults are held.⁶⁷² The *Care and Protection of Children Act* imposes a stricter requirement on the Minister, providing that the Minister must ensure that the place where the Family Matters Jurisdiction is exercised is *'separated from places in which other proceedings'* are being conducted.⁶⁷³ Remoteness and the small size of many towns in the Northern Territory impose practical limitations on implementing these obligations. However, the Commission is of the view that an immediate first step as a matter of priority is to establish a separate Youth Justice Court facility in Alice Springs.

In Tennant Creek and Katherine, two of the other main court venues in the Northern Territory, proceedings for children and young people are conducted in the same courthouse as adult proceedings.⁶⁷⁴ The Commission heard that there was an attempt to list matters for children and young people on separate days to adult matters and that in Katherine a hearing room was used rather than the main courtroom to create a more appropriate environment.⁶⁷⁵ Child protection matters are heard in the Local Courts at Darwin, Katherine, Alice Springs and Tennant Creek⁶⁷⁶ and while in each of those places there is a specific list day, urgent applications and contested hearings can be listed on any day the Court sits.⁶⁷⁷ This means, particularly for urgent matters, child and adult matters may be listed on the same day.

The Commission heard from the President of the New South Wales Children's Court of the barriers to having state-wide Children's Court facilities in New South Wales and this is much the same experience in other states. In part, this reflects the need for all the associated personnel and services involved in a youth justice or child protection hearing, such as police prosecutors, legal aid, Aboriginal legal services, support services and relevant government representatives to be in court.⁶⁷⁸ It is also indicative of the many towns with relatively small populations that the court visits. The situation is particularly challenging when dealing with the remoteness of small centres in the Northern Territory.

The Commission understands that when Local Court judges travel to bush courts in remote and regional locations, it is difficult to separate children and young people from adult offenders due to

a lack of available facilities and sitting times. However when the court sits for more than one day, it may be possible to hear youth matters on a separate day.⁶⁷⁹ The 2011 Carney Report noted that:

In regional towns and “bush courts” separation of young offenders is not practicable and, at best, occurs when youth matters are listed at a particular time, followed or preceded by adult matters. Separation is only achievable by listing youth matters at a separate time and day, which is not always possible. There is little that can be done by government to improve the situation in bush courts without a significant injection of expenditure.⁶⁸⁰

The evidence before the Commission suggests that child protection matters are not dealt with in bush courts.⁶⁸¹ This raises other issues, including that parents involved in care and protection proceedings may not be able to attend court if they live remotely and that there is limited access to adequately funded legal representation for families from remote areas.⁶⁸² Orders can be made in the absence of parents or responsible adults where they have failed to attend or respond to an application, although the Commission understands that in these circumstances a separate legal representative is generally appointed for the child.⁶⁸³

The Commission recognises the difficulty of separating children and youth matters from adult matters for bush courts and the manner in which families are likely to gather together in communities but, at a minimum in those locations, children and youth matters should be heard on separate days, or at least, in separate blocks of time to adult matters.

If the Commission’s recommendations concerning police diversion are implemented, there is a real likelihood that there will be fewer young offenders in court and the demand for dedicated youth court facilities will be much reduced. Care and protection proceedings can be delivered effectively in much less formal premises.

Findings

Contrary to sections 4(r) and 48 of the Youth Justice Act (NT), youth justice proceedings in the Northern Territory are not separated as far as practicable from adult proceedings in all instances.

Contrary to section 92 of the Care and Protection of Children Act (NT), care and protection proceedings in the Northern Territory are not separated from other proceedings in the Local Court in all instances.

Recommendation 25.23

A separate court venue in Alice Springs for proceedings under the Youth Justice Act (NT) and Care and Protection of Children Act (NT) be established as a matter of urgency.

Recommendation 25.24

In other locations where the Youth Court and Family Matters Jurisdiction of the Local Court conduct proceedings where there is no separate facility, such as Katherine and Tennant Creek, proceedings under the *Youth Justice Act* (NT) and the *Care and Protection of Children Act* (NT) be scheduled on days or times when no adult matters are scheduled, or alternatively other premises be used where possible to hear those matters or ancillary proceedings such as family group conferencing to give better effect to sections 4(r) and 48 of the *Youth Justice Act* and section 92 of the *Care and Protection of Children Act*.

CLOSED COURT

It is universally accepted that justice must be administered openly and transparently. This is true for adults but different considerations apply for children and young people whose prospects for rehabilitation are greater. It is well recognised that rehabilitation is seriously compromised by undue publicity and early identification as an offender. These propositions are acknowledged in the Beijing Rules.

Contrary to these standards, proceedings in the Northern Territory in the Youth Justice Court are by default held in open court⁶⁸⁴ and the names of children and young offenders may be made public. The court can be closed if *'it appears to the Court that justice will be best served by closing the Court'*.⁶⁸⁵ The court can order that information relating to proceedings not be published.⁶⁸⁶ Of the discretion to restrict publication of proceedings, the Northern Territory Court of Appeal has noted:

*[G]ood reason must be demonstrated to justify suppressing the identity of a child offender. However, when a court is asked to exercise its discretion, it is important to weigh in the balance the fact now almost universally acknowledged by international conventions, State legislatures and experts in child psychiatry, psychology and criminology, that the publication of a child offender's identity often serves no legitimate criminal justice objective, is usually psychologically harmful to the adolescents involved and acts negatively towards their rehabilitation.*⁶⁸⁷

No other jurisdiction in Australia allows similar publication of youth justice proceedings.⁶⁸⁸

The Commission heard that media reporting identifying young offenders can affect their prospects of rehabilitation, their sense of identity and their connection to the community.⁶⁸⁹ The impact can be further exacerbated by posting an offender's name and photograph on social media,⁶⁹⁰ which can lead to people seeking out a young offender. One young person told the Commission how he felt when his name was published:

*'This made me feel like everybody knew that I was a criminal and not a person ... It feels like the public can see right through me ... I began to feel like I was a lost cause.'*⁶⁹¹

Research also indicated that this 'naming and shaming' approach had particularly adverse effects on young people:

[A]n open forum precludes or severely hampers the ability of young people to

*participate fully in proceedings. In particular, because of potential embarrassment concerning the exposure of sensitive personal and family related information in a public courtroom setting, their ability to give full and frank instructions to their legal representatives is much affected. To speak of the need to expose children in trouble with the law to the 'full glare of publicity' in the interests of an open access to justice principle, as has been suggested in some legal circles in the Northern Territory, also runs counter to the well-established and research-based knowledge that most children mature out of crime if appropriately dealt with by the juvenile justice system.*⁶⁹²

There may be circumstances, such as protecting the safety of particular individuals, the community, or even the young person, that can best be served by identifying a young person, for example, after an escape. In this case, an application can be made to the court for leave to publish identifying material and the competing interests can be balanced.

A completely different approach is taken in child protection matters, which are held in closed court, open only to the child or young person, their parents, Territory Families and anyone with a direct and significant interest.⁶⁹³ Proceedings and their outcomes, and the names of the children involved, cannot be published without authorisation.⁶⁹⁴

The Commission considers that Youth Justice Court proceedings or any other court⁶⁹⁵ hearing criminal proceedings (including bail proceedings) involving a child or young person charged with an offence should take place in a closed court and their identities not publicly disclosed unless the court orders otherwise.

Findings

Contrary to the Beijing Rules to which Australia is a party, proceedings in the Youth Justice Court are open to the public and identifying material about youth involved in proceedings may be published.

Recommendation 25.25

Proceedings under the *Youth Justice Act* (NT) should be held in closed court, similar to child protection proceedings under the *Care and Protection of Children Act* (NT). The Court should retain a discretion to publish all or part of a proceeding upon application.

A SPECIALIST COURT, JUDGES AND TRAINING

Part 4 of the *Youth Justice Act* creates the Youth Justice Court as a separate court. The *Youth Justice Act* anticipates specialist judges by providing that judges of the Local Court may be appointed judges of the Youth Justice Court if, in the opinion of the Chief Judge, they have *'the knowledge, qualifications, skills and experience in the law and the social or behavioural sciences, and in dealing with children and young people and their families as the Chief Judge considers appropriate.'*⁶⁹⁶ Nonetheless, each Local Court Judge is a judge of the Youth Justice Court by virtue of that

commission.⁶⁹⁷ This is true in other jurisdictions in Australia with a separate children's or youth justice court.

The *Care and Protection of Children Act* created a Family Matters Division within the Local Court to deal with child protection proceedings. Family Matters Division proceedings are heard by a Local Court judge.⁶⁹⁸

The Commission heard of the value of professional development for those involved in specialist youth courts, including judges, so that decisions are informed by up-to-date knowledge of child development and behaviour, awareness of appropriate diversion programs and understanding of successful evidence-based research and outcomes in other jurisdictions.⁶⁹⁹ This was, it seems, the intention of the Northern Territory legislation, but as all Local Court judges do sit on youth proceedings, particularly when away from the principal area courts, it is important that all judicial officers have access to regular educational materials to help manage this specialist work. A Benchbook with a guide to the legislation, relevant articles and programs available in each region where the Court sits would be a useful tool for the judges and others such as prosecutors, defence lawyers and police.⁷⁰⁰

The Commission was told that the Darwin Youth Justice Court has become more specialised in its practice and judicial leadership. Legal practitioners have observed *'a marked shift in the training, resourcing, education and knowledge base of Youth Court Judges operating in the Darwin Youth Court over the last few years'* resulting in:

'A dramatic change in responses to dealing with youth involved in the criminal justice system, one largely driven to finding out what has happened to these youth and orders to try to assist them develop appropriately and responsibly. This new approach is more in line with the objects and principles of the [Youth Justice Act] and [Youth Justice Regulations]'.

However, current judicial practice in the Youth Justice Court does not appear to be adopting a uniform therapeutic and trauma-focused approach to youth justice. The Commission has heard that the administration and operation of Youth Court matters in the Alice Springs registry has been the subject of complaints about conduct and approach over many years. The following remarks were made to a young man appearing for sentence some years ago. They illustrate the failure by all concerned to understand what is entailed in effective youth justice:

'I accept that you might have had a difficult background but there are thousands of young people out in our community who have had difficult backgrounds and they don't break into other people's houses ... I still don't see the connection between having a difficult background and stealing and going into people's houses. No attempt has been made to explain that ... That's all to be glossed over in the usual poor child, had a bad background, give him some credit ... You go into a person's home, you steal their property, you rifle through their house, you go into detention, and that's a lesson that needs to be given to all youths of this town, and I don't care what their little backgrounds are, because it gives no excuse and no explanation as to why it is that you need to steal.'⁷⁰¹

For judges who deal principally with adult offenders, the prevalence of neurodevelopmental

disorders in young people presenting in the criminal jurisdiction as discussed in Chapter 3 (Context and challenges) may not be well known. Courts need to be alert to the extent to which a child may be criminally responsible for their offending conduct where chronological age is often well in advance of mental age capacity. The widespread prevalence of physical disability – the most usual is compromised hearing – together with a poor or very limited English aptitude and reduced literacy among the cohort of young offenders in the Northern Territory dictates the need for a careful assessment of the young person before the court. This requires knowledge of the research in these areas as well as dedication to delivering an outcome that will likely lead to rehabilitation and consequent community safety. At a practical level, the Commission heard that many young people coming before the court had both hearing and English language deficits and that the availability of Aboriginal language interpreters as well as aids for hearing were often not available. Although it is for the legal representatives of the young person to alert the court to any issues that may compromise the quality of justice, the court itself must be astute to ask about these things.

A new children's court should be established to give more complete recognition to the youth justice principles in section 4 of the *Youth Justice Act* and the importance of appointing judges with appropriate qualifications, skills and experience in law, social or behavioural sciences and in dealing with children and their families. It should be an operationally independent court led by a president who is, or is appointed as, a Local Court judge. The position should be an appointment by Executive Council. The functions of the president should be similar to those of the President of the Children's Court in NSW, which includes the extra judicial roles of meeting and conferring with community groups and advising the government on reform and resources.

Appointments to the court should involve consultation with the President and the Chief Judge of the Local Court.

The Northern Territory Government is actively considering the merits of a single act to cover *'both child protection and youth justice, and the establishment of a single specialised court for children and young people'*.⁷⁰²

NAAJA submitted that, similar to Western Australia's Children's Court President, a president of the Youth Justice Court in the Northern Territory should hear certain appeals from other Youth Justice judges, including bail appeals.⁷⁰³ The Commission is not persuaded that that proposal is suitable for the Northern Territory, which has only two levels of courts, unlike Western Australia where the President is a District Court judge and the other judicial officers who hear children's matters are members of the magistracy. This is also the situation in other Australian jurisdictions where there is a separate children's court with a president or dedicated head of jurisdiction.

In light of the workload in Alice Springs, and surrounding communities visited by the court, the Commission is of the view that a fulltime resident youth judge should be appointed to that jurisdiction. It is recognised that Local Court judges sitting in less populated centres may not be specialist youth judges. When, as is recommended, a president is appointed, coordination with the Chief Judge about rostering may achieve some promising outcomes. Additionally, all Local Court judges should be offered annual development in youth justice.

Legislation should be introduced to extend the present court's jurisdiction to hear and determine

care and protection matters currently dealt with in the Family Matters Division of the Local Court. This additional jurisdiction will entail a name change. The Commission understands that the Northern Territory Government is undertaking a review of both the *Youth Justice Act* and the *Care and Protection of Children Act* so that the detailed working out of these recommended changes can occur during that process. These broad changes will bring consistency with the rest of Australia and New Zealand.

Recommendation 25.26

All judicial officers in the Northern Territory be provided with access to seminars conducted by experts with particular emphasis on cognitive development, adolescent behaviour, communication with young people appearing in court and Aboriginal cultural competence.

Recommendation 25.27

A separate court be established independent of the Local Court to hear and determine those matters currently within the jurisdiction of the Youth Justice Court and the Family Matters Division of the Local Court.

Recommendation 25.28

A position of President of the new court be established. This position is to be an Executive Council appointment, carrying extra judicial powers and functions modelled on those conferred on the President of the Children's Court in NSW by section 16 of the *Children's Court Act 1987 (NSW)*.

Recommendation 25.29

The appointment of judges to the court include consultation with the President (of the new court) and Chief Judge of the Local Court and only those persons who reflect the qualities described in section 46(2) of the *Youth Justice Act (NT)* be appointed.

LEGAL REPRESENTATION

Pursuant to the CRC, a child affected by any judicial proceeding has the right to be heard either directly or through a legal representative.⁷⁰⁴ The child's participation in legal proceedings will depend on his or her maturity and capacity to understand the proceedings. The availability of

effective legal representation for a child involved in youth justice or child protection proceedings has a significant impact, in practical terms, on a child's ability to be heard. There is no guarantee of legal representation for young people under the *Youth Justice Act*, but the court may adjourn for legal representation to be provided if the court considers representation is needed.⁷⁰⁵ This contrasts with some other jurisdictions, such as Victoria, where the *Children Youth and Families Act 2005* directs that a child over the age of 10 years must be represented in protection proceedings, in bail proceedings where bail is opposed, and in all criminal proceedings.⁷⁰⁶

The Commission understands that children and young people are generally represented in criminal matters in the Northern Territory, primarily by NAAJA, CAALAS and NTLAC. Submissions made by NAAJA to the Commission were to the effect that quality legal assistance requires increased and continued investment in legal services.⁷⁰⁷ It is essential, if the inherent vulnerability of young people is to be recognised and the optimum outcomes for sound rehabilitation are to occur, that all children and young people appearing on criminal charges have legal representation, and that the organisations providing that representation to those without private lawyers, be adequately funded. This should be extended to opposed bail applications where a young person's capacity to assemble favourable submissions and conditions is particularly limited.

It is also important that children and young people who are the subject of an application in the Family Matters Division be provided with legal representation. Their interests will be different from those of their family and, if already in care, may not be adequately protected by their statutory guardians. NAAJA submitted to the Commission that in its experience, many caseworkers failed to ensure this occurred.⁷⁰⁸ This is best facilitated by Territory Families referring the child to an Aboriginal legal aid body or, for non-Aboriginal children, to NTLAC.

If the interests of children are to be adequately protected in either criminal or care proceedings, they must have *effective* legal representation. All children and young people should be able to receive a competent and prepared defence or representation from an appropriately experienced lawyer. Similarly, prosecutors need to be trained in youth justice. Specialist training for lawyers representing young people is recognised in international guidelines:

*Legal aid providers representing children should be trained in and be knowledgeable about children's rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding. All legal aid providers working with and for children should receive basic interdisciplinary training on the rights and needs of children in different age groups and on proceedings that are adapted to them, and training on psychological and other aspects of the development of children, with special attention to girls and children who are members of minority or indigenous groups, and on available measures for promoting the defence of children who are in conflict with the law.*⁷⁰⁹

Justice Hannam, formerly the Chief Magistrate of the Northern Territory, and Judge Johnstone, President of the Children's Court of New South Wales, told the Commission that this specialisation was '*critical to the successful operation of the Court*'.⁷¹⁰ In Queensland, a Children's Court Committee is developing an education program for the legal profession covering all aspects of appearing in the Children's Court.⁷¹¹ A Children's Court Benchbook was issued in June 2010 for use in its child protection jurisdiction. The current Children's Court Child Protection Proceedings Benchbook provides annotated legislation, articles and other useful references.⁷¹²

The Director of Public Prosecutions assumed responsibility from police prosecutors for all prosecutions in the Youth Justice Court in December 2013.⁷¹³ The Commission received submissions that concerns were raised with the Attorney-General at the time as experienced police prosecutors had made good connections with many of the young people and their families and had considerable practical experience.⁷¹⁴

Operational police in youth justice expressed regret at the loss of police prosecutors at the Commission's roundtable, and described some of the DPP prosecutors as far too inexperienced in both crime and youth justice matters.⁷¹⁵ These concerns endorse the need for specialist skills for everyone who works in this branch of the law.

A youth justice accreditation system should be a prerequisite for both defence and prosecution lawyers in a dedicated youth court and in the child protection jurisdiction. In urgent cases, this could be waived by the court. Whether accreditation should be the responsibility of the Attorney-General, the Justice Department, the Law Society or some other body is for others to decide. This would further ensure that no child or young person is detained or removed from their family because of a weakness or failure in their legal representation.

Recommendation 25.30

The *Youth Justice Act (NT)* and the *Care and Protection of Children Act (NT)* be amended to require all children and young people to be legally represented in contested bail and criminal and care and protection proceedings.

Recommendation 25.31

All legal practitioners appearing in a youth court be accredited as specialist youth justice lawyers after training in youth justice to include child and adolescent development, trauma, adolescent mental health, cognitive and communication deficits and Aboriginal cultural competence.

Recommendation 25.32

A Youth Proceedings Education Committee be established to develop and deliver a training program for Northern Territory legal practitioners in youth justice and care and protection. Membership to include a representative from the Supreme Court, Youth Justice Court (or equivalent), Territory Families, police, health, NAAJA, NTLAC, CAALAS and an academic expert in the field of youth justice.

RESPONSIBLE ADULTS

Where a child or young person appears before court for an offence, a 'responsible adult' in respect of that young person must attend the court and remain in attendance during proceedings.⁷¹⁶ The responsible adult must be identified by name to the court and ideally be seated close to the child during the proceedings. Responsible adults are defined broadly under the *Youth Justice Act* to include any person with parental responsibility for the child or young person, whether by contemporary social or Aboriginal customary law or tradition.⁷¹⁷ If they do not attend, the court may adjourn the proceedings so that they can attend, or it may continue in their absence.⁷¹⁸

Where a child is in the care of Territory Families, his or her biological parent cannot appear as the responsible adult, but may attend and participate, as invited, in the proceedings⁷¹⁹ and the young person is expected to be accompanied by a delegate of the Chief Executive Officer.⁷²⁰ The Commission heard much criticism of the quality of representation by some case workers from Territory Families who were said to be unfamiliar with the child's situation.⁷²¹ It is essential that caseworkers be reminded of the serious parental responsibilities vested in the Chief Executive Officer whom they represent, which entails attendance at court proceedings.⁷²²

Securing the attendance of a responsible adult can be particularly difficult if the young person is from a remote community and is appearing at court in Darwin, Alice Springs or a court far from home.⁷²³

The Commission heard that it was common for no arrangements to have been made, particularly for accused young people brought to Darwin from remote communities, for a responsible adult to attend or participate in proceedings via audio-visual link or telephone and that this was:

*'[A] frequent occurrence, which was compounded when NAAJA or NTLAC are not provided contact details or information on how to get in contact with the purported responsible adult and the youth does not know a parent or a family member's phone number. In such circumstances, the youth is often remanded in custody for the lawyer to try calling around or using community networks to try to locate family. The youth may be remanded for days or weeks on end.'*⁷²⁴

The burden falls on legal assistance organisations to attempt to find a responsible adult for the young person for which no funding is provided. NAAJA submitted that Law and Justice Groups are best placed to carry out this role in communities.⁷²⁵ The value of similar groups can be seen in the Community Justice Groups in Queensland, which have a formal role in providing sentencing advice to courts. There are about 50 of these groups from very remote and urban locations and they are regarded by their stakeholders, including police and the courts, as being a success.⁷²⁶ The Commission was told at the Judges' roundtable that on many occasions proceedings would go ahead without anyone close to the child attending.⁷²⁷

When police take a young person into custody there is an opportunity to obtain contact details for the child's responsible adult, but this may not necessarily be communicated to legal services or the court.

The requirement for responsible adult attendance can be waived if it is deemed unreasonable to expect this.⁷²⁸ The usual practice in such cases is to proceed without a responsible adult.⁷²⁹ However, in many cases it would help the young person and the court if the responsible adult could appear

even by video link or telephone. The Commission understands that this has occurred more often recently in the Darwin Youth Justice Court.

Recommendation 25.33

The Commissioner of Police by Directive require police to take all reasonable steps to obtain the contact details of a responsible adult for a young person taken into police custody and provide those details to the young person’s legal representative as soon as possible.

Recommendation 25.34

Resources be provided to support Law and Justice groups, or other suitable entities, to allocate adults to be responsible for Aboriginal young people appearing in criminal proceedings whether in remote or urban communities.

COURT-ACCESSIBLE SERVICES

The Commission heard that there have been positive changes to youth justice in the Northern Territory since the dedicated Youth Justice Court opened in Darwin in March 2016, including an increased focus on the issues facing children and young people. Expert reports on a young person received by the court are now being collated for reference so that if a young person comes before the court again, ‘vital information about issues such as trauma, exposure to violence or abuse, cognitive issues, FASD [fetal alcohol spectrum disorder] is not lost’.⁷³⁰

However, the Northern Territory lacks the support staff and services that form part of a specialist children’s court that are available in other jurisdictions. The Commission was told that by default, this is undertaken by youth support workers or lawyers from non-government legal services, such as NAAJA, NTLAC and CAALAS. They endeavour to link young people to education, accommodation and health services.

‘I do take on some young people as full-time case management, especially those who are in court repeatedly. I try to be a buffer between them, and any issues they have, with the department, Community Corrections, school or the Don Dale Youth Detention Centre. I see the role as presenting the face of the young person to the court; who they are and what has lead them to that point, so the court sees them as not just as another offender. Sometimes this is done by writing reports to the court in which I set out the child’s background, issues and what solutions we have come up with together to move forward. But I also give the court verbal submissions and updates on a young person’s progress’.⁷³¹

NAAJA submitted to the Commission that the lack of support services for young people at court has been a chronic issue throughout the relevant period.⁷³² It noted, however, that the availability of support services has improved since the start of the Commission, with agencies such as Danila Dilba

Health Service, Anglicare, Mission Australia and CatholicCare helping young people at court.⁷³³ NAAJA's former Indigenous Youth Justice Worker told the Commission this can make a discernible difference:

*'There are now people and service organisations present at court. I can talk to them straight away and the young person can start to develop a rapport with them immediately. That has made an enormous difference to my work. Before the Royal Commission, I had virtually no services to work with at court and felt like I was trying to do it all myself.'*⁷³⁴

NAAJA submitted, and the Commission's discussions with other jurisdictions indicate, that young people are more willing to engage with services when they are at court as they are in a time of high need and often are in a vulnerable state.⁷³⁵ Accordingly, sustained and coordinated efforts should be made to ensure the opportunity to link young people with support services is maximised. Co-locating youth services, or having youth services available on youth court days, would facilitate a comprehensive multi-agency response to the complex issue of youth offending. The Commission heard from the President of the Children's Court in Western Australia that having a 'one-stop shop' of youth justice services, mental health services, the Director of Public Prosecutions, legal aid, child protection and victim assistance services in the court building makes a real difference to rehabilitative outcomes.⁷³⁶ In New Zealand, the Commission saw the value of the Children's Court coordinating and controlling those services with well-established relationships being developed between the court and regular appearances by representatives of those agencies.

In New South Wales, specialist youth justice officers are available at court to provide tailored assessment reports on the underlying causes of offending and to provide young people and their families with information about the court processes and link them to relevant support services.⁷³⁷ These dedicated staff help address the fragmentation of services in the youth justice system.⁷³⁸ The Commission recognises the value of dedicated youth justice staff and Aboriginal liaison officers in coordinated case management. They are needed to facilitate the provision of information to the court and help with support services referrals. NAAJA has emphasised the value of 'warm' referrals, that is, actually making the appointment, or facilitating a face-to-face meeting.⁷³⁹ Professor Frank Oberklaid told the Commission that this kind of arrangement strengthens the likelihood of the service being used.⁷⁴⁰

As mentioned earlier, a number of young people coming before the court have hearing and/or English language deficits. The ready availability of interpreters is fundamental to the administration of justice for young people coming before the Youth Justice Court. The belief held by some lawyers that they can communicate adequately with their clients on the basis of a brief conversation just before court is unsound. Since some 94% of adult prisoners have some form of compromised hearing, from slightly to profoundly deaf, the Commission was told that it is likely this figure is replicated among young people.⁷⁴¹ The provision of hearing loops at all courts is thus a necessity if there is to be any confidence that children can hear what is occurring.

I didn't understand what was going on when I had video links for my court. I don't have very good hearing and I often didn't understand what people in the court room were saying. I didn't tell anyone that I didn't know what was going on.

Vulnerable witness BW⁷⁴²

Under section 51 of the *Youth Justice Act*, if the court believes a child or young person appearing before it charged with an offence is in need of protection, or the child's wellbeing is at risk, it can require the Chief Executive Officer of Territory Families to investigate and take any appropriate action, with a report to the court on the circumstances and the action taken.⁷⁴³

These section 51 reports prepared by Territory Families have been criticised on occasions by the courts. In a 2013 matter, the court noted that section 51 reports:

*'[W]ill only very rarely conclude that there are risks to [a child's] wellbeing or that they are in need of protection when they are involved in the criminal justice system, especially when they are Aboriginal and reside in remote communities.'*⁷⁴⁴

A possible explanation was said to be '*subtle pressure on workers to conclude that a child is not in need of protection where services are not available to meet the need*'.⁷⁴⁵ A lack of resources and the normalisation of risk in many communities may also contribute to this approach to section 51 reports.⁷⁴⁶

The Commission was told that the preparation of a section 51 report usually requires an adjournment of some weeks, creating a real risk that the young person will be remanded in detention until that occurs.⁷⁴⁷ This is an aspect of Territory Families' more general problems reported to the Commission at its roundtables. Territory Families and its departmental predecessors over the relevant period have had an unstable workforce, lack Aboriginal case workers and was seen as lacking participation in the administration of justice where young people for whom it had care responsibilities were involved. These are, of course, generalisations, and over a 10-year span there would have been periods when those comments did not reflect the situation. The Commission's informants were speaking of the more immediate past and, as has been noted earlier, there has been a discernible improvement in the delivery of services at court since the Commission was established.

Section 51 is just one of a suite of reports the court may order. Under section 67 of the *Youth Justice Act*, the court may obtain a report on the mental condition of a youth charged with an offence where that condition might affect his or her criminal responsibility or ability to understand proceedings. Obtaining such an expert report generally requires an adjournment and may result in the young person being remanded for the intervening period.⁷⁴⁸ It is not the legislation that is at fault but the availability of qualified people, including Aboriginal input, to prepare those reports.

The Commission heard that it was '*virtually impossible to obtain psychological or psychiatric reports for a young person in most remote communities*'⁷⁴⁹ and that there was a '*distinct lack of mental health, disability and cognitive functioning experts available to provide reports and ongoing treatment and support for young people appearing before the Youth Justice Court in Central Australia*'.⁷⁵⁰ Such services are lacking throughout the Northern Territory, resulting in a reliance on

interstate experts often by video link.⁷⁵¹ This causes delays, and the absence of face-to-face contact can adversely affect an assessment.⁷⁵² In contrast, larger jurisdictions such as Victoria and NSW have clinics attached to the children's courts to provide experts to assist the court.

The Commission was told that the Community Corrections budget funds these reports, which are often sourced from interstate practitioners because of the lack of locally based qualified mental health practitioners. The reports are expensive and are often delayed. It is not an ideal situation. If the court were funded to source these reports, perhaps with some input from the Chief Psychiatrist of the Northern Territory or the Department of Health about the availability of professional clinicians, there may be better outcomes.

Findings

During the relevant period, there were inadequate, or, at times, no support services attached to the court that were funded by the government, such as case managers, liaisons, officers, Aboriginal advisers or Aboriginal language interpreters to facilitate the administration of justice by the Youth Justice Court.

Recommendation 25.35

The Youth Justice Court be resourced to employ dedicated youth justice staff and place-based local Aboriginal liaison officers to coordinate case management and facilitate comprehensive referrals to support services for youth.

Recommendation 25.36

The Youth Justice Court be resourced to install hearing loops to help young hearing-impaired accused participate appropriately in the proceedings.

Recommendation 25.37

The Youth Justice Court be resourced to assume responsibility for arranging for reports required pursuant to section 67 of the *Youth Justice Act* (NT).

Recommendation 25.38

The Youth Justice Court in consultation with the Department of Health, Aboriginal health organisations and legal assistance organisations such as NAAJA, CAALAS and NTLAC, establish a panel of child and adolescent health practitioners to facilitate the timely preparation of section 67 reports.

DIVERSION

The Youth Justice Court may at any stage of the proceedings before a finding of guilt, with the consent of the child or young person and the prosecution, adjourn the proceedings and refer the youth to be re-assessed for inclusion in a diversion program.⁷⁵³ Some concern was raised that the requirement to get the prosecution's consent limited the court's discretion and made prosecutors 'gatekeepers' of the diversion options,⁷⁵⁴ but the Commission was not shown evidence that this was an actual barrier if the court was persuaded that this was the appropriate course.

The process of sending a young person to diversion works in the same way as diversion by decision of the police through the Youth Diversion Unit to a service provider. The same service providers are used, the same processes of referral are followed and the same problems exist. Delays are common, with multiple adjournments required before a diversion program can be completed by the young person.⁷⁵⁵ Evidence before the Commission indicated that programs could take up to six months to complete,⁷⁵⁶ with a lack of funding, staff and resources in the Youth Diversion Unit and the contracted service providers.⁷⁵⁷ Submissions to the Commission indicated a shortage of culturally appropriate, effective detoxification and rehabilitation facilities for young people.⁷⁵⁸

The Commission heard evidence that while the *Youth Justice Act* provided a sound legislative structure for diversion, the implementation of actual initiatives suffered from a lack of funding and suitable programs.

The same resourcing issues applied to other areas where the court had referral powers. For example, the court can use Family Responsibility Orders⁷⁵⁹ that require the parents of an offending child or young person to engage in counselling, undertake education or treatment for substance abuse, or take greater responsibility for the child's attendance at school. These orders provide scope for diversion of children and young people from the criminal justice system with the involvement of their families, but the Commission heard that they were largely unused because of a lack of funding.⁷⁶⁰ It may be useful for the Youth Justice Court to have a list of available programs with descriptions and contact details for each place where the court conducts proceedings, perhaps as part of a loose leaf Benchbook resource.

'But if you don't resource things – so they don't actually exist in reality, then the Act is nothing more than a statement of good intentions.'

Justice Hillary Hannam, former Northern Territory Chief Magistrate⁷⁶¹

Findings

Lack of resources and adequate programs have inhibited the Youth Justice Court's full and effective use of diversion through section 64 of the *Youth Justice Act*.

Recommendation 25.39

Territory Families in consultation with Aboriginal health and legal assistance organisations and NTLAC undertake an immediate assessment of the diversion program requirements available to the Youth Justice Court pursuant to section 64 of the *Youth Justice Act* (NT) and make available the necessary resourcing to support their implementation and delivery.

PRE-SENTENCE CONFERENCING UNDER SECTION 84

In addition to the many sentencing options available to the Youth Justice Court, the court may also direct the youth, after a finding of guilt but before sentencing, to participate in a conference with the victims of the offence, community representatives, members of the child or young person's family or any other persons the court considers appropriate. The Commission heard evidence that pre-sentence conferences under section 84 were rarely used over the 10 years of the relevant period due to a lack of funding of service providers. In effect, no conferencing facility under section 84 existed in practice.⁷⁶²

Until recently, the only organisation to receive funding for pre-sentence conferences was the Community Justice Centre (CJC), which was principally limited to Darwin and had other responsibilities besides youth justice.⁷⁶³ The CJC received 24 court referrals and conducted only 13 section 84 conferences between 2013 and 2017, with a total of three conferences conducted in the 2015–16 year.⁷⁶⁴ A conference needed to be arranged by the young offender's legal representative, including finding a suitable time and venue. Due to funding constraints and the availability of qualified convenors its operation was very limited.⁷⁶⁵

The CJC has received a higher number of referrals recently, with 11 in the 2016–17 year as a result of better connections between it and the Youth Justice Court. The CJC also conducted restorative practices training in October 2016, which was arranged and delivered urgently to address a shortage of conference convenors for restorative conferences.⁷⁶⁶

In February 2017, significant funding was announced for an external provider to deliver conferences pursuant to section 84 and any other appropriate assessments, such as a decision whether to divert under section 64.⁷⁶⁷ The provider is partnering with Aboriginal community controlled organisations including Danila Dilba Health Service and NAAJA to be part of the conferencing process. The model for the conference is restorative justice and when the Chief Executive Officer of the provider gave evidence to the Commission in May 2017, it had received seventeen court referrals.⁷⁶⁸

The Commission was told of the power and effectiveness of similar conferences in a number of other jurisdictions which it visited. The conferences promoted rehabilitation for young offenders with their families and prompted acknowledgment of the harm done to the victims.

Finding

In practice, children and young people found guilty of a criminal offence did not have access to pre-sentence conferencing under section 84 of the Youth Justice Act over most of the relevant period.

Recommendation 25.40

Adequate resourcing be available to ensure the accessibility of section 84 conferencing, including in remote areas for all children and young people.

SPEEDY RESOLUTION OF YOUTH JUSTICE MATTERS

One of the principles in the *Youth Justice Act* found in the relevant international instruments is the recognition that decisions for young people be made and implemented in a timeframe appropriate to the youth's sense of time. That means youth justice matters must be finalised as quickly as possible. This acts both as a safeguard to prevent the unnecessary detention of young persons on remand if bail is refused, often because there is no suitable accommodation, and to ensure that the young person understands the purpose of the juvenile justice process and can relate it to the offending conduct. The commentary to Rule 20 of the Beijing Rules notes that:

*The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.*⁷⁶⁹

Delays occur from time to time throughout the Youth Justice Court process, primarily because of a lack of adequate resources, delays in police finalising charges and appropriate co-ordination between relevant agencies.

There are also inefficiencies in the transfer of information that result in defence lawyers and the prosecution receiving briefs late, often on the morning of a hearing. This can lead to adjournments and can delay a matter being heard further. A senior prosecutor explained to the Commission that arresting police submit a physical file to the Judicial Operation Section which determines if and what charges are to be laid before referring the matter to the Youth Diversion Unit for consideration. The physical file is then taken to the DPP registry (housed in another building), which often occurs only when a significant number of files are ready. A copy of disclosure is then made for the defence. As can be seen, the number of steps involved in this process delays the arrival of the prosecution file at court.⁷⁷⁰ The Commission was told by a senior prosecutor:

*'I will only get the paperwork at court when rounds deliver the files to me, and I will provide that to defence. So whilst [the NTLAC lawyer] raised the issue of the delay in taking instructions and opposing bail ... prosecution are also reading the files for the first time at the bar table.'*⁷⁷¹

The effect on the quality of the administration of justice from this way of doing business needs no further comment. It may not be a problem only in the Northern Territory. The Legal Panel members who gave evidence to the Commission suggested that the introduction of electronic briefs that could be accessed by police, prosecutions, defence lawyers and the court would mitigate some of the delays associated with these procedural inefficiencies. Those who appear as accused in the Youth Justice Court and those who are endeavouring to prosecute and defend professionally and responsibly deserve better processes to reduce the delays.

The Commission also heard that where a young person has not entered a plea of guilty, the Youth Justice Court practice is to require a preliminary brief to be disclosed at first instance. The Commission was told that often a preliminary brief was not made available or was inadequate.⁷⁷² Defence then lists the matter for a case management inquiry and requests a brief service order. This can delay the matter for weeks. A member of the Panel told the Commission:

*'[I]f matters were commenced by way of summons once the evidence has been obtained, then perhaps we wouldn't have this delay. But however, as we've discussed previously, matters are often commenced by way of arrest, in which case the young person is brought to court and these decisions need to be made on limited evidence that is just not there.'*⁷⁷³

The lack of a specialist court – including in Darwin before the opening of the new Youth Justice facility – throughout the relevant period meant youth matters were often delayed because of the large adult lists, resulting in young people spending long periods in the cells.⁷⁷⁴ Judge Reynolds observed to the Commission that combined adult and youth jurisdictions led to excessive delays in children's matters being heard and was yet another argument for a separate youth court.⁷⁷⁵

Recommendation 25.41

All agencies explore the provision of electronic briefs to prosecution and defence lawyers in proceedings against a youth consistent with section 4(m) of the Youth Justice Act (NT) to reduce delays.

THE CONTENT OF REPORTS

The international human rights framework recognises the need to understand a child or young person's background and circumstances before sentencing⁷⁷⁶ and to address the underlying reasons for the offending behaviour.⁷⁷⁷ The Youth Justice Act, consistent with those obligations, requires the court to consider a child or young person's background and circumstances when sentencing and facilitates the court obtaining the relevant information. The court must require a pre-sentence report if it is considering imposing detention or imprisonment.⁷⁷⁸

The Youth Justice Act provides as one of its governing principles that *'if practicable, an Aboriginal youth should be dealt with in a way that involves the youth's community'*.⁷⁷⁹ In sentencing a young person, the court must consider the young person's cultural background.⁷⁸⁰ There is no specific provision for obtaining information about a young person's cultural background, although *'social history and background'* and *'family and community views of the youth's offending behaviour'* may

be canvassed in a pre-sentence report.⁷⁸¹ The Commission was told that the Youth Justice Court had not been resourced to seek information from Aboriginal Elders on cultural matters specific to their community.⁷⁸²

This may be addressed through the development of a model akin to the Canadian Gladue reports, which ‘set the foundations for a very specialist approach for how Aboriginal people are dealt with in the Canadian courts’:

*[A] Gladue report is ordered by the court as an alternative to a conventional pre-sentence report and it has a very different focus. It looks at the background of the defendant in great detail ... It provides enormous detail for the court about background issues, such as in Canada residential schools or stolen generation issues that that defendant may have experienced, or the family may have experienced, about that person’s home community, about trauma that they’ve experienced, and potential options by way of healing processes for that person to participate in.*⁷⁸³

The Commission was referred to recent research indicating that equivalent information would assist Australian judges:

‘One of the key findings of what sort of evidence would help, in terms of perhaps creating better individualised sentencing options, was the inclusion within reports that looked at dynamics within the Aboriginal community of things like family and kinship relations; the sorts of programs run by Indigenous community organisations that might be available within that community; the impact on the Indigenous community on the removal of that person from the community; and also the extent to which the Indigenous community could be involved in supporting the individual’s rehabilitation.’⁷⁸⁴

The Northern Territory Government accepted that the input of Aboriginal Elders would add value to the process of pre-sentence reports.⁷⁸⁵ This seems an area where the Law and Justice Groups or their equivalent might be developed within communities both remote and urban to provide community and family profiles for the court.

Recommendation 25.42

- 1. Communities be resourced to establish a process to provide:**
 - information for pre-sentencing reports for Aboriginal children and young people, and
 - information about local non-custodial sentencing options for Aboriginal children and young people.
- 2. The Youth Justice Act (NT) be amended to require this information be taken into account by the Youth Justice Court.**

SENTENCING CHILDREN AND YOUNG PEOPLE

Criminal responsibility

In the Northern Territory, a child under the age of 10 years is excused from criminal responsibility for an act, omission or event.⁷⁸⁶ The common law concept of *doli incapax* is retained in that a person under the age of 14 years is excused from criminal responsibility for an act, omission or event unless it is proved that at the time of doing the act, making the omission or causing the event, he had the capacity to know that he ought not do, omit to do, or cause the event.⁷⁸⁷ This topic is discussed more fully in Chapter 27 (Reshaping youth justice), where the Commission recommends that the age for criminal responsibility in the Northern Territory, consistent with many other countries with similar legal systems, but the first in Australia, be raised to 12 years. The Commission further recommends that detention for an offence be a sentencing option only for young people 14 years and over, in all but a narrow category of cases.

Sentencing options

The *Youth Justice Act* provides the Youth Justice Court with a wide range of sentencing options for a child or young person found guilty of an offence, and sets out the principles governing the use of these options.

The court must deal with the child or young person ‘in a way that is in proportion to the seriousness of the offence’.⁷⁸⁸ Where a charge is proven against a young person, the court may dismiss the charges, give directions that the child or young person participate in particular programs or comply with certain conditions, order fines or community service, or make various range of detention orders, including suspended, alternative or periodic detention.⁷⁸⁹

The court may also disqualify a young person from holding a driving licence⁷⁹⁰ or require the child or young person to pay money or perform services as compensation for the offence.⁷⁹¹

Under the *Victims of Crime Assistance Act*, a mandatory levy is imposed on offenders, including a child, if not imprisoned, to provide a source of revenue for a Victims of Crime Assistance Fund. For a child, the amount is \$50 for each offence.⁷⁹² As noted above, the Commission understands that if a child or young person is sentenced for multiple offences, each offence will incur a levy of \$50, often amounting to a figure that the child or young person has no means of paying. The Commission understands that if a child is in the care of the Chief Executive Officer of Territory Families the Department will assist the child with the payment of these fines.

When sentencing a youth, the court must take into account general principles of sentencing, including the nature and seriousness of the offence, the child or young person’s age, cultural background and factors such as any steps to make amends, whether rehabilitation may be facilitated through his or her family, and the opportunity to participate in educational programs and employment.⁷⁹³

The Commission learned about two Aboriginal-developed programs that have been effective in the rehabilitation of young people – the Mt Theo program near Yuendumu, and BushMob at Alice Springs. The first was a community initiative more than 25 years ago based on concern about the deleterious effects of petrol sniffing on their young people. This demonstrated the value of a community identifying a need and developing its own response. In urban or larger centres,

positive and sustained outcomes will be more likely if there is local engagement. It is important that the government encourages place- and culture-appropriate diversions for all children and young people so that the court can tailor sentences to the principles in sections 4 and 81 of the *Youth Justice Act*.

The lack of pre-sentence conferences, until recently, and suitable rehabilitative diversion programs, particularly in remote areas, limits in practice the options available to the court in dealing with a young offender.

The *Youth Justice Act* requires the court to explain any order it makes in relation to a child or young person in a language and in a way the child or young person concerned is likely to understand.⁷⁹⁴ Judges who regularly sit in the Youth Justice Court no doubt will have developed ways to ensure this occurs, but many young people told the Commission they did not understand what was said to them and what their orders or penalties related to. Some said they were unsure why they were in detention. It may be beneficial for an expert in communication, particularly with Aboriginal young people, to confer with the court about how best to ensure orders, sentences and other outcomes are understood by young offenders.

Detention as a last resort

The Beijing Rules provide that the detention of a child or young person is a last resort, with the focus on maintaining the family unit.⁷⁹⁵ This is reflected in the *Youth Justice Act*, which expressly provides that '[t]he court must impose a sentence of detention or imprisonment on a child or young person only as a last resort, and a sentence of imprisonment only if there is no appropriate alternative'.⁷⁹⁶ The term 'imprisonment' refers to the incarceration of a young person in an adult prison. This can occur if the youth is 15 years or over. It is a provision contrary to recognised principles that children and young people must not be incarcerated with adults.

The *Youth Justice Act* imposes limits on the length of any sentence of detention. Children under the age of 15 cannot be sentenced to a period of detention exceeding 12 months, while young persons between the ages of 15 and 18 cannot be sentenced to a period of detention greater than two years.⁷⁹⁷ If a young person is sentenced to detention or imprisonment exceeding 12 months, the court must fix a non-parole period, unless it considers the nature of the offence, the history of the young person or the circumstances of the particular case make this inappropriate.⁷⁹⁸ Parole is mentioned further below.

Sentencing in practice

Concern was conveyed to the Commission that in practice, although a period of actual detention might have been imposed on a young person as the option of last resort, on occasion it was the last resort only due to the absence of an appropriate alternative way to reflect both the seriousness or repetition of the offending and to engage the young offender in rehabilitation or the lack of stable accommodation.

The Northern Territory Government provided the Commission with the following information on the use of the options available under section 83 – orders a court may make – of the *Youth Justice Act* during the relevant period, which included dismissing the charge or discharging the young person without imposing a penalty:

The most frequent sentencing option used was a monetary penalty. Over the 10-year period, 38% of finalisations for Aboriginal and Torres Strait Islander youths and 50% of finalisations for non-Aboriginal and Torres Strait Islander youths resulted in a monetary penalty, as did 49% of finalisations for female youths and 38% of finalisations for male youths. The Commission notes that monetary penalties include both fines and levies.

The second most frequent sentencing option used was actual detention, either for a set term or partially suspended. Over the 10-year period, 20% of the finalisations for Aboriginal and Torres Strait Islander youths and 9% of the finalisations for non-Aboriginal and Torres Strait Islander youths resulted in actual detention, as did 10% of finalisations for female youths and 20% finalisations for male youths. The Northern Territory Government provided the Commission with a more detailed breakdown of sentencing options. The data provided, illuminated that, in 2014–15 and 2015–16, when one disaggregates monetary penalties into penalties of a fine and victim’s levies, a sentence of actual detention was the most common sentencing option used. The tables provided by the Northern Territory Government can be viewed at the end of this chapter.

The third most frequently used sentencing option was dismissal of the charge or discharge of the youth. Over the 10 years, 15% of finalisations for Aboriginal and Torres Strait Islander youths, 16% of those for non-Aboriginal and Torres Strait Islander youths, 15% of those for female youths and 15% of those for male youths resulted in dismissal or discharge.⁷⁹⁹

Table 25.14 shows the court’s actual use of different sentencing options for children and young people to be surprisingly narrow, across the three locations of the court that were referred to.

Home detention or alternative detention were rarely used, fully suspended detention was sometimes used, as were community work orders.

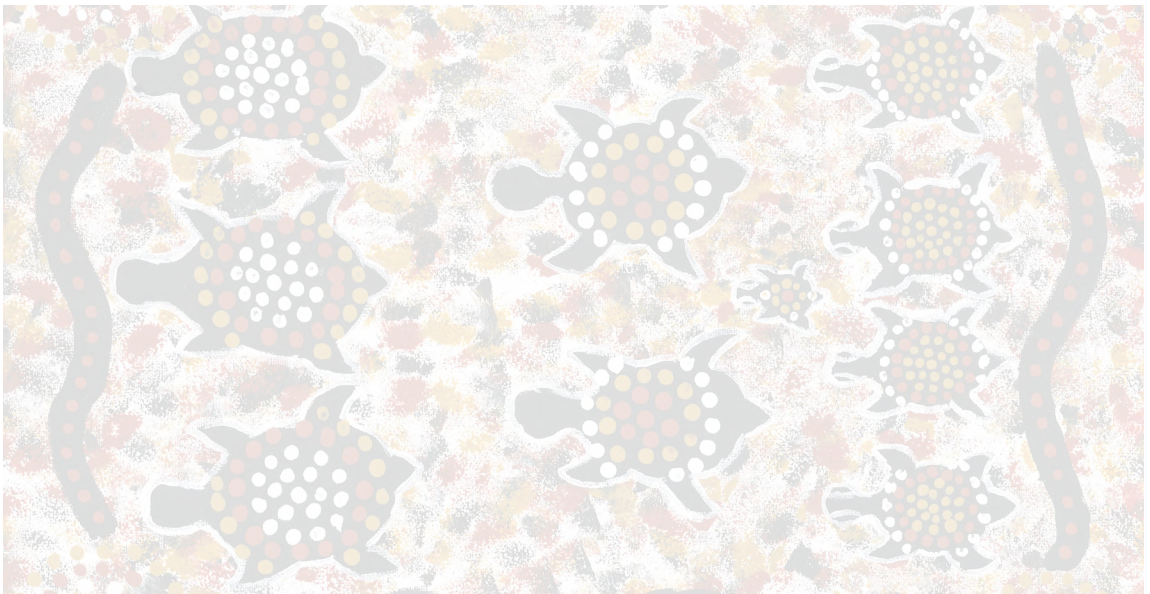


Table 25.14: Finalisation Occasions for youth by Court outcome and region, 2006–7 to 2015–16

Year	Main Courts	Actual Detention	Home Detention or Youth Alternative		Fully Suspended Detention	Community Work Order		Monetary Penalties	Other Orders	Withdrawn/Acquitted	Total
			Detention								
2006/2007	Alice Springs	54	0	17	25	69	22	55	242		
	Darwin	51	1	21	29	122	34	112	170		
	Katherine	3	0	1	4	20	6	10	44		
	Total	108	1	39	58	211	62	177	656		
2007/2008	Alice Springs	39	0	8	29	121	20	34	250		
	Darwin	56	0	23	18	164	47	81	389		
	Katherine	5	0	3	0	18	18	14	58		
	Total	99	0	34	47	303	85	129	697		
2008/2009	Alice Springs	37	0	15	12	121	24	63	282		
	Darwin	70	2	26	25	218	56	102	497		
	Katherine	10	0	5	0	19	19	6	59		
	Total	117	2	46	37	356	109	171	838		
2009/2010	Alice Springs	25	0	14	19	173	23	51	305		
	Darwin	48	2	15	51	200	53	101	450		
	Katherine	14	1	8	5	25	35	9	97		
	Total	87	3	37	55	398	111	161	852		
2010/2011	Alice Springs	34	0	7	24	161	40	74	340		
	Darwin	83	1	19	19	183	55	114	474		
	Katherine	13	0	2	1	55	5	15	91		
	Total	130	1	28	44	399	100	203	905		
2011/2012	Alice Springs	64	0	5	20	181	41	85	396		
	Darwin	53	6	19	29	186	69	172	534		
	Katherine	7	0	2	3	41	7	18	78		
	Total	124	6	26	52	408	117	275	1008		
2012/2013	Alice Springs	98	1	22	29	164	37	87	438		
	Darwin	98	0	20	54	176	87	271	706		
	Katherine	8	0	1	9	36	16	22	92		
	Total	204	1	43	92	376	140	380	1236		
2013/2014	Alice Springs	97	0	20	26	156	18	74	391		
	Darwin	98	0	14	54	135	87	164	552		
	Katherine	6	0	6	12	21	24	17	86		
	Total	201	0	40	92	312	129	255	1029		
2014/2015	Alice Springs	96	0	28	41	164	32	62	423		
	Darwin	103	1	20	81	113	81	137	536		
	Katherine	3	0	2	7	25	11	44	92		
	Total	202	1	50	129	302	124	243	1051		
2015/2016	Alice Springs	95	0	26	27	194	25	73	440		
	Darwin	144	2	15	55	107	58	194	575		
	Katherine	7	0	1	9	15	51	38	121		
	Total	246	2	42	91	316	134	305	1136		

Source: extracted from LIS on 26 September 2016

Source: Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, p. 18.

The table of finalisation outcomes for children and young people shows the proportion of the number not withdrawn or acquitted at Darwin, Alice Springs and Katherine courts who were sentenced to detention for each of the years. The Commission notes that the proportion sentenced to detention remains high, at 29.6% in 2015–16. A possible explanation is that less serious cases are diverted from the system and not included in these figures. Further review of the individual cases would be required to determine whether the court might, in some of those cases, have made a non-custodial order had other suitable options been available.

OTHER PROPOSALS

Community courts

During its community consultations, the Commission heard the request to ‘bring back the bush courts’ several times. The Commission’s informants were referring to community courts trialled in 2005 to align sentences in culturally appropriate ways in communities and to involve senior community members in the process. It was, it seems, intended that the community courts be extended across the Northern Territory as part of the *Closing the Gap of Indigenous Disadvantage Generational Plan of*

Action strategy but the budget was said to be totally inadequate.⁸⁰⁰ Where partnerships between the magistrate and the community did occur, it was regarded by some commentators as showing some promise.⁸⁰¹

The Hawkins and Misner Report, *Restructuring the Criminal Justice System in the Northern Territory*, in 1973 recommended that elected community councils deal with 'street offences' to administer justice better, more fairly and promptly and 'in response to acts the community deems to be offensive'.⁸⁰² Much has changed in the following 45 years but the sentiment that local justice tends to be more effective for low-level crime remains true.

At the Judges' Roundtable, the Commission was told that apart from funding deficits, there was no legislative framework to support these community courts operating on the basis of a shared responsibility for delivering suitable sentences in communities.

NAAJA has urged the Commission to recommend community courts be re-established 'as an important way of fostering meaningful justice outcomes for Aboriginal young people and communities'.⁸⁰³ Some early initiatives are under way in some communities. The Commission heard of the Lajamanu Kurdiji Law and Justice Committee, which was reformed in 2010. Some of its members gave evidence in a panel with the members of the Maningrida Burnawarra who developed a Law and Justice Plan in 2012.

It is worth repeating what is said in Chapter 7 (Community engagement):

'A preliminary analysis regarding trends in Lajamanu's court list revealed promising improvements when the Law and Justice Group took a leading role. Against a backdrop of escalating rates of Aboriginal incarceration across the Northern Territory, from 1996 to 2014 the Lajamanu court list recorded a 50% decline in the overall number of criminal cases, including a 90% decline in dishonestly offences and a 55% decline in assault cases.⁸⁰⁴ While further research would be needed to attribute such improvements to the work of the Lajamanu Law and Justice Group, Anthony and Crawford note that the figures 'match our observations that Lajamanu has become a safer community with the operation of Kurdiji because members of the community feel accountable to the Kurdiji and the Warlpiri authority structures that support its practices'.⁸⁰⁵

The Commission has not been able to explore in sufficient depth the general appetite for the introduction of community courts where the community selects those who advise the judge. But consistent with the Commission's overall perspective that decisions about communities should be, so far as principle and practice allows, made by communities, the development of community courts for youth justice and child protection matters should be explored.

Parole, probation and community corrections

If the Youth Justice Court orders that a young person should serve a term of detention, or imprisonment in an adult prison, the maximum period as mentioned previously is two years if aged 15 or over and 12 months if under 15.⁸⁰⁶ As a general rule, if the detention is longer than 12

months, the court must fix a non-parole period. If the sentence is 12 months or less, the court may not fix a non-parole period.⁸⁰⁷ Young people who have been sentenced to a term of detention or imprisonment under the *Youth Justice Act* must apply for parole to the Parole Board established under the *Parole Act*. That process is predominantly for adult prisoners, which is reflected in the composition of its members. The Parole Board's Policy and Procedures Manual mentions briefly⁸⁰⁸ that when hearing a parole application for a youth, the Board has regard to the general principles in the *Youth Justice Act* and in particular that a youth should be kept in custody only as last resort and for the shortest appropriate time; a youth should be dealt with in the criminal justice system in a manner consistent with his or her age; and that punishment is designed to have a rehabilitative effect. The Manual notes that:

*The Parole Board endeavours to release young people who are not dangerous offenders on parole as close to the NPP [non-parole period] as possible.*⁸⁰⁹

The Commission has received submissions that to implement fully the philosophy and principles which underpin the therapeutic approach to youth justice embedded in the *Youth Justice Act*,⁸¹⁰ a parole process separate from the Parole Board is required. Two other jurisdictions, Western Australia and Victoria, have provided for bodies distinct from the adult parole entity to hear and determine parole applications for young people.⁸¹¹ Those bodies are smaller than the adult parole boards. In the case of Western Australia, the Supervised Release Review Panel, as it is described, must include 'at least one person who has an Aboriginal background and is appointed from a panel of persons appointed by Aboriginal community organisations that have been invited by the Minister to submit nominations'.⁸¹²

NAAJA, which advocated for a separate parole regime for young people – notwithstanding the very small number who applied to the parole board in the Northern Territory, nine in 2015–16 and two in 2014–15, all Aboriginal – did acknowledge the adherence to *Youth Justice Act* principles by the current Parole Board. Nonetheless, it contends that the approach must necessarily be different as there must be engagement with the young person – which does not occur in the present system – if parole for the young offender is to be effective. The Commission acknowledges the force of this submission. The whole package of youth justice reforms recommended throughout this report must be informed by the same approach of working with the young person to address underlying causes for offending behaviour, engagement with education and training, and inculcating respect for their community.

As the numbers are small, it may be unnecessary to have a standing body. Similar to Western Australia's terminology, there could be a supervised release review board (or panel) comprised of, say, six members with experience or expertise in youth justice, youth policing, child psychology and paediatric health. Two should be Aboriginal and one, at least, a woman. It is both appropriate and practical to have one review panel available in Alice Springs and one in Darwin. The legislative basis for these bodies should be in the *Youth Justice Act*.

Recommendation 25.43

A youth-specific parole body be established with the following features:

- a small number of members, including an Aboriginal representative, an employee from an Aboriginal-led community organisation, and a professional with youth-specific training and experience
- taking a therapeutic and collaborative approach that aims to engage young people in the parole decision-making process
- young people, their lawyers and their responsible adult must be present at hearings and, preferably, when decisions are made, and
- with wide discretion to make a variety of orders.

Section 16AA of the Crimes Act

NAAJA has submitted that section 16AA of the *Crimes Act 1914* (Cth) be repealed. It prohibits a court from taking into account ‘any form of customary law or cultural practice as a reason for’ excusing or lessening or aggravating the seriousness of the criminal behaviour to which the offence relates when determining a sentence for an offence against a law of the Northern Territory. Both NAAJA and NTLAC⁸¹³ contend that without the capacity to take into account Aboriginal cultural practices, a court would be hampered in reaching a sentence that is just in all the circumstances. The Commission considers that to be useful, the implications of a recommendation to repeal section 16AA need to be canvassed across adult as well as juvenile sentencing. This is outside the Commission’s Terms of Reference and may need to be considered by the Australian Law Reform Commission.

CONCLUSION

The Commission’s examination of the *Youth Justice Act* indicates that, while a sound framework, it has in practice and across of different areas failed consistently to deliver therapeutic approaches to youth justice. A number of issues identified by the Commission – such as the lack of diversion options or alternative sentencing regimes – arise from a lack of resourcing.

However, practical improvements can also be made to court processes to better align youth justice in the Northern Territory with Australia’s international obligations and best practice in other jurisdictions. A renewed focus on the speedy resolution of matters will assist in the rehabilitation of children and young people involved in the criminal process.

This emphasis on rehabilitation must inform each element of the court process. Children and young people must be protected and their rights safeguarded. This will be improved through closing criminal proceedings unless necessary and ensuring children have access to effective legal representation in contested criminal and child protection proceedings, as well as enabling the attendance as far as possible of a responsible adult. Ensuring the voices of children are heard requires a process attuned to the specific needs of the children appearing before the courts, including accommodation for issues

such as hearing disabilities and FASD.

The other critical element is the involvement of community, as far as possible, in decisions about community. Community involvement through input to pre-sentence reports, law and justice groups are effective ways to ensure justice, which is accepted by all affected by it, is delivered.

Finally, the Commission finds that operational independence of youth courts, through the institution of a separate children's court, will best promote the development of a jurisdiction focused on youth justice where each actor, from judiciary, prosecution, defence to allied staff and services, have acquired the necessary skills and knowledge to ensure the objects of the *Youth Justice Act* are met.

To be effective, such a court should have its own facilities as far as possible, be led by an appointed president, and deal with both child protection and youth justice matters, that it can address both youth offending and the causes of that offending.

Tables provided by the Northern Territory Government

Youth sentencing decisions made by Northern Territory courts, 2006-07 – 2015-16.

Youths before the court - sentencing occasions

Data statement

Data were extracted from IJIS on 26 September 2016

All individuals were youths (aged under 18) at the time of commission of the alleged offence(s). Some were adults at the date of the final order. A sentencing occasion refers to an event where a person is before the court and receives a final order (either a sentence of some type or an acquittal/dismissal/withdrawal of charges). A person is counted once per date, regardless of the number of charges or cases finalised.

Main court: there are three main courts (Darwin, Katherine and Alice Springs) from which NT criminal courts are administered.

- Darwin is the main court for courts in East Arnhem, West Arnhem, the Tiwi Islands, Daly River and Wadeye.
- Katherine is the main court for courts in the Victoria River District and Roper Gulf Region.
- Alice Springs is the main court for courts in the Central and Barkly Districts.

Jurisdiction: in some cases, final orders for offences committed by youths are recorded as occurring in the Court of Summary Jurisdiction. This mainly covers youths who have turned adults and were adjudicated in the CSJ for both youth and adult matters on the same occasion. However, there are some youth cases that appear to have been misrecorded as occurring in the CSJ instead of the Youth Justice Court.

"Actual detention" includes both detention for a determined term, with or without a non-parole period, partially suspended detention and periodic detention, although periodic detention is extremely rare in the NT. It excludes home detention, alternative detention and fully suspended detention.

Table 1c_1: Court Finalisation Occasions For Youth by Outcome and Age Group

	Actual Detention #		Home Detention or Youth Alternative Detention	Fully Suspended Detention	Community Work Order	Monetary Penalties			Other Orders	Withdrawn/Acquitted	Total
	Need serve more time in detention	No need to serve more time in detention				Fine	Levy	Other (order of payment, restitution, cost etc)			
2006/2007	Age at Order										
	10-14	3	7	0	4	9	0	12	1	8	32
	15-16	23	14	1	12	22	30	26	1	30	71
	17	29	7	0	13	18	75	18	3	14	40
	18-19	14	10	0	9	7	24	9	4	6	24
	20-24	0	1	0	1	2	3	2	0	2	4
	25+	0	0	0	0	0	3	0	0	2	6
	Total	69	39	1	39	58	135	67	9	62	177
2007/2008	10-14	3	3	0	4	8	5	27	0	8	79
	15-16	19	16	0	14	20	39	44	3	45	48
	17	23	13	0	10	11	81	33	5	21	25
	18-19	12	8	0	4	8	35	22	1	11	19
	20-24	1	0	0	2	2	2	3	0	0	4
	25+	0	1	0	0	0	2	0	0	0	12
	Total	58	41	0	34	47	164	129	9	85	129
2008/2009	10-14	8	8	0	4	7	1	41	2	28	42
	15-16	21	18	1	11	17	51	67	3	43	51
	17	22	10	0	18	8	87	37	7	25	37
	18-19	10	15	1	12	5	39	14	2	12	28
	20-24	3	2	0	1	0	2	0	0	1	7
	25+	0	0	0	0	0	1	2	0	0	6
	Total	64	53	2	46	37	181	161	14	109	171
2009/2010	10-14	7	5	2	4	7	1	55	0	30	38
	15-16	22	15	1	15	26	55	71	1	48	59
	17	17	7	0	10	7	105	42	2	25	31
	18-19	5	5	0	7	8	36	18	1	6	27
	20-24	0	3	0	0	1	3	6	0	2	4
	25+	1	0	0	1	0	2	0	0	0	2
	Total	52	35	3	37	55	202	152	4	111	161
2010/2011	10-14	12	12	0	5	6	4	57	0	24	40
	15-16	28	17	0	6	13	39	87	2	43	72
	17	22	16	0	11	17	63	62	5	14	47
	18-19	10	10	1	4	8	29	39	3	15	34
	20-24	1	1	0	1	0	1	5	0	2	5
	25+	1	0	0	1	0	3	0	0	2	5
	Total	74	56	1	28	44	139	250	10	100	203
2011/2012	10-14	15	11	1	1	10	5	36	0	40	67
	15-16	34	14	2	11	15	35	115	4	39	67
	17	16	14	0	9	16	60	62	2	20	40
	18-19	10	10	3	5	11	35	28	2	14	31
	20-24	0	0	0	0	0	1	2	0	3	7
	25+	0	0	0	0	0	1	0	0	1	63
	Total	75	49	6	26	52	137	263	8	117	275
2012/2013	10-14	19	15	0	5	21	4	83	0	42	67
	15-16	51	36	0	17	33	25	101	0	54	84
	17	28	20	1	10	18	58	42	0	27	46
	18-19	22	11	0	9	19	38	21	0	15	30
	20-24	2	0	0	2	1	1	3	0	1	2
	25+	0	0	0	0	0	0	0	0	1	151
	Total	122	82	1	49	92	126	250	0	140	380
2013/2014	10-14	23	19	0	4	23	2	48	1	35	72
	15-16	42	33	0	14	30	30	69	2	46	90
	17	26	23	0	16	22	54	48	0	27	54
	18-19	19	13	0	6	16	26	27	1	17	33
	20-24	1	2	0	0	1	1	2	0	4	4
	25+	0	0	0	0	0	0	1	0	0	3
	Total	111	90	0	40	92	113	195	4	129	255
2014/2015	10-14	18	26	0	9	35	4	58	0	40	65
	15-16	44	35	1	22	44	27	74	0	46	90
	17	23	17	0	11	28	36	39	2	21	42
	18-19	22	16	0	7	21	24	26	2	15	39
	20-24	1	0	0	1	1	4	3	1	1	5
	25+	0	0	0	0	0	1	1	0	1	2
	Total	108	94	1	50	129	96	201	5	124	243
2015/2016	10-14	24	55	1	9	19	1	65	0	43	115
	15-16	45	41	1	17	43	18	109	0	55	117
	17	25	28	0	9	22	23	46	0	21	40
	18-19	13	8	0	6	7	16	25	3	13	30
	20-24	2	3	0	0	0	3	6	0	2	2
	25+	2	0	0	1	0	0	1	0	0	1
	Total	111	135	2	42	91	61	252	3	134	305

Source: extracted from UIS on 26 September 2016

#

1) Need to serve more time - Youth offenders are required to serve more time after the date of sentencing

2) No need to serve more time in detention - Youth offenders are released forthwith on current matters because they have already served the sentence on remand, sentenced to the rising of the court or time served on watch box.

Table 1C_2: Finalisation Occasions For Youth by Court Outcome, Gender and Indigenous Status

Year	Indigenous Status	Gender	Actual Detention #					Monetary Penalties					Total	
			Need serve more time in detention	No need to serve more time in detention	Home Detention or Youth Alternative	Fully Suspended Detention	Community Work	Fine	Levy	Other (order of restitution, cost etc)	Other Orders	Withdrawn/Acquitted		
2006/2007	Indigenous	Female	5	33	0	32	45	13	8	0	5	41	17	4
		Male	50	36	0	13	49	83	48	5	47	134	464	51
	Non-Indigenous	Female	0	0	0	0	1	6	3	0	7	3	22	0
		Male	9	3	1	6	8	44	16	4	8	40	130	0
	Total	Female	5	33	1	38	54	63	20	4	56	94	367	51
		Male	59	39	1	19	57	133	67	9	55	174	594	51
2007/2008	Indigenous	Female	3	4	0	3	4	2	1	0	2	10	18	0
		Male	51	32	0	25	35	85	63	6	65	277	440	72
	Non-Indigenous	Female	54	36	0	28	36	107	89	7	75	340	530	0
		Male	0	0	0	1	0	11	10	2	3	6	33	0
	Total	Female	4	5	0	31	40	114	100	7	82	346	533	0
		Male	4	5	0	6	9	57	40	2	10	33	166	0
2008/2009	Indigenous	Female	0	0	0	0	0	0	0	0	0	0	0	0
		Male	57	49	0	9	4	21	31	0	24	22	126	0
	Non-Indigenous	Female	1	0	0	3	0	21	10	1	5	13	646	0
		Male	6	4	0	9	7	55	22	1	8	34	146	0
	Total	Female	7	4	0	12	7	76	32	2	13	39	101	0
		Male	0	0	0	0	0	1	0	0	0	0	1	0
2009/2010	Indigenous	Female	57	44	2	35	33	130	120	13	80	144	667	0
		Male	64	53	0	46	37	183	161	14	109	171	878	0
	Non-Indigenous	Female	44	28	2	27	42	87	110	1	73	89	503	0
		Male	0	1	0	3	0	11	5	0	3	11	114	0
	Total	Female	1	1	0	30	42	98	115	1	76	100	614	0
		Male	7	4	1	4	9	24	17	2	17	47	220	0
2010/2011	Indigenous	Female	51	31	1	11	11	161	145	3	87	124	687	0
		Male	52	35	3	37	55	202	192	4	113	161	852	0
	Non-Indigenous	Female	7	5	1	3	4	13	6	1	13	15	79	0
		Male	62	47	1	21	24	81	154	5	61	154	607	0
	Total	Female	58	32	2	34	48	124	161	6	74	130	719	0
		Male	1	0	0	0	0	5	9	0	5	3	182	0
2011/2012	Indigenous	Female	5	4	0	4	4	11	47	2	19	42	219	0
		Male	5	4	0	6	4	36	56	2	24	45	183	0
	Non-Indigenous	Female	0	0	0	0	0	0	0	0	0	0	0	0
		Male	0	0	0	0	0	0	0	0	0	0	0	0
	Total	Female	66	51	1	38	52	112	203	7	80	177	769	0
		Male	7	8	1	28	44	139	250	10	100	203	905	0
2012/2013	Indigenous	Female	0	3	1	8	6	26	41	2	26	43	160	0
		Male	97	67	1	34	69	69	175	0	79	286	779	0
	Non-Indigenous	Female	105	71	1	36	72	98	210	0	105	237	936	0
		Male	0	1	0	2	4	7	5	0	9	25	58	0
	Total	Female	17	10	2	5	10	21	34	0	26	113	237	0
		Male	17	11	0	7	16	28	40	0	35	141	295	0
2013/2014	Indigenous	Female	8	9	0	4	13	36	41	0	35	72	218	0
		Male	134	73	1	29	79	80	209	0	105	268	1018	0
	Non-Indigenous	Female	122	82	1	43	92	128	250	0	140	380	1235	0
		Male	10	8	0	9	11	29	34	0	20	43	164	0
	Total	Female	102	87	0	39	77	87	159	0	98	117	609	0
		Male	0	0	0	0	0	0	0	0	0	0	0	0
2014/2015	Indigenous	Female	9	3	0	1	15	26	31	1	24	26	120	0
		Male	101	82	0	78	84	152	184	4	102	257	1060	0
	Non-Indigenous	Female	133	90	0	40	92	133	195	4	129	255	1029	0
		Male	10	9	0	11	24	4	24	0	34	44	184	0
	Total	Female	87	78	0	37	99	55	136	4	70	162	738	0
		Male	9	6	1	7	16	12	17	1	17	33	119	0
2015/2016	Indigenous	Female	13	7	1	8	19	16	22	1	20	37	142	0
		Male	0	0	0	0	0	0	0	0	0	0	0	0
	Non-Indigenous	Female	96	84	1	44	115	68	153	5	87	195	848	0
		Male	108	84	0	50	129	96	203	5	124	243	974	0
	Total	Female	6	6	0	13	25	16	31	1	35	56	224	0
		Male	90	90	1	52	60	112	163	2	81	200	774	0
2016/2017	Indigenous	Female	96	125	2	38	80	56	219	3	116	263	998	0
		Male	14	5	0	1	5	0	0	0	3	10	33	0
	Non-Indigenous	Female	15	4	0	1	7	5	24	0	15	32	105	0
		Male	15	10	0	4	13	5	33	0	18	42	138	0
	Total	Female	7	35	0	7	15	25	95	3	38	64	257	0
		Male	104	100	2	35	76	36	187	2	96	243	870	0
Total	Female	133	135	2	42	91	61	252	3	134	305	1135	0	
	Male	104	100	2	35	76	36	187	2	96	243	870	0	

Source: extracted from IIS on 26 September 2016

1: Need to serve more time - Youth offenders are required to serve more time after the date of sentencing
 2: No need to serve more time in detention - Youth offenders are released forthwith on current matters because they have already served the sentence on remand, sentenced to the rising of the court or time served on watch house.

Table 1C_3: Finalisation Occasions For Youth by Court Outcome and Region (main court locations)

Year	Main Courts	Actual Detention #					Monetary Penalties					Other Orders	Withdrawn/ Acquitted	Total
		Need serve more time in detention	No need to serve more time in detention	Home Detention or Youth Alternative Detention	Fully Suspended Detention	Community Work Order	Fine	Levy	Other (order of payment, restitution, cost etc)					
2006/2007	Alice Springs	34	20	0	17	25	55	12	2	22	55	242		
	Darwin	33	18	1	21	29	71	44	7	34	112	370		
	Katherine	2	1	0	1	4	9	11	0	6	10	44		
	Total	69	39	1	39	58	135	67	9	62	177	656		
2007/2008	Alice Springs	23	15	0	8	29	88	32	1	20	34	250		
	Darwin	33	23	0	23	18	61	95	7	47	81	389		
	Katherine	2	3	0	3	0	15	2	1	18	14	58		
	Total	58	41	0	34	47	164	129	9	85	129	697		
2008/2009	Alice Springs	19	18	0	15	12	70	45	6	34	63	282		
	Darwin	37	33	2	26	25	94	115	7	56	102	497		
	Katherine	8	2	0	5	0	17	1	1	19	6	59		
	Total	64	53	2	46	37	181	161	14	109	171	838		
2009/2010	Alice Springs	14	11	0	14	19	98	73	2	23	51	305		
	Darwin	29	19	2	15	31	87	111	2	53	101	450		
	Katherine	9	5	1	8	5	17	8	0	35	9	97		
	Total	52	35	3	37	55	202	192	4	111	161	852		
2010/2011	Alice Springs	21	13	0	7	24	81	74	6	40	74	340		
	Darwin	48	35	1	19	19	46	135	2	16	22	92		
	Katherine	5	8	0	2	1	12	41	2	5	15	91		
	Total	74	56	1	28	44	139	250	10	100	203	905		
2011/2012	Alice Springs	37	27	0	5	20	80	95	6	41	85	396		
	Darwin	34	19	6	19	29	49	135	2	69	172	534		
	Katherine	4	3	0	2	3	8	33	0	7	18	78		
	Total	75	49	6	26	52	137	263	8	117	275	1008		
2012/2013	Alice Springs	65	33	1	22	29	76	88	0	37	87	438		
	Darwin	56	42	0	20	54	39	137	0	87	271	706		
	Katherine	1	7	0	1	9	11	25	0	16	22	92		
	Total	122	82	1	43	92	126	250	0	140	380	1236		
2013/2014	Alice Springs	53	44	0	20	26	76	78	2	18	74	391		
	Darwin	56	42	0	14	54	31	102	2	87	164	552		
	Katherine	2	4	0	6	12	6	15	0	24	17	86		
	Total	111	90	0	40	92	113	195	4	129	255	1029		
2014/2015	Alice Springs	58	38	0	28	41	73	88	3	32	62	423		
	Darwin	49	54	1	20	81	22	89	2	81	137	536		
	Katherine	1	2	0	2	7	1	24	0	11	44	92		
	Total	108	94	1	50	129	96	201	5	124	243	1051		
2015/2016	Alice Springs	48	47	0	26	47	57	139	1	25	4	440		
	Darwin	62	82	2	15	55	4	101	2	58	194	575		
	Katherine	1	6	0	1	9	0	15	0	51	38	121		
	Total	111	135	2	42	91	61	252	3	134	305	1136		

Source: extracted from IJS on 26 September 2016

- #
- 1) Need to serve more time - Youth offenders are required to serve more time after the date of sentencing.
- 2) No need to serve more time in detention - Youth offenders are released forthwith on current matters because they have already served the sentence on remand, sentenced to the rising of the court or time served on watch house.

Table 1C_4: Finalisation Occasions For Youth by Court Outcome and Jurisdiction

Year	Jurisdiction	Actual Detention #					Monetary Penalties					Other Orders	Withdrawn/ Acquitted	Total
		Need serve more time in detention	No need to serve more time in detention	Home Detention or Youth Alternative Detention	Fully Suspended Detention	Community Work Order	Fine	Levy	Other (order of payment, restitution, cost etc)					
2006/2007	Supreme Court	11	2	1	4	2	0	0	0	0	0	0	3	27
	Other Court*	2	0	1	0	1	8	1	2	0	2	11	27	22
	Youth Court	56	37	0	34	55	127	66	9	60	163	607	607	607
	Total	69	39	1	39	58	135	67	9	62	177	656	656	656
2007/2008	Supreme Court	167	4	0	3	2	0	0	1	25	4	3	27	27
	Other Court*	2	0	0	0	2	15	0	1	0	12	11	31	31
	Youth Court	46	37	0	31	43	149	129	7	81	114	639	639	639
	Total	58	41	0	34	47	164	129	9	85	129	697	697	697
2008/2009	Supreme Court	9	3	0	1	1	0	0	0	0	4	18	18	18
	Other Court*	1	0	0	2	1	11	1	1	3	7	26	26	26
	Youth Court	54	50	2	43	35	170	160	14	106	160	794	794	794
	Total	64	53	2	46	37	181	161	14	109	171	838	838	838
2009/2010	Supreme Court	6	0	0	0	1	0	0	0	0	2	2	11	11
	Other Court*	0	3	0	1	1	8	0	0	1	8	22	22	22
	Youth Court	46	32	3	36	53	194	192	4	108	151	819	819	819
	Total	52	35	3	37	55	202	192	4	111	161	852	852	852
2010/2011	Supreme Court	17	5	0	1	0	0	0	0	3	7	33	33	33
	Other Court*	1	1	0	1	0	6	3	1	1	6	19	19	19
	Youth Court	56	50	1	26	44	133	247	9	96	190	853	853	853
	Total	74	56	1	28	44	139	250	10	100	203	905	905	905
2011/2012	Supreme Court	6	6	3	2	1	0	2	0	3	4	27	27	27
	Other Court*	1	1	0	0	0	7	10	1	0	35	44	44	44
	Youth Court	68	42	3	24	51	130	260	8	114	236	937	937	937
	Total	75	49	6	26	52	137	263	8	117	275	1008	1008	1008
2012/2013	Supreme Court	15	2	1	0	0	0	1	0	2	1	22	22	22
	Other Court*	2	0	0	0	1	7	2	0	0	101	112	112	112
	Youth Court	105	80	0	43	91	119	247	0	138	278	1102	1102	1102
	Total	122	82	1	43	92	126	250	0	140	380	1236	1236	1236
2013/2014	Supreme Court	5	0	0	0	0	0	0	1	1	1	8	8	8
	Other Court*	1	3	0	0	1	7	2	0	2	5	21	21	21
	Youth Court	105	87	0	40	91	106	193	3	126	249	1000	1000	1000
	Total	111	90	0	40	92	113	195	4	129	255	1029	1029	1029
2014/2015	Supreme Court	17	3	1	2	0	1	0	0	4	2	30	30	30
	Other Court*	1	0	0	0	1	7	1	0	0	3	13	13	13
	Youth Court	90	91	0	48	128	88	200	5	120	238	1008	1008	1008
	Total	108	94	1	50	129	96	201	5	124	243	1051	1051	1051
2015/2016	Supreme Court	13	8	0	2	2	0	0	0	3	2	30	30	30
	Other Court*	2	2	0	0	0	4	1	0	1	3	12	12	12
	Youth Court	96	125	2	40	89	57	251	3	130	300	1094	1094	1094
	Total	111	135	2	42	91	61	252	3	134	305	1136	1136	1136

Source: extracted from IJS on 26 September 2016

* - Mainly contain youths who have turned adults and were adjudicated in summary jurisdiction for both youth and adult matters on the same occasion. However, there are some youth cases that were misclassified to the summary jurisdiction by court staff

- #
- 1) Need to serve more time - Youth offenders are required to serve more time after the date of sentencing.
- 2) No need to serve more time in detention - Youth offenders are released forthwith on current matters because they have already served the sentence on remand or sentenced to the rising of the court or time served on watch house.

(Source: Exh.1240.001, Updated youth outcome table, 6 November 2017, tendered 6 November 2017)

ENDNOTES

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- ³ Holman, B & Ziedenberg, J, 2006, *The Dangers of detention: The impact of incarcerating youth in detention and other secure facilities*, A Justice Policy Institute Report, p. 6; Lynch, M, Buckman, J & Krenske, L, 2003, 'Youth justice: Criminal trajectories', *Trends & Issues in Crime and Criminal Justice*, no. 265, p. 2.
- ⁴ Exh.394.004, Judge Johnstone, 1 March 2017, Keynote Address ANZAPPL, 1 March 2017, tendered 12 May 2017, para. 130.
- ⁵ Exh.394.001, *10 characteristics of a good youth justice system*, by Judge Harding and Becroft, 12 February 2013, tendered 12 May 2017, pp. 14-15.
- ⁶ Exh.394.004, Judge Johnstone, 1 March 2017, Keynote address ANZAPPL, 1 March 2017, tendered 12 May 2017, para. 115.
- ⁷ Richards, K, 2011, 'What makes juvenile offenders different from adult offenders?', *Trends & Issues in Crime and Criminal Justice*, no. 409, Australian Institute of Criminology, p. 2.
- ⁸ Exh.601.000, *Precis of evidence of Vincent Schiraldi*, 6 June 2017, tendered 27 June 2017, para. 14.
- ⁹ Exh.394.001, *10 characteristics of a good youth justice system*, by judge Harding and Becroft, 12 February 2013, tendered 12 May 2017, p. 3; Exh.601.000, *Precis of evidence of Vincent Schiraldi*, 6 June 2017, tendered 27 June 2017, para. 13.
- ¹⁰ Exh.394.001, *10 characteristics of a good youth justice system*, by Judge Harding and Becroft, 12 February 2013, tendered 12 May 2017, p. 3; Holman, B & Ziedenberg, J, 2006, *The dangers of detention: The impact of incarcerating youth in detention and other secure facilities*, A Justice Policy Institute Report, pp. 4-5; Richards, K, 2011, 'What makes juvenile offenders different from adult offenders?', *Trends & Issues in Crime and Criminal Justice*, no. 409, Australian Institute of Criminology, p. 6.
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- ¹² Exh.394.001, *10 characteristics of a good youth justice system*, by Judge Harding and Becroft, 12 February 2013, tendered 12 May 2017, p. 14.
- ¹³ Exh.337.027, "'From Little Things Big Things Grow": Emerging youth justice themes in the South Pacific', by Judge Becroft, 20 May 2013, tendered 8 May 2017, p. 29; Lynch, M, Buckman, J & Krenske, L, 2003, 'Youth justice: Criminal trajectories', *Trends & Issues in Crime and Criminal Justice*, no. 265, p. 2.
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- ¹⁶ Exh.696.001, *Statement of Carolyn Whyte*, 9 June 2017, tendered 10 July 2017, para. 29.
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- ²⁰ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing time – Time for doing: Indigenous youth in the criminal justice system* June 2011, accessed 10 October 2017, <<http://www.aph.gov.au/house/committee/atsia/sentencing/report/fullreport.pdf>>, p. 203.
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- ²² Tribal Warrior Aboriginal Corporation, 2017, *Tribal Warrior Mentoring Program*, accessed 16 October 2017, <<https://tribalwarrior.org/tribal-warrior-mentoring-program/>>.
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- ³¹ Alternatives to Detention Roundtable, Darwin, 27 February 2017, transcript, pp. 22-23.
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- ³⁶ Exh.362.000, Statement of Matthew McKinlay, 21 April 2017, tendered 10 May 2017, para. 237.
- ³⁷ Exh.363.000, Statement of Jennie Renfree, 1 May 2017, tendered 10 May 2017, para. 154.
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- ³⁹ Northern Territory Police Meeting, Alice Springs, 16 March 2017.
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- ⁷⁰ Exh.359.002, Annexure IL-02 to Statement of Ian Lea, 5 May 2017, tendered 10 May 2017, para. 7.
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- 472 Submission, Northern Territory Legal Aid Commission, 1 June 2017, p 8.
- 473 Stewart, J et al, 2014, Indigenous Youth Justice Programs Evaluation, Australian Institute of Criminology, Special Report, p. vii.

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481 Exh.363.009, Annexure JR-09 to statement of Jennie Renfree, 1 May 2017, tendered 10 May 2017, p. 36.

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501 Exh.180.001, Statement of AQ, 14 February 2017, tendered 28 March 2017, para. 87(g).

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503 Northern Territory Government, Historic Youth Crime Overhaul Puts Victims First, Northern Territory Government Newsroom, 8 February 2017, viewed 22 September 2017, <<http://www.newsroom.nt.gov.au/mediaRelease/22812>>.

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506 Exh.340.000, Statement of Jeanette Kerr, 27 March 2017, tendered 8 May 2017, para. 45.

507 Northern Territory Government, Youth Outreach officers take up new role, Northern Territory Government Newsroom, 15 May 2017, accessed 22 October 2017, <<https://territoryfamilies.nt.gov.au/news/youth-outreach-officers-take-up-new-role>>.

508 Submission, Northern Territory Government Pre and Post Detention Submission, 10 July 2017, p. 10.

509 Exh.339.000, Statement of Jeanette Kerr, 17 March 2017, tendered 8 May 2017, para. 74.

510 Transcript, Shahleena Musk, 9 May 2017, p. 3611: lines 20-22.

511 Transcript, Anna Gill, 9 May 2017, p. 3612: lines 30-41; Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered on 9 May 2017, para. 89.

512 Exh.704.001, Wade Marshall, 19 June 2017, tendered 10 July 2017, para. 43; Exh.339.000, Statement of Jeanette Kerr, 17 March 2017, tendered on 8 May 2017, paras 34-38; Transcript, Shahleena Musk, 9 May 2017, p. 3613: lines 35-45; Exh.351.001, Statement of Sandy Lau, 7 May 2017, tendered on 9 May 2017, para. 68; Exh.355.000, Statement of Jared Sharp, 24 April 2017, tendered on 9 May 2017, paras 149-150.

513 Australian Institute of Health and Welfare, 2016, Northern Territory: Youth justice supervision in 2015-16, Youth Justice Fact sheets, no. 77, p. 3.

514 Australian Institute of Health and Welfare, Bulletin 139, Youth justice in Australia 2015-16, Figure 6.

515 Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, p. 49.

516 Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, para. 93. Ms Musk described a situation where a young person in the care of Territory Families with minimal criminal history and particular behavioural management care requirements was remanded into custody a number of times for breach of bail before her court matters finalised and she received a good behaviour bond.

517 Exh.352.000, Statement of Nicola MacCarron, 28 April 2017, tendered 9 May 2017, para. 62.

518 Exh.131.001, Statement of AF, 25 November 2016, tendered 23 March 2017, para. 13.

519 Exh.577.000, Statement of DB, tendered 26 June 2017, para. 52.

520 Exh.339.000, Statement of Jeanette Kerr, 27 March 2017, tendered 8 May 2017, para. 38.

- 521 Transcript, Shahleena Musk, 9 May 2017, p. 3611: lines 18-23; Exh.353-000, Statement of Shahleena Musk, 11 April 2017, tendered on 9 May 2017, para 89, 91-93.
- 522 Transcript, Anna Gill, 9 May 2017, p. 3612: lines 30-41; Exh.353-000, Statement of Shahleena Musk, 11 April 2017, tendered on 9 May 2017, para. 89.
- 523 Exh.704.001, Wade Marshall, 19 June 2017, tendered 10 July 2017, para. 43; Exh.339.000, Statement of Jeanette Kerr, 17 March 2017, tendered on 8 May 2017, paras 34-38; Transcript, Shahleena Musk, 9 May 2017, p. 3613: lines 35-45; Exh.351.001, Statement of Sandy Lau, 7 May 2017, tendered on 9 May 2017, para. 68; Exh.355.000, Statement of Jared Sharp, 24 April 2017, tendered on 9 May 2017, paras 149-150.
- 524 *Bail Act* (NT) s 4(1).
- 525 *Bail Act* (NT) s 8.
- 526 *Bail Act* (NT) s 7(A).
- 527 *Bail Act* (NT) s 7(A).
- 528 *Bail Act* (NT) s 24.
- 529 *Bail Act* (NT) s 24.
- 530 *Bail Act* (NT) s 24(1)(b)(iiib).
- 531 Exh.360.004, Annexure CL-4 to Statement of Craig Laidler, 9 May 2017, tendered 10 May 2017. General Orders are issued under 14A of the *Police Administration Act* (NT).
- 532 Exh.360.004, Annexure CL-4 to Statement of Craig Laidler, 9 May 2017, tendered 10 May 2017, para. 13.
- 533 Exh.360.004, Annexure CL-4 to Statement of Craig Laidler, 9 May 2017, tendered 10 May 2017, para. 21.
- 534 Exh.360.004, Annexure CL-4 to Statement of Craig Laidler, 9 May 2017, tendered 10 May 2017, para. 22.
- 535 Exh.360.004, Annexure CL-4 to Statement of Craig Laidler, 9 May 2017, tendered 10 May 2017, paras 33-58.
- 536 *Bail Act* (NT) s 37B. The offence was introduced by the *Bail Amendment Act* (NT) which commenced in May 2011.
- 537 *Bail Act* 1980 (Qld) s 29(2)(a).
- 538 For example, Submissions, Jesuit Social Services, October 2016, p. 22; Submission, Australian Red Cross, 20 December 2016, pp. 11-14; Submission, UNICEF Australia, 29 November 2016, pp. 46-49; Detention Submission, Central Australian Aboriginal Legal Aid Service, July 2017, p. 20, 66; Submission, Human Rights Law Centre, 10 July 2017, p. 18. Submission, North Australian Aboriginal Justice Agency, Detention, , July 2017, p. 101.
- 539 Exh.337.020, Australian Institute of Criminology, *Bail and Remand for Young People in Australia: A National Research Project*, 2013, tendered 12 May 2017, pp. 1-3.
- 540 Transcript, Eileen Baldry, 8 May 2017, p. 3488: lines 2-14.
- 541 Exh.601.000, Statement of Vincent Schiraldi, 6 June 2017, tendered 27 June 2017, para. 17.
- 542 Transcript, Loretta Crombie, 10 May 2015, p. 3746: lines 40-47; p. 3747: lines 1-5.
- 543 Exh.108.001, Statement of BR, 18 February 2017, tendered 21 March 2017, para. 15.
- 544 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 120;
- 545 Exh.190.001, Statement of Michael Yaxley, 20 February 2017, tendered 28 March 2017, para. 120; Exh.211.001, Statement of Salli Cohen, 21 February 2017, tendered 30 March 2017, para. 98.
- 546 Transcript, Anna Gill, 9 May 2017, p. 3603, 36-39.
- 547 Transcript, Anna Gill, 9 May 2017, p. 3603: lines 39-45.
- 548 Exh.696.001, Annexure CW-4 to Statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, p. 3.
- 549 Exh.355.000, Statement of Jared Sharp, 24 April 2017, tendered 9 May 2017, para. 60; Exh.354.000, Statement of Anna Gill, 2 May 2017, tendered 9 May 2017, para. 17.
- 550 Exh.354.000, Statement of Anna Gill, 2 May 2017, tendered 9 May 2017, para. 17; Exh.756.001, Statement of Ian Lea, 14 June 2017, tendered 28 July 2017, para. 15.
- 551 *Bail Act* (NT) s 28 (1).
- 552 *Bail Act* (NT) s 28(2).
- 553 Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, paras 89, 95-96; Exh.080.001, Statement of Antoinette Carroll, 1 December 2016, tendered 15 March 2017, para. 27, 30; Exh.354.000, Statement of Anna Gill, 2 May 2017, paras 18-21
- 554 *Bail Act* s 24(1)(b)(iiib)
- 555 *Bail Act* 1992 (ACT) s. 23(1)(b).
- 556 *Bail Act* 1982 (WA) schedule 1, part D, cl. 2(1a)(d).
- 557 *Bail Act* 1977 (Vic) s 3B.
- 558 *Bail Act* 1977 (Vic) s 3B.
- 559 *Bail Act* 1977 (Vic) s 3A.
- 560 Exh.337.020, Australian Institute of Criminology, *Bail and Remand for Young People in Australia: A National Research Project*, 2013, tendered 12 May 2017, p. 97.
- 561 Exh.337.020, Australian Institute of Criminology, *Bail and Remand for Young People in Australia: A National Research Project*, 2013, tendered 12 May 2017, p. 97
- 562 Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, para. 89.
- 563 Transcript, Anna Gill, 9 May 2017, p. 3612: lines 33-41; Submission, Judge Sue Oliver, 18 November 2016, p. 7; Exh.352.000, Statement of Nicola MacCarron, 28 April 2017, tendered 9 May 2017, para. 74.
- 564 Transcript, Hilary Hannam, 8 May 2017, p. 3435: lines 24-27
- 565 Australian Institute of Criminology, *Bail and remand for young people in Australia*, p. 76.
- 566 Submission, Judge Sue Oliver, 18 November 2016, p. 7.

- 567 Evenhuis, M, 2013, *Set Up To Fail: Aboriginal Youth, Bail and Children's Rights in Central Australia*, report prepared for the Central Australian Aboriginal Legal Service, pp. 35-36; Exh.352.000, Statement of Nicola MacCarron, 28 April 2017, tendered 9 May 2017, para. 74.
- 568 Transcript, Russell Goldflam, 14 December 2016, p. 850: lines 8-19.
- 569 Transcript, Anna Gill, 9 May 2017, p.3612: lines 30-41.
- 570 Exh.364.000, Statement of Loretta Crombie, 4 May 2017, tendered 10 May 2017, para. 41.
- 571 Exh.364.000, Statement of Loretta Crombie, 4 May 2017, tendered 10 May 2017, para. 41.
- 572 Exh.352.000, Statement of Nicola MacCarron, 28 April 2017, tendered 9 May 2017, para. 74.
- 573 Exh.474.000, Statement of CJ, 24 May 2017, tendered 31 May 2017, para. 58.
- 574 Exh.123.001, Statement of AS, 22 February 2017, tendered 22 March 2017, para. 5, 9.
- 575 Exh.145.001, Statement of AG, 25 November 2016, tendered 24 March 2017, para. 95-96.
- 576 Exh.128.001, Statement of AU, 18 February 2017, tendered 23 March 2017, para. 15.
- 577 Meeting at the Children's Court, 7 March 2017, Parramatta, NSW.
- 578 *Bail Act 1977* (Vic) s 3B(g).
- 579 Transcript, Justice Hilary Hannam, 8 May 2017, p. 3431: line 9-19.
- 580 Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, para. 95.
- 581 Exh.353.000, Statement of Shahleena Musk, 21 April 2017, tendered 9 May 2017, para. 95.
- 582 Submission, Judge Sue Oliver, 18 November 2016, p. 6.
- 583 Exh.025.003, Annexure 2, Statement of Dr Damien Howard, Aboriginal Hearing Loss and the Criminal Justice System, 5 October 2016, tendered 13 October 2016, p. 2.
- 584 Meeting at the Children's Court, 7 March 2017, Parramatta NSW, 7 March 2017.
- 585 *Bail Act* (NT) s 37B.
- 586 Exh.045.002, Statement of Joe Yick, 17 November 2016, tendered 9 December 2016, para. 9.
- 587 Exh.045.002, Statement of Joe Yick, 17 November 2016, tendered 9 December 2016, p. 10.
- 588 Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, Table 1f_1.
- 589 Exh.045.001, Statement of Joe Yick, 14 October 2016, tendered 9 December 2016, Table 1f_1.
- 590 Exhibit 045.002, Statement Joe Yick, 17 November 2016, tendered 9 December 2016, Corrected information Table 1e, Table a.
- 591 Exh.045.002, Statement of Joe Yick, 17 November 2016, tendered 9 December 2016, Corrected information Table b.
- 592 Exh.052.001, Statement of Russell Goldflam, 24 November 2016, tendered 13 December 2016, para. 25.
- 593 Exh.535.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, para. 89.
- 594 Transcript, Antoinette Carroll, 15 March 2017, p. 1164: lines 31-33; Exh.052.001; Exh.756.001. Statement of Ian Lea, 14 June 2017, tendered 20 July 2017, para. 11.
- 595 Exh.354.000, Statement of Anna Gill, 2 May 2017, tendered 9 May 2017, para. 19.
- 596 Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, para. 89.
- 597 Victims of Crime Assistance Act (NT), s. 61.
- 598 Exh.696.001, Statement of Carolyn Whyte, 9 June 2017, tendered 10 July 2017, para. 20.
- 599 Exh.577.000, Statement of DB, tendered 26 June 2016, paras 45-46.
- 600 Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, para. 89. Submission, Northern Territory Legal Aid Commission, May 2017, p 32; Submission by North Australian Aboriginal Justice Agency, Pre and Post Detention, 11 August 2017, p. 62.
- 601 Transcript, Jeanette Kerr, 8 May 2017, p. 3524: lines 44-47 – p.3525: lines 1-4.
- 602 Exh.337.020, Richards and Renshaw, Australian Institute of Criminology, Bail and remand for young people in Australia, 2013, tendered 12 May 2017, pp. 77-80.
- 603 Transcript, Loretta Crombie, 10 May 2017, p3746: lines 13-30.
- 604 *Bail Act 2013* (NSW) s 79
- 605 *Bail Act 2013* (NSW) s 77(1)(e); *Bail Act* (NT) s 38(a); *Bail Act 1992* (ACT) s 56A(2); Police Powers and Responsibilities Act 2000 (Qld), s. 367; *Bail Act 1985* (SA) s 18(2); *Bail Act 1994* (Tas) s 10(1); *Bail Act 1977* (Vic) s 24(1); *Bail Act 1982* (WA) s 54(2) (a); Exh.337.020, Richards and Renshaw, Australian Institute of Criminology, Bail and remand for young people in Australia, 2013, tendered 12 May 2017, pp. 77.
- 606 Exh.337.020, Richards and Renshaw, Australian Institute of Criminology, Bail and remand for young people in Australia, 2013, 12 May 2017, pp. 77-8.
- 607 Exh.180.001, Statement of AQ, 14 February 2017, tendered 28 March 2017, para. 48.
- 608 Submission, Judge Sue Oliver, 18 November 2016, p. 12.
- 609 Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, paras 99-100.
- 610 Submission, Northern Territory Legal Aid Commission, May 2017, p. 40.
- 611 Submission, Northern Territory Legal Aid Commission, May 2017, p. 40.
- 612 Exh. 123.001, Statement of AS, 22 February 2017, tendered on 22 March 2017, para. 10.
- 613 Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, para. 100.
- 614 Transcript, Judge Peter Johnstone, 8 May 2017, p. 3473: lines 36-47.
- 615 *Bail Act* (NT) s 52B.
- 616 Submission, Judge Sue Oliver, 19 November 2016, p. 12. Concerns to this effect were raised with the Commission by vulnerable witnesses, but in each case this has been redacted from their statement to avoid identifying the child.
- 617 Exh.365.000, Statement of CE, 21 February 2017, tendered 10 May 2017, para. 16.
- 618 Transcript, Shahleena Musk, 9 May 2017, p. 3608: lines 35-48; p. 3609: lines 1-4; Exh.350.001, Statement of Sandy Lau, 3 May

- 2017, tendered on 9 May 2017, paras 33-37.
- ⁶¹⁹ Exh.350.001, Statement of Sandy Lau, 3 May 2017, tendered on 9 May 2017, para. 34.
- ⁶²⁰ Transcript, Sandy Lau, 9 May 2017, p. 3612: lines 4-20; Exh.350.001, Statement of Sandy Lau, 3 May 2017, tendered on 9 May 2017, para. 68.
- ⁶²¹ Exh.339.000, Statement of Jeanette Kerr, 27 March 2017; tendered on 8 May 2017, para. 35; Exh.340.003, Annexure JK-3 to Statement of Jeanette Kerr, 17 March 2017, tendered 8 May 2017, pp. 3-8.
- ⁶²² Transcript, Shaleena Musk, 9 May 2017, p. 3613: lines 39-45.
- ⁶²³ Exh.339.000, Statement of Jeanette Kerr, 27 March 2017; tendered on 8 May 2017, para. 34.
- ⁶²⁴ Exh.339.000, Statement of Jeanette Kerr, 27 March 2017; tendered on 8 May 2017, para. 38.
- ⁶²⁵ Exh.352.000, Statement of Nicola MacCarron, 28 April 2017, tendered 9 May 2017, para. 75.
- ⁶²⁶ Exh.352.000, Statement of Nicola MacCarron, 28 April 2017, tendered 9 May 2017, para. 77.
- ⁶²⁷ Exh.368.000, Statement of Janet Wright, 2 May 2017, tendered 11 May 2017, para. 24.
- ⁶²⁸ Exh.368.000, Statement of Janet Wright, 2 May 2017, tendered 11 May 2017, para. 18.
- ⁶²⁹ Exh.368.000, Statement of Janet Wright, 2 May 2017, tendered 11 May 2017, paras 18-19.
- ⁶³⁰ Exh.368.000, Statement of Janet Wright, 2 May 2017, tendered 11 May 2017, para. 16.
- ⁶³¹ Transcript, Amanda Nobbs-Carcuro, 25 May 2017, p. 3958: lines 20-35, p. 3959: lines 1-6.
- ⁶³² Submission, Northern Territory Government Responsive Submission on Notice of Adverse Material 34, The Path into Detention (Bail Section), 14 September 2017.
- ⁶³³ Exh.339.000, Statement of Jeanette Kerr, 27 March 2016, tendered 8 May 2017, paras 40-43.
- ⁶³⁴ Transcript, Jeanette Kerr, 8 May 2017, p. 3517: line 27 – p. 3519: line 13.
- ⁶³⁵ Transcript, Jeanette Kerr, 8 May 2017, p. 3522.
- ⁶³⁶ See generally: Denning-Cotter, Indigenous Justice Clearinghouse, Bail Support in Australia, April 2008, at <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief002.pdf>; Exh.337.020, Richards and Renshaw, Australian Institute of Criminology, Bail and remand for young people in Australia, November 2013, tendered 12 May 2017.
- ⁶³⁷ Submission, Central Australian Aboriginal Legal Aid Service, Pre and Post Detention, July 2017, pp. 15-16; Submission, North Australian Aboriginal Justice Agency, Pre and Post Detention, August 2017, pp. 62-64. In their submissions to the Commission, Central Australian Aboriginal Legal Aid Service and North Australian Aboriginal Justice Agency both supported models for bail support programs that include 'wrap-around' services such as those provided by the Conditional Bail Program in Queensland and ASYASS in Central Australia. CAALAS submitted that existing services in Central Australia, such as ASYASS, BushMob and the Walpiri Youth Development Aboriginal Corporation, are best placed to deliver bail support programs because of their existing relationships with the community and young people, and should be funded to provide such programs rather than new providers entering the field.
- ⁶³⁸ Transcript, Janet Wright, 11 May 2017, p. 3772: lines 1-4.
- ⁶³⁹ Transcript, Janet Wright, 11 May 2017, p. 3771: lines 40-43.
- ⁶⁴⁰ Transcript, Janet Wright, 11 May 2017, p. 3771: line 34 – p. 3772: line 4.
- ⁶⁴¹ Transcript, Janet Wright, 11 May 2017, p. 3777: lines 39-46 – p. 3778: lines 2-7.
- ⁶⁴² *Care and Protection of Children Act (NT) s 89.*
- ⁶⁴³ Appendix A Cross-over Chapter 75.2% of Aboriginal and 60% of non-Aboriginal children convicted of an offence had been reported to child protection.
- ⁶⁴⁴ *Youth Justice Act (NT) ss 45, 46.*
- ⁶⁴⁵ *Youth Justice Act (NT) s 45(2).* This is a practical necessity both in the Northern Territory and elsewhere in Australia because of the distance between population centres and small numbers of people living in them.
- ⁶⁴⁶ *Youth Justice Act 2006 (NT) s 45(1).*
- ⁶⁴⁷ His Honour Judge Peter Johnstone, His Honour Judge Michael Shanahan, His Honour Judge Denis Reynolds respectively.
- ⁶⁴⁸ Her Honour Judge Penelope Eldridge.
- ⁶⁴⁹ Magistrate Sue Duncome.
- ⁶⁵⁰ Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, art 40; Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, rules 1.6, 22.
- ⁶⁵¹ Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, arts 3, 40; Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), rules 5.1, 17.
- ⁶⁵² Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, arts 9, 12, 40; Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, rules 7, 14, 15.
- ⁶⁵³ Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, rules 10, 20.
- ⁶⁵⁴ Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, rule 8.
- ⁶⁵⁵ Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, rules 1.5, 16.
- ⁶⁵⁶ Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, arts 3, 23; Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, rule 24.
- ⁶⁵⁷ Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, rules 6, 11, 18.
- ⁶⁵⁸ Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, art 9; Exh.006.002, Standard

Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, rules 17, 19, 20.

⁶⁵⁹ *Youth Justice Act* (NT) s 4(d).

⁶⁶⁰ *Youth Justice Act* (NT) s 4(a), (e).

⁶⁶¹ *Youth Justice Act* (NT) s 4(b), (f), (n).

⁶⁶² *Youth Justice Act* (NT) s 4(c).

⁶⁶³ *Youth Justice Act* (NT) s 49(2).

⁶⁶⁴ *Youth Justice Act* (NT) s 50(1).

⁶⁶⁵ *Care and Protection of Children Act* (NT) ss 97, 99.

⁶⁶⁶ Exh.357.001, NT Youth Justice Court Practice Direction No 2 of 2016, 11 April 2016, tendered 10 May 2017.

⁶⁶⁷ Closed Court transcript, AQ, 28 March 2017, p. 4: lines 27-39.

⁶⁶⁸ Submission, Central Australian Aboriginal Legal Aid Service, 10 July 2017, pp. 58-60; Submission, North Australian Aboriginal Justice Agency, August 2017, pp. 72-73.

⁶⁶⁹ Transcript, Antoinette Carrol, 15 March 2017, p. 1162: lines 42-47; p. 1163: lines 1-2.

⁶⁷⁰ Exh.354.000, Statement of Anna Gill, 2 May 2017, tendered 9 May 2017, para. 31; Transcript, Anna Gill, 9 May 2017, p. 3636: lines 1-11; Transcript, Jeanette Kerr, 8 May 2017, p. 3537: lines 19-22.

⁶⁷¹ Submission, Central Australian Aboriginal Legal Aid Service, 10 July 2017, p. 58-60.

⁶⁷² *Youth Justice Act* (NT) s 48.

⁶⁷³ *Care and Protection of Children Act* (NT) s 92(3).

⁶⁷⁴ Submission, Judge Sue Oliver, 18 November 2016, p. 5.

⁶⁷⁵ Submission, Judge Sue Oliver, 18 November 2016, p. 5.

⁶⁷⁶ Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 June 2017, para. 11.

⁶⁷⁷ Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 June 2017, para. 54.

⁶⁷⁸ Transcript, Judge Peter Johnstone, 8 May 2017, p. 3472: lines 1-9.

⁶⁷⁹ Submission, Judge Sue Oliver, 18 November 2016, p. 5.

⁶⁸⁰ Exh.096.017, Carney Review of the Northern Territory Youth Justice System, 30 September 2011, tendered 17 March 2017, p. 61.

⁶⁸¹ Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 June 2017, para. 11.

⁶⁸² Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 June 2017, para. 73.

⁶⁸³ Exh.660.001, Statement of Gabrielle Brown, 3 May 2017, tendered 30 June 2017, paras 46-47.

⁶⁸⁴ *Youth Justice Act* (NT) s 49(1).

⁶⁸⁵ *Youth Justice Act* (NT) s 49(2).

⁶⁸⁶ *Youth Justice Act*, (NT) s 50.

⁶⁸⁷ *MCT v McKinney & Ors* [2006] NTCA 10, [20].

⁶⁸⁸ See, for example, *Children (Criminal Proceedings) Act 1987* (NSW) ss 10, 15A(1). Provides that proceedings against young people are to be held in closed court and automatic non-publication orders apply. Section 24 of the *South Australian Youth Court Act 1993* (SA) permits 'a genuine member of the news media' to be present at hearings and section 63C of the *South Australian Young Offenders Act 1993* (SA) prohibits the publication of any report of proceedings that identifies or tends to identify the youth involved.

⁶⁸⁹ Transcript, Russell Goldflam, 14 December 2016, p. 855: lines 1-16; the Commission also received submissions to similar effect: Submission, Central Australian Aboriginal Legal Aid Service, 10 May 2017, p. 60.

⁶⁹⁰ Exh.355.000, Statement of Jared Sharp, 24 April 2017, tendered 9 May 2017, second numbered para. 158.

⁶⁹¹ Exh.180.001, Statement of AQ, 15 February 2017, tendered 28 March 2017, para 80.

⁶⁹² Chappell, D & Lincoln, R (2012) Naming and Shaming of Indigenous Youth in the Justice System, *Final Report for Grant G20009/7475, Australian Institute of Aboriginal and Torres Strait Islander Studies*, p. 128, as quoted in Submission, Northern Territory Legal Aid Commission, May 2017, pp. 27-28.

⁶⁹³ *Care and Protection Act* (NT) s 94.

⁶⁹⁴ *Care and Protection Act* (NT), s 97.

⁶⁹⁵ Offences that carry a maximum of life imprisonment for an adult proceed in the Youth Justice Court as a preliminary examination and are committed up to the Supreme Court. All matters are heard summarily in the Youth Justice Court and the accused may elect to have indictable charges heard in that way in that court. The prosecution may present an ex officio indictment in the Supreme Court at any time.

⁶⁹⁶ *Youth Justice Act* (NT) s 46(2).

⁶⁹⁷ *Youth Justice Act* (NT) s 46(3)(b).

⁶⁹⁸ *Care and Protection Act* (NT) s 89. Previously, section 39 required that the jurisdiction could only be exercised by judges directed by the Chief Judge to do so and in making that direction the Chief Judge was required to take into account the expertise of particular judges relating to matters arising under the Act.

⁶⁹⁹ Transcript, Judge Peter Johnstone, 8 May 2017, p. 3457: lines 38-42.

⁷⁰⁰ For example the New South Wales Children's Court has a Benchbook covering both the criminal and care and protection jurisdictions.

⁷⁰¹ A citation is deliberately omitted.

⁷⁰² Exh.661.001, Statement of Luke Twyford, 5 May 2017, tendered 30 June 2017, para. 22.

⁷⁰³ Submissions on pre- and post-detention, North Australian Aboriginal Justice Agency, August 2017, p. 71.

⁷⁰⁴ Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, art 12.

⁷⁰⁵ *Youth Justice Act* (NT) s 62.

⁷⁰⁶ *Children Youth and Families Act 2005* (Vic) ss 524, 525.

⁷⁰⁷ Submissions on pre- and post-detention, North Australian Aboriginal Justice Agency, August 2017, p. 89.

⁷⁰⁸ Submissions on pre- and post-detention, North Australian Aboriginal Justice Agency, August 2017, p. 89.

⁷⁰⁹ UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, June 2013, guideline 11(58(d)).

710 Transcript, Justice Hilary Hannam, 8 May 2017, p. 3437: lines 33-41. Transcript, Judge Peter Johnstone, 8 May 2017, p. 3458: lines 30-38;

711 Transcript, Judge Michael Shanahan, 11 May 2017, p. 3763: line 28 – p. 3764: line 14.

712 Magistrates Court of Queensland, Children’s Court Child Protection Proceedings, July 2016, <http://www.courts.qld.gov.au/___data/assets/pdf_file/0003/485274/cc-bb-childrens-court-child-protection-proceedings-benchbook.pdf>, accessed 2 November 2017.

713 Exh.350.001, Statement of Sandy Lau, 2 May 2017, tendered 9 May 2017, para. 8.

714 Submissions on pre- and post-detention, North Australian Aboriginal Justice Agency, August 2017, pp. 90-92; Exh.337.026, Re: Youth Justice Prosecutors, 5 November 2013, tendered 12 May 2017.

715 Northern Territory Police Meeting, Darwin, 21 March 2017., .

716 *Youth Justice Act* (NT) s 63.

717 *Youth Justice Act* (NT) s 5.

718 *Youth Justice Act* (NT) s 63(4).

719 Exh.357.001, NT Youth Justice Court Practice Direction No 2 of 2016, 11 April 2016, tendered 10 May 2017.

720 Exh.357.001, NT Youth Justice Court Practice Direction No 2 of 2016, 11 April 2016, tendered 10 May 2017.

721 Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, para 40; Exh.350.001, Statement of Sandy Lau, 2 May 2017, tendered 9 May 2017, para 48.

722 *Youth Justice Act* (NT) s 63.

723 Exh.704.001, Statement of Wade Marshall, 19 June 2017, tendered 10 July 2017, para. 56.

724 Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, para. 69.

725 Submission on detention, North Australian Aboriginal Justice Agency, July 2017, pp. 106, 107.

726 Chapter 8(Community Engagement), p. 64.

727 Judges’ Roundtable, Darwin, 31 March 2017.

728 *Youth Justice Act* (NT) s 63(2).

729 Transcript, Shahleena Musk, 9 May 2017, p. 3628: lines 33-39.

730 Exh.355.000, Statement of Jared Sharp, 24 April 2017, tendered 9 May 2017, para.102.

731 Exh.104.001, Statement of Terry Byrnes, 10 December 2016, tendered 20 March 2017, paras 8-9.

732 Exh.104.001, Statement of Terry Byrnes, 10 December 2016, tendered 20 March 2017, para. 26.

733 Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, para. 21.

734 Exh.104.001, Statement of Terry Byrnes, 10 December 2016, tendered 20 March 2017, para 27.

735 Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, para. 23.

736 Transcript, Judge Denis Reynolds, 29 June 2017, p. 5309: lines 42-45.

737 Transcript, Judge Peter Johnstone, 8 May 2017, p. 3463: lines 8-13; Transcript, Shahleena Musk, 9 May 2017, p. 3633: lines 1-18.

738 Transcript, Justice Hilary Hannam, 9 May 2017, p. 3423: lines 1-8.

739 Submissions on pre- and post-detention, North Australian Aboriginal Justice Agency, p. 77.

740 Transcript, Professor Frank Oberklaid, p. 4026: lines 17-27.

741 Transcript, Damien Howard, p. 241: lines 15-19.

742 Exh.260.001, Statement of BW, 22 February 2017, tendered 31 March 2017, para 15.

743 *Youth Justice Act* (NT) s 51.

744 Exh.337.024, *Police v FC & AB* [2013] NTMC 008, 8 February 2016, tendered 8 May 2017, paras 18-19.

745 Exh.337.024, *Police v FC & AB* [2013] NTMC 008, 8 February 2016, tendered 8 May 2017, para. 19.

746 Transcript, Justice Hilary Hannam, 8 May 2017, p. 3428: lines 9-28.

747 The Court may adjourn the matter for the preparation of the report and remand the youth under section 65: *Youth Justice Act* s 51(4). Exh.350.000 Statement of Sandy Lau, 2 May 2017, tendered 9 May 2017, paras 65, 68; Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, paras 69, 113; Transcript, Shahleena Musk, 9 May 2017, p. 3629: lines 24-39.

748 Transcript, Shahleena Musk, 9 May 2017, p. 3630: lines: 33-46; *Youth Justice Act* (NT), s 67(2).

749 Submission, Judge Sue Oliver, 18 November 2016, p. 12.

750 Exh.354.000, Statement of Anna Gill, 2 May 2017, tendered 9 May 2017, para. 25.

751 Exh.350.001, Statement of Sandy Lau, 2 May 2017, tendered 9 May 2017, para. 76; Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, para. 46.

752 Exh.352.000, Statement of Nicola Marie MacCarron, 28 April 2017, tendered 12 May 2017, para. 152; Exh.350.001, Statement of Sandy Lau, 2 May 2017, tendered 9 May 2017, para. 76.

753 *Youth Justice Act* (NT) s 64.

754 Submissions on pre- and post-detention, North Australian Aboriginal Justice Agency, August 2017, p. 34.

755 Exh.352.000, Statement of Nicola Marie MacCarron, 28 April 2017, tendered 12 May 2017, para. 39.

756 Exh.352.000, Statement of Nicola Marie MacCarron, 28 April 2017, tendered 12 May 2017, para. 39.

757 Exh.353.000, Statement of Shahleena Musk, 11 April 2017, tendered 9 May 2017, para. 14.

758 Submissions on pre- and post-detention, North Australian Aboriginal Justice Agency, August 2017, p. 103.

759 *Youth Justice Act* (NT) Pt 6A, Div 3.

760 Transcript, Justice Hilary Hannam, 8 May 2017, p. 3426: lines 29-38.

761 Transcript, Justice Hilary Hannam, 8 May 2017, p. 3425: lines 17-19.

762 Transcript, Justice Hilary Hannam, 8 May 2017, p. 3425: lines 39-42.

763 Exh.386.000, Statement of Ann Lewis, 26 April 2017, tendered 12 May 2017, para. 11; Exh.355.000, Statement of Jared Sharp, 24 April 2017, tendered 9 May 2017, para. 112.

764 Exh.386.000, Statement of Ann Lewis, 26 April 2017, tendered 12 May 2017, paras 47-49.

765 Exh.352.000, Statement of Nicola MacCarron, 28 April 2017, tendered 12 May 2017, para. 134.

- 766 Exh.386.000, Statement of Ann Lewis, 26 April 2017, tendered 12 May 2017, paras 47-49.
- 767 Exh.386.000, Statement of Ann Lewis, 26 April 2017, tendered 12 May 2017, para. 11; Exh.355.000, Statement of Jared Sharp, 24 April 2017, tendered 9 May 2017, para. 114.
- 768 Transcript, Jared Sharp, 9 May 2017, p. 3645, lines: 32-33.
- 769 Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, rule 20.1.
- 770 Exhibit 350.001, Statement of Sandy Lau, 2 May 2017, tendered 9 May 2017, para. 28.
- 771 Transcript, Sandy Lau, 9 May 2017, p. 3605: line 4 – p. 3606: line 3.
- 772 Transcript, Nicola MacCarron, 9 May 2017, p. 3635: line 2.
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- 774 Exhibit 354.000, Statement of Anna Gill, 2 May 2017, tendered 9 May 2017, para. 33.
- 775 Transcript, Justice Denis Reynolds, 29 June 2017, p. 5309: lines 21-26.
- 776 Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, rules 1.5, 16.
- 777 Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered 11 October 2016, rule 24.
- 778 *Youth Justice Act* (NT) s 69.
- 779 *Youth Justice Act* (NT) s 4(o).
- 780 *Youth Justice Act* (NT) s 81(2)(c).
- 781 *Youth Justice Act* (NT) ss 70(b), 70(m).
- 782 Submission, Judge Sue Oliver, 18 November 2016, p. 19.
- 783 Transcript, Jared Sharp, 9 May 2015, p. 3660: lines 6-14.
- 784 Transcript, Larissa Behrendt, 29 May 2015, p. 4008: lines 15-22; Exh.454.001, Individualised justice through indigenous community reports in sentencing, 2017, tendered 29 May 2017.
- 785 Transcript, Tracy Luke, 11 May 2015, p. 3798: lines 29-30.
- 786 *Criminal Code Act* (NT) sch 1, s 38(1)
- 787 *Criminal Code Act* (NT) sch 1, s 38(2).
- 788 *Youth Justice Act* (NT) s 81(3).
- 789 *Youth Justice Act* (NT) s 83.
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- 791 *Youth Justice Act* (NT) s 89.
- 792 *Victims of Crime Assistance Act* (NT) s 61.
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- 795 Exh.005.002, Convention on the Rights of the Child, 20 November 1989, tendered 11 October 2016, art 9; Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, rules 17, 19, 20.
- 796 *Youth Justice Act* (NT) s 81(6).
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- 806 *Youth Justice Act* (NT) s 83(2)(b).
- 807 *Youth Justice Act* (NT) ss 85(1), 85(3).
- 808 Exh.TBC, DAJ.0031.0016.2225, Northern Territory Government, Parole Board's Policy and Procedures Manual, tendered TBC, s. 8.12.
- 809 Exh.TBC, DAJ.0031.0016.2225, Northern Territory Government, Parole Board's Policy and Procedures Manual, tendered TBC, s. 8.17.
- 810 Submissions on pre- and post-detention, North Australian Aboriginal Justice Agency, August 2017, pp. 133-140.
- 811 *Young Offenders Act 1994* (WA) s 151; *Children Youth and Families Act 2005* (Vic) s 442.
- 812 *Young Offenders Act 1994* (WA) s 152(3)(a).
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OTHER YOUTH JUSTICE AND
DETENTION MODELS

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OTHER YOUTH JUSTICE AND DETENTION MODELS

INTRODUCTION

The Northern Territory is not alone in having to repair a broken youth detention system. The experience of other jurisdictions shows that reform of youth detention systems to overcome problems similar to those identified in this report is achievable. Indeed the impetus for change elsewhere has often been as a result of a particular crisis in a detention system facing growing numbers and spiralling costs. In Washington DC, for example, the system had been in perennial crisis, with chronic over-crowding, high levels of assault and sexual harassment, and long-running law suits about mistreatment within the system.¹

Ultimately, such breakdowns led to the recognition that the traditional model for youth detention, with its focus on large 'prison-like' juvenile detention facilities was no longer fit for purpose, looking instead ill-conceived and outmoded, as '*a failure, with high costs and recidivism rates and institutional conditions that are often appalling*'.²

The youth justice system in the Northern Territory has so far followed the traditional model, over-reliant on incarceration, and seemingly '*impervious to reform*',³ and it has now faced a series of crises. Incremental, modest adjustments to the system would not be capable of achieving the degree of change needed. The Commission actively looked to other places which have achieved successful reforms in youth detention to understand the process of reform and the models for more effective and more humane approaches to youth detention.

A 2010 report, *A Review of Effective Practice in Juvenile Justice*,⁴ examined the evidence gathered over more than 30 years from empirical studies conducted in Australia, the United States, New Zealand and Europe. It clearly shows the ineffectiveness of traditional penal or '*get tough*' methods of reducing juvenile crime, such as juvenile incarceration, overly strict bail legislation, trying juveniles in adult courts, '*scared straight*' programs and boot camps.⁵ The report concluded that not

only do these methods tend to be ineffective in reducing recidivism among young people, but they are also among the most costly means of dealing with juvenile crime. The Commission also heard of the potential damage such an approach can have:

...the harsher you are in terms of tough on crime, the more you tend to pick up those who are the most vulnerable to being caught up in that sort of approach.⁶

The Commission reviewed submissions, précis of evidence, academic articles and other research material on alternative detention models. International and Australian witnesses spoke to the Commission about what had changed in their systems and demonstrated that reform is achievable. Whilst the Commission did not thoroughly inquire into the successes or failings of each of those detention models, valuable insight was gained. Bold, brave decision-making is required. Implementing significant reform involves a major cultural shift in how juvenile crime is perceived and treated. It requires a change in community expectations to focus on prevention rather than punishment. It requires high level champions for that change who will advocate for it both within and without government.

Western Australia – West Kimberley Regional Prison

Opened in November 2012 near Derby in Western Australia, the West Kimberley Regional Prison (WKRK) houses adult men and women. The facility was designed and built to be culturally appropriate for inmates, the majority of whom are Aboriginal people from the Kimberley. The design and operation of the facility do not follow the traditional prison model. The Commission heard from Mike MacFarlane, Superintendent of the WKRK from 2012 to 2016, about his involvement in developing and running the facility.⁷

The facility was built to address overcrowding in Broome Regional Prison and to allow prisoners from the Kimberley region to remain on country while in prison.⁸ The Western Australian Government consulted widely with Elders and communities across the Kimberley in developing the design and its guiding principles, which are:

- proximity to land and family
- recognition and respect for cultural obligations and responsibilities to family, kin and community, and
- recognition of Aboriginal people's cultural and spiritual connection to country.⁹

'WKRK was designed as a town, and not as a traditional jail'¹⁰

The WKRK model of *'self-care supported by a community style of living'* is intended to *'reduce prisoners' dependence on institutional care and provide skills for independent living'* and in turn *'improve rehabilitation outcomes and reduce reoffending for the benefit of offenders and the wider community'*.¹¹

The WKRK was built on a large bushland site. The aim was to keep the environment *'as natural as possible'*.¹² The surrounding bush is visible through the perimeter fence and the landscape is an important element of the facility. As Mr MacFarlane noted:

You see the red dirt and the soil and the trees there, it tends to create a lower atmosphere in the gaols. Some gaols have a real high atmosphere, when you walk into the West Kimberley its very low, as in tension, as in behaviours ... it's because of the natural landscape.¹³



[Outside visits area viewed from inside visits area¹⁴]

The facility was built to look like a community.¹⁵ Mr MacFarlane observed that 'if you took the fence away it could be an outer community in the Kimberley'.¹⁶



Aerial photo of West Kimberley Regional Prison¹⁷

Buildings are oriented around a central football oval. Men and women are separately accommodated but are able to mix during recreational and other activities. Residential style houses situated in bushland accommodate six to seven prisoners in each unit. There are separate accommodation areas for minimum and medium security men; maximum security men; and women. Prisoners in minimum and medium security have a key for their own rooms.¹⁸



Interaction between male and female prisoners at the oval with appropriate supervision¹⁹

‘The prison was actually a learning environment’²⁰

Mr MacFarlane told the Commission he saw imprisonment as an opportunity to provide skills and training to inmates and develop *‘positivity and self-esteem’*.²¹

The first step was to teach the *‘basic life skills’* that many prisoners lacked.²² Inmates learn new skills running the laundry, kitchen, garden and grounds. Tasks like looking after animals and producing their own food promoted empathy and self-sufficiency.²³

The vocational training provided was determined by the needs in the prisoners’ communities. Mr MacFarlane explained that the *‘approach we took was to identify the communities that prisoners had come from, then go to those communities and ask them what skills they were in need of’*.²⁴ This training was valued by prisoners and made them more likely to be employed when they returned to their communities. The training included building skills such as basic plumbing and carpentry to perform maintenance work needed in the local shire. The training also fostered pride *‘It’s my community. I fixed that; don’t break it’*.²⁵

Mr MacFarlane considered that the positive activities for inmates contributed to the 'very low' number of 'assaults and incidents' at the WKRP.²⁶ In particular, Mr MacFarlane observed that having access to music in the prison 'brings the atmosphere down'.²⁷

Culture and community

Staff members transferring from other prisons had to undergo 'a whole cultural shift', reinforced by the management team.²⁸ As superintendent, Mr MacFarlane made a point of talking to prisoners and staff members on the ground, and noted 'you need an open door policy'.²⁹ He held regular 'staff-prisoner meetings' to get feedback.³⁰ He identified the importance of having a champion at high levels of management who 'believes in what you are doing' on the ground,³¹ as well as the value of independent oversight.³²

WKRP saw a need to be not just 'a prison on the outskirts of town' but 'part of that community'.³³ A relatively high proportion of the staff members were local Aboriginal people.³⁴ Staff members were trained in the community rather than being sent to Perth or another centre, which helped in attracting and retaining local people.³⁵

Mentoring by both staff members and prisoners was one of the key ways that the philosophy behind the WKRP was put into practice.³⁶ For example, when the first group of prisoners arrived 'we had a bush meeting' where 'everyone sits and talks' to 'just explain what the prison is about'.³⁷ This group then mentored the next intake of prisoners. Inmates from the local area were involved in teaching those from other areas about the local culture.³⁸ Having local Aboriginal staff members helped to constantly reinforce cultural competence among other staff members.

As prisoners could be transferred from another prison without taking the steps that 'normally culturally you would need to do' to arrive on that country, Mr MacFarlane explained that he would ask the Elders 'to do a welcome to country'.³⁹ Other ceremonies were also performed where culturally appropriate.

'Cultural security' is a key part of the WKRP philosophy, in part achieved through its 'modified design and practices to reflect, accommodate and build on culture'.⁴⁰ The housing units were 'designed for people from specific regions ... so you are putting people in from the same communities and families as much as you can together'.⁴¹

Community Elders are part of life at WKRP. In addition to more formal quarterly visits and involvement in the community reference group, Elders would come in 'just to talk' to inmates or to teach culture.⁴² Conflicts arising between inmates were resolved by mediation by Elders or other respected people in the local community.⁴³

The Inspector of Custodial Services for Western Australia noted an extremely low rate of complaints, incidents and use of restraints at the WKRP, indicating that the prison achieves better outcomes on these measures than more traditional prisons.⁴⁴ The 2015 report identified 'a marked difference' in the 'physical demeanour and attitude' of Kimberley prisoners at the WKRP 'compared with when they are at prisons "out of country"'.⁴⁵ Both prisoners and staff members reported feeling safe at the WKRP.⁴⁶

Summary – West Kimberley Regional Prison

Culturally appropriate detention facility design and practice

Key success factors

Design promoting connections to community and culture

Focus on reintegration into the community after release

Engaging with the local Aboriginal community and involving Elders in the life of the facility

Key challenges

Developing and maintaining a staff culture supportive of the operating philosophy

Ensuring that the design of the facility, particularly cultural design elements, reflect the recommendations of local Aboriginal people

Adapting recruitment methods to promote employment of local Aboriginal staff members

Although the WKRP was specifically designed for adult prisoners, Mr MacFarlane considered that aspects of its design and operation could inform the development of a best practice youth detention facility in the Northern Territory:⁴⁷

‘A key issue will be the architectural design of any new facility that is constructed. The traditional European prison design should be replaced with either a campus style design, or a community-style design. The aspirations of the facility should be reflected in the buildings that are given prominence ... ’

Mike MacFarlane
Superintendent of West Kimberley
Regional Prison, Western Australia,
2010-2016

INTERNATIONAL REFORM – ‘THERE’S NO ONE SILVER BULLET’⁴⁸

The Commission has received evidence about the approaches to reforming juvenile justice systems in other countries. People responsible for spearheading or shepherding reform in New York and Washington DC, Scotland, Missouri, Ohio, Spain, the United Kingdom, and Canada, all spoke of positive achievements through changing their youth justice systems.

As discussed in Chapter 25 (The path into detention), the main systems the Commission examined were:

- the New Zealand youth justice system
- the Kibble Education and Care Centre in Scotland

- Diagrama Foundation’s education centres in Spain and its work in the United Kingdom
- the work of the Annie E Casey Foundation through the Juvenile Detention Alternatives Initiative in the United States of America
- the Missouri Model in the United States of America
- the reforms in Washington DC in the United States of America from 2005-2010
- the reforms in New York City in the United States of America from 2010-2015
- the reforms in Ohio in the United States of America 2007-2015
- the reforms introduced in Canada in 2003-2017, with particular reference to the reforms in Ontario from 2003-2017, and
- the findings of the Review of the Youth Justice System in England and Wales in 2016.

The Commission visited and received evidence from other Australian jurisdictions regarding their youth justice systems.

The Commission is conscious that it is not possible simply to transplant a model of youth detention, no matter how apparently successful, from somewhere else in the world to the Northern Territory. The Northern Territory has special features that would make it difficult to transplant overseas models and expect them to work. The Northern Territory population is scattered – with more than 1,000 geographically dispersed and isolated communities. It is home to most Aboriginal language speakers in Australia, with more than 100 Aboriginal languages and dialects, see Chapter 3 (Context and challenges). It also has a much smaller population than a number of the international jurisdictions the Commission examined.

Any overseas model would need substantial customisation to be able to respond to the challenges of this context. As one witness advised *‘you have to set about the process of contextualising it, making sure that for us, that it works’*.⁴⁹

The Commission heard evidence from many experts about the importance of community consultation,⁵⁰ including in the planning of services.⁵¹ Dr Rohan Lulham advised the Commission that when planning any model of detention, *‘you need to know what people want. In the absence of that information, you will get a meaningless place’*.⁵²

The following case studies illustrate approaches to youth justice reform in different jurisdictions and identify the findings of international comparative research on what makes an effective youth justice system. They describe the benefits and risks of alternative systems, as well as the consultative process and evaluation tools used in designing them.

Despite the differences between the Northern Territory and the places considered, the Commission believes there are many lessons which can be drawn from reforms elsewhere which will guide the Northern Territory in developing a model for the future.

SCOTLAND

The Scottish system for youth justice is very different to that in other countries profiled here. Since 1968, Scotland has had a welfare approach to young people at risk with a Children’s Hearing System, which has almost completely replaced youth involvement in the court system. Scotland does not have a prison service for children under the age of 16. It is presently transitioning away from having any person under the age of 18 in a prison.

Children who get into trouble are dealt with entirely through the child welfare system. This position reflects a policy decision made by the Scottish Government in 1996 to radically overhaul a youth justice system that was in crisis. Prior to that time the Scottish youth detention system was entirely punitive and non-therapeutic.

A significant impact of the approach adopted in Scotland is that the number of children who go through the criminal court process is very low. Last year it was only 24 children in a population of approximately 5.4 million, who had all committed serious offences. Only a very small number of children in Scotland are detained pre-trial.

Independent charitable providers have traditionally been the main suppliers of grant-supported residential services, including secure accommodation, along with a variety of local government provision.⁵³

***Kibble - 'an integrated array of support services for children and young people'*⁵⁴**

The Kibble Education and Care Centre (Kibble) is one of five facilities in Scotland that securely hold children. The other four secure facilities are run by the Catholic Church (two centres), a charitable trust and a local government body. Unlike Kibble, these facilities only hold children securely.

Kibble is distinct as it has both secure and non-secure housing for children, with most children being held in non-secure housing. Kibble is also distinct in that it offers a range of welfare-related services across a variety of issues. This enables it to operate across a full spectrum of care options that are integrated, and through which young people transition over time.

Established in 1859 after an initial bequest by Elizabeth Kibble to '*reclaim youthful offenders against the laws*', Kibble is one of Scotland's oldest charities and largest social enterprises. It provides an integrated array of specialist services to young people who have chronic and acute social, emotional, educational and behavioural problems.

It works with young people aged from 5 to 25. The services it runs include: residential care, primary and secondary education, community services, intensive fostering services, secure care, employment and training services, preventative and rehabilitative community services, and transitional support.

All of Kibble's 14 residential services offer specialised types of non-secure residential care that are therapeutic and structured, as well as evidence-informed, and delivered using a welfare approach. The total service provision significantly contributes to effectively keeping young people out of secure care.⁵⁵

If a secure placement is required, three secure residences are located within the Kibble centre, each housing up to six young people. Young people are referred to the centre by the Children's Panel or a court order. The secure services are co-located and integrated with all of Kibble's other services. This ensures that young people in secure care have a care plan that integrates their educational needs, specialist intervention services, transitional support services and access to employment and training.

Kibble also provides residential services within the Scottish care and protection system. This is provided for up to 64 young people in residences with a maximum of eight beds per unit. Kibble

operates 10 units that cater to young people with differing circumstances, including those who have experienced severe trauma, exhibit extremely challenging behaviour or display high-risk behaviour. There are also units specifically designed to cope with mental health issues. Kibble's rationale for having both secure and non-secure facilities is that it means that children can stay with Kibble in a range of circumstances, including during transition planning for their movement from secure to non-secure facilities.

The typical child who comes to Kibble is aged 14 and has been in out-of-home care since they were seven years old. They have typically had many different placements, which has been very disruptive to their life. Kibble aims to provide a facility where the child can stay in the same place irrespective of whether they make progress. Even once they leave the Kibble campus, they can move to one of a number of Kibble houses in the surrounding area. The combined facility also provides economies of scale in the delivery of services and staff training.

Facility design

Kibble operates on a campus model, where children are kept in units of six. There are around 100 young people on the campus. There are no medium-security or semi-secure facilities. Children are either held securely, or they are not. The campus is open and situated in the middle of an urban setting, close to Glasgow International Airport. Members of the public can walk onto the campus.

Kibble's goal is to create a home-like environment for children. There are always compromises between this objective and the need to ensure proper security for the children and staff, and to meet mandatory design standards for secure facilities. This is a constant tension, and the balance changes for the young person individually. If the young person is settled, then additional steps are taken in their room to make it more like home. Physical restraints and intervention are not used. As Graham Bell, Associate Executive Director of Kibble, advised the Commission:

*'...we have gone for a model of physical intervention that there is absolutely no pain-based interventions; that there are – that it is at least physically restrictive, that we try to obviate the need to put young people in any floor positions. And we do not use any secure rooms for physical interventions. So we don't have any, you know ... arrangement for any containment of a physical situation. So we always make – we try to make, in effect, the physical relationship – the physical intervention a relationship-based one.'*⁵⁶

The average length of stay for a child in the secure facility is 45 days, with significant variation. The principle is that all other alternatives will be used before placing a child in the secure facility, and that children will be taken out of the secure facility as quickly as possible. In very limited circumstances a child might stay there long term, such as in the case of a child murderer, who would likely be in the secure facility until their 18th birthday, upon which they would leave Kibble.

Kibble will house children who are on remand in its secure facility. A challenge for Kibble is that it has very high demand for its places and a long waiting list. This makes it difficult to take children who are held on remand as they usually need to be housed immediately with little prior notice.

'...we have the best qualified workforce in the UK within the sector...'⁵⁷

Kibble's front-line staff members are known as 'child and youth care workers'. This reflects a decision not to give them a title that had the word 'corrections', 'justice' or 'officer' in it.

Kibble is registered as an operator of a care facility and it is regulated to the national standards for such facilities. This means that the minimum entry-level qualification for staff members is a Vocational Training Level 3 and a National Certificate in Social Care. Staff members can earn these qualifications while they work, but must gain them within two years. These are only the entry-level qualifications.

Kibble has a very significant (and expensive) focus on ongoing training above and beyond this entry-level standard. This training is delivered by both internal and external trainers, and includes staff members being sent for training overseas. Kibble has a policy of never using consultants, and always upskilling staff members if specialist work needs to be done.

Mr Bell advised the Commission:

'...we have the best qualified workforce in the UK within the sector...it's built on having a care sector qualification but we then usually will add a range of specialisms to that program and currently work is underway to have these formally accredited as part of a national qualifications system for Scotland.'⁵⁸

This high level of investment in staff training contributes to staff buy-in to Kibble's work, which results in very low staff turnover. This in turn avoids the high expenses associated with replacing staff and retraining them.

'Our staff turnover rates for last year were around 4%. So they are small...we are careful about what that means. But it does allow us to provide a continuity where possible.'⁵⁹

Community involvement

Kibble is very much part of its local community. Its physical location helps it integrate into the community. The location also brings some challenges given the population of Kibble, but the benefits are said to far outweigh the costs.

Danila Dilba Health Services submitted to the Commission that there are valuable lessons to be learnt from the Scottish approach to dealing with young offenders.

Although Scotland has quite a different history and context to the Northern Territory, we believe that elements of its system has applicability in the Northern Territory, particularly in areas of family and child participation and involvement in decision making. The Scottish system departs from traditional youth justice approaches and treats young offenders as 'children with unmet needs' rather than offenders.'⁶⁰

Transitioning young people out of residential care

A Scottish national throughcare program was developed about 15 years ago but it was not wholly effective. Kibble now delivers its own range of throughcare services. Work and training are very important stabilising factors for young people. Research shows that employment is the single most powerful variable in preventing delinquent behaviour. Kibble uses a range of programs to support young people up to the age of 25, based on the Transitional Jobs Model that it copied from North America.

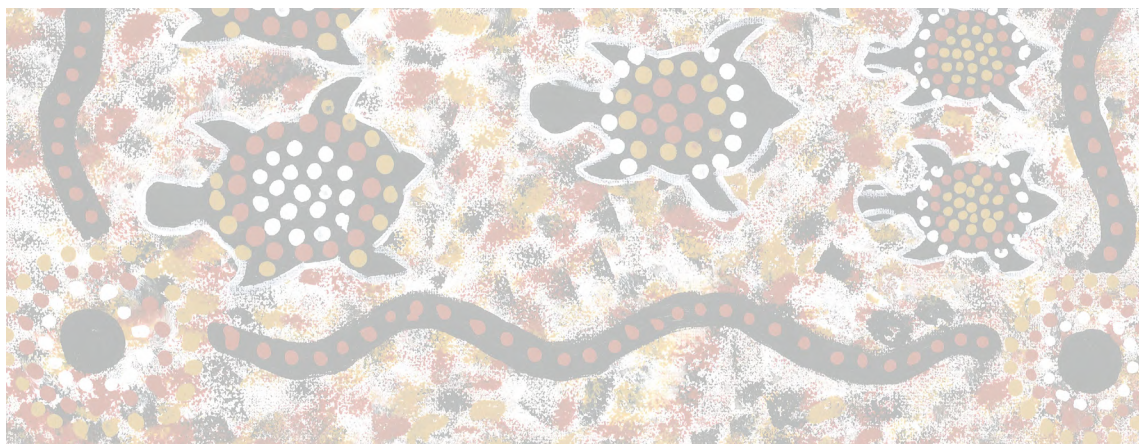
A key part of these programs is Kibbleworks, which is located about 1.5 kilometres from the Kibble campus. Kibbleworks is a range of small businesses – including a garage, a warehouse and a lawnmower repair business – that provide services to the public and employment to young people. Kibble also operates a leisure centre and a go-kart track, which are also staffed by young people. Mr Bell explained to the Commission the importance of having actual businesses providing work for careleavers:

*'...if you have a training program actually in a secure unit, a vocational training program, it has limited success compared to a program where a youngster is in an actual business work. So we now operate a cluster of small businesses that provide training and employment for careleavers.'*⁶¹

Kibble also provides housing and housing support transitional programs in the community. This is a voluntary model of care where young people can choose to move into supported houses in the community.

Kibble operates a series of in-house Specialist Intervention Services with a team of forensic psychologists, social workers, family and program workers. An initial psychological assessment occurs within the first 72 hours to screen for acute mental health issues and substance abuse or suicidal or self-harm behaviours, as well as to identify any potential supports and the nature of any further specialist intervention services.

Kibble runs a series of programs to address anti-social behaviour, substance misuse, victim awareness and consequential thinking (for those who are in the centre because they have committed a criminal offence), anti-violent behaviour and anger management, conflict management and self-awareness.⁶² Kibble also provides services and support to the families of young people.



Summary – Kibble Education and Care Centre

The least possible restrictive intervention for as limited a period as possible.

Key lessons

An integrated service model enables a variety of interventions and supports that would otherwise not be easily matched

An integrated model that uses secure care as a last resort

A high priority placed on staff education and training

Access to education and employment opportunities also must be a high priority, as well as providing supported transition back into the community

Key challenges

Ensuring that the full spectrum of care through the system is integrated, so that young people do not slip back into offending behaviour

*'At the operational level we believe that being open to new ideas and new approaches is absolutely critical. We couldn't have built what we have done and developed the services that we have unless we studied nationally and internationally what works and, importantly, what doesn't work.'*⁶³

Mr Graham Bell
Associate Executive Director of
Kibble Education and Care Centre

SPAIN

In Spain, youth detention centres have a focus on education. The purpose of the centres is to rehabilitate young offenders by providing them with social education and skills to assist their integration into the local community. Educational centres focus on the children's best interests rather than adopting a punitive approach and aim to assist the children to develop their potential. Fundación Diagrama (Diagrama), which runs about 70% of the custodial facilities in Spain, works towards integrating children into the local community outside the centres, through school, work and other activities:

*'We show them how to spend the leisure time instead of being drunk or having drugs, [it is] doing some sport or do some sort of activities that are going to be healthier for them, and you can see one kid coming and a different kid going.'*⁶⁴

Centres in Spain are run by the public sector or not-for-profit organisations. Diagrama also runs more than 35 programs and secure centres throughout Europe.⁶⁵

David McGuire provided evidence to the Commission based on his eight years working with Diagrama in Spain, including five years at Medina Azahara, a small secure centre in the south of Spain. He is now the Chief Executive of Diagrama Foundation (UK), which aims to introduce the organisation's methodology in the United Kingdom.

***'A big brother or a big sister...they are the model for the kids...'*⁶⁶**

A distinguishing feature of the Diagrama model is its focus on the skills and capabilities required of staff members. As Mr McGuire described in evidence, the key to this model's success is having excellent, committed workers who are able to talk with the children and develop a trusting relationship.⁶⁷ The staff members are described as 'social educators' – they are not teachers but people who are able to communicate with children and are interested in teaching basic relationship skills, such as the importance of saying good morning. They are educated to bachelor degree level or equivalent. They understand the theory of attachment and the importance of nurturing for healthy growth and development. They also understand that young people's challenging behaviour arises from a lack of secure attachment experiences and poor boundary setting.

The staff members provide structure, support, encouragement and guidance, together with emotional warmth. They work as positive role models for the children and actively take part in all aspects of a child's life. They spend all day with the children: eating with them, supporting them in the classroom, sharing activities, and looking after the building and pets together.

Training and recruiting appropriate staff members is challenging. A degree of staff turnover occurs when Diagrama takes over an existing centre and introduces its methods. Some of the existing staff members will adapt to the new methods; others will be unwilling to do so. Diagrama recognises that some mistakes are inevitable, but a refusal by staff members to adopt its methods is unacceptable.⁶⁸ The centres have a technical team who are in charge of the case management of the children, which is shared by the deputy director of the centre. The technical team comprises social workers, psychologists, teachers, lawyers, doctors and a social educator. Mr McGuire described to the Commission the importance of this technical team:

*'...you have people that know about the [children's] needs psychologically, people that know the needs in the community, the social worker and they work together. All the team together around the kid is what makes everything work.'*⁶⁹

***'The judge who sentences a child is actively involved in the child's rehabilitation'*⁷⁰**

A key feature of the Spanish system is the ongoing role played by judges and prosecutors beyond the sentencing process. This is distinctly different to the position of Australian judges. In Spain the judiciary assumes responsibility for overseeing the rehabilitation of children who have been sentenced. This includes visiting young people to monitor their progress and to assess the potential for detention orders to be varied.⁷¹

Mr McGuire advised the Commission that for this to work all centres need to be local or within the same region as the sentencing judge, so that the judge is able to visit once every three months or so to monitor the progress of each sentenced child. Further, he described how ‘work between the judges and the prosecutor is very, very close’⁷² such that the prosecutor took on a regulative monitoring role to guard the public interest.

‘Security is addressed with the relationship that we have with the kids’⁷³

Educational centres have a different physical appearance to traditional prisons. Diagrama operates in a variety of different facilities. Mr McGuire told the Commission that in his experience some facilities work better than others, and purpose-built facilities were cheaper and more efficient to operate.⁷⁴ The ideal design is modelled on a family home with young people grouped in small units where they can live and eat together.

Generally, if Diagrama is establishing a new facility, it would aim to have a population of around 80 young people, who live in units of around 8 – 12 beds, with large outside spaces around the units. They consider the maximum size of a centre should be 100 people, and the minimum around 50, for reasons of economies of scale.⁷⁵

The facilities that Diagrama operate have minimal physical restraints or security. Mr McGuire said that there are fences around some, but not all establishments, depending on a risk assessment. He considered that the Diagrama way of working with young people meant that there is much less need for internal constraints on security. It is common for children to be found outside in unrestrained spaces.

‘...when on a visit a few weeks ago (around May 2017) to one of the Diagrama centres in Spain, I observed 25 children who were in custody outside in an open field doing activities with minimal supervision. This is now usual practice, after more than 25 years of experience for the organisation. It would be too risky to do this from day one for a new centre: when I started, we took a maximum of 4 children out together, before we built up our experience.’⁷⁶

Success

Mr McGuire described the metrics that have been used to evaluate the success of Diagrama education centres, including:

- recidivism
- the education and qualifications obtained by detainees
- evidence that detainees have gained life skills and conflict resolution skills, and changed their behaviour
- the number of detainees who went back to families, and
- detainees’ medical or health outcomes.⁷⁷

Mr McGuire advised the Commission that there was no overall systematic data collection on recidivism among children who have been involved with Diagrama education units because in Spain criminal records are wiped when children turn 18.⁷⁸

Overlap with the justice system and care and protection

Diagrama runs one facility in Murcia (Spain) that houses children who have come through the justice system or the care and protection system. This 24-bed facility can house up to 12 children in a custody arrangement and 12 children in a welfare arrangement. They are housed in separate accommodation at night but engage in shared activities during the day. The children in the welfare facility often have no family and are free to leave the centre during the day and rejoin in the evening. All children in this centre attend a local school outside the centre.⁷⁹

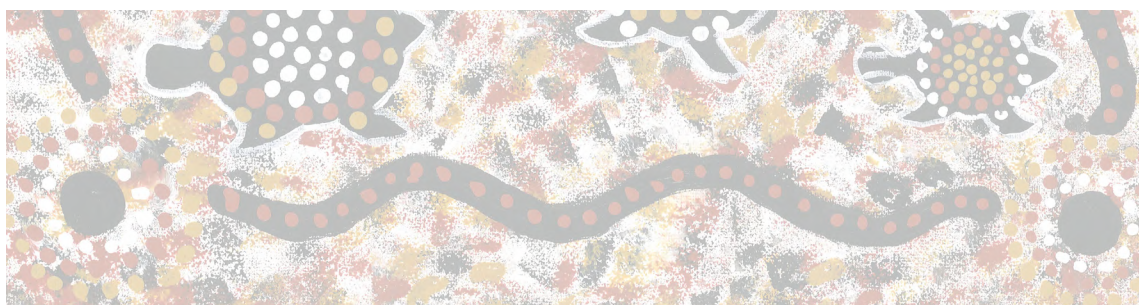
Mr McGuire considered that ‘a shared facility combining justice and welfare placements can only work in the right environment and only with certain children’.⁸⁰ He noted, however, that every Spanish Diagrama centre accommodates both remand and sentenced young people, who live together and taking part in activities together. On average, 20% of young people in these centres are on remand, while 80% are sentenced.⁸¹

Diagrama’s future vision

Diagrama describes its vision for the future of youth care and custody as focused on the following five points:

- to see vulnerable young people equipped for life – with the ability to make their own choices, build positive relationships, understand the consequences of their actions and realise their full potential
- to break the cycle of crime and associated social difficulties and influences
- a transformation in the culture of juvenile care and custody, with a transformed practice model – that incorporates a seamless and fully integrated approach based on love and boundaries
- a society where children, young people and adults are accepted for who they are, as individuals, fully integrated into their communities and offered equal opportunities and rights without prejudice
- a collaborative approach to juvenile justice and care throughout world with shared best practice and research.⁸²

Diagrama’s approach is being considered for introduction in the United Kingdom as part of the implementation of the 2016 Review of the Youth Justice System in England and Wales (the Taylor Review) of the juvenile detention system and a broader focus on reforming the prison system.



Summary – Diagrama Foundation in Spain

Social education and positive modelling

Key success factors

Focus on education and relationship skills

Employ highly skilled professional staff

Implement an incentive-based model, where young people earn greater privileges and access rather than losing them

Foster residential settings and humane security, promoting safety and trust

Key challenges

Staff buy-in to philosophy and model

Collecting data collection to demonstrate the impact of the model can be challenging, especially once children transition to adulthood

Competition with commercial organisations in jurisdictions where private sector businesses traditionally manage the existing juvenile detention systems.

*'To be honest, it's not rocket science...the difficulty is to change the culture of how these kids are perceived. If they are perceived as young offenders, that they need to be punished, that is very difficult to change. But what we are doing is something that can be replicated all over, with the support of the public sector, the support of the legal framework and everything, it can be easily replicated all over the world. Easy.'*⁸³

David McGuire
Chief Executive, Diagrama Foundation

UNITED STATES

The use of objective criteria to reduce incarceration

Over the 1980s, juvenile crime increased considerably in the United States, leading to a 'tough on crime' approach and increased use of incarceration. In response, the Juvenile Detention Alternatives Initiative (JDAI) was launched on the premise that 'by changing decision-making practices and developing alternatives to detention, jurisdictions could safely and significantly reduce the use of secure detention'.⁸⁴

The JDAI is an initiative of the Annie E. Casey Foundation, a philanthropic organisation working towards improving the well-being of children in the United States. Nate Balis, Director of the Juvenile Justice Strategy Group at the Foundation, gave evidence to the Commission about the initiative. He explained that JDAI began with the 'fundamental notion' that the youth detention population was increasing 'not necessarily because of the behaviour of kids' but because of 'the behaviour of adults and how we were responding to the behaviour of kids'.⁸⁵

The JDAI aims to safely reduce the use of pre-trial detention, reduce racial and ethnic disparities in the use of detention, and improve detention conditions. There are eight core strategies for achieving these goals:

- collaborating with stakeholders
- making decisions informed by data
- using objective admissions screening
- developing alternatives to detention
- expediting case processing
- devising new ways of dealing with breaches of court orders
- promoting equality, and
- intensively monitoring detention conditions.⁸⁶

Mr Balis emphasised that achieving the aims of JDAI requires using all the strategies so that they *'work together'* and *'all with an eye on data and an eye on race.'*⁸⁷ A set of best practices have been developed for each strategy and implemented in jurisdictions across the United States.⁸⁸

Risk assessment instruments

For the JDAI, reducing the use of pre-trial detention is particularly important as this is *'a ticket to the deep end' of juvenile justice.*⁸⁹ Youth detained before trial *'are far more likely to be formally charged' and 'committed to youth corrections facilities'* than youth in similar circumstances who are not placed in pre-trial detention.⁹⁰ One of the core strategies of the JDAI model for reducing youth detention is using objective admissions screening to *'identify which youth actually pose substantial public safety risks, which should be placed in alternative programs and which should simply be sent home.'*⁹¹

The JDAI developed risk assessment instruments to guide objective decision making about initial pathways for youth accused of an offence. A risk assessment instrument is a *'written checklist of criteria'* applied to each youth *'for specific detention-related risks.'*⁹² Points are assigned for each risk factor, producing an overall score to determine whether the child or young person is *'eligible for secure detention, for a non-secure detention alternative program, or for release home.'*⁹³

An effective risk assessment tool must be tailored to the individual circumstances and needs of the implementing government. Mr Balis noted that *'the development of the tool is the conversation the jurisdiction needs to have.'*⁹⁴ The first step is reaching a common understanding among stakeholders and within the community about the purpose of detention,⁹⁵ and setting a *'threshold for when a young person should be detained.'*⁹⁶ Mr Balis explained the need to continually analyse the application of the tool and to *'see why we are detaining so many kids that didn't meet the threshold'* of the screening tool.⁹⁷

The concept of using a screening tool to assess risk and divert young people from custody was initially seen as a radical proposition. Risk assessment tools are however now used in a number of the jurisdictions.

Impact of the JDAI model

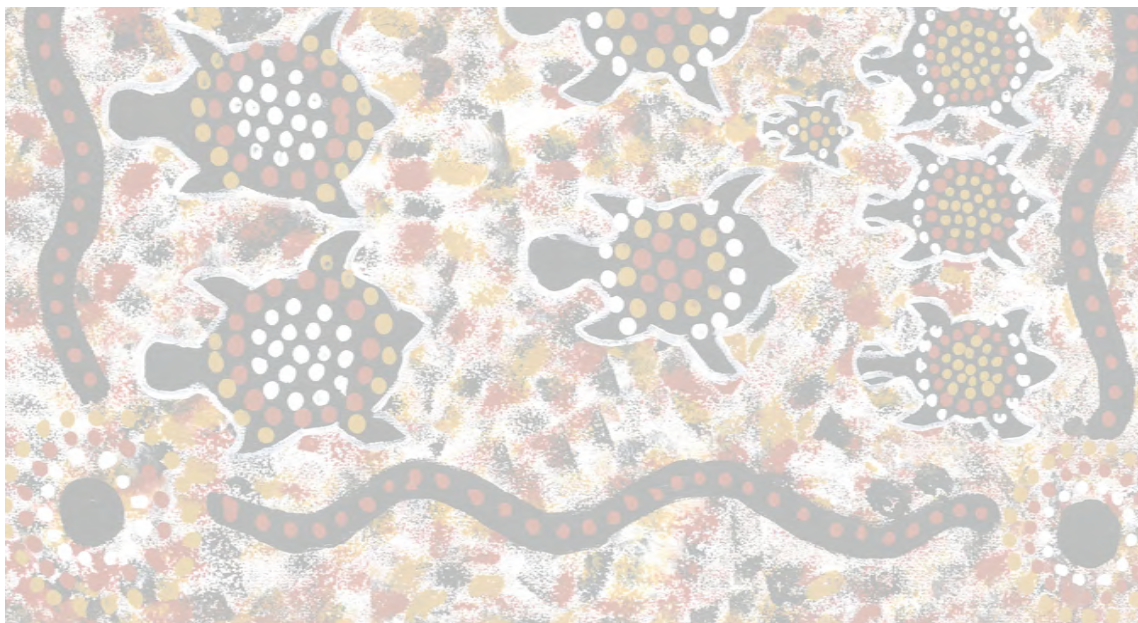
JDAI has become ‘the most widely replicated juvenile justice reform initiative in the United States’.⁹⁸ JDAI data indicates that about 30% of youth aged 10 to 17 in the United States live in a community ‘pursuing detention reforms based on JDAI core strategies’, in more than 300 local jurisdictions.⁹⁹ Based on reports from participating JDAI sites in 2016, reliance on juvenile detention and other forms of youth incarceration in those sites has fallen.¹⁰⁰ In addition, JDAI data indicates ‘sustained and growing reductions in juvenile crime’.¹⁰¹

Mr Balis reflected that a key reason for the success of the JDAI model is simply ‘because it worked’.¹⁰² He also noted that ‘there’s something just so common sense about the approach’:¹⁰³

‘If you want to come into JDAI because your focus is really on “I want to improve wellbeing for our kids” then JDAI makes sense. If you want to come in because you think “All I want to focus on is protecting public safety”, then JDAI has made sense. And if you want to come in because you’re thinking “what I really believe in is good governance; that government shouldn’t waste its funds, that we shouldn’t be spending money to get bad results”, JDAI has made a whole lot of sense’.¹⁰⁴

Ongoing challenges

Mr Balis warned against a tendency for some jurisdictions to narrow their focus to seeking better ‘alternatives to detention’.¹⁰⁵ He observed that this can be ‘a crutch that allows officials to avoid taking on comprehensive reform and in particular addressing the more significant issue of reducing the number of children who need to be subject to any sort of pre-trial detention or supervision’.¹⁰⁶ JDAI has identified key ongoing challenges as combating racial and ethnic disparities that ‘have persisted or worsened’, and the slowing of reform momentum in some places in recent years.¹⁰⁷ As Mr Balis observed, a ‘critical element’ of successful reform is ‘committed leadership from those involved in the system on a day-to-day basis’.¹⁰⁸



Summary – Juvenile Detention Alternatives Initiative

Reducing pre-trial detention

Key success factors

Diverting youth from custodial sentences by reducing reliance on pre-trial detention

Introducing objective risk-assessment tools to guide decision-making about whether a child should be detained before trial

Developing alternatives to pre-trial detention

Key challenges:

Ensuring risk assessment tools are appropriately designed for each community

Addressing underlying drivers of offending behaviour

Combating racial and ethnic disparities in the youth justice system

Maintaining reform momentum in communities that have achieved gains

The success of the JDAI model in the United States demonstrates the possibility and the benefits of long term fundamental reform in youth justice. It also illustrates the importance of reducing pre-trial detention in reducing the overall use of youth incarceration.

‘The basic principles of what JDAI advocates are common sense and help explain its widespread appeal. While there will always be some who overtly advocate for a more punitive and harsh youth justice system, it is my sense that JDAI has had such widespread take-up because of its practical nature. I rarely meet people who flat out oppose the concepts of moving juveniles quickly through the system, providing alternatives to secure detention for those posing minimal risk to public safety, using objective screening criteria, focusing on and seeking to eliminate racial and ethnic disparities, using data to inform decision-making, and providing humane conditions in places of detention.’¹⁰⁹

Nate Balis

Director of the Juvenile Justice Strategy Group, Annie E Casey Foundation

Missouri

The Commission has heard evidence that the system developed in Missouri in the United States constitutes a best practice model that could potentially be applied in the Northern Territory.¹¹⁰ In the 1980s, Missouri decided it was a time to rethink its approach of detaining children and young people in large detention facilities with few treatment options and no consideration of the children’s future.¹¹¹ The Missouri model is premised on the use of small-scale facilities, promoting an environment of safety, providing youth focused support and being community-oriented.¹¹²

This reflection led to Missouri abandoning a model of a few large youth detention facilities and, instead, establishing many smaller, residential style buildings across the state to house children and young people who are detained.¹¹³ These facilities are generally within 120 kilometres of a child's or young person's home.¹¹⁴ Smaller facilities have allowed Missouri to localise programming and avoid sending children and young people to distant facilities far from their homes and communities.¹¹⁵

There are 32 residential youth corrections facilities throughout Missouri, the largest of which has 50 beds.¹¹⁶ There are three types of facility, each designed for a different level of young offender:

- **Group homes that can house 10-12 young people** are for children and young people who have committed minor offences, have little criminal history and pose low danger to the community, but who need more structure, support, and supervision than their families can provide.¹¹⁷ Group homes are non-secure environments where children and young people attend school onsite and participate in extensive individual, group and family counselling, but spend considerable time in the community in jobs, group projects and other community activities.¹¹⁸
- **Moderately secure facilities located in residential neighbourhoods, state parks, and two college campuses** are for children and young people who may have more serious offending histories or who pose higher risks to the community.¹¹⁹ Residents at these facilities also spend time in the community going on field trips and undertaking community service. Those who make progress with counselling and demonstrate trustworthiness are given the opportunity to attend work experience programs with non-profit or government agencies.¹²⁰
- **Secure care facilities** are surrounded by a perimeter fence and are locked at all times. Children and young people detained in them participate primarily in activities within the facility and are for the most part serious young offenders.¹²¹

In each of these facilities, the environment is different to a more typical youth detention centre. The facilities look more like schools than prisons. Dormitories are decorated with students' artwork and home-like furnishings, and children and young people are able to wear their own clothes and keep personal mementos.¹²² All the facilities have live plants and pets such as dogs and cats to create a more home-like environment.¹²³

...from the outset, it feels different. The kids have regular beds, just normal beds with normal comforters and stuff, and they sleep in what looks almost like a camp in how you would do it. They sleep in bunk beds and they have regular living spaces. So it's just sort of – it just feels different and it's just not correctional.¹²⁴

'Eyes-on, ears-on, hearts-on supervision'¹²⁵

The Missouri model is designed with a very different focus on staff capability to that employed by the prevailing detention centre model. A large percentage of staff members have degrees in counselling or psychology. Staff members are employed as youth specialists and are required to complete 236 hours of training on topics such as youth development, family systems, conflict management and group facilitation.¹²⁶ In addition to having training and qualifications Mr Balis explained, *'for a staff person to work in a facility in Missouri, they have to believe that every young person will succeed'*.¹²⁷

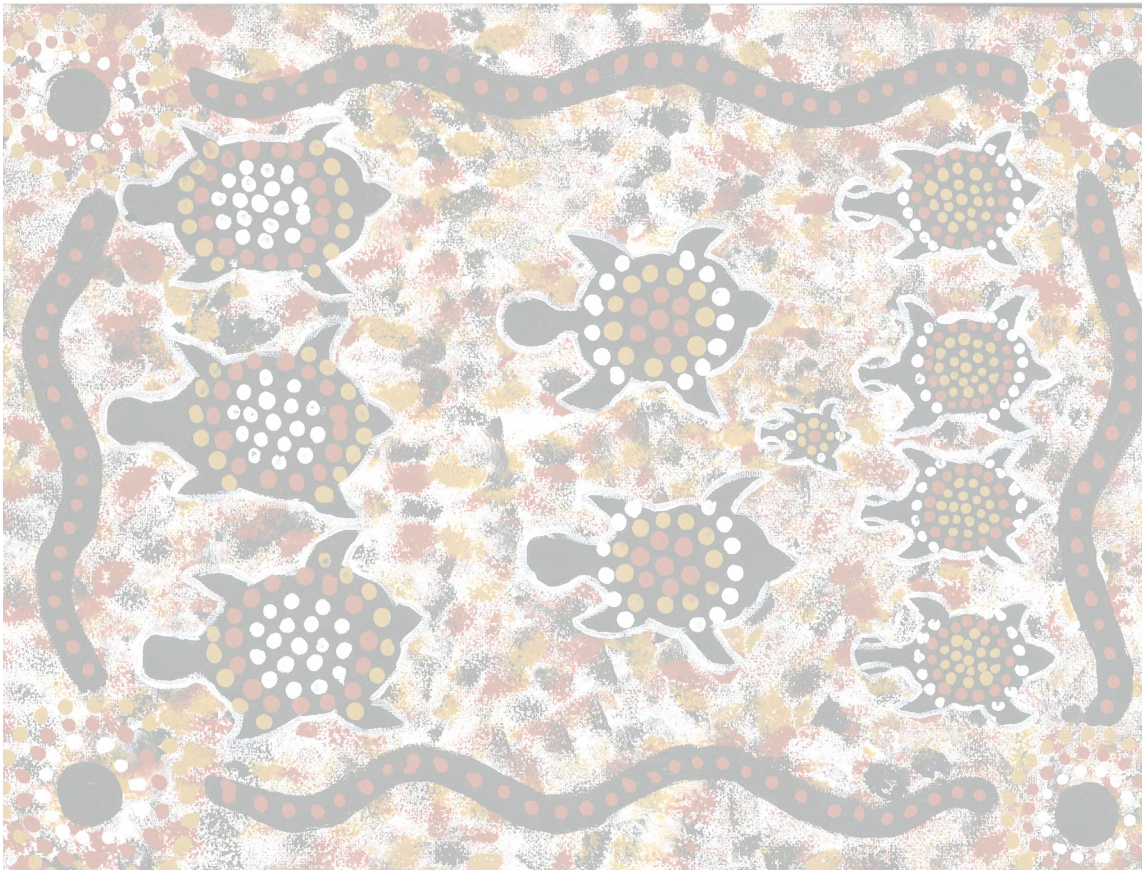
Staff members provide intensive youth development to children and young people rather than correctional supervision. Safety is maintained through relationships and supervision rather than more punitive measures.¹²⁸

The success of this approach is demonstrated by recidivism figures. While other American States have a 20-26% rate of recidivism, in Missouri only 8% of young offenders were incarcerated three years later.¹²⁹

The Missouri model is based on a series of underlying beliefs and values about the young people who enter the youth justice system. While these beliefs have previously been detailed in an extensive 10 point list,¹³⁰ Mr Balis explained to the Commission that he considered the two key factors to be:

- a belief by staff that every young person would succeed; and
- a belief that being committed to Corrections and removed from home and community is the punishment. Everything else that happens from that day forward needs to be positive and about the rehabilitation, education and development of that young person.¹³¹

This model has been in place in Missouri for 25 years. It has support across the political spectrum due to its success in demonstrating positive outcomes for children and young people who live in the state's residential facilities and pass through its programs.¹³²



Summary – Missouri model

Small scale, localised, residential-style facilities

Key success factors

Shift from large institutions to small group homes, camps and treatment facilities

Relying on building relationships and in-person supervision to maintain safety

Delivery of intensive and ongoing case management tailored to each individual youth by staff members who have specialist training in youth development

Changing the culture of detention facilities from a correctional focus to a rehabilitative approach through strong leadership

Ongoing challenges

Developing effective diversion and probation programs to reduce the numbers of youth entering the criminal justice system

Addressing the over-use of secure detention before trial.

‘The Missouri Model in the United States stands out as a best practice model and exemplar to treat youth who offend from the culmination of twenty five years of evidence.’¹³³

Olga Havnen
Chief Executive Officer of Danila Dilba Health Services, Darwin

Washington DC – a system in crisis

The Missouri model has been replicated in other jurisdictions in the United States, and has been influential internationally. The Commission heard evidence from Vincent Schiraldi about the adoption of the Missouri model as part of large scale reforms of youth justice in Washington DC and New York City.

Mr Schiraldi was the Director of the Department of Youth Rehabilitation Services (DYRS) in the District of Columbia from 2005 to 2010.¹³⁴ When he started in the role, he faced a system in ‘a state of crisis’.¹³⁵ The District’s juvenile justice department had defended a civil law suit for 19 years, and Mr Schiraldi was the 20th person to take on the role of Director in that period.¹³⁶ In 2004, the Council of the District of Columbia legislated to close the detention facility over time. The DYRS was created, and Mr Schiraldi appointed as its first Director the following year.

The detention facility was built for 200 detainees but housed 280 children.¹³⁷ Beatings of the children were ‘very commonplace’, along with the use of isolation and restraints.¹³⁸ The physical infrastructure was inadequate and children were exposed to extreme temperatures and vermin. Children were commonly detained in cells and denied access to toilets. Their physical and mental health needs

were not addressed. Some staff members had been *'assaulting children, sexually harassing them and selling them drugs'*.¹³⁹ Morale was *'dismal'* and as one third of the staff had been transferred from an adult prison, the culture was *'very correctional'*.¹⁴⁰ As staff members *'defined themselves as correctional officers'* the children and young people *'responded in kind'* and *'took on the role of inmate'*.¹⁴¹

A major program of reform

Mr Schiraldi identified two key elements of his reform agenda: significantly reducing the number of young people in detention, and a *'total overhaul'* of the culture and environment of the detention facility.¹⁴²

Youth detention numbers were reduced by developing a risk assessment tool based on the JDAI model in consultation with stakeholders. Mr Schiraldi noted that in developing the tool the *'real nub of the question was: who belongs behind bars?'*¹⁴³ The tool was then applied to determine whether a child could be diverted out of detention or out of the system.¹⁴⁴

Reforming the detention centre culture and environment was a staged process. As the numbers of detainees declined, parts of the facility were completely closed and renovated. Community members and leaders were invited to help with the refurbishments and participate in activities with the children and young people *'to rehumanise the kids in the eyes of both the community and the staff'*.¹⁴⁵ At the same time, a new purpose-built facility was being constructed. The facility was designed to be *'more like a college campus than a correctional facility'*.¹⁴⁶

Mr Schiraldi noted that cultural change was particularly difficult and ultimately required replacing senior and middle management.¹⁴⁷ As the state of Missouri *'had done a really good job of making their facilities more decent, humane, and home-like'*, Mr Schiraldi *'asked for their help'*.¹⁴⁸ Operational staff received a month's intensive training from the Missouri Youth Services Institute and ongoing coaching.¹⁴⁹ The training aimed to teach staff members to be youth counsellors rather than guards. Mr Schiraldi noted that staff morale improved as change gained momentum: *'every win we got they became more and more believers'*.¹⁵⁰

In Mr Schiraldi's experience, *'staff in detention systems being reformed often initially resist the change'* but the majority *'are usually hard working people who believe in advancing public safety, and who will work effectively within a therapeutic system if given appropriate training'*.¹⁵¹

A new vision for juvenile justice in New York City

Between 2010 and 2014, Mr Schiraldi was the Commissioner of the Department of Probation in New York City.¹⁵² Mr Schiraldi was not directly responsible for youth justice but was involved in youth justice reform.

In 2010, New York City Mayor, Michael Bloomberg, announced that the city would take back responsibility from the state for the juvenile justice system. Through the *Close to Home* initiative children and young people were transferred from state-run correctional facilities to community-based programs and facilities.¹⁵³ The initiative aimed to improve public safety, reduce reliance on *'costly, ineffective and harmful'* state facilities and create a *'new, locally-operated continuum of dispositional options'* allowing children and young people to *'stay close to home and participate in meaningful*

interventions'.¹⁵⁴ Mr Schiraldi was co-chairperson of the New York Dispositional Reform Steering Committee established to plan and implement '*a new vision for juvenile justice*' in the city.¹⁵⁵

'Reserve incarceration for only those who needed it'¹⁵⁶

A structured decision-making tool was developed in consultation with stakeholders from each borough.¹⁵⁷ This risk assessment instrument provided an objective guide to determining when a child or young person should be diverted to a community program or detained taking into account factors such as the risk of re-offending and the severity of the offence. The aim was '*to reserve incarceration for only those who needed it*'.¹⁵⁸

Mr Schiraldi explained the need to '*avoid exposing low-risk kids to the justice system as far as possible*', as removing them from the things that make them low-risk, such as community and family supports, makes them more likely to offend.¹⁵⁹ Similarly, Mr Schiraldi considered that detaining children and young people before trial is '*highly undesirable*' as these children are '*much more likely to be detained post-adjudication*'.¹⁶⁰

Mr Schiraldi also observed that there was evidence that '*kids weren't being locked up for the offence severity or their risk; they were being locked up for their problems*', such as mental illness or disability, which needed to be addressed in other ways.¹⁶¹

'There's no program that works better in institutions than it does in communities'¹⁶²

A range of community-based '*alternative to placement*' programs were developed for children and young people assessed as suitable for diversion. Programs introduced for higher-risk children were more intensive and involved higher levels of supervision and support from probation officers with lower caseloads. Programs for lower-risk children were less intensive and run by probation officers with larger caseloads.¹⁶³ Programs included advocacy and mentoring;¹⁶⁴ a six-month program providing a '*full-day curriculum*' combining education, behaviour modification and therapeutic services;¹⁶⁵ and a year-long program teaching young people the '*core skills they need to lead law-abiding lives and achieve their goals*'.¹⁶⁶

'Small, humane facilities'¹⁶⁷

Children and young people who were detained were moved out of '*large prison-like facilities in rural areas*' to '*small-scale, home-like, local facilities*' run by non-profit organisations.¹⁶⁸ Many of these facilities adopted the Missouri model. Mr Schiraldi noted that the transition to small facilities meant '*we could ... capture the money and pour it back into the community based program*'.¹⁶⁹ He explained '*if the kids were in a 250-bed facility and you took six kids out of it, you didn't save much, but if they're in a six-bed facility and you take six kids out of it, you close the whole facility*'.¹⁷⁰ This meant that as the detention population decreased with lower-risk children and young people being diverted to community programs, the '*worst functioning*' small facility could be closed.¹⁷¹

***'Take the opportunity to reform when it arises, even if it is caused by a crisis'*¹⁷²**

Reflecting on his experience of wholesale reform in two jurisdictions, Mr Schiraldi noted *'the question to be asked is what the goals of the system are and how those goals can best be achieved'* not *'what do we have and how do we make the best of it'*.¹⁷³

Mr Schiraldi observed that there is increasing support for reducing reliance on youth incarceration across the political spectrum in the United States: *'We're on the right path. We still have too many people locked up. But the conversation is happening in a way it never did before'*.¹⁷⁴

Summary – New York and Washington DC

Closing harmful and ineffective detention facilities

Key success factors

Closure of some harmful and ineffective detention facilities

Development of a risk-assessment instrument to guide decision-making

Reduced youth incarceration

Introduction of small-scale humane facilities

Development of a continuum of community-based alternatives to detention

Key challenges

Responding to a system in crisis

Building momentum for change

Changing staff and community attitudes to children and young people in detention

Addressing racial disparities in incarceration rates

Mr Schiraldi could *'see no reason why a version of the Missouri model and elements of the JDAI could not be implemented in the Northern Territory'* given that they have been *'successfully implemented in the United States in a range of contexts, including both urban and rural areas'*.¹⁷⁵

'My experience is that the community will support such reforms when they are informed about how they work. The average member of the public, when asked in the abstract, insist that youth detention facilities are filled with the worst-of-the-worst offenders. But when they are asked about what sort of offenders should be diverted and which should be detained, they usually say that only those who have been convicted of serious crimes (a significant minority of offenders) should be detained'.¹⁷⁶

Vincent Schiraldi
Senior Research Fellow, Program in
Criminal Justice Policy and Management, Harvard Kennedy School

Ohio

From the mid-1990s, the Ohio Department of Youth Services has significantly reduced the number of young people entering the youth justice system.

The RECLAIM program (Reasonable and Equitable Community and Local Alternatives to the Incarceration of Minors) changed financial incentives to promote community-based innovations rather than the use of detention.

Since 1992 the Ohio Department of Youth Services has reduced the population of youth in detention by 80 per cent, from 2,500 to 500 annually.¹⁷⁷ The centre of the RECLAIM approach is the allocation of funding through a population-based model to the counties, rather than at the state level. Alongside the significant achievements of this process, however, sat a concerning approach to the management of detention facilities. At the time, these facilities faced overwhelming challenges similar to the problems in the Northern Territory that have been evidenced by the Commission. These included:

- violence in youth detention facilities
- overuse of, and reliance on, isolation and segregation
- excessive use of force, and
- low retention rate and low morale among staff members due to the oppressive operating environment.

This situation came to a head in 2007 when two simultaneous lawsuits challenged the constitutionality of the conditions within juvenile detention facilities in Ohio (*S.H. v Reed* and *U.S v Ohio*). Both lawsuits resulted in findings of unconstitutionality, and consent decrees were put in place.¹⁷⁸ These decrees resulted in court monitors being appointed to oversee the system for around eight years. This resulted in several years of efforts, with court supervision, to remedy the conditions and then move beyond this requirement into operating a best practice, high quality youth detention system.

This court action and ongoing supervisory role makes what happened in Ohio distinctly different to some other case studies considered here – because at the centre of the reform process was a monitoring and reporting framework to continually assess progress and conditions. With the success of RECLAIM, those young people who did progress to detention often had more complex needs and difficult behaviours.

According to Dr Kelly Dedel, the US Federal Court Monitor appointed to oversee conditions, who gave evidence to the Commission, the crux of the problem that Ohio faced was how to respond to children in detention who had very complex behavioural problems. If isolation, physical restraints and punitive measures were used the children most in need of support programs and behaviour modification programs were given the least access to them, and their behaviour did not improve, or worsened.¹⁷⁹

The integrated range of actions undertaken to reform the custodial environment is often referred to as the Ohio model. A thorough overview of the reforms initiated in Ohio between 2007 and 2015 is provided in a report prepared by the two court monitors appointed to oversee the system.¹⁸⁰

Dr Dedel summarised to the Commission the main elements of reform, which included developing

a continuum of alternative behaviour management tools, reducing children’s amount of idle time, implementing a system of incentives, and increasing the involvement of mental health services.¹⁸¹ Dr Dedel commented:

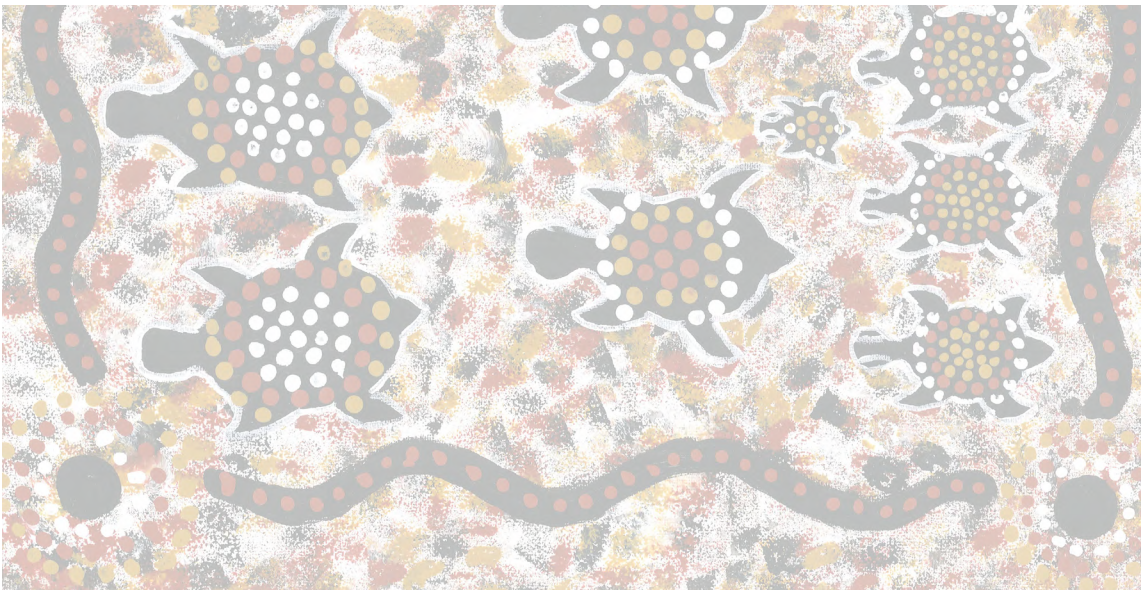
‘...they radically changed the programming and their approach to kids. They focused on providing kids with more programming, more activities. They reduced their idle time.’¹⁸²

Leadership

Dr Dedel noted that critical to the success in reforming the custodial environment in Ohio was having strong leadership that was committed to change. Leadership modelled behaviour, set clear expectations and also kept staff engaged by reporting regularly to them on the outcomes of the new reforms by sharing the data.¹⁸³ For example, this meant that they could demonstrate to staff members that as the use of isolation was reduced and alternatives used, incidents of misbehaviour and violence had also decreased.¹⁸⁴ Top level leadership was required to drive a change in culture and philosophy.

Data collection, which was required as a consequence of the court decree was also critical as it enabled continual reflection of progress and outcomes.¹⁸⁵ High quality data could be used to demonstrate what interventions worked and identify patterns of behaviour (such as patterns on the timing of when incidents of misbehaviour occurred, so that interventions could be planned to actively address these). As Dr Dedel described, by using data to demonstrate how the reduction of seclusion hours correlated with a reduction of violent offences, they:

‘[H]ad the hook in with the staff and staff started to see the results of the process that they were doing, the programming, the different focus on treatment, and all of these things started coming together in a real meaningful way. But it took the headquarter staff really making an effort to get that information in the hands of the line staff in order to sell it.’¹⁸⁶



Summary – Ohio

Ohio - reforming the custodial environment for youth by addressing safety concerns

Key success factors

Using financial incentives to promote the use of alternatives to custody

Establishment of court enforced oversight and accountability mechanisms (in this instance, court enforced), and data collection mechanisms

Development of alternative behavioural management tools to respond to behavioural problems and reduce the reliance on isolation and restrictive practices

Change championed by strong leadership

Investing in building staff capacity to provide individualised support for youth

Key challenges

Maintaining momentum to prevent reversion to old practices and mindsets

Equipping detention facilities to cater for a population with high needs as offenders with less complex behaviours are diverted out of custodial settings

‘With all of the changes they made, they drastically reduced violence, both youth on youth violence and youth on staff violence, and they also reduced the amount of misconduct amongst staff that they had been seeing. Because staff were better trained, they were more suited to the role...so there were positive outcomes for both the youth and the staff as a result of the reforms that they made.’¹⁸⁷

Dr Kelly Dedel
former Court Monitor in Ohio

Texas

Texas is another example of a youth justice system significantly reformed following a period of great scandal. The model of restorative justice – focusing on using existing funding that would normally be applied to detention – is said to have been born in Texas.¹⁸⁸

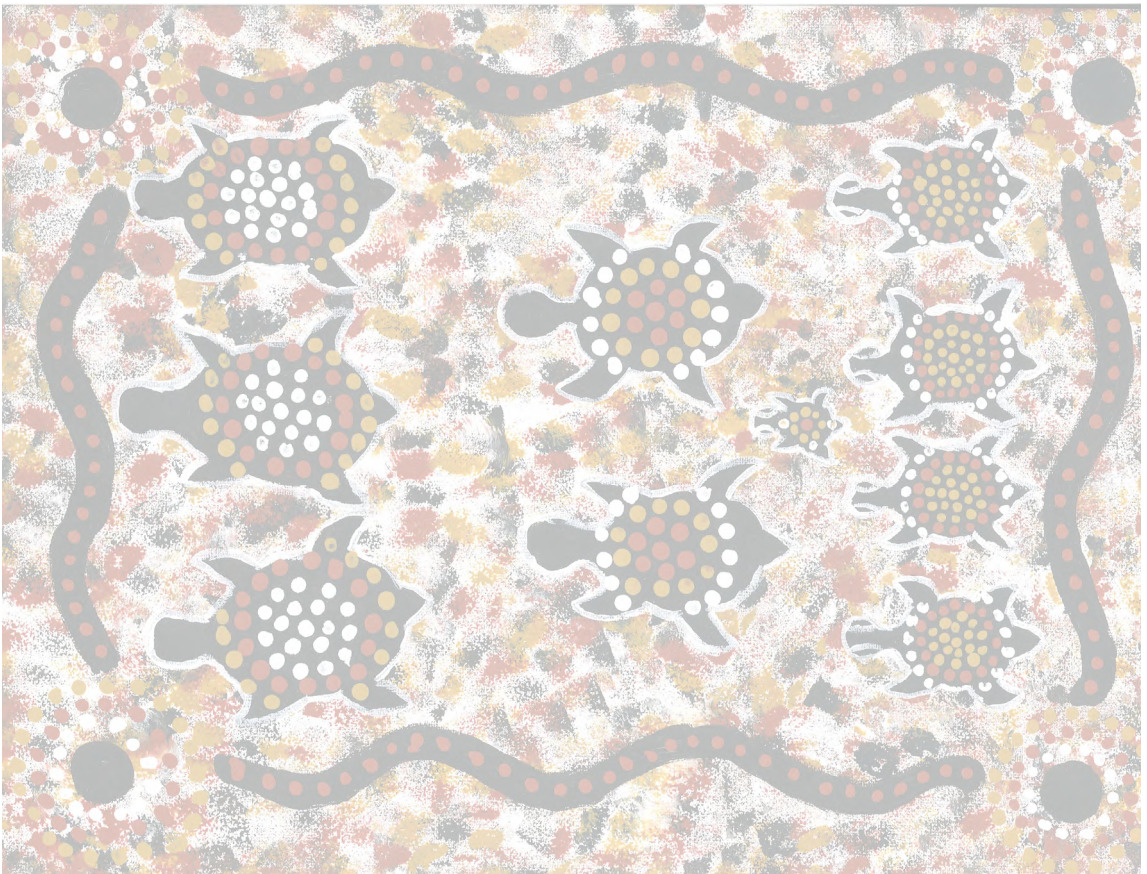
Following public inquiries into the operation of the youth justice system, new legislation was introduced in 2007 over-hauling the system. These reforms are often heralded as introducing the concept of ‘justice reinvestment’.¹⁸⁹ The system was reformed to mandate that offenders who commit misdemeanours be dealt with through community options, rather than custodial sentences. The reforms would also provide funding to communities to help deliver programs to address youth offending – that is ‘reinvesting’ the prohibitive cost of detention into cheaper, community-based alternatives.¹⁹⁰

It was based on the view that *'too many juveniles were being unnecessarily removed from their families and communities'* and in recognition that *'minor property damage or other low-level offenses did not justify the enormous expense of incarceration or its disruption to communities'*.¹⁹¹

These reforms were supported across the political spectrum. The substantial financial savings that resulted made the reforms extremely popular. The basis of the Texas reforms has been influential across the United States and increasingly in other countries. Thirty-two other states have reformed their systems to adopt the principles of the Texas system.

The Texas system has continued to evolve since 2007. It has adapted by:

- providing additional funding for counties to introduce alternatives to detention, coupled with setting a maximum target for incarcerated youth. Counties are required to repay that funding, if they exceed the target of incarcerated youth
- introducing a stronger focus on recidivism, educational and vocational progress, and victim restitution, with improved systems for public reporting on outcomes in these areas, and
- placing a greater focus on school disciplinary systems and responses to truancy - which were a major driver of incarceration rates - to focus on alternative dispositions.¹⁹²



Summary – Texas

Ensuring community safety without relying on new custodial facilities

Key success factors

Re-orientation of the youth justice system away from custodial sentencing, driven by financial considerations, with alternative processes much cheaper and more effective

Funding distribution at the county and community levels to introduce alternative options for dealing with youth offending

Incentives, including targets, to reduce the pipeline of young people moving into detention settings

High-level political leadership, with bipartisan support

Good data collection to enable targeted funding and support to areas most requiring services

Key challenges

Ensuring detention facilities are equipped to deal with more complex behaviours, particularly as lower-level offenders are streamed out of detention settings through the effective use of alternative pathways

‘Texas reduced its juvenile population, incarcerated population by 38 per cent. They closed six facilities and put \$50 million out to communities for programs and juvenile crime dropped by 49 per cent.’¹⁹³

Vincent Schiraldi

Senior Research Fellow, Program in Criminal Justice Policy and Management, Harvard Kennedy School

Canada

Canada had one of the highest youth incarceration rates in the Western world before the introduction of the *Youth Criminal Justice Act* in 2003.¹⁹⁴ The new federal legislation radically transformed the youth justice system in Canada. Reliance on the use of courts and custody for young offenders has since reduced significantly without increasing youth crime.¹⁹⁵

Youth Criminal Justice Act: reducing the over-reliance on incarceration

The *Youth Criminal Justice Act* is federal legislation which governs youth criminal justice in Canada. It applies to children and young people aged between 12 and 18 at the time of the offence. A key aim of the *Youth Criminal Justice Act* is to reserve the ‘most serious intervention for the most serious crimes’ and ‘reduce the over-reliance on incarceration for non-violent young persons’.¹⁹⁶ The Act established diversionary ‘extrajudicial measures’ to deal with a young person alleged to have committed an offence outside the formal court process.¹⁹⁷

‘Extrajudicial measures’ include warnings, cautions and referrals to a community program or agency.¹⁹⁸ The Act expressly recognises that these measures ‘are often the most appropriate and

*effective way to address youth crime’ and ‘allow for effective and timely interventions focused on correcting offending behaviour’.*¹⁹⁹ There is a presumption that extrajudicial measures are *‘adequate to hold a young person accountable for his or her offending behaviour’.*²⁰⁰

The use of diversionary approaches must be considered in the first instance when a young person is alleged to have committed an offence. A police officer must consider whether it would be sufficient to *‘take no further action, warn the young person, administer a caution’ or ‘refer the young person to a program or agency in the community that may assist the young person not to commit offences’.*²⁰¹

‘Extrajudicial sanctions’ may be used where a young person cannot be adequately dealt with by a warning, caution or referral, and involve participation in a formal program.²⁰² Examples include restitution or apology to victims, family group conferencing, community service or counselling. Extrajudicial sanctions may be used if the youth *‘accepts responsibility’* for the alleged offence and consents to a sanction being imposed.²⁰³

In addition to encouraging the use of diversionary approaches, the *Youth Criminal Justice Act* expressly limits the use of custodial sentences for young people. A young person *‘shall not’* be committed to custody unless the young person has committed a violent offence, failed to comply with non-custodial sentences or committed certain indictable offences, or there are exceptional circumstances.²⁰⁴ Before imposing a custodial sentence a youth justice court must consider *‘all alternatives to custody’* and determine that no reasonable alternative is available.²⁰⁵ The *Youth Criminal Justice Act* expressly prohibits the use of custody *‘as a substitute for appropriate child protection, mental health or other social measures’.*²⁰⁶

Implementing the Youth Criminal Justice Act in Ontario

The Commission heard from Tamara Stone, of the Ontario Ministry of Children and Youth Services, about the successes and challenges of implementing the federal reforms in the province of Ontario.²⁰⁷ Ms Stone explained that the *Youth Criminal Justice Act* *‘redefined Canadian youth justice policy’*²⁰⁸ and *‘set the direction in Canada about how young people who come in conflict with the law, how they would be managed and diverted and what provisions and principles needed to be considered’.*²⁰⁹

The *Youth Justice Act* required a shift away from a custody-focused youth justice system. This change is evident in statistics comparing Ontario in 2013 to 2003:

- the youth crime rate was down by 43% the number of youth charged by police was down by 46%
- the number of youth in custody was down by 72% and
- the number of youth in detention was down by 33%²¹⁰

This trend has continued in recent years.²¹¹ There is a distinct similarity between the Canadian legislative model of youth justice and the principles in the Northern Territory’s *Youth Justice Act*. The difference seems to be the practical implementation of those principles in Canada with the above positive features.

Key features of the current youth justice system in Ontario

The *Youth Criminal Justice Act* required the establishment of a ‘continuum of youth justice services’, including ‘prevention, diversion, community supervision, open/secure detention and custody supervision’.²¹² Youth justice in Ontario operates on a single case management model across this continuum. A probation officer is assigned to each youth to supervise court orders, support their rehabilitation and reintegration into the community, and reduce the risk of further offending.²¹³

While *Youth Criminal Justice Act* promotes alternatives to custody, where youth are detained, there are two levels of custody ‘distinguished by the degree of restraint of the young persons in them’.²¹⁴ Ms Stone explained that in Ontario, open detention facilities are ‘often smaller facilities in residential type settings, generally located in community and neighbourhoods’ and ‘by design, the expectation is that [the young people are] going to have regular programming access to the community’.²¹⁵ Secure facilities tend to be larger with ‘extensive static security’ and highly restricted access to the community.²¹⁶ The Ontario Ministry of Children and Youth Services seeks to ensure that ‘young people aren’t required to be so far from home if they’re serving a sentence in a place of detention’ though this is not always possible.²¹⁷

Consistently with the rehabilitative purpose of youth custody under the *Youth Criminal Justice Act*, custody orders must generally include a period of community supervision.²¹⁸ For most orders, ‘the community period is one half as long as the custody period’.²¹⁹

‘Cultural change takes time’²²⁰

Ms Stone explained that the reduction in the number of youth in custody and the closure of several secure custody facilities ‘provided us with an opportunity to reinvest in our community based alternatives’.²²¹ The establishment of the Ontario Ministry of Children and Youth Services with youth justice ‘under one umbrella provided us with an incredible opportunity’ to approach the needs of youth in a holistic way.²²² Having one ministry and ‘one decision maker’ provided the leadership required for a long-term transformation in youth justice.²²³

The new legislation required the province to implement new and untested sentencing options such as the establishment of attendance centres where youth subject to an ‘attendance order’ would participate in rehabilitative programs. Ms Stone observed that the starting point was ‘what did the research tell us’.²²⁴ The next step was piloting and evaluating different programs. An evidence-informed approach remains a key priority for the Ontario Ministry of Children and Youth Services.²²⁵

The shift away from a custodial focus required intensive investment in cultural change. Ms Stone gave the example of a facility that ‘may have been largely providing custody, then all of a sudden they were repositioning themselves to be an attendance centre’.²²⁶ Ms Stone noted that ‘we really had to focus on culture’ and ‘be really clear with expectations’.²²⁷ This was done through the development of a ‘relationship custody approach’ requiring ‘staff in custody/detention facilities to foster positive relationships with youth in order to effectively deliver programming’.²²⁸ A 2016 report found that the implementation of this approach had been uneven and smaller custodial facilities had been more successful in instituting a ‘youth centred, therapeutic focus’. It is evident that continuing efforts were being made to foster this approach.²²⁹

‘It does not work for government to stand on the outside and decide what we think communities need’²³⁰

The shift towards a community-based youth justice system required building capacity in the community sector. Ms Stone explained that this involved *‘extensive consultation with the community’*, including *‘non-traditional justice partners’*, such as education, health, and child welfare.²³¹

Engaging with Indigenous communities, particularly remote Indigenous communities, was a key priority. Noting the challenge of *‘a very vast geography’*, Ms Stone explained that *‘we went out and spoke to communities directly’* to identify their needs and *‘as a result, we expanded programming in Indigenous communities’*.²³² This approach involved creating community-based programs relating to diversion, community sentencing and reintegration support.²³³ These programs must include cultural components, of which many are provided by Indigenous organisations.²³⁴

Summary – Canada

Transforming the youth justice system to limit the use of custody

Key success factors

- Long-term reform of youth justice
- Reducing reliance on incarcerating youth
- Development of a range of alternatives to custody for youth
- Focus on diversion, rehabilitation and reintegration

Key challenges

- Indigenous youth continue to be *‘dramatically overrepresented’* in the youth justice system²³⁵
- Cultural challenge of moving away from the established custodial approach
- Reconfiguring the established system and re-purposing existing services and facilities

The Canadian experience demonstrates that long-term reform of youth justice is achievable. Legislative change underpinned by strong leadership and cultural change across the youth justice sector has contributed to significant reductions in the use of incarceration for children and young people in trouble with the law.

‘We’ve shifted our system from predominantly a custody focused system to one that offers a broad range of community based options.²³⁶ ... We know in youth justice we have done some great work in terms of transformation, but we have still work to do. Prevention is one area that we need to direct our energies and focus.’²³⁷

Ms Tamara Stone
Director of Policies and Programs Youth Justice Services Division, Ontario Ministry of Children and Youth Services

UNITED KINGDOM

Over the past decade, the United Kingdom has seen a substantial fall in the number of young people entering youth detention. Reform of both the youth and adult justice systems has been achieved by maintaining a focus on rehabilitation and reducing recidivism. The government commissioned a number of reviews to develop reform options for aspects of the justice systems in the United Kingdom. Of particular note is the Taylor Review, which reported in December 2016.²³⁸ The Commission heard evidence from Charlie Taylor, the author of this report and current Chair of the Youth Justice Board for England and Wales.

Mr Taylor advised the Commission that the United Kingdom has seen a very substantial fall in the number of young people entering detention over the past decade, due to reforms to the youth justice system commencing in 1998. He also attributes the decrease to a general reduction in levels of crime, the removal of police arrest targets and the uptake of diversionary programs for relatively low-level crime.²³⁹

The Taylor Review found that in the youth justice context, the most important outcome was whether the justice system had the effect of rehabilitating young offenders.²⁴⁰ Education was identified as being central to equip children with the skills and qualifications they need to achieve their potential, and the most important factor for better outcomes in the youth justice system was the quality of the worker who is involved with the child, and the relationship they strike up with the child.²⁴¹ In evidence, Mr Taylor confirmed to the Commission his view that it is important to deal with the child directly and focus on understanding the individual needs of each child.

'... the focus on treating children as children first and offenders second, always taking into account the welfare of the children I think is something now that is far better understood not only within the justice system, within the sort of courts, and – but also critically I think with the police...'²⁴²

Cross-disciplinary expertise

Youth offending is often a manifestation of numerous things that are going wrong in the lives of young people, and is therefore best addressed by using cross-disciplinary expertise. The United Kingdom's *Crime and Disorder Act 1998* aimed to prevent offending by children and young people. A key initiative in the legislation was that all local authorities were required to establish a Youth Offending Team (YOT) comprising members of the police, social services, probation, health and education services. Mr Taylor advised the Commission that YOTs have two main statutory functions: to support the court by providing pre-sentencing reports and to ensure the terms of a sentence are fulfilled and discharged when those terms contain community sentencing.²⁴³ The legislation specified that YOTs must:

- assist police with out-of-court disposals and arrange for appropriate adults to be present during police questioning
- provide reports and information required by the courts in criminal proceedings against children and young people
- supervise children and young people serving a community sentence, and
- supervise children and young people released from custody.²⁴⁴

Mr Taylor advised the Commission of the importance of this role. He noted that YOTs were made up of:

*'...people who have the resilience and determination to keep going, and to keep working with children for whom the rest of the system has often given up on, you know, children who can be enormously challenging and difficult and hard to engage, youth justice, youth offending teams have done a terrific job in terms of working with those children, and I think have been instrumental in some of the reasons why we are seeing falling custody rates and falling reoffending rates...'*²⁴⁵

The cohort of young people requiring support from a YOT have developmental, health and educational issues that required a comprehensive response across a range of service providers. The first set of recommendations in the Taylor Review aim to achieve this coordination, increase local level flexibility and decision making, and enhance multi-agency engagement.²⁴⁶

Removal of target-driven policing

The Taylor Review identified an interesting correlation between the law-and-order policies of the United Kingdom Government and increasing engagement of young people who are first-time offenders in the youth justice system. As the review notes, at the same time as introducing YOTS, the government introduced 'a target-driven approach to policing, including a government aim to increase the number of offences brought to justice'.²⁴⁷ This particularly affected children:

*Children seem to have been disproportionately affected by these targets as their offending is often easy to detect – much of it is unsophisticated and takes place in public. The effects of children having increased contact with the youth justice system were compounded by a three-strikes policy which required that a third offence, no matter how trivial, would result in a child being prosecuted at court. By 2008 the number of children in youth custody stood at around 3,000.*²⁴⁸

In 2008, the government removed these police targets for bringing minor offences to justice and established a new target to reduce first-time entrants to the youth justice system by 20% by 2020. As the Taylor Review notes:

*This target was met within one year. The ease with which a trend established over many years was suddenly reversed demonstrates how powerful the pursuit of targets can be in driving behaviour, which can easily lose sight of the public interest in individual cases. The substantial and continuing reductions in first-time entrants to the youth justice system since then also highlight just how many children were unnecessarily dragged into the system during this period.*²⁴⁹

The lesson from this approach is directly applicable to the operation of the Northern Territory youth justice system where a 'tough on crime' approach, demonstrated through laws such as mandatory sentencing provisions, has escalated offenders into the detention system unnecessarily.

Diversiory programs

Mr Taylor advised the Commission that the Taylor Review recognised that a wide range of diversion schemes operated across England and Wales, although there was not a strong evidence base to assess which diversionary programs, if any, had a direct impact on the rehabilitation of youth offenders.²⁵⁰

It was noted that some programs, such as the Scared Straight program, through which children were exposed to the unpleasantness of prison, were not effective and in fact were simply demystifying prison for children. In his evidence to the Commission, Mr Taylor noted that negative diversionary programs such as this had the unintended effect of entrenching a child's negative self-esteem and convincing them that *'You're a bad kid and this is where you're going'*.²⁵¹

Mr Taylor argued that community sentences tend to have better outcomes than custodial sentences but that to be effective, any community sentence needs *'to be seen to be just and fair and following things up'*.²⁵²

Short sentences *'simply pull the rug from under the child'*²⁵³

The second proposed reform of the Taylor Review was to make the process of sentencing for serious offenders more meaningful and appropriate than the current system involving the Youth Court. The report recommended that the minimum custodial sentence for any young person should be six months.²⁵⁴ Mr Taylor said:

*'We have this strange expectation of our custodial establishments that we send children in for very short periods of time, two, three months, and we expect something to change... there's nobody you talk to within the custodial estate who thinks that short sentences serve any purpose.'*²⁵⁵

Further, the Taylor Review found that ultimately, due to a range of factors, the criminal courts *'are not equipped to identify and tackle the issues that contribute to and prolong youth offending'*.²⁵⁶ This is particularly in relation to repeat offenders or those with complex needs.²⁵⁷

'Good examples of problem solving courts'²⁵⁸

To address this, the Taylor Review recommended a new approach be taken with the establishment of Children's Panels, to enable the courts to tailor the way they respond to the needs of children. The Children's Panel was recommended to comprise groups of specially trained magistrates to investigate the cause of an offending child's behaviour, and to look at the child's broader health, welfare and education context.²⁵⁹

*'In order that children are given the support they need to stop offending I propose a new system of Children's Panels which can take an individualised approach to rehabilitating children, and can make better use of the skills of magistrates and others with experience of working with children.'*²⁶⁰

Courts would continue to establish the guilt of young offenders. The Children's Panels will then undertake the process of deciding and monitoring the action that should be taken to repair harm and rehabilitate the child. They would develop and oversee a plan for the child.

The Taylor Review sees these reforms being accompanied by changes to when young people can be held in secure remand and be sentenced to short custodial sentences. The Taylor Review proposed a minimum sentence of six months, for the most serious of offences, to be combined with a more comprehensive plan.

...by and large the solution to the children's behaviour is about getting them into education, getting them into safe housing, making sure that they are mentally healthy and giving the family the support that they require in order to look after their child in an appropriate manner.²⁶¹

'Schools for children with behaviour problems, which are enormously successful'²⁶²

The third major reform proposed in the Taylor Review is to transform existing youth custody facilities into secure schools. The Taylor Review argues that education must be placed at the centre of correctional facilities operations if they are to truly equip offenders for meaningful participation in society.²⁶³ Mr Taylor advised the Commission that the idea for a secure school simply reflected the centrality of education as an element of rehabilitation and could be modelled on the existing education system provided to children with behavioural problems.

'What we have in England and Wales are lots of examples of outstanding practice where we have schools for children with behaviour problems, which are enormously successful which get very good results, which take on and address some of the most challenging sorts of behaviours and help to support children into a transition towards adulthood. So we had a really good model there of what was working.'²⁶⁴

The Taylor Review sets out the vision for how this revamped youth justice system would operate and outlined a bespoke support model that would allow the integration of health and welfare services into the secure school so that a child serving a sentence would receive wrap-around support to be fully rehabilitated. Mr Taylor summarised the support offered by the secure school as:

'So in effect you have a child that comes in with a range of difficulties and the job of a secure school would be to put in place programs to support that would mean that child can go on when they leave – when he or she leaves to be successful and much less likely to offend.'²⁶⁵

The United Kingdom Government published its response to the Taylor Review at the same time that it was released publicly, in December 2016. The response accepted some of the recommendations in the report, including announcing the establishment of two secure schools as trials, along the lines suggested.²⁶⁶

Summary – United Kingdom

Prioritising education and rehabilitation of young offenders

There are valuable principles from the Taylor Review which could be considered in the Northern Territory context:

- Question the role that targets and political debate can play – positively and negatively – on outcomes in the youth justice system.
- Understand the benefits of taking a more holistic approach to addressing young people’s offending such as through the Youth Offending Team model.
- Consider principles for juvenile diversion and alternative, community-based approaches to sentencing, such as through a Children’s Panel model.
- Prioritise educational and training outcomes for serious offenders.

‘...where children are dealt with in the community, they tend to be less likely to reoffend than if they’re incarcerated.’²⁶⁷

Mr Charlie Taylor
Chair of the Youth Justice Board for England and Wales

IRELAND

The Commission did not receive evidence during the hearings from experts in Ireland but understands Ireland to be a jurisdiction that has undergone significant reform in the last two decades. Substantive reforms commenced in 2001 with the introduction of the *Children Act* and the establishment of a statutory framework for the treatment of children in conflict with the law. The *Children Act* raised the age of criminal responsibility from 7 to 12 years of age and implemented a rebuttable presumption that a child aged between 12 and 14 years of age is incapable of committing an offence due to a lack of capacity to know that the act of omission was wrong.²⁶⁸

The Irish Youth Justice Office within the Department of Children and Youth Affairs established a Youth Justice Plan to manage Youth Justice.²⁶⁹ According to their 2014-2018 report, the number of children sentenced to detention on criminal conviction in Ireland has consistently dropped since 2008 and the operational costs of detention have reduced by around 30%.²⁷⁰

Features of the Irish youth justice system include:

- Diversion to be considered where a child has committed an offence and accepts responsibility for his or her criminal behaviour.²⁷¹ A child is referred to Police Youth Diversion Program for consideration before any prosecution commences. Diversion programs are underpinned by restorative justice.²⁷² The objective of the program is to divert the child from committing further offences.²⁷³ In 2015 there were 100 locally based police diversion projects.²⁷⁴

- The court can impose a variety of community sanctions including probation, training or activity orders; various supervision orders including residential supervision, person care, mentor or family support; as well as restriction on movement.²⁷⁵
- Courts should only sentence a child to detention if it is the only suitable way of dealing with that child and a place is available at a children detention school.²⁷⁶
- Convictions can, in limited circumstances, be removed from a youth’s criminal record when the offence was committed before the youth was 18 years old.²⁷⁷

Detention schools

Further reform occurred in 2015 under the *Children’s (Amendment) Act 2015* which provided that children up to the age of 18 were not to be held in adult jails or youth detention centres, but rather in child detention schools.²⁷⁸ These amendments partially reflect the government response to the 2012 Inspector of Prisons report on conditions at St Patrick’s Institution, Irish Prison. The report raised issues such as the record keeping of ‘control and restraint’,²⁷⁹ the use of ‘special cells’,²⁸⁰ the forced stripping of detainees²⁸¹ and complaints being discouraged.²⁸²

The principal objective of child detention schools is to provide care, education, training and other programmes with a view to reintegrating the child into society.²⁸³ Previously there were three different schools within the one campus at Oberstown in Lusk, Co. Dublin.²⁸⁴ They were consolidated into one school in June 2016 following the 2015 reforms.²⁸⁵

Ireland has had a senior cabinet minister with the title ‘Minister for Children and Youth Affairs’ since 2011. The Minister for Children and Youth Affairs is responsible for the detention school while the Minister for Justice and Equality retains responsibility for youth crime policy and law.²⁸⁶

Summary – Ireland

Child detention schools	
Key success factors	Key challenges
High level government involvement in children’s affairs	Relatively low age of criminal responsibility
Responsiveness to criticism	Possible stress on a social justice system previously not burdened with responsibility for youth offenders.
Detention as a last resort approach to youth justice	

NORWAY

The Commission did not hear evidence from experts within the Scandinavian countries. Australia and the Scandinavian countries have substantial differences in legal frameworks and economic conditions which make it difficult to compare the youth justice systems. Scandinavian countries have historically adopted 'progressive' approaches to youth justice and recognise the importance to treating juvenile and adult offenders differently.²⁸⁷

Norway in particular, considers policy on children and youth a priority for the whole government.²⁸⁸ It experiences low youth crime rates compared to other liberal-democratic countries.²⁸⁹ Norway's approach to youth justice is characterised by a simple sanction with less emphasis on treatment oriented options. The system also involves the participation of interest groups.²⁹⁰

Norway's success has been explained as the product of a small, fairly homogenous population and its long institutionalised welfare policies influencing the extent and nature of criminality.²⁹¹ Norway's model has received support in academic research. The research literature has found little evidence that more punitive custodial sentences have any significant individual or general deterrence effects.²⁹² Rather, research suggests a more comprehensive approach such as that adopted by Norway substantially decreases the likelihood of serious and violent offending later in life.²⁹³

Key features of Norway's youth justice system include:

- no specific legislation or separate courts for juvenile offenders. However Norwegian policies and procedures discriminate between juveniles and adults²⁹⁴
- legislative provisions addressing juvenile justice including an age of criminal responsibility of 15 years²⁹⁵
- legislative provisions preventing the arrest of a person under 18 years of age unless especially necessary,²⁹⁶ and
- legislative provisions preventing the placement of children on remand in isolation.²⁹⁷

In addition, Norwegian youth justice policy includes:

- providing support from welfare services for children aged 15-17 involved with criminal justice²⁹⁸
- prohibiting the imprisoning children, except for the most violent crimes, and instead directing them to be treated at one of two child welfare institutions²⁹⁹
- employing diversion as the most prevalent response to criminal behaviour,³⁰⁰ and
- making a fine the most common sanction and conditional imprisonment the least common.³⁰¹

Criticisms

The Norwegian system has come under criticism. The Norwegian Forum for the Convention on the Rights of the Child made a submission to the United Nations Commissioner for Human Rights in 2009 which criticised the Norwegian youth justice system for violating article 37 of the Convention.³⁰² Norway was considered in breach of article 37 for failing to separate children aged 15 to 18 from adults. They were further criticised for keeping as many as 7 out of 10 young offenders in isolation for extended periods.³⁰³ The report also noted 'alarming discriminatory practices' against children who did not speak Norwegian.³⁰⁴ Further the Norwegian system was thought to over-emphasise

children younger than 15 at the expense of adolescents aged 15 to 18 and vulnerable children with psychosocial disorders.³⁰⁵

Norway’s model may be experiencing new challenges as a result of declining enrolment and funding for community based programs³⁰⁶ and the new policy challenges of increased immigration from countries outside Scandinavia since 2007.³⁰⁷

Summary – Norway

Unique system supported by welfare policies	
Key success factors	Key challenges
Focus on the welfare of the child and families	No specific legislation or court system for juveniles leaving small numbers of children to ‘fall through the cracks’
High-level government prioritisation of children’s welfare	Demographic changes and funding pressures may precipitate reform in the near future
Detention as a last resort approach to youth justice	
Funding of alternative, diversionary community programs	

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RESHAPING YOUTH JUSTICE

INTRODUCTION

The Commission accepts that despite the practices of the past which are the subject of serious criticisms in this report, there is a strong common determination in all parts of the Northern Territory community to address the underlying causes which brought this Commission into being. The common goal is to achieve a just and safe society with substantially reduced levels of youth offending. The aspiration is to achieve a society in which all children from all backgrounds are able to flourish and grow into adulthood in an environment which promotes their health, education and physical and emotional development. If this is achieved the community will be a safer place.

This chapter draws together the evidence and analysis in earlier chapters and recommends how this goal might be achieved. The framework, for the most part, is already in place inasmuch as the *Youth Justice Act* (NT), if the intent of its provisions is fully implemented, offers an adequate basis for shaping the future.

When the Commission was called, the immediate attention was on the youth detention system in the Northern Territory but the Commission's investigations quickly showed that long before the point of incarceration was reached for a young person, much can, could and should have been done to prevent this endpoint. Empirical and scientific research has convincingly shown that:

- many children and young people who engage in anti-social behaviour and even criminal conduct will mature eventually and become responsible adults
- those children and young people who are at risk of continuing on a trajectory of criminal behaviour are able to be deflected from such an outcome, and
- if a child can be kept out of the formal criminal justice system the prospects of staying out are considerably enhanced.

These are the drivers behind those jurisdictions which have succeeded in diverting the majority of their young people demonstrating poor and anti-social behaviour away from engagement with the courts. Some jurisdictions, for example, Scotland, have a welfare model for nearly all of their young

people with these unwanted behaviours. With a population of approximately 5.4 million it has only 24 young offenders in secure detention.

As has been discussed in other chapters and described briefly below, the Commission has concluded that investing strongly in the 'front end' of the youth justice system by providing a variety of relevant, targeted interventions through police diversion will result in fewer charges and, if successful, fewer young offenders.

If a young person is charged, prior to a finding of guilt, the Youth Justice Court under section 64 of the *Youth Justice Act* may also offer an opportunity for inclusion in a diversion program. A successful outcome will depend on many factors, of course, but essential is the immediate availability of high quality programs as discussed in Chapter 25 (The path into detention).

Should a young person still remain in the system after diversion opportunities have been exhausted and there has been a finding of guilt, the court can order the young person to participate in a pre-sentence conference under section 84 of the *Youth Justice Act*. This option, until this year, has been virtually dormant in the Northern Territory, as discussed in Chapter 25 (The path into detention).

In every jurisdiction visited by the Commission where such a conference is typically convened prior to sentence, all participants from judicial officers, to the lawyers for the youth, to youth advocates and police prosecutors have spoken of its compelling advantages in assisting the youth to determine on a new direction. Many of the victims of crime with whom the Commission spoke in the Northern Territory indicated that they would have been interested in participating in a conference with the young person.

Finally, if the Youth Justice Court as a last resort must sentence a young person to a period in detention because of the seriousness of the offence, the safety of the community or other good reason, it should be seen as an opportunity to rehabilitate, educate and make whole these invariably damaged young people and the punishment should be no more than the deprivation of liberty.

It is important, as is discussed in Chapter 25 (The path into detention), that a child or young person not be detained in secure custody with sentenced offenders, when on remand.

Finally, the Commission has recommendations about the age under which a child ought not be held criminally responsible for their acts or omissions and below which they ought not be held in detention.

EFFECTIVE EARLY INTERVENTION

The term 'early intervention' when considering the youth justice system describes the variety of activities, programs and initiatives designed to address problem behaviours in children and young people who may have reached a difficult point in their lives and have started exhibiting early signs that they are heading down a negative path. The goal of early intervention is to reduce risk factors, strengthen protective factors and provide children and young people with life skills and family and community support.¹ Prevention programs are aimed at reducing the likelihood a child may offend or reoffend through addressing individual risk factors for offending behaviour.²

As outlined in Chapter 3 (Context and challenges), risk factors for youth justice system involvement include low educational attainment and unemployment, substance misuse, intellectual disability, psychological or psychiatric and mental health problems, anger, poor coping or problem-solving skills, poor impulse control, boredom, peer group pressure, prior victimisation and child abuse, neglect and exposure to family violence.³

Overrepresentation of Aboriginal young people in the youth justice system not only reflects the disproportionate presence of individual risk factors, but also a range of structural, community-level and societal factors, such as chronic social and economic disadvantage, substance misuse and the ongoing effects of historical factors and events.⁴

While there is a ‘paucity of robust evaluation data’ in Australia about the effectiveness of mainstream and Aboriginal-specific prevention and early intervention programs that address criminogenic needs,⁵ international analysis of prevention programs has found strong evidence in the capacity of family-based programs, including behavioural parent training, to reduce youth delinquency and antisocial behaviour.⁶ There is also strong evidence that family-focused interventions can be built into a public health approach to improving parenting capacity.⁷ School retention and engagement are important factors in reducing the risk of criminal justice involvement.⁸

Family-focused and education-based early interventions and the public health approach are the subject of detailed discussion in Chapter 38 (Early support), which considers early intervention in the child protection context. Given the linkage between children at risk of offending and those who are the subject of child protection involvement,⁹ there is an obvious connection between early intervention aimed at child protection and youth offending improvement objectives.

The Commission’s own inquiries established that early intervention efforts must involve the full spectrum of services engaged with young people. In June 2015 the current Northern Territory Children’s Commissioner Colleen Gwynne, prior to her appointment, reported on youth services in the Northern Territory to Cabinet and recommended the Northern Territory Government:

[S]trengthen the capacity and capability of the NT Public Sector workforce to reflect the level of expertise and resilience required of workers across the full spectrum of children, youth and families’ and ‘encourage reciprocal training initiatives across all government departments.’¹⁰

The Commission endorses this recommendation and has recommended that specialist youth-related training be extended to Northern Territory Police engaging with young people as detailed in Chapter 25 (The path into detention).

In addition to education and health services, the frontline role of police in engaging with children and young people at risk of offending cannot be overemphasised. The nature of interactions with police can play a pivotal role in determining young people’s attitudes to police and the law.¹¹ Police must find innovative ways to interact positively with children and young people and their families to build relationships of trust and pro-social modelling, rather than contact being limited to negative interactions in response to offending.

Obvious means of achieving positive interactions involve providing, and participating in, regular exercise and recreational activities for young people within local communities. These activities have the two-fold advantage of avoiding the boredom gateway to offending, and building relationships between young people, their families and police. The Clean Slate Without Prejudice program established in Redfern, New South Wales described in Chapter 25 (The path into detention), is a successful example of positive collaboration.

FEWER CHILDREN BEFORE THE COURTS

When early intervention fails and young people engage in offending behaviours, responses should be focused on diverting them away from the formal court pathway. Diversion responses should be based upon the risks and needs of the individual.

Relying on formal charging as a means of responding to youth offending is not developmentally appropriate for the majority of children and young people and is counterproductive in most cases. The majority of young offenders mature out of crime and many longitudinal studies have highlighted that only 5–10% of young people who commit antisocial acts become chronic offenders.¹²

Alternative diversion programs generally have a greater impact on reducing recidivism than formal engagement with the courts. Evidence shows that the vast majority of young people in the Northern Territory who are diverted to an alternative program complete that program.¹³ A number of evaluations of diversion programs which operated in the Northern Territory between 2001 and 2014 had positive findings, including some programs which reduced reoffending.¹⁴ The Senior Program and Policy Officer Youth Services in Northern Territory Police stated:

'[R]epeat offending rates for those formally diverted, case managed and conferenced when compared with Court reoffending rates have remained consistently low. This experience is consistent with data from other restorative justice schemes nationally and internationally'.¹⁵

The rate of reoffending following a police diversion is only 9–14%.¹⁶ Deloitte Access Economics, including by reference to Northern Territory-specific evaluations, estimated current diversion programs in the Northern Territory to have an offending rate of around 32% compared to a rate of 46.5% for those who would go through the court system.¹⁷

Alternative programs are more likely to respond to the root causes of offending behaviours without the counter-productive consequences of participation in the criminal justice process. For example, for young people whose offending is related to alcohol or other drug abuse, participation in an alcohol and other drug counselling program is more likely to reduce the risk of reoffending than incarceration. A simpler example might be that a young person exhibiting antisocial behaviour because of boredom who is kept busy in an after-school or school holiday program becomes less likely to offend.

Some young people will be of such low re-offending risk and rehabilitation needs that minor responses, such as issuing a caution and taking no further action, will be adequate and appropriate. Police cautions must be considered in all cases involving children and young people. Where police consider a caution to be inappropriate, the presumption must be that intervention and diversion to alternative programs will be required. Young people who present with higher risks and needs should be responded to with a higher degree of intervention, and supported to engage with services and activities that target their particular individual assessed risks and needs.

A 'one size fits all' model of alternative programs will not target the diverse needs of young people. Police need to have a genuine spectrum of options available to enable them to implement a risk-based system which offers alternatives that are more likely to support rehabilitation. Based on the needs of the Northern Territory youth population, the range of programs focused on drug and alcohol rehabilitation, mental illness and cultural healing in particular needs to be expanded.

Examples of successful diversion programs are summarised in Chapter 26 (Other youth justice and detention models). Chapter 25 (The path into detention) lists the features necessary for effective diversion programs. Rather than prescribe what programs should be introduced in the Northern Territory, programs should fit into the following categories:

- non-residential programs based on individual participation
- non-residential programs based on group participation, and
- residential programs focused on the particular needs of program participants.

Appropriately designed diversion programs allow young people to remain closer to their communities. Alternative programs created, led by and delivered in communities keep young people in contact with the positive influences of family, school, community and culture.

Ms Gwynne in her 2015 report to Cabinet recommended that the Northern Territory Police implement a youth crime reduction strategy with benchmarks targeted at youth offending.¹⁸ The Commission supports this recommendation, and specifically recommends a target of diversion of at least 80% of young people who are dealt with by police for offending behaviour. This is based upon the 80% diversion achievement of the New Zealand Police Youth Aid.¹⁹

In more serious cases of offending behaviour, a Youth Justice Conference as discussed in Chapter 25 (The path into detention), may be considered.

FEWER CHILDREN ENTERING DETENTION

Further diversion options

If prevention and pre-court diversion reforms are fully implemented, only a very small number of children and young people will be brought before the courts in formal criminal proceedings. They will be children and young people with high needs, who have been involved in the most serious and persistent offending behaviour. In such cases, the court process ought not be primarily directed at a punitive response. Instead, it should serve as a further opportunity to apply a specialist assessment, and for the planning and monitoring of plans for responses to the young person's risks and needs. Even at this stage, options for diversion from continuation in the court process are available under section 64 of the *Youth Justice Act*. This is to the same Youth Diversion Unit which police sending a young person to diversion use. The same comment is made here – without readily available programs apt to address the young person's criminogenic needs there will be no advance on the present situation.

Pre-sentence conference

As discussed in Chapter 25 (The path into detention), the pre-sentence conference under section 84 of the *Youth Justice Act* has only recently been funded and convenors recruited for Darwin. The participants at the conference may be any of the victims of the offending, community representatives, the youth's family and any other persons the court thinks appropriate. The progenitor of conferences of this kind was the New Zealand Family Group Conference almost 30 years ago²⁰ based upon principles of restorative justice. This initiative is now used in dozens of states in the USA and many other countries as well as in some Australian jurisdictions. In New Zealand participation is mandatory. Reflecting on its value some 25 years after the introduction of the Family Group Conference, Judge Henwood of the New Zealand District Court observed:

There is no appetite for going back to the old system of a hearing at court with the Judge and the young person but no role for the family or victim. The fact that cases can be dealt with on a 'not denied' basis opens the way for the young person to discuss the offence and accept responsibility for it; discuss the possible causes of the offending; participate in formulating a plan to deal with the causes of the offending and repair the harm done to the victim; and apologise and express remorse to the victim, and answer any questions posed by the victim. Another strength of the process is that the family group conference is not limited to petty crime: it can deal with very serious cases too – everything short of manslaughter and murder.²¹

The Commission encourages the continued support for the section 84 pre-sentence conference by resourcing for training convenors in other centres where the Youth Justice Court sits. As with all new initiatives, an evaluation of its outcomes is essential, to be measured not just by recidivism rates but also measures such as re-engagement with education or vocational training or reduction of harmful conduct such as substance abuse.

A SPECIALIST APPROACH TO DIVERSION

The Youth on Track program in New South Wales²² provides a good example of an intense case management program in Australia for a more serious offending profile. It may be useful for the Northern Territory to consider it in due course.

Case management in early intervention: Youth on Track

Youth on Track is a voluntary early-intervention scheme established in New South Wales in 2013. Youth on Track provides one-on-one case management and offence-based interventions to young people who have come into contact with the criminal justice system and have a medium to high risk of reoffending. The scheme aims to intervene before a young person has multiple and increasingly serious contacts with the criminal justice system.

When a young person is referred to Youth on Track by police or their school, they are allocated a case worker who will aim to make contact with the young person within three days. If the young person agrees to participate in Youth on Track, the case worker develops an individualised case plan with the young person and their family to address the young person's criminogenic risk, identified through an assessment tool.²³ Case plans generally include participating in behavioural or family-based intervention programs and engaging with other local support services.

Most participants spend about four hours per week with their case worker, who will use creative strategies to build rapport with the young person and deliver the behavioural interventions in an engaging way.²⁴

Youth on Track case workers 'try to work out what is of interest to the young person and fit the interventions in around that'.²⁵ For instance, case workers may encourage the young person to re-engage in school by 'unpacking activities, hobbies, sport that the young person enjoys' and showing them how education would help them reach their goals in these areas.²⁶

Youth on Track was initially established in three sites and was expanded to a further three sites following promising results.²⁷ Between 1 July 2013 and 31 December 2016, the majority of Youth on Track participants completing the program had lowered their risk assessment score from medium or medium high to low or medium.²⁸ Following three months of intervention, 71% of participants had reduced or stabilised their score.²⁹

Reducing the remand population

Reducing the number of children in youth detention starts with reducing the number of children who are admitted to detention on remand. In international jurisdictions where major improvements have been achieved in youth offending and recidivism, this is a core element to reform.³⁰

For children charged with a criminal offence and refused bail, spending even a short period of time remanded in detention as most commonly occurs in the Northern Territory has negative impacts on their prospects of rehabilitation. Their connection with protective factors such as family, community groups and positive peer groups is removed at a critical time for therapeutic intervention in their life and they are put in close contact with delinquent peers.³¹ Although their protective connections are interrupted, they do not remain in detention long enough to permit their educational, health or social difficulties to be addressed in any positive way.³²

As outlined in Chapter 25 (The path into detention), matters such as the unavailability of appropriate accommodation or previous non-compliance with stringent bail conditions are common reasons why a child may be remanded in detention, rather than the seriousness of their offending and the risk they pose to the community. Whether or not a young person is detained must not depend on whether their family is in a position to provide them with accommodation and to support them in complying with their bail conditions, but rather upon an assessment of their risk of further offending.³³

A high remand population with frequent turnover impacts negatively on the effective delivery of education, health and case managed rehabilitation services within youth detention to both sentenced and remanded young people.³⁴ Reducing the number of children remanded in custody is in the interests of both individual young people, and the youth justice system as a whole.

Chapter 25 (The path into detention) describes the reforms required to bail laws and services to ensure that fewer young people are remanded in detention. The central elements of the reforms are the creation of a threshold of seriousness, namely, a serious risk to public safety or of committing, a serious offence, or a probable sentence of detention if found guilty, in order for bail to be refused, and the introduction of bail support programs. A central component of the reforms is the creation of appropriate bail support and accommodation. The purpose of a bail support program is to assist children and young people to comply with bail conditions. Bail accommodation will also avoid a situation where a young person is securely detained because they lack appropriate accommodation and adult support.

A SPECIALIST DEDICATED YOUTH COURT

As discussed in Chapter 25 (The path into detention), the Commission concludes that a specialist Children's Court with jurisdiction over both child protection and youth justice matters be established. The development of procedures, authorities and institutions specifically applicable to children, and a focus on diversion, rehabilitation and wellbeing in decision-making, are requirements of international instruments concerning youth justice.³⁵ The inherent overlap between many causal issues which underlie child protection interventions and youth offending call for a single, cohesive approach to court interventions in these issues.³⁶ Development of a single court with judges, practitioners and support staff with specialist expertise, experience and suitability in child development, risk factors and responses to those risk factors will enable properly informed measures targeted at rehabilitation and wellbeing to be at the centre of court interventions in the lives of young people, whether they be the subject of child protection proceedings or offending charges.

Children by virtue of their age and developmental stage have a greater potential to be rehabilitated than do adults.³⁷ Placing jurisdiction for these matters in a court separate to those which deal with adults, with a separate head of jurisdiction, permits the development of court administration and direction focussed on the very different characteristics and needs of children compared with adults.

INCREASING THE AGE OF CRIMINAL RESPONSIBILITY

The Commission has considered whether the age of criminal responsibility from which a child can be charged with a criminal offence should be increased from 10 to 12 years. Not only would this more accurately reflect modern understanding of brain development, it would ensure that the number of children brought before the courts is reduced.

Under section 38 of the *Criminal Code Act (NT)* the age of criminal responsibility is 10 years.³⁸ Section 38 of the *Criminal Code Act* also creates a rebuttable presumption that a child aged between 10 and 14 is excused from criminal responsibility unless it is proved, at the time of committing the offence, he or she had capacity to know that he or she should not have performed that act.³⁹ The prosecution must demonstrate beyond reasonable doubt the capacity of a child to understand the wrongness of his or her actions.⁴⁰ There is little reported case law on the implementation of section 38.

The age of criminal responsibility is the age a child is considered capable of understanding they have done something wrong and can be dealt with in the criminal justice system. Article 40(3)(a) of the *United Nations Convention on the Rights of the Child (CRC)* requires States to set a minimum age of criminal responsibility, below which children are presumed to be incapable of infringing the penal law.⁴¹

Although the CRC does not specify the minimum age of criminal responsibility, the United Nations Committee on the Rights of the Child has recommended that 12 years of age should be the minimum age.⁴² The *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* stipulate that the determined age should recognise emotional, mental and intellectual maturity.⁴³ As discussed in Chapter 3 (Context and challenges), the findings of research into brain development suggest that the age of criminal responsibility should be greater than 10 years.

In many international jurisdictions the age of criminal responsibility is greater than 10 years. In the Netherlands,⁴⁴ Canada,⁴⁵ and Ireland⁴⁶ the age of criminal responsibility is 12 years; in Austria⁴⁷ and Spain⁴⁸ the age is 14 years; in Sweden⁴⁹ the age is 15 years, and in Cuba⁵⁰ and Argentina it is 16 years.⁵¹ In New Zealand the age of criminal responsibility is 14 years except for murder or manslaughter when it is 10 years, and certain other very serious offences may be brought against 12 and 13 year old young people. Effectively, for most crime in New Zealand the age of criminal responsibility is 14 years.

The Commission notes that the National Children's Commissioner as part of her 2016 statutory report to the Commonwealth Parliament, sought views about the minimum age of criminal responsibility in Australia. Commentary at her roundtables and written submissions made to her overwhelmingly called for the raising of the minimum age of criminal responsibility in Australia.⁵² Submissions to this Commission made the same call.⁵³

The Commission recommends that the minimum age for criminal responsibility should be increased to 12 years. There should be a rebuttable presumption retained for children aged between 12–14.

Some children under 12 years will display risks and needs which require a level of support and intervention. Where police become aware of those situations, they should have power to deal with them by way of diversion to appropriately resourced programs, subject to the condition that if they had been over 12 years old they would have been reasonably suspected to have committed a criminal offence.

NO DETENTION UNDER 14 YEARS

The Commission recommends that for children under 14 years, detention should not be a sentencing option, nor should children under 14 years be remanded in detention.

Imposing a minimum age eligibility for detention reflects practices in other international jurisdictions detailed further in Chapter 26 (Other youth justice and detention models), where children over the age of criminal responsibility are protected from certain sentencing options until they reach higher age thresholds, and there is heavy investment in pre-court diversion alternatives.⁵⁴

In Belgium legislation provides minimum age thresholds for imposing different types of measures on children and young people who offend. A sentence of detention is only allowed for children above the age of 14.⁵⁵

In Switzerland youth prison sentences can only be given to young people aged at least 15.⁵⁶ The priority for young offenders under the age of 15 is that they are educated. Rather than being punished in the traditional sense, they are subject to educational or therapeutic measures.⁵⁷ The Juvenile Criminal Code in Switzerland has two categories of sanction that can be given to young people: protection measures and penalties. Protection measures include supervision, personal care, outpatient treatment, and placement with a family or in an educational or treatment facility. Penalties include cautions, personal work orders (which are usually for a maximum of 10 days) and, for 15 to 18 year olds only, personal work orders of up to three months for committing a felony or misdemeanour, fines of up to 2000 CHF (Swiss Francs) and sentences of custody for a maximum of one year for a felony or misdemeanour or four years for a serious offence.⁵⁸ Slovenia also takes a phased approach to the sentences that can be imposed on young people. The minimum age of criminal responsibility is 14 years.⁵⁹ However, only young people aged 16 and

17 can be sentenced to a term of imprisonment and only if they have committed an offence where a sentence of five years or more would be imposed if that offence was committed by an adult.⁶⁰ In Slovenia only four juveniles that were tried in court in 2012 received a sentence of detention.⁶¹ In 99% of cases young people who appear before the courts are committed to an educational institution, where young offenders represent only 10% of the school population.⁶² Only one third of young people who are reported to the police in Slovenia even appear before the court.⁶³

In Finland there are three categories of young offenders: children under 15 years, between 15 and 17 years, and between 15 and 20 years.⁶⁴ Young persons aged 15 to 17 years can be subjected not only to criminal law sanctions, under the *Youth Offenders Act*, but also to a variety of child welfare measures; children under 15 years of age are subjected only to the child welfare measures.⁶⁵ The same criminal law applies to both adults and children and there are no specialty courts for children.⁶⁶ However, Finland has implemented a deliberate policy against the use of imprisonment for the youngest age groups. The *Conditional Sentence Act* includes a provision which allows the use of unconditional sentencing for young offenders only if there are weighty reasons calling for this. In practice this means either that the crime is especially serious or that the offender has several prior convictions.⁶⁷

In Scotland there is no prison service for children under the age of 16. Under the Kibble Education and Care Centre model, children under 16 years reside in either secure or non-secure parts of the same campus, which is open to the public and is a home-like environment.⁶⁸

The 2016 review of youth justice in England and Wales recommended that only in exceptional circumstances should children aged under 16 years be given a 'plan' (by the Children's Panel recommended by the review; but not adopted) with a custodial element, usually where they pose a significant risk to the community.⁶⁹

Throughout the relevant period, children aged between 10 and 12 commonly made up no more than 2–3% of the yearly Northern Territory youth detention population and children aged between 12 and 14 made up on average 23%. The remaining more than 70% of the detention population was comprised of young people aged 15 to 17.⁷⁰

There are many considerations which, singly and in combination, establish that any apparent punishment and deterrent value of detention is far outweighed by its detrimental impacts, particularly for the minority group of pre-teens and young teenagers. The reality of this cohort's developmental status;⁷¹ the harsh consequences of separation of younger children from parents/carers, siblings and extended family;⁷² the inevitable association with older children with more serious offending histories;⁷³ that youth detention can interrupt the normal pattern of 'aging out' of criminal behaviour;⁷⁴ and the lack of evidence in support of positive outcomes as a result of time spent in detention are all results of detention that are counter-productive to younger children engaging sustainably in rehabilitation efforts and reducing recidivism.

There is therefore strong evidence in support of restricting the ages of children who may be admitted to detention and for those younger children, focussing intervention in response to their offending wholly around their family life and social network in the community. There would be an exception for children who have committed violent crimes, who were a serious risk to the community, where the President of the proposed Children's Court would have to approve the sentence. It is anticipated this would be rarely used.

The Commission recommends the change to the minimum age for admission to detention occur over five years, to allow the other significant reforms referred to in this chapter and Chapter 28 (A

new model for youth detention) to come into effect so that adequate services are available in the community for those under 14 years.

Secure residential accommodation intervention – the last resort

The Commission considers there will always be a need for secure detention as a last resort for a very small minority of children who commit the most serious of offences. The Commission’s recommended model for secure residential accommodation is detailed in Chapter 28 (A new model for youth detention).

However, success of the new model necessarily depends upon there being only a small number of young people detained in such accommodation. To this end, all of the reforms proposed in this chapter must be considered to be a coherent whole.

Recommendation 27.1

Section 38(1) of the *Criminal Code Act (NT)* be amended to provide that the age of criminal responsibility be 12 years.

Section 83 of the *Youth Justice Act (NT)* be amended to add a qualifying condition to section 83(1)(l) that youth under the age of 14 years may not be ordered to serve a term of detention, other than where the youth:

- **has been convicted of a serious and violent crime against the person**
- **presents a serious risk to the community, and**
- **the sentence is approved by the President of the proposed Children’s Court.**



ENDNOTES

- ¹ Exh.311.087, Report to Cabinet on service provision for youth in the Northern Territory, 1 June 2015, tendered 28 April 2017, p. vii; Higgins D & Davis K, 2014, *Law and justice: prevention and early intervention programs for Indigenous youth* (resource sheet no. 34), Australian Institute of Health and Welfare & Melbourne: Australian Institute of Family Studies, p. 5
- ² Higgins D & Davis K, 2014, *Law and justice: prevention and early intervention programs for Indigenous youth* (resource sheet no. 34), Australian Institute of Health and Welfare & Melbourne: Australian Institute of Family Studies, p. 5
- ³ Higgins D & Davis K, 2014, *Law and justice: prevention and early intervention programs for Indigenous youth* (resource sheet no. 34), Australian Institute of Health and Welfare, Melbourne: Australian Institute of Family Studies, p. 4 (citing Wundersitz 2010).
- ⁴ Higgins D & Davis K, 2014, *Law and justice: prevention and early intervention programs for Indigenous youth* (resource sheet no. 34), Australian Institute of Health and Welfare & Melbourne: Australian Institute of Family Studies, p. 4 (citing Allard 2010, Memmott et al 2001, Scott and Higgin 2011).
- ⁵ Higgins D & Davis K, 2014, *Law and justice: prevention and early intervention programs for Indigenous youth* (resource sheet no. 34), Australian Institute of Health and Welfare & Melbourne: Australian Institute of Family Studies, p. 3 (citing Allard 2010, Memmott et al 2001, Scott and Higgin 2011).
- ⁶ Higgins D & Davis K, 2014, *Law and justice: prevention and early intervention programs for Indigenous youth* (resource sheet no. 34), Australian Institute of Health and Welfare & Melbourne: Australian Institute of Family Studies, p. 5 (citing Farrington and Welsh 2003).
- ⁷ Higgins D & Davis K, 2014, *Law and justice: prevention and early intervention programs for Indigenous youth* (resource sheet no. 34), Australian Institute of Health and Welfare & Melbourne: Australian Institute of Family Studies, p. 5 (citing Sanders 2012).
- ⁸ Higgins D & Davis K, 2014, *Law and justice: prevention and early intervention programs for Indigenous youth* (resource sheet no. 34), Australian Institute of Health and Welfare & Melbourne: Australian Institute of Family Studies, p. 5 (citing Stewart 2012).
- ⁹ See Chapter 35 (The crossover of care and detention).
- ¹⁰ Exh.311.087, Report to Cabinet on service provision for youth in the Northern Territory, 1 June 2015, tendered 28 April 2017, p. ix.
- ¹¹ Exh.024.002, *National Report – Royal Commission into Aboriginal Deaths in Custody – Volume 2*, 15 April 1991, tendered 13 October 2016, paras 14.4.18-14.4.20; Submission, North Australian Aboriginal Justice Agency Submissions on Pre- and Post-Detention, August 2017, p. 16.
- ¹² Steinberg, L, 2009, 'Adolescent Development and Juvenile Justice', *Annual Review of Clinical Psychology*, vol. 5, p. 478, <<https://pdfs.semanticscholar.org/3076/96d426d902087b15d0777ef709ded9673e7c.pdf>>.
- ¹³ Exh. 363.000, Statement of Jennie Renfree, 1 May 2017, tendered 10 May 2017, para. 97 including Table Diversion Participants 2006-07 to 2016-17.
- ¹⁴ See Exh. 363.010, Annexure JR-10 to Statement of Jennie Renfree, 1 May 2017, tendered 10 May 2017.
- ¹⁵ Exh. 363.000, Statement of Jennie Renfree, 1 May 2017, tendered 10 May 2017, para. 132.
- ¹⁶ Exh. 363.000, Statement of Jennie Renfree, 1 May 2017, tendered 10 May 2017, para. 134.
- ¹⁷ Deloitte Access Economics, Northern Territory youth justice models: Fixing a broken system, 24 October 2017, p. 40.
- ¹⁸ Exh.311.087, Report to Cabinet on service provision for youth in the Northern Territory, 1 June 2015, tendered 28 April 2017, p. vi.
- ¹⁹ Youth Court of New Zealand, Youth Justice Principles and Processes, 7 September 2016, <<https://www.youthcourt.govt.nz/youth-justice/youth-justice-principles-and-processes/>>; Transcript, Judge Peter Johnstone, 8 May 2017, p. 3466: lines 33-35.
- ²⁰ Henwood, C & Stratford, S, 2014, *New Zealand's Gift to the World: The Youth Justice Family Group Conference*, The Henwood Trust, Wellington.
- ²¹ Henwood, C & Stratford, S, 2014, *New Zealand's Gift to the World: The Youth Justice Family Group Conference*, The Henwood Trust, Wellington., pp 136-7.
- ²² See Chapter 26 (Other youth justice and detention models).
- ²³ Youth on Track uses the Youth Level of Service / Case Management Inventory (YLS/CMI) which assesses criminogenic risk in eight areas of a young person's life. See Exh.626.000, Statement of Mandy Loundar, 16 May 2017, tendered 28 June 2017, para. 15.
- ²⁴ Transcript, Mandy Loundar, 28 June 2017, p. 5233: lines 28-33.
- ²⁵ Transcript, Mandy Loundar, 28 June 2017, p. 5233: lines 40-41.
- ²⁶ Transcript, Mandy Loundar, 28 June 2017, p. 5233: line 47 – p. 5234: line4.
- ²⁷ Exh.626.000, Statement of Mandy Loundar, 16 May 2017, tendered 28 June 2017, para. 12.
- ²⁸ Exh.626.000, Statement of Mandy Loundar, 16 May 2017, tendered 28 June 2017, para. 28. See further Exh.626.004, Annexure D to Statement of Mandy Loundar, 16 May 2017, tendered 28 June 2017, pp. 2-3.
- ²⁹ Exh.626.000, Statement of Mandy Loundar, 16 May 2017, tendered 28 June 2017, para. 29.
- ³⁰ Exh.601.000, Precis of evidence of Vincent Schiraldi, 6 June 2017, tendered 27 June 2017, para. 4-5; Exh 576.000, Precis of Evidence of Nate Baylis, 20 June 2017, tendered 26 June 2017, para. 11-16.
- ³¹ Exh.632.000, Precis of evidence of Dr Kelly Dedel, 15 May 2017, tendered 29 June 2017, para. 14.
- ³² Exh.644.000, Review of the youth justice system in England and Wales, December 2016, tendered 29 June 2017, p. 37.
- ³³ Exh.632.000, Precis of evidence of Dr Kelly Dedel, 15 May 2017, tendered 29 June 2017, para. 13.
- ³⁴ See Chapter 16 (Education in detention), Chapter 15 (Health, mental health and children at risk) and Chapter 19 (Case management and exit planning).
- ³⁵ See Chapter 25 (The path into detention).
- ³⁶ See Chapter 3 (Context and challenges).
- ³⁷ Exh.394.001, *10 characteristics of a good youth justice system*, by Harding and Becroft JJ, 12 February 2013, tendered 12 May 2017, p. 20; Richards, K, 'What makes juvenile offenders different from adult offenders?', *Trends & Issues in Crime and Criminal Justice*, no.

- 265, p. 1.
- ³⁸ *Criminal Code Act (NT)* s 38(1).
- ³⁹ *Criminal Code Act (NT)* s 38(2).
- ⁴⁰ *R v F; ex parte Attorney-General [1998] QCA 097; [1999] 2 Qd.R. 157; R v CRH* (Unreported, NSW Court of Criminal Appeal, Smart, Hidden and Newman JJ, 18 December 1996).
- ⁴¹ Exh.005.002, Convention on the Right of the Child, 20 November 1989, tendered 11 October 2016, art 40(3) (a).
- ⁴² Committee on the Rights of the Child, *General Comment No 10: Children's rights in juvenile justice*, 44th sess, UN Doc CRC/C/GC/10 (25 April 2007), para. 32.
- ⁴³ Exh.006.002, Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), 29 November 1985, tendered, 11 October 2016, rule 4.
- ⁴⁴ Child Rights International Network, 2017, *Minimum ages of criminal responsibility in Europe*, Child Rights International Network website, accessed 31 October 2017, <<https://www.crin.org/en/home/ages/europe>>.
- ⁴⁵ Hazel, N, 2008, *Cross-national comparison of youth justice*, Youth Justice Board for England and Wales, p. 32, accessed 31 October 2017, <http://dera.ioe.ac.uk/7996/1/Cross_national_final.pdf>.
- ⁴⁶ Grzywa-Holten, J, Horsfield, P, Parosanu & Pruin, I, 2015, 'Country reports (snap shots), in A, parosanu, I, Pruin, J Grzywa-Holten & P, Horsfield (eds.), *Alternatives to custody for young offenders and the influence of foster care in the European Juvenile Justice*, p. 94, accessed 30 October 2017, <http://www.ijjo.org/sites/default/files/comparative_report_alternatives_to_custody_for_young_offenders.pdf>.
- ⁴⁷ European Union, 2014, *Study on children's involvement in judicial proceedings: Contextual overview for the criminal justice phase – Austria*, report prepared by J Behrens, Luxembourg, p. 15.
- ⁴⁸ Hazel, N, 2008, *Cross-national comparison of youth justice*, Youth Justice Board for England and Wales, p. 32, accessed 31 October 2017, <http://dera.ioe.ac.uk/7996/1/Cross_national_final.pdf>.
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A NEW MODEL FOR YOUTH
DETENTION

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A NEW MODEL FOR YOUTH DETENTION

INTRODUCTION

The model of secure residential accommodation presently used in the Don Dale Youth Detention Centre and the Alice Springs Youth Detention Centre is unsound. It fails to meet the needs of the young people detained. It fails to make the community safer.

An entirely new model is needed. The objective is not simply to make the Northern Territory's detention facilities somewhat cleaner and safer. Nor is it just to bring them into line with equivalent facilities in Australian jurisdictions. The opportunity should be seized to transform the Northern Territory's youth detention system into one of which it can be proud not ashamed. But it cannot be achieved quickly. It will take years of sustained dedication to see results. The Northern Territory can and should embark on a 'new beginning'.¹

The Commission received evidence of the best practice approaches to secure residential accommodation for young people from around the world. Although there were differences between these systems, there was convergence around four propositions:

- The best results, in terms of ensuring community safety and rehabilitating young people are achieved in small facilities designed to be normalised and residential that focus on delivering therapeutic and educational services. Punitive institutional environments damage young people, endanger staff and do little, if anything, to make the community safer.
- The philosophy and operating principles of the facilities are extremely important. Staff at all levels must take seriously the purpose of secure accommodation facilities as being to turn around the lives of troubled young people and make them productive members of a safe society. This means

a focus on the delivery of high quality therapeutic services, education, interpersonal and life skill development training for the young people who are detained.

- The detail of the design, philosophy and operating principles for the facilities in a particular jurisdiction must be developed in consultation with the community and in light of the characteristics of the expected population. In particular, while an overrepresentation of Aboriginal young people should not be planned for, regard must be had to the significant Aboriginal population in the Northern Territory when planning reform. There is no silver bullet:² while it is valuable to borrow ideas from other places, it is a mistake to import models uncritically or programs from elsewhere.³
- The development of a new secure residential model should occur alongside reforms to minimise the number of young people who need to be detained at all, as described in Chapter 27 (Reshaping youth justice). There is a risk that building new facilities distracts decision makers from the real goal of keeping young people out of detention. It is not enough to just 'build a better mouse trap'.⁴

The Northern Territory should build new secure accommodation facilities based on these propositions.

The transition cannot occur overnight. It will be a difficult process that will take years to complete. New purpose built facilities will be needed. A new operating philosophy must be developed, implemented and then reinforced in practice. Staff will need support to reskill for the different demands that are to be placed on them in a therapeutic model.

The Royal Commission has made recommendations about the operation of youth detention centres in the Northern Territory, many of which are capable or and should be immediately actioned, prior to the building of new facilities. However, the focus of this chapter and Chapter 27 (Reshaping youth justice) is for long term reform and culture shift in the youth justice system and the operation and design of secure accommodation in the Northern Territory.

The evidence before the Commission suggests that this new model will, in concert with the reforms in Chapter 25 (The path into detention) and Chapter 27 (Reshaping youth justice), improve the outcomes for the young people who are held in secure accommodation and make the community safer by lowering the rates of youth offending.

These reforms are also likely to deliver a significant financial dividend to the Northern Territory. A report prepared for the Commission by Deloitte Access Economics that modelled the Commission's proposed reforms found that over a 10 year period they would produce an estimated \$335.5 million in savings for the Northern Territory. This modelling was based on conservative assumptions and the savings might exceed half a billion dollars over 10 years. A significant driver of the costs savings is the predicted reduced rates of recidivism by young people who have offended. Even on a 'worst case' analysis, reforms would save the Northern Territory \$79.6 million.

Outline of the proposed model

The current model in Darwin and Alice Springs, notwithstanding the use of the term 'detention centre', has been designed and operated as a prison for young people.

The new model will involve secure accommodation, but its focus will be rehabilitative, therapeutic and educational rather than containment.

The rehabilitative and therapeutic services will include cultural healing, reconnection with family, mental health and trauma counselling, drug, alcohol and other substance abuse services and medical and dental services. They will be delivered through professionals working with the young people and by ensuring that the physical design and operational practices support those services. For example, a counsellor may achieve far more effective engagement with a traumatised young person if they can meet at a bench in a garden, rather than in a cell. The aim is that both the services and the environment respond to young people in a manner appropriate to their age, providing both a necessary circuit breaker for unlawful behaviour and offering constructive options towards alternative choices after release.



Yarn Circle

Education and skills development will be a major component of the facilities operation and its purpose. It will include formal education to ensure young people have an opportunity to meet their full potential, vocational training to assist older children to enter the workforce when they finish their education and basic living skills for those young people who have not been taught them at home. The young people are statistically likely to have underperformed in their education prior to entering detention, so high quality teaching staff will be needed to help them catch up to their age group.

Physical security measures will still be needed, but security would be minimised to the extent possible in an environment where staff are keeping the young people engaged and occupied, developing positive relationships and providing a transparent and fair system of incentives for good behaviour.

This model is a conscious rejection of the so called ‘tough on crime’ or ‘scared straight’ approaches to managing youth offending. These punitive approaches are popular as political rhetoric, but have no support amongst practitioners or researchers of best practices in youth justice.⁵ As the former Commissioner of Corrections observed, ‘tough on crime means more numbers, more overcrowding and stress on the system’ that means it has no benefits for the rehabilitation of the young people.⁶

This is not a new observation. Almost 45 years have passed since the US National Advisory Commission on Criminal Justice Standards and Goals called for the closure of prison like institutions for juveniles, saying:

‘The prison, the reformatory, and the jail have achieved only a shocking record of failure. There is overwhelming evidence that these institutions create crime rather than prevent it.’⁷

Mr Hamburger, Managing Director of Knowledge Consulting, who led a review of the Northern Territory Corrections system in 2016, observed that while the concept of deterrence through harsh treatment might have intuitive appeal to some members of the community:⁸

‘the people that come into our detention centres and our prisons don’t come, in the main, from [a] loving supportive background. They have been sexually abused, they (sic) gone to school without lunch, they have had quite serious things happen in their lives. So if you put them in jail and think another good kick up the backside or something like that is going to change their ways, you have got to think again because they have had far worse at home, on the street, and so that sort of punishment that people like to think should be dished out to those sort of people, is not being – it has no effect ... the things I’m talking about are not being soft on crime: they are an appropriate response to the problem and the challenge that we are facing’.

In the course of its work the Commission has listened carefully to members of Northern Territory community who are angry or frightened about youth crime and who believe that harsh conditions of imprisonment may deter children from offending. They may not agree with the Commission’s recommendations to provide young people who have offended with a range of professional services and high quality education within a therapeutic environment. The Commission understands this point of view, but the evidence overwhelmingly shows that the therapeutic approach suggested has the best prospect of reducing youth offending and supporting those youth to become productive members of society. If young people do not reoffend, then the community is made safer.

The Commission recognises that the therapeutic model outlined in this chapter is broadly similar to the Northern Territory Government’s current plan. In December 2016. Ms Kerr, Deputy Chief Executive Officer of Territory Families, told the Commission that:

‘the vision, the concept and the philosophy for what youth justice should be for the Territory ... it’s very much along the lines of a therapeutic model, and that – and if I can paint a picture, a facility that, you know, you go outside and it has a beautiful garden, and there’s water running, and we don’t get constrained to thinking about, “They are going to counselling so you get put into a room here with your counsellor.” Why couldn’t you go and sit under a Bali hut next to running water, and

an environment where people actually feel safe, and feel calm, and it adds to better outcomes for them. I'm – you know, swimming pools, running track, exercise stations, animals.'

'Missouri has abandoned mass kiddie prisons in favor of small community-based centers that stress therapy, not punishment...'

'A law-and-order state, Missouri was working against its own nature when it embarked on this project about 25 years ago. But with favorable data piling up, and thousands of young lives saved, the state is now showing the way out of the juvenile justice crisis.'

Excerpt from New York Times report on Missouri's reforms.⁹

Structure of this chapter

This chapter is divided into 5 sections:

- Evidence of what works: a summary of international best practice in secure accommodation.
- Overview of the new secure residential facilities for the Northern Territory.
- The design of the Northern Territory's new facilities.
- The operation of the Northern Territory's new facilities.
- The expected results of reform.

EVIDENCE OF WHAT WORKS: A SUMMARY OF BEST PRACTICE IN SECURE ACCOMMODATION

As stated in Chapter 26 (Other youth justice and detention models), the Commission received evidence about the efforts other jurisdictions have made to reform their youth justice systems. Many international experts gave evidence about best practice in the operation and design of youth detention centres.

Convergence in international best practice

The following features were identified as reflecting best practice in secure accommodation for young people in multiple systems.

Minimising the number of detained young people

A consistent theme across all jurisdictions examined is an emphasis on minimising the number of children who need to be detained at all.¹⁰ Detention is damaging for the young person, distressing for their family and expensive for the taxpayer.

This is examined in Chapter 27 (Reshaping youth justice) and is not the focus of this chapter.

However, expert reformers warned the Commission of the risk that a focus on improving facilities might distract government from the more important task of ensuring it only detains children when it is truly necessary to do so. The reforms need to occur together.

The Juvenile Detention Alternatives Initiative

The Juvenile Detention Alternatives Initiative (JDAI) is run by the Annie E. Casey Foundation, a philanthropic organisation in the United States.

A core goal of JDAI is to safely reduce the use of pre-trial detention for young people. JDAI emerged in response to concerns that ‘tough on crime’ approaches had led to higher numbers of children being detained than was necessary for public safety.¹¹

A major component of the JDAI approach to reducing youth pre-trial detention is using objective admissions screening to identify which youth actually pose substantial public safety risks, which should be placed in alternative programs and which should simply be sent home. This screening is done using risk assessment tools that are developed through consultation with the community. The consultation process is often powerful in itself, as many communities have never had a discussion about the purpose of pre-trial detention and then assessed whether their system achieves those purposes.¹²

JDAI has been adopted in around 300 counties in the United States. Those jurisdictions have seen a 44% average reduction in the number of children who are detained pre-adjudication and a 40% average reduction in juvenile crime.¹³

Residential, normalised facilities

For the children who are securely detained, the jurisdictions that achieved the best results are those that moved away from the institutional prison model and towards more normalised, home like facilities. This has occurred, for example, in Missouri, Washington DC,¹⁴ New York City,¹⁵ and Diagrama’s centres in Spain.¹⁶

In some instances this has been achieved by building or purchasing small scale facilities that reflect a residential design. In other places, such as Washington DC, it has been achieved within an existing prison-like building, but softening it as far as possible. This can be done by, for example, putting up the children’s artwork on the walls, bringing in normal furniture, allowing children to have coloured quilts rather than standard issue blankets, and bringing plants and pet animals into the facility.

The rationale for softening the environment is not simply compassion, but operational effectiveness. The young people in detention are often frightened, angry and isolated when they arrive. Many of them are victims of trauma. If they remain stressed and agitated, they are much more likely to act aggressively, and much less likely to engage in services directed at their rehabilitation. A normalised environment helps lower the stress levels of both young people and staff.

The Missouri Model

The Missouri Model was repeatedly recommended to the Commission as an example of international best practice in youth detention. Missouri fundamentally changed the structure of its youth detention system in the 1980s following multiple allegations of abuse in its centres.¹⁷ It abandoned the large youth detention centre model in favour of smaller residential style buildings dispersed across the state. It has now operated successfully for 30 years.

Missouri operates group homes, moderately secure facilities and secure care facilities. All of them are designed to look like schools rather than prisons. Dormitories are decorated with student's artwork and home-like furnishings, and children and young people are able to wear their own clothes and keep personal mementos. All the facilities have live plants and pets, ranging from dogs and cats to chickens and iguanas, to create a more humane environment. The facilities are small: the largest secure facility has 36 beds and many have fewer.¹⁸

Most of the staff who work in the facilities have a bachelor's degree or an equivalent mix of study and experience. Staff are employed as youth specialists and are required to complete 236 hours of training on topics such as youth development, family systems, conflict management, and group facilitation. Staff provide intensive youth development to children and young people rather than correctional supervision. Safety is maintained through relationships and supervision rather than more punitive measures.¹⁹

Missouri's approach has resulted in far lower recidivism rates, many fewer youth on youth and youth on staff assaults, and much better educational outcomes than comparable US states that continue to use traditional prisons.²⁰

Delivering therapeutic services

Effective youth detention systems take seriously the concept that being detained is the full extent of the punishment a young person will receive. The role of staff in the detention centre is therefore to make the most productive use of the time they have with the young person. A key element is delivering intensive therapeutic services aimed at treating the factors that led to the young person breaking the law.

The intensive delivering of counselling and therapy sessions is a feature of the Missouri model, which was replicated in Washington DC and New York. Diagrama in Spain operates on the basis of a multidisciplinary technical team of social workers, psychologists, teachers, lawyers and doctors who are responsible for the case management of the child.²¹ Kibble in Scotland delivers an integrated array of specialist services for young people who have chronic and acute social, emotional, educational and behavioural problems.²²

The therapeutic services are directed both at the immediate causes of a young person's offending, such as anger management classes, and at the problems in the young person's life that make their offending more likely, such as drug and alcohol counselling.

The reforms in Washington DC 2005-2010

In 2005 Washing DC's youth justice system was in a state of crisis: it was overcrowded, morale was dismal, the physical plant was badly degraded, staff were assaulting young people, some young people were unnecessarily held in isolation, and children were being locked in cells and denied access to a toilet.²³

A major program of reform was introduced to significantly reduce the number of young people in detention based on the JDAI approach and to overhaul the facility and its culture based on the Missouri approach. The transformation of the facility occurred in a staged way. It was refurbished block by block to make it a softer and more humane design while a new purpose built facility was being built. At the same time that the facilities were transformed, the staff were being intensively retrained in small groups by trainers from Missouri.²⁴

In 5 years the population of young people detained was reduced from 280 to 60.²⁵ Recidivism rates have fallen every year since 2007. The young people's educational attainment dramatically improved.²⁶

High quality education

The young people who are detained are usually entitled to receive primary or secondary schooling by virtue of their age. The best performing systems make the delivery of high quality education to students a central part of their operations. The children who are detained are likely to have had inadequate education prior to their detention. Education is a powerful determinant of future success and reduced recidivism. It is sensible to invest in highly skilled teachers to work with these children.

In England and Wales the government has accepted many of the key recommendations in the December 2016 Review of the Youth Justice System. A central recommendation of that Review is the establishment of 'Secure Schools', which replace detention centres, and deliver children 'a bespoke and intensive programme of study and support in a therapeutic and well-ordered environment'.²⁷

Education is also a core component of Kibble,²⁸ Missouri and Washington DC's²⁹ reformed systems. Education also typically extends to vocational training. International examples of vocational training provided in secure accommodation include metalwork, mosaics, building, catering, mechanics and viticulture.³⁰

The Review of the Youth Justice in England and Wales

In September 2015, the British Ministry of Justice commissioned a review of its youth justice system to examine its effectiveness in responding to youth offending. A report was published in December 2016.³¹

The number of young people in custody in England and Wales fell from 2900 in 2007 to 900 in 2017, due to changes in police practices and an increase in the use of diversionary programs. The review found that the population who remain in custody are disproportionately from minority ethnic and lower socio-economic backgrounds, tended to have cognitive, developmental or mental disorders, and tended to have poor education attainment for their age.³²

The review recommended changes to diversion practices to further reduce the number of young people who need to appear before court, with a particular focus on how to design them for young people from minority ethnic backgrounds who may mistrust the youth justice system.³³

A key recommendation from the review was the creation of a new type of institution for young people to replace the existing centres – ‘secure schools’. These are to be education centric institutions staffed by specialist teachers, social workers and health professionals, intended to deliver the highest quality of education to the young people.³⁴ The British Government has accepted this recommendation.³⁵

Keeping young people busy

The Commission repeatedly heard about the importance of keeping young people productively occupied throughout their days when in detention. The underlying intuition is that all young people, when left with nothing to do, are much more likely to misbehave.

Structured and full days can be used to help to develop in young people useful skills, a sense of self-worth and to support therapeutic treatments. If a wide range of activities are available they support the behaviour management system by providing incentives that young people want to earn.

An emphasis on keeping young people occupied is a feature of Diagrama’s centres³⁶ and Ohio’s³⁷ reformed operations.

Diagrama Foundation, Spain and UK

Diagrama is a not for profit association that operates education centres in Spain that function as a replacement for youth detention centres. Diagrama currently operates 70% of the centres in Spain and is presently seeking to expand its operations to the United Kingdom.³⁸

Diagrama's centres operate on a model of running the system in the best interests of the young people and seeking to educate them, not to punish them. The staff are known as 'social educators' and all have degree level education, typically in social work, psychology or teaching.³⁹ The staff seek to act as positive role models and nurture the young people, providing structure, support, guidance and emotional warmth.⁴⁰

Diagrama's education units operate with minimal physical restraints. Some centres do not have fenced perimeters. Security is achieved through staff supervision and building relationships with the young people. The reduced level of physical security allows Diagrama to operate with a lower staff than equivalent facilities operated in the UK on a prison-like model.⁴¹

Diagrama takes the view that it can operate in any building, and has run centres in facilities that were originally prisons, farms, and orphanages.⁴² However, where it has the opportunity to design its own centre, it considers that the ideal 'is one modelled on a family home, with young people in small units where they can eat and live together'.⁴³

A study of Diagrama's work in the Murcia region of Spain found that 28.2% of the young people who attended a Diagrama residential centre reoffended, compared to 50.3% of young people in the comparison group at other centres.

Security through relationships

Security is an important part of the operation of any secure facility. Staff will be unable to deliver successfully, and young people unable to receive effectively, therapeutic and educational services if they do not feel safe from physical and verbal attacks.⁴⁴

The best performing systems achieve this primarily through relationships, rather than through the use of fences, locks, isolation and restraints.⁴⁵ The Diagrama⁴⁶ and Missouri⁴⁷ approaches both emphasise relational security. Staff are trained and supported to engage with the young people as individuals, and to deal with outbursts through counselling and group therapy. The facilities that introduce this approach usually have fewer incidents than those that rely more on physical restraints. When Ohio radically reduced its use of isolation, the rates of violence in its facilities also fell.⁴⁸

Highly skilled staff

In most jurisdictions, the young people who come into detention disproportionately come from disadvantaged backgrounds, have a high level of need for support and, at least, initially have behaviours that make them difficult to work with. To manage this population effectively, successful jurisdictions have highly skilled staff. The staff have to be able to manage difficult behaviours, while showing positive behaviour, and actively engaging with the children.

Diagrama staff all have degree level education.⁴⁹ Kibble staff 'far exceed the minimum qualifications' such that it has the 'best qualified workforce in the UK within the sector'.⁵⁰ When Washington DC went through its reforms it brought in trainers from Missouri for intensive reskilling of its staff.⁵¹

Kibble Education and Care Centre, Scotland

Kibble is a charitable trust that acts as a multi-service centre for young people at risk. It provides residential and non-residential services in secure and open accommodation.⁵² It operates a campus facility in a residential area close to Glasgow International Airport.⁵³

The secure residential centre comprises three units each with space for 6 young people.⁵⁴ The young people accommodated include those who have committed the most serious crimes. Within the secure centre each young person has their own room with an ensuite, designed to be as domestic as possible. There is a common living area, and access to a sports area, a fitness area, a swimming pool and a garden area.⁵⁵

For the young people in the secure centre Kibble's focus is on providing a full school curriculum to the young people, teaching them about normal day-to-day routines, delivering a full recreation program directed at helping them live a fitter life, and delivering a range of specialist support programs. The support programs include work with psychologists, family caseworkers, interventions in trauma, art therapy, cognitive behavioural therapy and counselling.⁵⁶

Strong leadership

Reform of youth detention systems is only successful and enduring when led by senior managers who are committed to the vision of reform, willing to spend time on the floor explaining the changes to staff, and robust enough to work through the obstacles that arise.⁵⁷ Dr Dedel, who monitored the reforms in Ohio, suggested that leadership 'matters more than anything else' in reform of juvenile detention.⁵⁸

The Ohio Department of Youth Services Reforms from 2007-2015

Ohio's secure facilities for young people went through a remarkable process of change from 2007 to 2015.

Ohio reduced the size of the youth detention population from 2000 young people to 500, by adopting a risk assessment tool based on the idea that young people should only be securely detained when they have a high risk of future offending. Formal program evaluations found that this increased use of diversion resulted in lower recidivism rates, better educational and health outcomes and higher family engagement with the young people.⁵⁹ It also resulted in '*enormous cost savings for the state*'.⁶⁰

Inside the secure facilities, Ohio substantially changed the way it dealt with young people with complex behavioural problems who were detained, by reducing the use of isolation, physical restraints and punitive measures. It achieved this by introducing a range of alternative behaviour management tools, reducing the amount of idle time the young people had, and increasing the level of mental health services available to the young people.⁶¹ The effect of this was to drastically reduce the level of youth on youth, and youth on staff, violence.⁶²

The provision of education to the young people '*vastly improved*', as did the medical care and dental care.⁶³

Community involvement

A common feature of successful youth detention systems is that they welcome the community into the secure facilities.⁶⁴ Community involvement in the life of the secure facility provides transparency and informal oversight of the operations. It normalises the experience for young people, helps them develop social skills for their return to the community and allows them to develop positive relationships with the community. It allows the community to develop a sense of ownership and understanding of the operation of the facility.

In Washington DC, community members were involved in the refurbishment of the centre, dignitaries such as judges, City Council members and the Mayor were invited to visit, university students and theatre groups were brought in to work with the young people, and major government departments such as the Department of Health and the Department of the Environment brought their staff into the centre to engage in activities with the children.⁶⁵ Kibble in Scotland actively seeks to link the community into its work, inviting community groups to come onto its campus to use its facilities for sporting matches, theatre performances, or meeting rooms.⁶⁶

Evidence based decision-making

A common feature of jurisdictions that went through successful reforms was having access to high quality data, having the capacity to analyse it, and being prepared to act on the evidence. Such an approach might be thought to be a basic feature of good governance in any context, but it is particularly valuable in the youth justice context because the evidence often points the opposite way to what many people intuitively assume is the best approach. Kibble's reforms were driven by a commitment to 'evidence –informed residential provision' and 'evidence-creating practice'.⁶⁷ In Ohio detailed data was kept and statistics were used to persuade staff of the effectiveness of the reforms.⁶⁸

Other reports on international best practice

In 2013 the CfBT Education Trust, a charity in the United Kingdom, conducted a review of international best practice in the incarceration of young people, considering practice in Canada, England and Wales, Finland, the Netherlands, New Zealand, Northern Ireland, Norway, Sweden and the United States. That review identified the following "key aspects" of good practice:

- Education is placed at the heart of an institution's focus
- Interventions are personalised and targeted
- Staff are given multidisciplinary training and custodial staff are also involved in the education of offenders
- There are high ratios of staff to offenders providing a high level of attention and subsequently care/education
- Institutions are relatively small and are split into units which are even smaller
- Offenders are assigned mentors who work with them for up to 12 months after their release
- Activities within the community are a key aspect of provision, and
- Residential facilities are locally distributed, reasonably close to the homes of young offenders.⁶⁹

In 2015, a Churchill Fellowship report was prepared by Diana Hart into the comparative practice in the treatment of children in secure custody in England, the United States, Finland and Spain. She identified the following key elements of models that work well:

- small units, caring for young people in groups of no more than 12
- close to home to allow for successful reintegration into family and community
- a continuum of placements, with levels of security based on risk and need
- streamlined case management systems, with the facility playing a central role

-
- a regime that promotes adolescent development, based on a theory of change
 - active and continuous engagement by front line staff, who are seen as key agents of change
 - a clear pathway to success that offers young people meaningful rewards linked to their progress
 - family engagement to support parents to regain control over their young person's behaviour, and
 - a phased rather than abrupt return to the community.⁷⁰

In December 2014 the New Zealand Ministry of Social Development commissioned a team of researchers to prepare a report on the international evidence of best practice in youth justice secure residences. The report was delivered in October 2016. It examined best practice in England and Wales, Scotland, the United States, Australia and the Nordic Countries. It identified Missouri and Kibble Centre as the models that have aspects that should be considered for implementation in the New Zealand context.⁷¹

The conclusions in these reports are consistent with what has emerged from the wider body of evidence about international best practice before the Commission.

OVERVIEW OF THE NEW SECURE RESIDENTIAL FACILITIES FOR THE NORTHERN TERRITORY

The evidence before the Commission leaves no doubt that the current youth detention facilities used in the Northern Territory are unfit for purpose and cannot continue to be used to detain young people. The Northern Territory Government has assured the Commission that there is no intention to use either Don Dale Youth Detention Centre or Alice Springs Youth Detention Centre as permanent facilities.⁷²

Secure residential accommodation for young people should be a genuine last option used only where the use of a less restrictive option would pose an unacceptable risk. There remains a need for secure residential accommodation facilities for the small number of young people in the Northern Territory who are involved in the youth justice system and for whom there is no other more appropriate option.

The young people who will need to be accommodated will be aged between 14 and 18, in light of the recommendation in Chapter 27 (Reshaping youth justice) to raise the age of criminal responsibility to 12 years, and to recommend the phasing in over 5 years that no child under 14 years should be placed in secure detention.

The precise detail of its design and day to day operation must be developed by the Northern Territory Government in collaboration with professionals, experts and in close consultation with the community.

Principles for the design of the new secure residential accommodation facilities

The purpose of the facilities is to securely accommodate young offenders while ensuring that they have the best opportunity to learn something from the period of confinement to equip them to prosper in and contribute to society when they are released. The fact of being detained in secure accommodation should itself constitute the whole of the punishment the young people will receive for their offending.

The facilities, in their design and operation, must be directed towards providing rehabilitative, educational and therapeutic services and ensuring the personal, practical and academic development of the young person. This is done both because it is in the interests of the young person's development and because it will make the broader community safer by diverting young offenders towards more productive lives.

The guiding principle in the design of the new facilities is that they should be as normalised and home-like as possible. The youth prison model is a demonstrated failure. It has proved to be damaging to young people, dangerous for staff, expensive to the state and detrimental to public safety.⁷³ The problems experienced in the Northern Territory detention centres are similar to those that arise in comparable institutions across Australia and internationally. Such problems appear to be a product of how such institutions operate, rather than an aberration.

A residential design approach is advocated by practitioners and academics. It is associated with more positive experiences, behaviours and cultures compared to a prison-like or institutional design.⁷⁴ Minimum security and safety standards will need to be met, but it should closely resemble a successful boarding school or a family home⁷⁵ rather than an adult prison.



Boronia Pre-release Centre for Women was suggested as an example of best practice design. It is designed for incarcerated adult women and their young people

'The ideal centre, which is the design Diagrama adopts when it starts up a new Centre is one modelled on a family home, with young people in small units where they can live and eat together.'

David McGuire, CEO of Diagrama Foundation⁷⁶

Each facility should be designed on a campus model that has facilities for the accommodation, education, training and basic service delivery for the detained population within a secure perimeter. The facilities should be built and finished to a standard that would be considered acceptable in a new fee-for-service boarding school. Given the large Aboriginal population in the Northern Territory all facilities should be designed in a culturally competent way.

The international best practice from the USA, Spain, England, Scotland and Canada is that moving from a harsh to a humane model has clear benefits for the society as a whole. Missouri's use of a humane model has resulted in far lower rates of reoffending compared to other US states adopting a prison model⁷⁷ and far lower rates of assaults in the facilities.⁷⁸

*'Large, institutional structures, surrounded by razor wire and filled with noise and harsh lighting, create a toxic environment. The staff and kids are inevitably caught in their roles of guard and prisoner, locking both into a struggle of power and resistance. Life in these places is about violence and control, submission, and defiance, leaving little room for the guidance, learning, role-modelling, and caring relationships that young people need.'*⁷⁹

The detail of how the facilities will be designed necessarily have to be decided through a process of engagement with architects, design professionals and the local community. Staff and community groups with an interest in the operation of facilities should also be invited to be involved from the outset. Given the current very high rate of Aboriginal young people, representatives of Aboriginal communities, community controlled organisations and service providers should be involved from the start of the design process.⁸⁰

A key consideration in the design of the facility is developing a robust understanding of the likely population of the centre.⁸¹ This can be done in part through an evaluation of the current population of young people who are detained, while acknowledging that it will change over time. This analysis should be as comprehensive as possible in light of the data available, as it can inform the design of the facility and the types of training that staff will need. Graham Bell, from the Kibble Education and Care Centre in Scotland, observed that analysing the key characteristics of their youth population had been 'pivotal in shaping how new approaches and services were developed'.⁸²

Some members of the community who have been victims of youth offending may object to the idea of the perpetrators of those crimes being detained in well-furnished accommodation. But the sum of the evidence before the Commission is that this approach has the best prospect of putting

young people in a position to make a positive contribution to society rather than engage in further offending. There is evidence that young people who have been institutionalised ‘get into worse trouble, are more likely to commit worse crimes, are less employable, are more likely to be on a path toward lifelong failure and are more likely to pass their problems on to their children’.⁸³

Physical design affects behaviour

A number of witnesses suggested to the Commission that the physical layout can have a significant impact on the operation of a facility.⁸⁴

The extent to which physical design affects behaviour is often underestimated. Corrections architecture experts refer to this as fundamental attribution error, the concept that when attributing causes to poor behaviour to inmates most people overemphasise the detainee’s personal character as a cause and significantly underestimate the effect of the environment or situational context.⁸⁵ This error can cause a dangerous spiral in a secure environment if people in positions of authority respond harshly to poor behaviour by young people and in doing so set up an environment in which future poor behaviour is more probable.⁸⁶

Physical design affects the way in which the participants in the facility see their roles, and influences their behaviour. The academic research indicates that even moderate differences in design are associated with how young people and staff members perceive themselves and each other. In correctional and detention facilities based on a residential design detainees and staff perceive themselves and others more positively, whereas in institutional settings they perceive each other as ‘worse and tougher’.⁸⁷ A residential design is likely to lead to a calmer atmosphere.⁸⁸ These research findings are reflected in the experience of practitioners on the ground. Mike MacFarlane, a prison Superintendent, observed that:

If a building looks like it is intended to be punitive, with big grey walls and fences, then prisoners will reflect that environment and come to have an attitude of just trying to do their time and not engaging⁸⁹

Physical design affects how secure the young people (and perhaps staff) feel in the facility. Being placed in a secure accommodation facility will be a disconcerting and stressful experience for any young person. The harsher the environment and the more alien it is to their life experience to date, the more stressful that experience will be.

The type of activities that can be undertaken are in part determined by the facilities that are available. Physical activity cannot be done unless there is a recreation area of adequate size. One-on-one counselling cannot occur if there is no space for a private meeting.

The physical layout also affects the demands made on staff. If all detained young people have direct access to a toilet and water, then there is no need for staff to escort them every time they need to use the toilet or drink water. If staff do not have confidence in the physical perimeter then they may constrain the activities the young people can undertake.⁹⁰

The location of the new residential accommodation facilities

The Commission received consistent evidence that it is usually in the best interests of a young person who has to be securely accommodated to be kept as close to their community as possible.⁹¹ This proximity gives the young person the best chance of maintaining the positive associations they have in their life that are likely to support their rehabilitation and subsequent positive re-engagement with their community.

This objective is in tension with the evidence before the Commission about the need to ensure that young people who are detained have access to professionals skilled in working with young people who have offended, and who may have significant underlying physical or mental challenges in their lives, as set out in Chapter 15 (Health, mental health and children at-risk), Chapter 16 (Education in detention), Chapter 19 (Case management and exit planning) and Chapter 20 (Detention centre staff).



Boronia Pre-release Centre for Women was suggested as an example of best practice design. It is designed for incarcerated adult women and their young people

The large size of the Northern Territory and the low population density means that it is not practical to construct purpose built secure accommodation facilities in or near every community that has had, or may have, young people who may need to be securely detained. Even if the cost issues could be overcome, it would be impractical to deliver the necessary range of specialist professional services across so many dispersed locations. The larger cities of Darwin and Alice Springs struggle to find resident professionals to service the present detention centres. The smaller communities have considerable difficulty attracting a sufficient number of trained professionals to visit. In some locations there might only be one young person who needed to be detained at a time, placing them in *de facto* isolation that would likely be detrimental to their rehabilitation.

The Commission believes that purpose built new residential accommodation facilities should be constructed in Darwin and Alice Springs.

Mr Hamburger, who completed a 'root and branch' review of the Northern Territory youth justice and corrections systems, recommended development of 'Healing and Rehabilitation Centres' located on a number of different traditional lands as a new form of custodial environment.⁹² The Commission endorses the substance of Mr Hamburger's recommendations so far as they call for small facilities, designed on a cultural healing, therapeutic and justice reinvestment model. However, for the reasons outlined above, multiple very small secure facilities in many communities do not appear to be a practical option for the Northern Territory. It would be highly desirable for such centres to be developed in a number of communities as non-secure residential facilities to be used as an alternative to secure accommodation for suitable young people.

The Commission understands that the number of young people who need to be in secure accommodation who come from more remote locations is already relatively low and if a wider range of diversion options are introduced it will be further reduced. Nonetheless, there will be some who will need to be detained some distance from their community. This is not an outcome that this Commission welcomes, but it appears to be the best balance of the need to ensure proximity to community and to deliver services to the young people detained.

The new facilities should not be located on, or in close proximity to, adult prison precincts.⁹³

The size of the new facilities

The recommendations made in Chapter 27 (Reshaping youth justice) will lower the number of young people who need to be held in secure youth detention. The new facilities should be no larger than what is expected to be the maximum number of young people who need to be detained over the 10 year period following their construction.

This figure should be determined through a careful analysis of the expected demographic changes in the Northern Territory. The material presently available to the Commission suggests that the maximum number of youth required to be detained at any one time would be no higher than 10 in Alice Springs and 36 in Darwin. Deloitte's modelling (discussed further below) estimates that if the type of interventions described in this chapter, Chapter 25 (The path into detention) and Chapter 27 (Reshaping youth justice) are implemented, the highest number of young people who can be detained on an average day in the following 10 years would be 33, comprising 14 sentenced and 19 on remand. A total bed count of 46 would accommodate this, with an additional 13 beds available to accommodate for higher than average days, or other operational pressures such as an unusually high number who needed to be in Darwin rather than Alice Springs.

The actual number to be in detention at any point is expected to be significantly lower. The facilities should be designed in a way where they can economically shut down parts of the facility when not in use, such as closing down accommodation units.

These sizes are consistent with international best practice about the desirability of keeping secure facilities small. The largest secure facility in Missouri, for example, is 36 beds.⁹⁴ In New York it is 24

beds.⁹⁵ Small facilities allow for one-to-one treatment to be delivered and allows the staff to engage with the young people as individuals. In small facilities it is realistic for the most senior staff member to know every young person by name and to understand their background and circumstances.

Any suggestion that a larger facility should be built for the sake of having spare capacity in case of an unexpected increase in the number in young people committed to detention should be rejected. As Mr Hamburger put it, that amounts to 'planning for failure'.⁹⁶ There is a well-established phenomenon that however big a detention facility or prison is built, it will inevitably be quickly filled.⁹⁷ The maximum numbers proposed above are already extraordinarily high compared to other jurisdictions; Scotland, for example, only has 78 secure places for young people for a population 20 times the size of the Northern Territory.⁹⁸

As highlighted in Chapter 17 (Girls in detention), female juveniles aged 15 to 17 might be co-located with young female adults aged 18 to 25 or be housed in alternative forms of secure accommodation. If male and female young people are housed in the same precinct, they should use shared facilities but live in separate residential units. The Commission received conflicting evidence about whether it was desirable to separate male and female young people. While there are some advantages to separating them, having them in a combined facility has a normalising effect and allows for effective service provision. Given the relatively small number of young people that are expected to be detained in the Northern Territory when the Commission's recommendations are adopted, the benefits of shared services from co-location outweigh the arguments for separation.

Culturally appropriate design

Based on the profile of the young people who are currently in detention and the general demographics of the population of the Northern Territory, there is likely to be a number of Aboriginal young people who are housed in the new secure accommodation, although problems of overrepresentation must be addressed. In any event, new facilities need to incorporate and reflect aspects of Aboriginal culture in its design and operation.

This can only be achieved by substantively involving Aboriginal communities in the design of the new facilities from the outset. This Commission is not prescriptive about how the consultation happens, although it has made findings and recommendations about community engagement in Chapter 7 (Community engagement). Consultation must be meaningful and reflected in the outcome. They should be directed both towards achieving a culturally appropriate design and encouraging the community to be involved in the rehabilitation of their young people.

The West Kimberley Regional Prison, an adult prison designed for a population of predominantly Aboriginal people from the Kimberley region, is an example of how a culturally competent prison might be designed. It is designed as a town, painted with colours that reflect the surrounding natural environment, with an AFL oval given pride of place.⁹⁹ The natural bush environment is built into the facility.¹⁰⁰ Its physical design was described by the Western Australian Inspector of Custodial Services:

WKRP has been uniquely designed and managed giving consideration to the Aboriginal peoples of the Kimberley and embracing their culture and practices. The prison is open, spacious, and occupies

approximately 25 hectares within a 100 hectare parcel of natural bushland. Buildings are built in materials, styles and colours that depict the Kimberley. The perimeter fence allows for vision of the natural bushland outside the prison and the internal grounds have retained the natural bushland scape as much as possible.

The design of West Kimberley Regional Prison should not be uncritically replicated in the Northern Territory, but it serves as an example of what can be achieved when culturally appropriate design is taken seriously.¹⁰¹

Recent attempts at reform

The Northern Territory Government accepts that new facilities are needed.¹⁰² It told the Commission that:¹⁰³

‘it is committed to the redevelopment of youth detention facilities with an approach that differs fundamentally from the previous system.’

This assurance is significant. The Northern Territory Government has received a preliminary design brief for a ‘New Darwin Youth Detention Centre’ (dated December 2016).¹⁰⁴ Experts in detention architecture and architectural anthropology who gave evidence to the Commission were critical of the design brief and were concerned in particular about what they saw as:

- a lack of consultation with staff, management and the community, particularly Aboriginal communities, about what they wanted the facilities to be and to achieve¹⁰⁵ or consideration of the Northern Territory’s particular conditions.¹⁰⁶
- a lack of vision from the Northern Territory Government about the purpose of the facilities and the values and principles that will underpin their design.¹⁰⁷

The outline design brief reflected an early stage of the planning process for future facilities. Nonetheless, it was an inauspicious start.

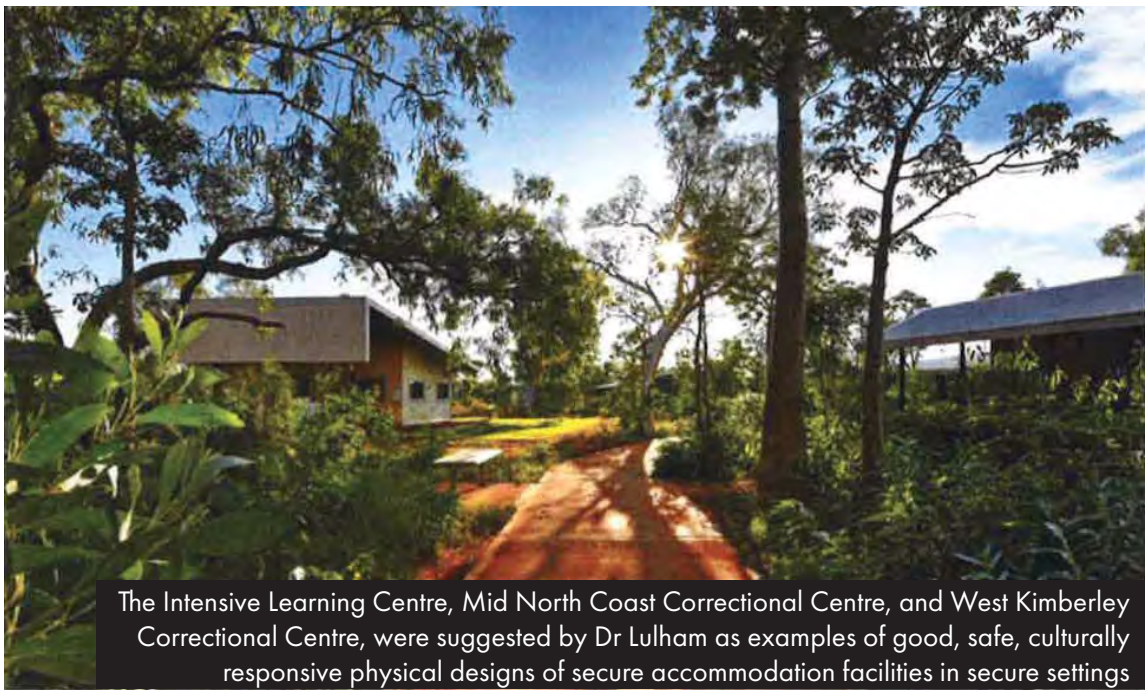


The Intensive Learning Centre, Mid North Coast Correctional Centre, and West Kimberley Correctional Centre, were suggested by Dr Lulham as examples of good, safe, culturally responsive physical designs of secure accommodation facilities in secure settings

This outline design brief was being written in December, at the same time that senior public servants were telling the Commission that they were confident the Northern Territory was about to lead the world in youth detention practice, yet the Design Brief is based on outdated 60 year old standards.¹⁰⁸ On 8 December 2016, the Commission was told that the Northern Territory Government was committed to a ‘new facility, not a detention facility, but a youth justice facility’,¹⁰⁹ and ‘very different from anything that we would recognise as a detention centre’¹¹⁰ yet on 22 December 2016 the Government received the outline design brief it had commissioned for a ‘youth detention centre’. The aspirations do not appear to have been reflected in practice at this time.

Ms Kerr suggested that Loves Creek, then operated by BushMob in Alice Springs, offered a good model for what could be achieved, because:¹¹¹

‘The education there is very good, the work skills is very good. It’s run by traditional owners on traditional land. I think there’s a huge amount of positives in that model that we could draw from.’



The Commission has heard consistent praise for BushMob’s work and its operations represent a valuable example of good practice in working with troubled young people. Will MacGregor, BushMob’s Chief Executive Officer, told the Commission that the Loves Creek site has had consistent problems from its outset due to a lack of support from Territory Families. These included:

- ‘Unworkable’ operational guidelines.¹¹²
- A lack of potable water, adequate power generation, or refrigeration facilities.¹¹³
- Inadequate security for the young people or vehicles.¹¹⁴
- Uncertain funding arrangements that undermine staff recruitment, retention and training.¹¹⁵

Loves Creek was shut down in July 2017 after BushMob withdrew from the agreement citing the range of unremedied problems.

The gap between the Northern Territory Government's statements about the type of model it aspires to, and what it appears to do in practice, is disappointing.

The reforms that this Commission considers need to be pursued by the Northern Territory involve a transformation of the way the system operates. They will be challenging to implement. There is no prospect of them succeeding unless there is genuine commitment to systematic change. There should not be a poorly prepared rush to be seen to be doing 'something'.

THE DESIGN OF THE NORTHERN TERRITORY'S NEW FACILITIES

This section sets out an outline of the necessary features of the new facilities. It is intended to provide a framework for, and not replace, consultation with the interested stakeholders.

External perimeter and security

The campus will have a secure external perimeter. A reliable external perimeter means that physical security within the precinct can be kept to a minimum.

As far as possible, the external perimeter should be designed to be relatively inconspicuous and to blend in with the natural surroundings.

Accommodation units

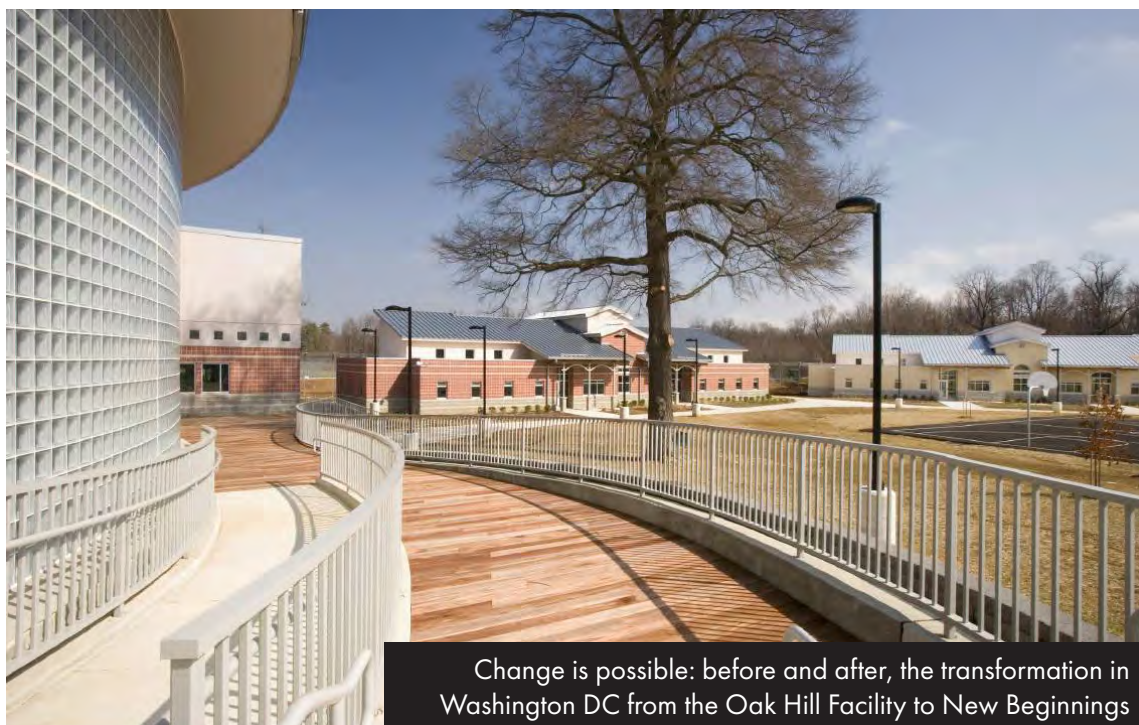
The accommodation will comprise small units, each of which comprises four to six bedrooms and a shared common area. The young people will each have their own bedroom, but there should be capacity for some shared rooms where it would be in the best interests of detainees to be co-located. Each bedroom will have its own toilet and washbasin.

These accommodation units will be designed, furnished and run in a way that resembles a home environment as far as possible. The bedrooms should look much like a single bedroom given to a young person in a boarding school: a normal bed with regular bedding, a study desk, cushions and books.

The common area for each unit will be a communal space with couches, board games, basic facilities for making a snack, stocked bookshelves and a television. These common areas should be available to young people as an area to socialise in a similar way to a lounge room in a house or a boarding school.

The number of accommodation units in use and the composition of each unit will be based on a careful monitoring of the population who are coming to the centre. There may need to be the capacity to separate particular groups of young people into different accommodation units, for example, separating:

- girls and boys
- younger and older children
- higher needs young people from lower needs young people, and
- Aboriginal youth from incompatible communities.



Change is possible: before and after, the transformation in Washington DC from the Oak Hill Facility to New Beginnings



Change is possible: before and after, the transformation in Washington DC from the Oak Hill Facility to New Beginnings

These are not intended to be prescriptive divisions. There may be circumstances where it is appropriate not to separate these groups in, such as to keep an older and younger brother together, or to avoid the de facto isolation of a younger boy if all other boys at the centre are older.

Applying these principles and depending on what the data indicates about the likely population, the facility built in Darwin might have four units each of six beds in use at a particular point in time, one intended for girls, one for older boys, one for younger boys and one for those detainees who need a higher level of security, observation or support.

Education, training and life skills facilities

Education and skills development will be core goals of the new facilities and the design must enable supporting activities.

There will be a small school on site, with sufficient rooms to allow separate classes. It will have the facilities to provide core academic training such as Maths, English, History and Science and skills based training such as woodwork or metalwork. An important focus of the curriculum will be learning living and social skills, such as managing money, cooking, shopping and personal development, in addition to literacy and numeracy. In designing the curriculum, importance will be placed on 'continuity' of education so that the young person could return to their regular school once released without being left behind.

There will be a separate vocational training area, where detainees can be trained in skills and trades to prepare them for potential employment, although as set out in Chapter 16 (Education in detention) the Northern Territory Government should ensure barriers are removed to allow detainees to leave the facility temporarily to attend vocational education activities in the community if appropriate.

There should be vegetable gardens and facilities for animals such as chickens or goats to be held on site to allow the development of agricultural skills and animal / work based therapies.

Similar to the current Don Dale Youth Detention Centre, there will be an activities centre, including a music room, movie room and a technology centre with computers and related equipment. This should be available to detainees for education and training purposes, recreation purposes and for web-based communication such as Skype with family.

Physical recreation facilities

Physical recreation facilities will be provided because physical activity is important to human health, development and functioning.

Sport may provide a way to engage with young people in skill building, such as cooperation skills through team sports, or learning about nutrition in the context of sports recovery.

The new facilities should have multiple areas for physical recreation. These might include:

- an oval and equipment to play football and other field sports, as well as athletics
- an indoor / covered sporting area that could be used during wet or very hot weather, suitable for sports such as basketball, netball and boxing
- a pool for learning to swim and recreational swimming.

These types of sporting facilities are comparable to what is available in many high schools and are in a number of Australian youth detention centres and should be designed to a similar standard. [Note to editor - inserting picture of undercover basketball Court from West Kimberley Regional Prison, contained in Exh-607-00]

MW Comment: could include the Cavan, S.A. facilities.

Medical and therapeutic services

The facilities will have dedicated space available for the delivery of medical and therapeutic services.

This would likely comprise a building or buildings designed for the delivery of medical and therapeutic services, including a doctor / nurse's treatment room and multiple rooms designed to allow one-one-one meetings with counsellors or mental health professionals. The facilities will be designed to allow for basic dentistry and medicine to be performed onsite.

The medical facilities will include modern computers with web cameras to allow for the possibility of specialists who are unable to attend the facility in person delivering telemedicine.

Dining and recreational facilities

There will be onsite kitchen facilities, a cafeteria and a dining area that has both indoor and outdoor dining areas.

When not otherwise in use, the dining areas could be used as a general recreation area.

There should be garden spaces with tables and shade, to be used for recreation, and meetings with counsellors or visitors in less formal settings, in addition to the private meeting spaces.

Staff facilities

Staff will have a dedicated area available for their use that allows them to meet and take breaks away from the young people. This will include office and administrative space, a kitchen and lunch room, and space for staff to have meetings with each other and external service providers.

There will be sufficient desk space and computer resources to allow staff to prepare for their work and complete their administrative tasks without delays waiting for other staff to use the facilities.

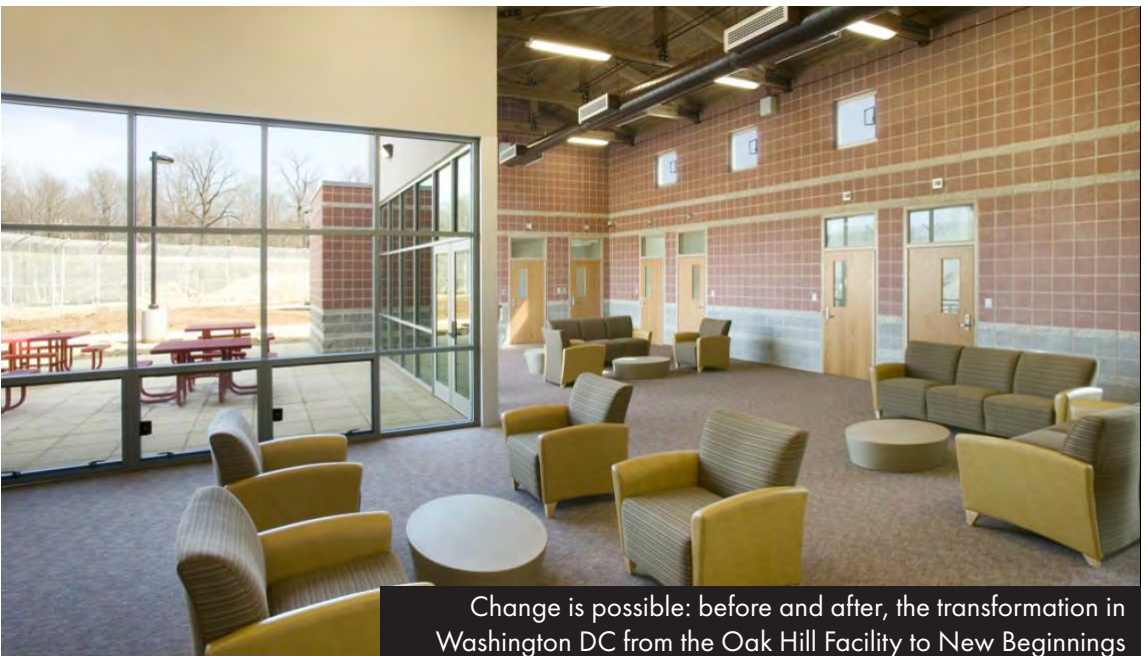
A modern computer system with software suitable for the management of a secure accommodation facility, that allows the recording of detailed data and high quality record keeping in a user friendly way will be installed (see Chapter 21 (Record keeping)).

Visitor facilities

Visitors will be welcomed into the facility as often as reasonably possible. Visitors contribute to the normalisation of the facilities and allow formal and informal oversight to occur. It is important for any young person's development to spend time with their friends and family. It may be that, as has been Bushmob's experience, it is also beneficial for young people to have the opportunity to interact with someone else's parent, grandparent, auntie or uncle over a meal.¹¹⁶



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There should be facilities available for the resident young people to meet with visitors, including in informal areas and where appropriate with some privacy.

A small accommodation unit will be constructed close to the facility. It will be used to allow family members of young people who do not live nearby to stay for short periods of time and engage in the life of the facility. It may also be used to accommodate other visitors who do not live locally, such as trainers who are delivering courses or visiting Elders.

The availability of a free bus to the facility from a central point at weekends would respond to the many difficulties the Commission heard of from witnesses who had family in detention.

Maintenance and ancillary facilities

Space will be needed for the support facilities, such as a laundry, secure rooms or sheds for cleaning supplies, maintenance equipment and gardening tools, and secure vehicle storage.

THE OPERATION OF THE NORTHERN TERRITORY'S NEW FACILITIES

The best designed facilities will achieve bad results if they are not well operated.

The operating philosophy

The operating philosophy of the facility is important in the recruitment or training of staff with the right skillset. Staff at all levels must buy into and have reinforced that they are working with young people who have a future and who will succeed with their assistance and their role is to develop, rehabilitate and educate those young people.¹¹⁷ They have a responsibility to help put them on the right path in life.

Former Superintendent of West Kimberley Regional Prison, Mike MacFarlane told the Commission that:

*'The approach taken by the staff employed in a facility is vital to whether the facility can operate effectively. To run effectively there needs to be a clear philosophy, managers who believe in that philosophy and reinforce it with staff, and multiple champions in the senior management and executive who support that philosophy and will help overcome opposition to it.'*¹¹⁸

The operating principles and philosophy need to be formally developed by the leaders of the new centre, in consultation with the community they serve, and drawing upon best practice elsewhere. The Missouri Department of Youth Services underlying beliefs and values about youth, set out below, serve as an example of what could be developed in the Northern Territory.¹¹⁹

- *'Every young person wants to succeed—and can succeed.*
- *Public safety is best served not by punishing young people or shaming them for their crimes, but by offering a therapeutic intervention to help them make lasting changes in their attitudes, beliefs, and behaviours.*
- *These lasting changes cannot be imposed on young people. Youth cannot be scared straight, reformed, or deterred from crime by fear of punishment. Rather lasting changes can only result from internal choices made by the young people themselves.*
- *Like all people, troubled youth tend to resist and fear change. Positive relationships with staff*

and other youth are critical to overcoming resistance and fostering positive change.

- Every young person requires individual attention. Each DYS youth has chosen to engage in delinquent behaviours based upon his or her own circumstances, and each will make the decisions to change and grow—or not—for his or her own personal reasons.*
- Some youth lapse into serious and chronic delinquency as a coping mechanism in response to earlier abuse, neglect, or trauma. For other youth, delinquency has less deep-seated roots.*
- Regardless of the roots of their behavior problems, delinquent youth typically suffer from a lack of emotional maturity—an absence of insight into their own behavior patterns, an inability to distinguish between feelings and facts, and an underdeveloped capacity to communicate their emotions or express disagreement or anger responsibly.*
- All behaviour, no matter how destructive, has an underlying emotional purpose. Therefore, rather than punishing or isolating young people when they act out, the best response is to ask probing questions that help the youth understand the roots of the problem and identify more constructive responses.*
- Most youth entering custody have very low confidence in their ability to succeed as students—or eventually as workers in the mainstream economy. And most have had limited exposure to mentors and positive role models.*
- While the DYS staff and treatment process are important, parents and other family members remain the most crucial people in youths' lives—and the keys to their long-term success.*

Education should be a core component of the philosophy and practice. The young people who are held at the facilities are likely to have struggled to engage with their school to date and educational attainment is likely to be critical to them having prosperous futures.

Staff profile

The secure accommodation facilities will only house young people for whom no other option is suitable. This means that the young people who are detained are likely to have a range of complex needs and require a high level of support. A high staffing level also reduces the likelihood that staff members will be overworked.

This high level of need means that there will be a high staff-detainee ratio. That ratio, including administrative support and professionals might exceed 1:1. At any point in time during the day there should be at least one youth worker / teacher for every four detainees, and at least a 1:6 ratio overnight. This should ensure that there can be active eyes supervising the young people at all times.

The exact staffing profile will depend upon the population of young people who are housed, or likely to be housed, in the facility. By way of illustration, the staffing profile for a facility housing 24 young people might look like:

- one senior executive officer
- one psychologist
- one nurse/medical officer
- one head teacher and 3 additional teachers
- four senior youth workers
- eight youth workers
- one chef
- one maintenance and facilities officer
- four general administration officers.

The staff working with young people will be skilled in their field, experienced in youth work and will have received job specific training for working with troubled youth. As stated in Chapter 20 (Detention centre staff), they will either hold, or be actively working towards, a Certificate IV in Youth Justice. They will be supported to develop skills relevant to the operation of the facility. In the longer term, the Northern Territory Government might work with a local university to develop a specialist diploma or degree course for youth workers in secure facilities, as Diagrama is doing in the UK with the University of Canterbury.¹²⁰

The staff who work directly with young people will be rigorously selected, trained and professionally supported. Working effectively with troubled young people is an emotionally and intellectually difficult task that does not come easily to most people. The young people who are held in secure detention will include some who, at least when they arrive, have very challenging behaviours and for whom previous interventions have been ineffective. The managers will monitor staff to ensure that they are not overworked and that they are supported if they show signs of having been traumatised or otherwise overwhelmed with their work. The highest demands are placed on youth workers and teachers, but the same principles apply to all staff who work in the facility.

This suggested staff profile deliberately does not include any specialist ‘security’ officers. Having a distinct group of staff who perform this role may raise the risk of violence, as they are more likely to rely on physical coercion or restraint when they encounter a resistant young person.¹²¹ Those staff are more likely to become institutionalised and to see security as the primary function of the facility.

Staff will have received training in security, but that should not be their primary skill set. For the staff working with young people the model for their role is that of a parent big brother or big sister, not a prison guard.¹²² As Mr McGuire said of the Diagrama approach, security should be like an airbag in the car: essential to have, but hopefully never to be used.¹²³

As recommended in Chapter 20 (Detention centre staff), staff will have received comprehensive training in trauma informed practice and how it will apply to the young people likely to be detained in secure accommodation in the Northern Territory. This would involve, for example, recognising that a majority of the young people are likely to be victims of childhood trauma and as a result may have ‘marked difficulties with the management of emotions and impulses such that when they are under stress, they may readily resort to verbal and sometimes physical aggression.’¹²⁴ Staff must be equipped to recognise such behaviour and help the young people to manage their stress in a healthy way. The experience in Queensland has been that since it introduced trauma informed practice in 2015 it has seen a decrease in the number of physical interventions used against young people in detention.¹²⁵

Staff in more senior roles will be trained in how to actively supervise and support the staff they are managing. Staff who are well supported and regularly supervised, feel appreciated and are less likely to experience burn out and more likely to remain motivated to deliver a high level of service to the young people.¹²⁶

As recommended in Chapter 19 (Case management and exit planning), each young person will have access to case workers who will take a multi-disciplinary approach to case management by consulting with the relevant stakeholders, for example, counsellors / psychologists, social workers, nurses/medical officers and teachers. Each young person will be given an individualised case plan, covering the specific developmental and rehabilitative needs of the individual, including from the outset, a plan for the person's release. This type of multi-disciplinary case management approach is used by Diagrama in the United Kingdom and Spain.¹²⁷

The case management team would meet regularly with the young person, monitoring and updating their case plan, with a continuing focus on the arrangements which need to be put in place for accommodation and return to school or employment on leaving detention.

Specialist medical advisors, or other professionals such as child psychiatrists, will be retained when there are detainees with particular needs. They will also be engaged to train staff in recognising the problems the young people may have and how to work with young people who may have these difficulties.

The composition of the staff in terms of race and gender will be a balance between reflecting the backgrounds of the people of the Northern Territory so as to encourage a normalised environment and ensuring that there is an appropriate mix of staff in light of the young people who are detained. As recommended in Chapter 20 (Detention Centre staff), a priority must be to recruit and retain female and Aboriginal staff.

Embedding cultural competence

All staff will receive comprehensive training to ensure they are culturally competent to work with the population of the facility. At this time, this means ensuring they are equipped to work with young people from the Aboriginal cultural backgrounds in the Northern Territory. This may evolve over time.

Staff will be recruited who have particular skills in working with vulnerable and Aboriginal young people, such as similar backgrounds, language skills or experience living in Aboriginal communities.

All staff will be able to explain the culturally significant features of the facilities to all young people when they arrive as part of their initial orientation.

Significant dates for Aboriginal people in the Northern Territory, or for particular groups who are represented in the facilities staff or youth detainee population, will be acknowledged and marked in an appropriate way.

The current Visiting Elders program will operate and should be expanded and strengthened.

The day to day operation of the facility

The focus of the day to day operations will be on keeping the youth productively occupied throughout the day.

Young people, by virtue of their developmental stage, have the capacity for rapid and extraordinary change.¹²⁸ The young people who are held in secure accommodation should be supported to make positive change.

Throughout the day and night, young people will be constantly supervised by one or more staff members. That supervision should be active, rather than passive; staff should be engaging with the young people and not simply watching them.¹²⁹

Education

The young people will be engaged in formal education for an extended school day. Education and skills training should be a central part of the facilities operations. The young people who enter secure accommodation are likely to have missed significant periods of schooling, may have learning difficulties or poor previous school results. Education is crucial to rehabilitation and preventing future offending, because it equips the young people with the skills and qualifications that they need to positively engage with society and achieve their potential.¹³⁰

A number of elements of the recent recommendations for 'secure schools' in England and Wales should be adopted in the new facilities. In particular:

- The young people who are securely held should receive the highest quality education from outstanding teaching professionals, to repair the damage caused by their previous lack of attendance and attainment.¹³¹
- Any assumption that the young people are incapable of succeeding in education or only suited to low level vocational skills should be rejected. While education and training should reflect the abilities of the young people, instruction in tertiary pre-requisite subjects should be available for those young people who wish to pursue it.¹³² As in any good school, there should be a culture of aspiration.¹³³
- The therapeutic and welfare services should be integrated into the school day and potentially into the school curriculum. With an extended school day it is important that 'wrap around' support be provided to the young people throughout the day.¹³⁴

Vocational training

Vocational training courses should be made available to all of the young people, but especially for those who have passed the age of compulsory education and who want to build skills for potential employment.

The vocational training should be directed at skilling the young people to obtain jobs that are likely to be available in their communities. A review should be carried out as part of the planning process for the new facility to identify the most appropriate vocational programs which would be of both interest

and potential employment value for the detainees, including in their home communities. This review should not be limited to considering traditional trades; Reiby Juvenile Justice Centre in New South Wales, for example, offers TAFE courses in hospitality and sign writing.¹³⁵

Given the relatively small number of young people who will be pursuing these courses it is likely that they will need to be pursued through a mixed model of online, offsite and in person training (see Chapter 16 (Education)).

Life skills training

Training will also need to be provided in basic life skills for young people who, by virtue of their age or background, have not been taught these skills at home. This may include basic skills in personal hygiene, cooking, household cleaning, household maintenance, laundry, shopping, budgeting and managing money, completing forms, using computers and cyber safety.

Ensuring that the young people have a level of competence appropriate for their age will facilitate their transition back to the community.

Other activities

Mr Hamburger told the Commission that:¹³⁶

'young people, if you can give them positive things to do, and point them in the right direction, by and large they will go that way. A lot of [misbehaviour] is out of boredom, frustration, feelings of neglect...'

Mr McGuire made a similar observation:¹³⁷

'A key part of Diagrama's operations is that children are kept very busy all day. Just like in the family home, if children are bored they will misbehave. They should be going to bed tired in the evening from a full day of activities.'

While some free time will be allowed, most of the young people's waking hours that are not spent in formal training will be taken up by making a choice between specified structured activities run by staff. For example, in a given time period they might be given a choice between painting, basketball, swimming or gardening. Long stretches of unstructured time are an invitation to restlessness.¹³⁸





Children working with animals in Diagram's La Zarza facility

The young people will contribute to the running of the facility by completing chores that are appropriate for their age and circumstances. This will reflect the contribution an adolescent would be asked to make in a well-functioning family home. It communicates a message that the young people are responsible for their own environment.¹³⁹ It also allows young people to complete small tasks successfully and be praised for it, a powerful motivator that they may not have experienced previously in their lives.¹⁴⁰ The chores might include feeding the animals, washing dishes, laundry or minor repairs and maintenance. This will be used as an opportunity for staff to engage with students, to engage in informal role modelling and counselling.

Young people will have the opportunity to engage with animals, both as pets to play with or as farm animals to work with. Pets help make a facility more humane¹⁴¹ and animal therapy can help calm stressed young people.¹⁴² In Missouri, for example, young people have dogs and cats as pets, raise chickens and work with rescue dogs to retrain them for adoption.¹⁴³ In Diagrama's facilities in Spain the activities for the young people include training horses.¹⁴⁴

Male and female detainees will be permitted to interact under supervision. These interactions may need to be managed carefully¹⁴⁵ but can assist in helping the young people practice the skills required for living in the wider community upon their release.

Young people will be encouraged to communicate regularly with their families and there will be no restrictions on contact with family associated with security classification and behaviour management systems (see Chapter 18 (Culture in detention)). They will be given assistance to maintain contact and the Northern Territory Government should consider that for those young people from remote or distant areas, transport costs be provided for family members to visit three or four times a year. This will include ensuring that a bus runs regularly to the facilities from nearby communities, increasing weekend visiting hours and assisting families and young people to access Skype or other web based video conferencing tools.¹⁴⁶ Technology can play a valuable role in allowing young people to stay connected to their families, especially if those families do not live nearby, but should not be treated as a replacement for ensuring there is also in person contact.¹⁴⁷

Therapeutic services

It is likely that the population of detained young people will have a range of diagnosed and undiagnosed health and developmental problems as outlined in Chapter 15 (Health, mental health and children at-risk). They are also likely to be feeling angry, frightened and isolated by virtue of having been sent to a secure facility.

All staff will be trained in how to identify and respond to these conditions. Specialist professional service providers will also be needed on a regular basis. The services provided will reflect the needs of the population at any point in time, but will likely include services delivered by psychologists, psychiatrists, experts in cultural healing, drug and alcohol counsellors, grief counsellors and providers of programs relevant to the perpetrators and victims of physical and sexual abuse.

The role of specialist professionals will be to work directly with the young people, but also with the staff in the facility and the families of the young people, to ensure that the adults in the young person's life are supporting the treatment the young person receives. For example, psychologists would work with the teachers to consider whether aspects of the school curriculum could be adapted to support the rehabilitation of the young people.

Treatment for substance abuse is an area of particular importance and the facility would include regular drug and alcohol education programs and access to specialist treatment upon release (see Chapter 15 (Health, mental health and children at-risk)).

The initial reception and induction of a young person into secure accommodation is an important period for the delivery of therapeutic services. A prompt assessment must be conducted of their mental and physical health and any urgent problems then to be treated (see Chapter 15 (Health, mental health and children at-risk)). At the same time, staff must begin the process of engaging with the young person, making them feel secure, explaining the facility's philosophy and making them familiar with the operation of the facility (see Chapter 11 (Detention centre operations)). This process may take several days, and for some young people it may be more than a week before they feel settled in the facility.¹⁴⁸

Community involvement

The local community will be encouraged to be involved in the day to day life of the facility. This will provide transparency of operation and encourages a normalised environment.

This element of the facilities' operations should not be misunderstood as a nice-to-have feature. Closed institutions tend to become abusive and corrupt, so maintaining openness is critical to the safe and effective operation of the facility.¹⁴⁹ This openness also allows young people to develop positive connections within the local community, which is a protective factor that may prevent them from reoffending after their release.¹⁵⁰

Local residents will be encouraged to participate in all aspects of the centre. This might include tradespeople delivering training, retirees visiting to play cards, sporting teams visiting for matches, business owners providing professional mentoring and Aboriginal community controlled organisations visiting to provide information on their services.

There will be opportunities for members of the community to visit for no particular purpose, such as sitting in the garden playing a board game, or kicking a footy on the sports field, to encourage informal contact and a more normal environment with social interactions. This could be done through the establishment of a 'Community Youth Justice Group', a pre-approved group of local people willing to regularly visit the detainees, less formal than the official visitors, to play sport, conduct courses, play music or just talk.

Aboriginal community controlled organisations should be welcomed into the facilities to work with the young people. These organisations play a valuable role in the current centres, which should continue. They are also well positioned to act as supports for young people throughout their life, before, after and during their involvement with the youth justice system.

Opportunities will be identified to partner with charities to allow the young people to assist their work. This will only be done where it is in the interests of the young people to undertake the activity and not simply to provide free labour. For example, this might include working with an animal rescue group to train assistance dogs for people with disabilities, as occurs in New South Wales through Assistance Dogs Australia's 'Pups in Prisons' program.¹⁵¹

Senior officials and members of parliament will be encouraged to visit the facilities, both to inspect it and to participate in its daily life. Borrowing from the practice in Spain, judges and magistrates who are involved with the youth justice system regularly will be encouraged to visit the facility.¹⁵² Staff members will have the opportunity to bring their families to the facilities on open days. The Commission heard that such an initiative was successful at West Kimberley Regional Prison because it meant that staff could go home, debrief and talk to their family about their work in a meaningful way.

Where disputes arise between Aboriginal young people it may be appropriate to ask Elders to mediate the disagreements within the centre.¹⁵³

Young people engaging with the community

Where it is assessed as appropriate, young people should be given the opportunity to spend time in the community for short periods while continuing to reside in the secure accommodation, as occurs presently for young people in detention. This might include leaving the centre to play in a sporting team, attend school or complete work experience.

Behaviour management and security

A secure accommodation facility must ensure the safety of the young people, staff and visitors who enter that facility. Some of the young people in the facility will come from backgrounds in which violence is normal and some will have limited capacity to regulate their own behaviour. For many young people, when they arrive they will be traumatised, in a state of shock and angry and not in a position to think about how to control their behaviours until they have gone through an initial process of healing.¹⁵⁴

Why don't you run?" asks one member of the delegation, a county judge. "Do you ever think about running?"

The question is posed to a tall, slender 16-year-old with a speech impediment and deep scars crisscrossing his face.

"I did when I first got here," the boy says, "I was making my plan. But then I saw that the other kids weren't going anywhere, they were thinking about their futures. And I saw that the staff here really cared. So I changed my mind.

"I'm in here because I stole a car and crashed it going 85 miles an hour," the boy continued, his voice suddenly trembling. "I need to get this surgery finished. I need to make some different choices. I don't want to spend the rest of my life running.

Discussion between a judge visiting from interstate and a youth detained in a facility in Missouri.¹⁵⁵

It is well settled that threatening and punitive interactions, incarceration and punishment escalate, rather than alleviate, aggressive behaviour in troubled youth.¹⁵⁶

Mr McGuire said Diagrama's experience in Spain has been that:¹⁵⁷

'supervision and human interaction can replace the need for [fences]. By employing the right staff who are committed to assisting the children, and by having well-defined and well run centres where positive behaviour is modelled, we have found that physical restraints on children can be minimised.'

Staff will still require advanced training in the use of safe physical defence and restraint techniques, but these should only be used when all other measures, including a counselling response, have failed (see Chapter 13 (Use of force)). Staff need training and support to ensure they are able to stay composed in the face of threats of violence or abuse. For anyone, it is a lot to expect that if spat on by a child they would respond therapeutically rather than by disciplinary measure.¹⁵⁸

An important part of behaviour management is simply keeping the young people busy¹⁵⁹ and treating them fairly. Just like in a family home, if young people are not treated fairly and consistently and given meaningful things to do, then they are likely to behave badly.¹⁶⁰ If young people have been working hard on their own development and are proud of their results they are unlikely to misbehave or abscond.¹⁶¹ Research indicates that when young people perceive a system to be fair their behaviour tends to improve.¹⁶²

A continuum of alternative behaviour management tools will be developed to ensure that staff have a range of measures available to them to respond to inappropriate behaviour by young people without the use of force.¹⁶³ This will include an incentive system designed to encourage responsible

behaviours by the young people.¹⁶⁴ This system will not involve restricting access to any programs or facilities that are part of the young people’s rehabilitation and development, will not interfere with the principle of keeping the young people constantly busy and will not deny young people access to education or physical exercise. An incentive system is effective when the range of activities available to the young people are rich enough to create an incentive for good behaviour.

The package of behaviour management tools will not only include measures that take something away from young people. There will also be elements that require a young person to model the desirable behaviour that they failed to perform initially.¹⁶⁵ These measures are valuable to reinforce the positive behaviours, but necessarily only work if the young person is willing to follow the instruction to model the appropriate behaviour.

The behaviour management tools should be kept simple. It should be clear in advance to all staff and young people what the response to a particular negative behaviour is going to be. This reduces the risk that behaviour management tools will be applied inconsistently by staff. Such inconsistency is likely to result in frustrated staff and resentful young people.¹⁶⁶ Greater consistency of treatment is required in the Northern Territory’s youth detention centres as set out in Chapter 11 (Detention centre operations).

Support for returning to the community

As set out in Chapter 24 (Leaving detention and throughcare), planning and preparation for a young person’s return to the community should begin within the first few days after they arrive at the secure facility.¹⁶⁷ This planning will inform the services the young person accesses while in secure accommodation. For example the type of vocational training they receive might be informed by what sort of jobs are currently in demand in their community.

Throughout this period Territory Families will be actively engaging with the young person’s family and community to ensure that there are people available to support the young person to maintain positive behaviours upon his or her release. The adults who are expected to support the young person should be supported to be actively involved in the young person’s life in the secure facility.¹⁶⁸

Over the longer term, Territory Families should consider introducing work based programs in communities that support young people’s transition back to their community. Kibble in Scotland, for example, runs ‘Kibbleworks’, a collection of small businesses that provide training and employment for young people who are leaving Kibble’s facilities.¹⁶⁹ The businesses include recycling, warehousing, mechanics, trades, a conference centre, a café, laser-tag and electric go-karting.¹⁷⁰

THE EXPECTED RESULTS OF REFORM

The model of secure accommodation facilities described in this chapter will be more humane to the staff and young people. Based on the experience of other jurisdictions, it is also expected to save money over the medium term and reduce the level of youth crime. For example,

- In the US, it has been estimated that steering just one high-risk delinquent teen away from a life of crime saves society US\$3 million to US\$6 million in reduced victim costs and criminal justice expenses, plus increased wages and tax payments over the young person’s lifetime.¹⁷¹

- In Washington DC, after two years of reform under a new Director of Youth Services, recidivism rates of young people released has fallen every year since.¹⁷² Education results improved dramatically and absconding fell dramatically.¹⁷³
- Missouri, which has adopted a therapeutic approach for many years, significantly outperforms other US states in terms of recidivism rates. Measured in terms of the number of youth who leave the facility but are sentenced to adult prison within the following three years, Missouri had a rate of 8.5% compared to 23.4%, 20.8% and 26% for Arizona, Indiana and Maryland respectively.¹⁷⁴
- In Ontario, Canada there was a 46% fall in the youth crime rate from 2003-2015 after it implemented reforms to its youth justice system.¹⁷⁵
- The Scottish transition from a prison based to a welfare model has coincided with a steady decline the prevalence of youth crime.¹⁷⁶
- A study of Diagrama’s work in the Murcia region of Spain found that 28.2% of the young people who attended a Diagrama residential centre reoffended, compared to 50.3% of young people in the comparison group at other centres.¹⁷⁷

The Deloitte Access Economics paper

The Commission engaged Deloitte Access Economics (DAE) to model the potential cost and benefits of the Northern Territory adopting reforms of the type described in this chapter as well as Chapter 25 (The path into detention) and Chapter 27 (Reshaping youth justice).

DAE modelled three interventions:

- an increased use of diversion (as recommended in Chapter 25 (The path into detention));
- the creation of low security bail accommodation and bail support programs to house most of the young people who would be placed in remand in detention centres under the current model (as recommended in Chapter 25 (The path into detention));
- adopting a ‘restorative’ model of detention, in new facilities, where young people are provided with therapeutic services directed at reducing the likelihood that they reoffend (as recommended in this chapter).

Qualifications

Without detailed and complete data and detailed facility costs, such modelling is necessarily an imprecise task, which could only produce an estimate of the impact of the reforms and not a concrete prediction. Even so, such modelling can provide an indication of the potential longer term benefits of a new youth justice and detention model.

DAE was asked to model the impact of the introduction of a hypothetical package of policy reforms compared to what is likely to occur in the Northern Territory if the status quo continues. On current

trends, offending by young people and incarceration of young people will continue to increase at a steady rate.

In conducting their analysis DAE was able to draw on the published data on the effectiveness of similar reforms in other jurisdictions, such as Missouri in the United States, recognising that there are significant differences between those jurisdictions and the Northern Territory.

The Northern Territory Government supported this project by providing the data that it had available on metrics relevant to DAE's task. In some cases this was incomplete; for example, the Northern Territory does not currently produce statistics on the rate of recidivism for young people who leave detention, notwithstanding that it is a 'critical whole-of-government social indicator'.¹⁷⁸

The Northern Territory Government commented on a draft version of DAE's report by letter correspondence. DAE responded to those comments by letter correspondence and by making some changes to the final report.

The limits on the data available about some aspects of the status quo and the impact of the proposed reforms meant that DAE had to use estimates for some data points, such as using the Australian average of a figure where Northern Territory data was not available.

Results

Accepting these qualifications, the outcomes of DAE's analysis are striking. DAE found that:

- Implementing the reforms proposed by the Commission would produce a net benefit of \$335.5 million dollars for the Northern Territory over a 10 year period;
- For every \$1 spent on these reforms the Northern Territory would receive a return of \$3.40;
- Even if the costs of restorative detention, or the costs of increased diversion, were around double what DAE have estimated, the Northern Territory would still receive a return of more than \$3 for every \$1 spent;
- Recidivism rates following the introduction of restorative detention would fall from an estimated 75% of youth to 46% of youth, meaning that both youth and adult crime rates would fall.
- By 2027, the average daily population of sentenced young people in secure accommodation will be 14 young people, compared to the current average of 17 young people per day at present, and a projected 27 young people per day in 2027 if no action is taken. Further, there would be a significant reduction in the remand population through increased diversion and bail accommodation, avoiding a projected population of 85 young people per day in 2027 if nothing is done.

Put simply, although an initial investment will be needed, over a 10 year time period these reforms would pay for themselves.

These figures are likely to understate the financial benefits of these reforms, perhaps significantly, for four reasons.

- DAE was asked to take a conservative approach, and err on the side of assuming that costs were on the high end and benefits on the low end of the ranges they were looking at. Even on an absolute 'worst case' basis the Northern Territory would still save \$79.6 million over 10 years.
- DAE did not attempt to model the benefits to society of young people who go on to have productive lives, rather than engage in future offending. The benefits to the community in terms of those young people paying taxes, employing others in their businesses and providing services to their communities may be considerable.
- DAE only projected the benefits over a 10 year period. The major capital costs are all in the early years, so the cost benefit ratio is higher in the later years and the rate of return would likely be much higher if modelled over a longer time period.
- Even in the absence of the proposed reforms, given the state of the current detention centre facilities, the Northern Territory will incur capital costs in providing new facilities, so the modelled capital costs are overstated relative to the baseline.

These results are valuable, but it is important to acknowledge that financial drivers are not the sole, or perhaps even the most important consideration. Even if DAE had concluded that these reforms would have a net cost to society, they may well be still justified in terms of recognising the rights of young people to be treated appropriately, enhancing community safety and giving young people the opportunity to reform their lives and reach their potential.

Progress is not always linear

During the transition phase and once the new facilities are established mistakes will be made. Young people will have outbursts, staff will make poor decisions, equipment will not function as expected and, despite receiving excellent support, some young people will leave the facilities and then reoffend.

Progress is not always linear, especially during a process of major reform and when dealing with a vexed social issue such as young people who have offended. Critics of the system may seize on these moments to discredit it, but they are both normal and inevitable. They are not a reason to abandon the change. The leaders of the reform should acknowledge the possibility that misteps will occur, and put in place measures to evaluate the reform as it occurs so that any problems can be identified promptly.

The practitioners who gave evidence to the Commission about successful reform projects all acknowledged that there had been misteps along the way. For example:

- In Washington DC, staff moved multiple votes of no-confidence against the new director who was attempting to introduce therapeutic reforms, before they were eventually persuaded of the effectiveness of what was proposed when they saw the outcomes.¹⁷⁹
- In Ohio, the first process for de-escalating children in segregation proved to be unworkable, and the incentive system as originally designed proved did not work as well as hoped, so adjustments

had to be made.¹⁸⁰

- In West Kimberley Regional Prison, the spiritual centre designed for use by the Aboriginal inmates proved to be a ‘white elephant’, because the Aboriginal inmates considered it an inappropriate space, so it was instead converted to a music room.¹⁸¹
- Mr Bell observed of Kibble’s successes that: ‘Presenting the Kibble approach as a 20-year case study also has the effect of sanitising the journey, and diminishes the challenges faced, the lack of knowledge and the steep learning curve experienced by all involved, from Board level to front line staff.’¹⁸²

The test for those administering the system and their leaders is how they respond to challenges when they arise. This underscores the importance of a strong operating philosophy based on evidence based practice that is implemented by qualified staff.

Recommendation 28.1

The Northern Territory design, construct and implement a new model of secure accommodation based on the principles set out in this chapter.

THE TRANSITION TO THE NEW FACILITIES

Analysis of the population

An important first step in the transition process is to conduct a comprehensive review of the profile of the population of young people likely to be held in the secure facilities over at least its first 10 years of operation. It is essential that the design process occur in light of the best evidence available of the population that the facility will serve, even though it is not possible to precisely predict the population a decade in advance.

Dr Grant suggested that a number of factors should be considered in this process, some being:¹⁸³

- age and gender of potential population,
- typical existing family structures and family/kin/skin groups,
- number of languages spoken and language groups/communities,
- histories, stories and cultural practices of the Aboriginal peoples who might be represented in detainee population,
- cultural obligations of population to family and community and repercussions of being able/not able to fulfil cultural obligations,

-
- cultural relationships between different offenders,
 - spatial requirements as per cultural norms, and
 - educational and health needs of population, including disability.

Consultation

Close consultation with the community in how to design and operate the new facilities in light of the principles set out in this chapter must occur.¹⁸⁴ The consultation must be broad and meaningful. It must begin at the earliest possible stage in the design process and continue through the transition, construction and operation of the facility.

Aboriginal communities and organisations are major stakeholders in this consultation process. Detention centre staff, unions, management, victims of crime representatives, judges, lawyers and other interested parties should all be consulted in the process of developing the new approach to youth detention.

Staffing and recruitment

The transition from the current facilities to the proposed new facilities will be challenging for staff. They will be asked to re-train and re-skill, work in a new environment and operate under a wholly different philosophy and operating model. This could be a challenging process for some staff, managers, support staff and the senior executive.

Staff will need to be supported through the transition, including paid leave to attend training. Regular meetings should be held with staff to explain the changes that are to be made, the rationale for them and to answer any questions.¹⁸⁵

It is clear that many staff currently working in youth detention centres would welcome the opportunity to work in a more therapeutic environment. When asked about their vision for youth detention as part of the Hamburger review Youth Justice Café, middle and senior managers from the then Department of Correctional Services called for a 'YMCA for youth with security', group homes and community run outstations.¹⁸⁶

Inevitably, there will be some resistance to change. If, despite support and training, staff are unwilling or unable to buy in to the new model and cultural shift, they should not work in youth justice.

For those staff who are willing to work within in a therapeutic model every opportunity should be provided to allow them to re-train for their new roles. The difficulty of this transition should not be understated. As Dr Dedel, the Court Monitor for Ohio's reforms said of the transition for staff in Ohio that a therapeutic role is more demanding because:¹⁸⁷

Part of being a counsellor is becoming immersed in the child's issues, sharing part of your own life, and developing a relationship.

Some staff may feel that they signed up to perform a particular role and do not find a counselling oriented role attractive. Clear and detailed job descriptions should be developed so that it is transparent to staff what will be asked of them.¹⁸⁸ These detailed job descriptions will then also guide the recruitment process and assist in identifying areas in which staff need additional training. Mr McGuire said that when Diagrama takes over a facility and implements its therapeutic model the change in culture takes around two years. He explained that while in his experience the young people will adapt to a wholly new model in two weeks, changing staff culture takes a much longer time.¹⁸⁹

A recruitment process should be developed to attract appropriately skilled staff for the future. This might include partnering with the social work or similar programs of local universities. Over time, the opportunity to work in a leading facility enacting a therapeutic philosophy is likely to attract skilled staff to work in the Northern Territory.¹⁹⁰

Staff salaries and conditions will need to be significantly improved, to reflect the high level of professional skills and emotional intelligence that they will be expected to demonstrate.

Attracting a high proportion of Aboriginal staff will be critical. The standard government recruitment process of selection criteria, curriculum vitae and interview panels may deter well suited candidates who do not have experience with these processes and consideration should be given to the best way to attract Aboriginal candidates for the positions.¹⁹¹

Leadership

Leadership is critical to success. The consistent evidence to the Commission from successful reformers in other jurisdictions is that transformational reform can only succeed if it has the support of the senior executive and a leader who has bought into the new philosophy.¹⁹² Leadership from within government is necessary for effective reform and the leaders in youth justice need to articulate the vision about how to do things a better way and then bring their stakeholders along with them.¹⁹³

The leaders within the facilities also need to be willing to model the behaviours that staff will be expected to adopt and to spend time working with staff and young people in person to guide the transition process.

The senior executive leaders in the public service can only be effective if they are supported by the ministers and the politicians who ultimately control the resources and powers available to them.

This may require refreshed leadership to ensure people with commitment to the new model and philosophy are employed and who have the necessary skills in change management to institute and lead reform.

Timing and priorities

The transition to the new detention model will need to occur in a staged approach. The consultation on design and construction of the new facilities will take time.¹⁹⁴ Embedding a new philosophy, culture and practice may take longer.¹⁹⁵ Enduring reform will require sustained commitment that lasts

longer than the Northern Territory's four year electoral cycle.

In cross-examination of Mr Hamburger, counsel for the Northern Territory Government suggested that before any new model was rolled out it should be trialled through a pilot project before any larger commitment was made.¹⁹⁶ This might be prudent if the population of young people detained in the Northern Territory were much larger than it is and if the existing facilities were in acceptable condition. But given the small numbers, poor current facilities and time that will be needed for design and construction, it is not an option that should be pursued.

The caution expressed by Nate Balis of the Annie E Casey Foundation, commenting on the campaign in the United States to shut down all prison-like environments should be heeded:

Achieving an end to youth prisons is complex...The practicalities of how to close down existing facilities, and then renovate them or build new ones are complex, time consuming and expensive. There is a risk that the resources needed are diverted away from the primary task of reducing the number of young people who need to be detained at all.¹⁹⁷

While the transition will be difficult, other jurisdictions have successfully transitioned from dangerous and degrading youth prisons to world leading examples of therapeutic secure residences.

Mr Hamburger suggested that for a reform of this type 15 years would be the appropriate time scale to judge success in terms of how the model impacts on society.¹⁹⁸ Some of the young people presently in the system are a product of that system and the longer term benefits of reform will not be immediately realised until the outcomes for young people who enter and leave detention under the reformed model can be properly tracked and assessed.

Given that it may take a number of years before the new facilities are designed, built and become operational. North Australian Aboriginal Justice Agency submitted that the Northern Territory Government take urgent action to close the current Don Dale Youth Detention Centre as soon as possible.¹⁹⁹ However, in the short and medium terms, the reality is that there are no alternatives to continuing to use the current inadequate youth detention centres.²⁰⁰ To ameliorate this highly unsatisfactory situation, the development of alternative pathways and supported bail accommodation must be a priority: see Chapter 20 (The path into detention) together with intensive training for staff in therapeutic and trauma informed management. As noted above, work has been done and is being done to make the current detention centres safer, less oppressive and 'as contemporary [and] supportive as possible'.²⁰¹ In his evidence to the Commission, the CEO of Territory Families made it clear that the current situation is far from ideal, that work is underway to make further improvements while new facilities are built, and that he will not allow children and young people to be held in unsafe conditions.²⁰²

Immediate steps to improve the facilities

The Commission is anxious that children who are detained in the Northern Territory prior to the commissioning of the new youth detention facilities will experience improved conditions to those experienced today. As recommended below, the Northern Territory Government should carry out

further work to ameliorate the conditions in the current facilities as described in this chapter and make as many improvements as practicable, including to ensure that, for example:

- water is readily available to detainees (e.g. by installing water coolers)
- there are appropriate rooms for detainees to see visitors and have private consultations with medical professionals, lawyers, case workers etc
- the amenity is improved as much as possible (e.g. by painting rooms and murals etc)
- detainees have access to appropriate mental stimulation (e.g. library books that are appropriate to detainees' ages, literacy levels and interests, suitable board games and card games, tablets/electronic devices, blackboard paint on room walls etc), physical activity (e.g. by installing a gym and/or providing sporting equipment) and outdoor activities (e.g. growing gardens)
- as much as possible detainees' rooms are like ordinary bedrooms/dorm-style rooms
- access to natural light is maximised (e.g. by removing metal bars and cages wherever possible)
- detainees have appropriate privacy when showering
- visitors are permitted to bring in food to detainees, such as bush food and bush medicines
- there are appropriate cultural spaces accessible to visitors including elders and family, such as:
 - an area where a smoking ceremony may be conducted
 - traditional style Bough Shed
 - a sand pit for traditional dancing
 - an area for campfires to be used for story-telling and traditional cooking
- wherever possible:
 - furnishings and features which were appropriate for adult prisoners but are now redundant or not appropriate for youth detainees are removed or replaced with more appropriate alternatives
 - alternative security measures are used instead of razor wire e.g. barrelled walls
 - physical reminders of a detention centre's former use as an adult prison facility are removed.

The most important change which can be implemented in these unsatisfactory facilities is in the area of staff recruiting and training. As the Commission's investigations have revealed, there are staff at both Don Dale Detention Centre and the Alice Springs Youth Detention Centre, whose approach to the management of detainees has been poor. They are unlikely to embrace the new approach and are seen by detainees, their families and supporters as an impediment to better practices. Territory Families should consider options for moving these staff from positions in youth detention centres. This transition period will be a difficult time for all.

Recommendation 28.1

The Northern Territory design, construct and implement a new model of secure accommodation based on the principles set out in this chapter.

Recommendation 28.2

The Northern Territory:

1. Develop and complete as soon as possible a program of works to further improve the physical environments and facilities at the current Don Dale Youth Detention Centre and Alice Springs Youth Detention Centre.
2. Involve detainees in the project as much as possible, including by consulting with them about the kinds of improvements they would like, taking their views into account in developing the program of works and giving them the opportunity to participate in the work where appropriate.
3. Review the current staff working at youth detention centres to ensure that only those who can work in a trauma-informed therapeutic model of youth detention continue to be employed in frontline roles.

ENDNOTES

- ¹ 'New Beginnings Youth Development Centre' in Washington DC is described in Chapter 26 (Other youth justice and detention models).
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- ³ Transcript, Graham Bell, 27 June 2017, p.5156: lines 41-47.
- ⁴ Transcript, Nate Balis, 26 June 2017, p.4985: line 26.
- ⁵ Exh.643.000, Precise of Charlie Taylor, 27 June 2017, tendered 29 June 2017, para 18.
- ⁶ Transcript, Ken Middlebrook, 26 April 2017, p.2926: lines 12-29.
- ⁷ Exh.601.002,Annexure 2 to the Precise of Vincent Schiraldi, Item 3, McCarthy, P, Schiraldi, V, and Shark M, 2016, The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model, tendered 27 June 2017, p. 6.
- ⁸ Transcript, Robert Hamburger, 6 December 2017, p.400: line 33-40; p 401: lines 12-14.
- ⁹ Exh.601.002, Annexure 2 to the Precise of Vincent Schiraldi – , Item 2, Annie E Casey Foundation, 2010, The Missouri Model: Reinvention the Practice of Rehabilitating Youthful Offenders, tendered 27 June 2017, p. 11.
- ¹⁰ Exh.609.000, Report of Graham Bell, 1 June 2017, tendered 27 June 2017, section 2.3.3; Exh.601.000, Precise of Vincent Schiraldi, 6 June 2017, tendered 27 June 2017, para 5; Exh.632.000, Precise of Kelly Dedel, 15 May 2017, tendered 29 June 2017, para 6; Transcript, Nate Balis, 26 June 2017, p.4985: lines 18-31; Transcript, Tamara Stone, 30 June 2017, p.5379: line 19-p.5381: line 29.
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- ¹² Exh.576.000, Precise of Nate Balis, 20 June 2016, tendered 26 June 2017, para 16; Transcript, Nate Balis, 26 June 2017, p.4977: lines 11-35.
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- ¹⁵ Exh.601.000, Precise of Vincent Schiraldi, 6 June 2017, tendered 27 June 2017, para 15
- ¹⁶ Exh.631.000, Precise of David McGuire, 9 June 2017, tendered 28 June 2017, para 14.
- ¹⁷ Exh.601.002, Annexure 2 to the Precise of Vincent Schiraldi, Item 2, Annie E Casey Foundation, 2010, The Missouri Model: Reinvention the Practice of Rehabilitating Youthful Offenders, p. 17.
- ¹⁸ Exh.601.002, Annexure 2 to the Precise of Vincent Schiraldi, Item 2, Annie E Casey Foundation, 2010, The Missouri Model: Reinvention the Practice of Rehabilitating Youthful Offenders, p. 15-19.
- ¹⁹ Exh.601.002, Annexure 2 to the Precise of Vincent Schiraldi, Item 2, Annie E Casey Foundation, 2010, The Missouri Model: Reinvention the Practice of Rehabilitating Youthful Offenders, p. 18-19.
- ²⁰ Exh.601.002, Annexure 2 to the Precise of Vincent Schiraldi, Item 2, Annie E Casey Foundation, 2010, The Missouri Model: Reinvention the Practice of Rehabilitating Youthful Offenders, p. 6-10.
- ²¹ Transcript, David McGuire, 28 June 2017, p.5271: lines 7-19.
- ²² Exh.609.000, Report of Graham Bell,1 June 2017, tendered 27 June 2017, section 2.3.3.
- ²³ Exh.601.000, Precise of Vincent Schiraldi, 6 June 2017, tendered 27 June 2017, para 2-3; Transcript, Vincent Schiraldi, 27 June 2017, p.5078: line 34-p.5079: line 17.
- ²⁴ Exh.601.000, Precise of Vincent Schiraldi, 6 June 2017, tendered 27 June 2017, para 7-9; Transcript, Vincent Schiraldi, 27 June 2017, p.5081: line 13-p.5084: line 38.
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- ⁴¹ Exh 631-000, Precise of evidence of David McGuire, 9 June 2017, tendered 28 June 2017, para 13; Transcript, David McGuire, 28 June 2017, p.5271: line 44 - p.5272: line 33.

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- ⁴⁵ Exh.631.000, Precis of evidence of David McGuire, 9 June 2017, tendered 28 June 2017, para 13; Exh.632.000, Precis of evidence of Kelly Dedel, 15 May 2017, tendered 29 June 2017, para 6.
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- ⁴⁷ Transcript, Nate Balis, 26 June 2017, p.4986: lines 26-29.
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- ⁴⁹ Exh.631.000, Precis of evidence of David McGuire, 9 June 2017, tendered 28 June 2017, para 5 and 10
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- ⁵¹ Transcript, Vincent Schiraldi, 27 June 2017, p.5082: lines 14-23; p.5084: line 40- p.5085: line 30.
- ⁵² Transcript, Graham Bell, 27 June 2017, p.5146: lines 9-35.
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- ⁵⁷ Transcript, Kelly Dedel, 29 June 2017, p.5289: lines 18-32; Transcript, Charlie Taylor, 29 June 2017, p.5371: lines 14-15.
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- ⁶⁴ Exh.609.000, Report of Graham Bell, 1 June 2017, tendered 27 June 2017, section 2.12.1 – 2.12.3; Transcript, Tamara Stone, 30 June 2017, p.4384: lines 5-25.
- ⁶⁵ Transcript, Vincent Schiraldi, 27 June 2017, p.5082: line 23 – p.5083: line 44.
- ⁶⁶ Transcript, Graham Bell, 27 June 2017, p.5152: line 18: p.5152: line 6.
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- ⁶⁹ Exh.654.023, Improving outcomes for young offenders: an international perspective - Literature review, 2013, tendered 30 June 2017, p. 3.
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- 158 Transcript, Vincent Schiraldi, 27 June 2017, p.5085: lines 15-30.
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- ¹⁹² Exh.606.000, Precis of evidence of Mike MacFarlane, 16 June 2017, tendered 27 June 2017, para 20; Exh.632.000, Precis of evidence of Kelly Dedel, 15 May 2017, tendered 29 June 2017, para 21.
- ¹⁹³ Transcript, Robert Keith Hamburger, 6 December 2016, p. 401: lines 24-26.
- ¹⁹⁴ Transcript, Mike MacFarlane, 27 June 2017 p.5116: line 45-p 5117: line 15.
- ¹⁹⁵ Transcript, Kelly Dedel, 29 June 2017, p 5286: line 14-20.
- ¹⁹⁶ Transcript, Robert Keith Hamburger, 6 December 2016, p.452: lines 40-47
- ¹⁹⁷ Exh.576.000, Precis of evidence of Nate Balis, 20 June 2017, tendered 26 June 2017, para 19.
- ¹⁹⁸ Transcript, Robert Keith Hamburger, 5 December 2016, p 354: lines 15-38.
- ¹⁹⁹ Submission, North Australian Aboriginal Justice Agency, Youth Detention – Topic 2, June 2017, pp. 10.
- ²⁰⁰ Transcript, Ken Davies, 30 April 2017, pp. 5440: lines 31-35.
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- ²⁰² Transcript, Ken Davies, 30 June 2017, pp. 5401: lines 1-18, 33-35; pp. 5401: line 47 – pp. 5402: line 9; pp. 5402: lines 22-25; pp. 5439: lines 10-16; pp. 5440: lines 32-35.

